


Paul A. Allen
San Francisco, CA
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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

Copy: Sgt. Stacy Youngblood stacy.a.youngblood@sfgov.org
Supervisor Rafael Mandelman rafael.Mandelman@sfgov.org

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

Dear Commissioners:

This letter supplements my letters of September 8 and 18, as well as October 30, on this matter. I am a 30 year resident of the City and a retired lawyer.

This is a letter of questions, not arguments.

1. Questions Regarding Process

- 1.1. Has the May 6 draft been amended as a consequence of the Working Group and the HRC “listening sessions”? If so, when will it be released?
- 1.2. Will the Commission itself hold public hearings prior to the consideration or adoption of a final draft order?
- 1.3. Assuming the answer to the foregoing is yes, prior to holding hearings on such a final draft order, will the Commission publish a report or memorandum, with citations to the record, that sets forth the purpose of the order; all the alternatives considered; the reasonably foreseeable benefits and detriments of the remedy proposed; and why that remedy is the one that the Commission seeks to adopt?

2. Questions Regarding Legal Authority

- 2.1. Has the Commission sought an opinion on its legal authority under California law and the City Charter to order San Francisco police officers to refrain from citing or arresting in connection with violations of California state law?
- 2.2. Has the Commission sought an opinion on its legal authority under the City Charter to order San Francisco police officers to refrain from citing or arresting in connection with violations of California state or local law given, *inter alia*, that any rules or regulations of the Commission must be "...consistent with [the] Charter and ordinances of the City and County"?

3. Questions Regarding the Reasonably Foreseeable Benefits and Detriments of the Order

- 3.1. Has the Commission identified, set forth, and evaluated the reasonably foreseeable *benefits* of the order and has it clearly set forth the nexus between purpose ("to reduce racial bias in the enforcement of our traffic laws") and the order's terms? What is the probative evidence in support of the purported benefit(s), and how will the benefit(s) be measured if the order is adopted?
- 3.2. Has the Commission identified, set forth, and evaluated the reasonably foreseeable *detriments* of the order, e.g. to public safety generally (such as pedestrian deaths and injuries from failure to signal; harm from permitting occupied vehicles to park in otherwise prohibited public spaces such as emergency MUNI exits, bus stops, green bicycle lanes, loading docks, driveways, fire hydrants); police department morale, retention, and recruitment; and the general social fabric of the city and its reputation?
 - 3.2.1. Regarding public safety, has the Commission quantified the number of "excess deaths and injuries" that would be attendant to the adoption of an order in its current or amended form, or asked the Health Department to do so? Has it identified, quantified, and set forth all the reasonably foreseeable adverse effects on public safety attendant to adoption of the order in the form proposed? Has it sought the views of any state agencies on these questions given that most of the laws at issue are California state statutes?
 - 3.2.2. Regarding the police department, has the Commission sought to measure the reasonably foreseeable adverse effect, if any, on police department morale, retention, and recruitment, a relevant issue given that SFPD is already short at least 500 officers (likely more by year end) and is unable to attract enough recruits?
 - 3.2.3. Has the Commission sought to determine the reasonably foreseeable adverse effects of the order on the social social fabric of the City — the

social compact, if you will — or its reputation insofar as safety and habitability is concerned?¹

4. Questions Regarding the Basis Upon Which the Commission Will Evaluate and Vote Upon a Final Order

4.1. In evaluating the wisdom of the order and whether it should be adopted, on what principled basis will the Commission decide?

4.2. That is, how will the Commission balance the *benefit*, if any, of the order on reducing “racial bias in the enforcement of our traffic laws” against the *detriment*, if any, to public safety, the police department, the social compact, and the city’s reputation?

4.2.1. Is the Commission using an implicit or explicit cost-benefit analysis? A utilitarian standard of the greater good? Another standard that accounts for foreseeable harms but outweighs them with particularized benefits?

4.3. Regarding the balancing of benefits against the potential harm to public safety, the police department, the social fabric, and the city’s reputation for safety and habitability, is it the Commission’s view that it has the professional capability, the moral authority, and the legal remit to make this judgement for the City of San Francisco?

Respectfully Submitted,

Paul Allen

¹ My prior memoranda identified the social fabric of the City as a potential collateral victim of the current version of the traffic order but without elaboration. As this is a “questions” letter, I will not dwell on it here, but surely it merits serious reflection by the Commission. To take one example, shoplifting in supermarkets, to say nothing of higher end retail establishments, is already widespread, daily, increasingly brazen, and largely without consequence to the perpetrators. Yet the cost to the City’s residents is real: closed stores, reduced hours, higher prices. In this setting, what is the reasonably foreseeable effect of *voluntarily* abandoning enforcement of duly enacted motor vehicle codes? What message does that send?