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May 11, 2017

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Dear President Turman and Commissioners,

We appreciate the San Francisco Police Commission's willingness to partner with The Bar Association of San Francisco (BASF) and other organizations to improve the Department of Police Accountability (DPA) and build an effective model for civilian oversight in San Francisco. In the coming months, the Police Commission will decide critical issues regarding the leadership of the DPA and the implementation of the voters' vision for a robust and effective DPA. This letter presents BASF's informed ideas and best recommendations to assist the Police Commission in meeting the voters' mandate for professional civilian oversight in San Francisco.

**EXECUTIVE SUMMARY**

BASF urges the Police Commission to improve DPA in three key areas: (1) follow existing ethical and professional standards; (2) address specific report findings and areas of concern from recent federal and other reviews of DPA's predecessor, Office of Citizens Complaints (OCC); and (3) select and set priorities for new leadership.

*Professional Standards*

San Franciscans expect and deserve highly effective and professional civilian oversight. BASF has long been an advocate for and partner in building robust civilian review. As such, BASF strongly urges the DPA, a long-standing member of the National Association for Civilian Oversight of Law Enforcement (NACOLE), to follow the standards set forth in NACOLE's code of ethics and other professional standards, available at [http://www.nacole.org/nacole\\_code\\_of\\_ethics](http://www.nacole.org/nacole_code_of_ethics).

*Specific Concerns*

Three recent reports highlighted significant problems undermining the DPA's



effectiveness: the USDOJ COPS Office Collaborative Review Initiative Assessment of the SFPD (and OCC); the Blue Ribbon Panel on Transparency, Accountability and Fairness in Law Enforcement; and, the December 1, 2016, report by Aaron Zisser, “Recommendations to the SF OCC Regarding Investigations Policy, Procedure and Practice.” The reports identified specific concerns, including:

- Civilian oversight philosophy and approach: Implementing needed reforms, including emphasis on community outreach to respond to identified concerns about bias
- Expanded DPA authority: Operationalizing the new mandates
- Leadership: Ensuring adequate resources and preparedness

*New leadership: selection and priorities*

We share the Police Commission’s desire to deliver the best professional civilian oversight in San Francisco. Given the DPA’s newly expanded authority and mandate, the new leadership will be tasked with not only addressing systemic shortcomings highlighted in recent reports, but also with building the DPA into a robust and trusted civilian oversight mechanism. Details about each of these recommendations are discussed below.

## **BACKGROUND**

The Bar Association of San Francisco has an ongoing commitment to the success of the Department of Police Accountability. BASF was part of the effort that led to the agency’s creation 35 years ago and has played central roles in various campaigns and drives to increase the effectiveness of this critical civilian oversight system for many years.

The DPA’s relative impact has always been dependent on a combination of support, legal authority and leadership. On every occasion the voters have been asked to expand the DPA’s authority, role and budgetary support, they have done so — usually by overwhelming margins. They did so twice again last year. Significantly, they voted most recently last year to rename the agency to more directly describe its core mission — improving police accountability. The Board of Supervisors unanimously put Proposition G on the November 2016 ballot and told the voters it would bring “greater accountability, transparency and external oversight” to the SFPD, rightly calling these things “essential” to any police agency’s “operational and policy effectiveness.”

San Francisco’s DPA system is widely recognized in the civilian oversight field for both the scope of its legal authority and the relative size of its budget (backed by minimum funding levels the voters wrote into the charter long ago, in part based on the BASF’s strong recommendation). However, significant questions remain about the performance and effectiveness of the agency in recent years and its readiness to pursue aggressively the new responsibilities the voters assigned to it in the June 2016 and November 2016 elections. Those questions require an evaluation of the effectiveness of the DPA’s leadership and the answers should guide the Police Commission and the Mayor as new leadership is selected to lead the agency into the future.



## **DPA FUNCTIONS**

BASF identifies six specific DPA functions and areas of authority in the charter:

- Complaint investigation
- Filing charges and pursuing discipline with the Police Commission on sustained cases if necessary (when SFPD fails to act)
- Transparency in the form of statistical reporting
- Policy reform
- Investigation of all shootings (per Prop. D, June 2016)
- Compliance audit and reviews (per Prop. G, November 2016)

These functions are tools of the agency in accomplishing its overarching mission of ensuring accountability of the SFPD.

## **PROFESSIONAL STANDARDS**

San Franciscans expect and deserve highly effective and professional civilian oversight. The National Association for Civilian Oversight of Law Enforcement — in which the OCC/DPA has long been a member — is the professional association for the field. NACOLE has published standards against which the performance of the agency and its director should be evaluated.

As outlined above, the DPA has been assigned significant authority and its exercise of this authority must be measured by NACOLE standards.

The NACOLE Code of Ethics — endorsed by the DPA/OCC — articulate professional standards for civilian oversight agencies and those who lead them. BASF strongly encourages the Police Commission to use them in setting expectations for new leadership at the DPA.

