

Paul A. Allen  
San Francisco, CA  
November 18, 2022

**San Francisco Police Commission**

Cindy Elias [cindy.elias@sfgov.org](mailto:cindy.elias@sfgov.org)  
Kevin Benedicto [kevin.benedicto@sfgov.org](mailto:kevin.benedicto@sfgov.org)

**Copy:** Larry Yee [lawrence.yee1@sfgov.org](mailto:lawrence.yee1@sfgov.org)  
Jim Byrne [jim.byrne@sfgov.org](mailto:jim.byrne@sfgov.org)  
Max Carter-Oberstone [max.carter-orberstone@sfgov.org](mailto:max.carter-orberstone@sfgov.org)  
Jesus Yanez [jesus.g.yanez@sfgov.org](mailto:jesus.g.yanez@sfgov.org)  
Debra Walker Larry Yee [lawrence.yee1@sfgov.org](mailto:lawrence.yee1@sfgov.org)

Stacy Youngblood [stacy.a.youngblood@sfgov.org](mailto:stacy.a.youngblood@sfgov.org)  
Supervisor Rafael Mandelman [rafael.Mandelman@sfgov.org](mailto:rafael.Mandelman@sfgov.org)

**Re: Our Meeting On The Draft Traffic Enforcement Order 9.01 (“DTEO”)**

Dear Commission President Elias and Commissioner Benedicto:

Thank you for the opportunity to meet yesterday, November 16, about 9.01, the Draft Traffic Enforcement Order. I appreciate your candor and learned from our discussion. I have three follow-up points.

**First**, separately I have emailed Sgt. Youngblood a list of District 8 neighborhood groups that was recently compiled by Castro Merchants in connection with their attempt to enlist neighborhood support for their entreaties to the City for assistance in managing the unacceptable problems of aberrant street behavior, homelessness, and drug related activities in the Castro, an adjacent Corona Heights Neighborhood.<sup>1</sup> I will also send to him the link to a website that lists many San Francisco neighborhood groups, to which outreach would be appropriate.

**Second**, what I found most dismaying about our meeting yesterday was the apparent belief that there are no *adverse* consequences from an order that would bar SFPD from citing or arresting in connection with a dozen motor vehicle infractions. Indeed,

---

<sup>1</sup> In prior submissions, I noted my membership on the Board of Directors of our neighborhood association.

President Elias stated that the order would enhance public safety;<sup>2</sup> and Commissioner Benedicto repeatedly referred to the exceptions or exclusions in the draft that would permit enforcement, while also stating that the the amended version of the order would remove ambiguities. Indeed, the entire focus of this endeavor apparently is to eliminate as much as possible pretext stops and to enjoy the benefits thereof, yet without any attention at all to unintended, *adverse* consequences. Perhaps the amended order will allay my concerns but the public only has the May 6 draft. This inattention to the “cons” is as mystifying as it is unacceptable.

To begin with the obvious, I think we can agree that California motor vehicle laws are enacted in order to increase public safety and to further the common good. If the Police Commission now proposes, *de facto*, to weaken those laws — assuming for the moment it has the legal and moral authority as well as the institutional competency to do so — one would think it bears an especially heavy burden of investigation, analysis, and justification — all supported by evidence pro and con. I found it telling and distressing in equal measure that in yesterday’s meeting *I* was asked to identify aspects of the order that might imperil public safety. I would have thought that this is precisely the job of the order’s advocates on the Police Commission. It is astonishing that the Commission assumes that offering grace to (even more) turns without signaling, otherwise illegal U-turns from far left lanes, and driving without lights in the fog will not adversely affect public safety.<sup>3</sup>

Other potential adverse effects seem not to be considered at all. I previously identified ill affects to police department morale, retention, and recruitment. Other consequences may be more subtle but no less important. Motor vehicle statutes duly enacted largely to further public safety have collateral benefits: as do many laws that regulate individual behavior, they further the common good and “cultivate civic virtue.”<sup>4</sup> Apart from considering the potentially beneficial effect on the *individual* subject of a traffic stop, has the Commission considered the potential adverse *social and community* effects of abrogating, in whole or in part, enforcement of motor vehicle codes? On the sense of community? On “a concern for the whole, a dedication to the common good”? On residents’ and visitors’ respect for the law generally? On the reputation of the city, such as it is, for safety and habitability?