Key aspects of those standards include:

- Earn trust through a firm commitment to the public good (and) the mission of the agency;
- Demonstrate the highest standards of personal integrity, commitment, truthfulness, and fortitude in order to inspire trust among stakeholders;
- Conduct investigations, audits, evaluations and reviews with diligence, an open and questioning mind, integrity, objectivity and fairness, in a timely manner; Rigorously test the accuracy and reliability of information from all sources; Present the facts and findings without regard to personal beliefs or concern for personal, professional or political consequences;
- Conduct outreach activity in the communities served; Pursue open, candid, non-defensive dialog with stakeholders; Educate and learn from the community by recognizing that bias and related civil rights issues need to be addressed and by implementing meritorious recommendations of community groups;
- Seek continuous improvement in the effectiveness of the agency, the law



enforcement agency it works with, and their relations with the communities they serve, including minority communities regarding bias and related civil rights issues; Gauge the Director's and the agency's effectiveness through evaluation and analysis;

- At all times, the Director must place his or her obligation to the community, duty to uphold the law and to the goals and objectives of his/her agency, above personal self-interest.

### **SPECIFIC CONCERNS**

BASF believes the NACOLE benchmarks and standards should be used to evaluate the role of DPA leadership in addressing the serious short-comings identified in the three reports referenced above. Some of these concerns include:

- The COPS CRI Report documents that from 2013 to 2015 discipline from sustained complaints was exceedingly rare, notwithstanding the voter-approved charter provision designed to prevent a Chief from ignoring OCC findings.
- On the policy recommendation side, the COPS CRI Report highlights the Sparks Report and OCC policy recommendations not acted upon, and characterizes this as "reflect(ing) missed opportunities." The COPS CRI Report notes that the OCC Director allowed SFPD to completely ignore several high quality policy recommendations which followed up on the President's Task Force on 21st Century Policing, including the SFPD's need to update policies in order to implement a bias-free policing environment.

OCC authorities/functions were never intended to be merely symbolic. The goal is to have independent, civilian investigations of complaints that actually result in improved accountability. The goal of the critical policy recommendation authority is not to merely make recommendations but to have those proposals actively considered, discussed, pursued, adopted, and enacted in a timely manner. To achieve that goal, agency leadership is required that, per the NACOLE standards, has a "firm commitment" to the agency's mission, and acts with "fortitude", "resilience" and "passion." BASF believes that a DPA leader is needed who is driven "to seek continuous improvement" in both the SFPD and his or her own agency and who demonstrates a "commitment to (actually) achieving results and solutions."

- The Blue Ribbon Panel Report further documented very longstanding problems in the timeliness of investigations which can act as a barrier to accountability.

The responses to the SEIU 1021 survey attribute the persistence of this problem to failures to fill vacant positions and provide basic equipment that would facilitate investigations, to high degrees of bureaucratic inefficiencies and unnecessary steps, to unexplained delays when cases are forwarded to certain supervisors, to a lack of openness to staff suggestions, and to very low morale. The specific causes are less important for this purpose than the fact that this problem has not been effectively addressed after several years. Timely investigations are not only a legal necessity in California they are a core, minimum NACOLE standard for professional, impactful



civilian oversight.

- The COPS CRI and Blue Ribbon panel reports both noted that an extraordinarily high portion of the OCC's findings — more than 60% — were deemed “not sustained” or insufficient evidence to prove one way or another, dating back to at least 2013.

Given that the standard of evidence has long been a mere preponderance — 51% of the evidence — this reflects a shockingly high and persistent level of institutional indecisiveness and reluctance to issue definitive findings. It is simply not credible that, accurately and fairly weighed, the evidence in nearly two thirds of filed complaints justify the result of “not sustained” or “insufficient evidence to prove one way or another.” The report by Mr. Zisser, cited above, reveals a failure to train and actively supervise investigators on the most fundamental aspects of complaint investigation — understanding the nature of the evidentiary standard of “preponderance of the evidence,” how to apply that evidentiary standard to the facts found in an investigation, and how to make credibility assessments of officers, complainants and witnesses. Mr. Zisser's recommendations suggest that there had been insufficient guidance provided to investigators for them “to understand that an allegation can be sustained or found to be proper conduct even absent video evidence.” BASF believes that this strongly suggests that far more sustained and proper conduct findings should have been made for years by the OCC and far fewer indecisive evidentiary “ties” declared in the form of not sustained/insufficient evidence findings.

The failure of the OCC to evaluate evidence consistent with the mere preponderance standard, and to make appropriate findings, not only significantly undermines the accountability mission of the agency, but also fundamentally impedes a fair discharge of OCC's duty owed to officers and complainants alike.

## **NEW LEADERSHIP**

BASF believes that the new leadership must be a proactive change-agent, implementing the voter's vision of the new mission of the agency.

Systemic audits of the SFPD is a significant new mission, which will be added to the other increased DPA responsibilities. We believe that a new leader must inspire confidence, earn trust and build consensus around a clearly-articulated organizational vision consistent with public expectations for strong, independent civilian oversight of the SFPD as required by the charter, especially during a time when there is heightened public concern about police accountability.

### *Leadership Selection*

San Francisco is compensating the DPA Director at a level among the highest of any civilian oversight system in the country. BASF believes it is appropriate in evaluating the Director's leadership to assure that that leadership is guided by knowledge, skills and abilities, which NACOLE lists as the professional “requirements” for this top level executive leadership position.



Some of these standards include:

- Must possess a creative, innovative and outgoing leadership with recognized judgment, objectivity and integrity with a commitment to achieving solutions and results;
- Must show strong passion for community relations and outreach;
- Must demonstrate the ability to bridge community and institutional concerns around fairness and justice issues;
- Must demonstrate exceptional analytical, verbal and communication skills;
- Must have the ability to manage people and possess a high level of resiliency and the ability to not personalize adversity; and
- Must possess effective facilitation, negotiation and diplomacy skills.

#### *Key Report Findings*

The Police Commission must consider how to select and oversee this new leadership in light of the findings in three key reports — the USDOJ COPS Office Collaborative Review Initiative Assessment of the SFPD (and OCC); the Blue Ribbon Panel on Transparency, Accountability and Fairness in Law Enforcement; and, the December 1, 2016, report by Aaron Zisser, “Recommendations to the SF OCC Regarding Investigations Policy, Procedure and Practice.”

All of these reports have identified highly significant problems undermining the OCC’s (now DPA’s) effectiveness — issues which have contributed to the lack of accountability in SFPD and much-discussed problems within the internal police culture.

#### *Employee Concerns*

BASF believes that an effective leader must consider the perspectives of many, experienced DPA employees who have spoken critically, including in the November 2016 SEIU 1021 OCC Working Conditions and Morale Survey. At a minimum, the validity of those concerns should be verified by speaking directly with the DPA employees, in much the same manner as Police Commissioners interacted with rank and file SFPD officers by periodically visiting police stations and interacting directly in other contexts.

#### *Voter Mandate*

BASF also believes that new leadership must be prepared to pursue doggedly the added responsibilities assigned to the DPA.

Nearly ten months has passed since more than 80% of the voters approved Prop. D, which required the DPA to investigate every police shooting. The Board of Supervisors characterized this as “a critical part of a systematic approach to keeping everyone in our communities safe and protecting the rights of all those involved during police encounters.” The new DPA director must ensure that his or her staff is fully trained, equipped, and ready to perform this function. BASF believes that the new Director must assure the public that the DPA is conducting “timely and



complete investigations” of these shootings, as Prop. D requires. BASF strongly urges that the DPA Director pro-actively identify and resolve problems in obtaining the Prop. D-required “prompt and full cooperation and assistance” from the SFPD in carrying out this new responsibility. Armed with a specific legal mandate by the voters, the DPA director must insist on the SFPD’s “full cooperation” pursuant to its Prop. D authority and, if necessary, must be prepared to alert the Police Commission to any problems it experiences in carrying out this mission.

Further and significantly, it has been nearly five months since Prop. G was enacted, significantly expanding the DPA’s mission to include new authority to conduct performance audits and reviews to ensure that SFPD is complying with federal, state and local legal obligations as well as its own policies. BASF submits that the DPA Director must exercise pro-active leadership — internally and externally — to develop and carry out plans for performing this important, high impact authority.

New leadership should reflect the Police Commission’s desire to proactively ensure that the DPA Director speeds, rather than delays, the hoped-for impacts of a vibrant SFPD reform process. For example, effective pursuit of the agency’s critical complaint investigation function – which remains at the heart of delivering accountability – has been changed radically by the department-wide introduction of body cameras. BASF invested considerable time participating in 2015 in the Commission-appointed task force devoted to developing a consensus body worn camera policy. Even though the implementation of that policy was delayed by a lengthy “meet and confer” process, it has been clear for at least 15 months that it was only a matter of time until body-worn cameras would be deployed and would fundamentally change the nature of the DPA’s investigations. New leadership at the DPA must address how that would impact how DPA investigators do their work each and every day.

## CONCLUSION

The voters have spoken. Effective and professional civilian oversight of SFPD is within the reach of the Police Commission. BASF hopes the Police Commission will continue to consider BASF’s input as the Police Commission strives to ensure the new and improved DPA better fulfills its organizational mission and plays the larger role in the reform process the public now expects. BASF will remain a concerned observer as the Police Commission and SFPD both undertake needed reforms. We thank you for your consideration, and look forward to continuing a partnership to improve DPA.

Sincerely,

Merri Baldwin  
2017 President