---

<sup>2</sup> This, purportedly because officers will be freed up to handle more serious crimes. Of course, this argument neatly disposes of another “first principles” remedy: hire more police officers. And, thinking of my own neighborhood, I still don’t see the opportunity cost of a patrolling officer from Park Station citing a vehicle for failing to signal at the already dangerous 17th/Ord intersection.

<sup>3</sup> The Commission, or at least the order’s advocates, appear to have given up on the “first principles” notion that officer education and accountability are remedies preferable to neutering in whole or in part, state statues. But now I know I am really repeating myself.

<sup>4</sup> “If a just society requires a strong sense of community it must find a way to cultivate in citizens a concern for the whole, a dedication to the common good...It must find a way to lean against purely privatized notions of the good life, and cultivate civic virtue.” Michael J. Sandel, Justice, What’s the Right Thing to Do?, Farrar, Straus and Giroux, 2009 at p. 336.

In my prior submissions and yesterday as well, in light of the foregoing I raised two essential questions, the second more impolitic than the first: (1) In light of reasonably foreseeable adverse consequences of the traffic order, what standard will the Commission use to balance the pros and cons? (2) Has the Commission satisfied itself that it has the legal and moral authority, as well as the professional competence, to make these judgments? Yesterday's meeting seemed to suggest that both questions are immaterial because the order's advocates apparently believe *there are no potential adverse consequences*. On its face, it is inconceivable that this is so.

**Third**, I want to address once again the process the Commission is using for obtaining public input. I acknowledge the Commission's pride in a process for 9.01 that is, as President Elias noted, far more comprehensive than has ever been used before, such as for the "use of force" order. However, unlike that order, 9.01 potentially has greater implications for public safety, police department morale, the strength of the City's social fabric, and the reputation and habitability of San Francisco. In short, I think we can agree that the effect of the traffic order is far broader and deeper than the "use of force" order. Again, I speak of 9.01 in its May 6 form. In writing this, I acknowledge that apparently neither Commissioner Elias nor Commissioner Benedicto agree with the foregoing statement. Nonetheless, if this is even possibly so, broader public outreach to the San Francisco community is appropriate, surely when there is a final order ripe for Commission action.

As I think you agree, neither the public generally nor most neighborhood groups specifically have any idea that such a consequential order's birth is imminent; certainly not its terms. Prior to serious Commission consideration of a final order it is imperative that there be a fair, broad, and reasonable process for taking public comment. For all the work that has gone into them, neither the HRC "listening sessions" nor the working group meetings are a replacement for that, for reasons set forth in my prior correspondence. Commission "listening sessions" — perhaps in a handful of venues and neighborhoods throughout the city — seem the most appropriate.

Finally, I respectfully reiterate what I have previously written, what I advocated in our meeting, and what — as I understand it — you have apparently already rejected: that on a matter with so many material public policy implications, surely with vastly greater effect than a "use of force" order, a final draft order should be accompanied by a memorandum that sets forth the purpose of the order, the alternatives considered, the reasonably foreseeable consequences (pro and con), and the evidence in support of this significant public policy change. Why not, for example, take a page from the San Francisco Planning Commission that does this even for relatively trivial conditional use authorization ("CUA") applications: prepare a staff report that discusses the merits and pros and cons and provides the evidence, then publish the report and schedule a hearing to take testimony? The traffic order is certainly more consequential than a CUA application or a zoning variance request. Far more: this is an order that could affect pedestrian safety; whether San Francisco has a chance of meeting its 2024 "vision zero" death metric; the reputation of the City for safety and habitability; police

department recruitment and morale; and the social and community fabric. And, yes of course, issues attendant to pretext stops. In writing this, I acknowledge that neither of you apparently agrees with this and that 9.01 will be redrafted, though in what form I do not know.

Finally, as I have written previously, I would hope that neutering in whole or in part a dozen state motor vehicle statutes (and a San Francisco Transportation Code provision) presupposes humility, due diligence, and evidence.

Thank you for your consideration.

Sincerely,

Paul Allen