



November 10, 2023

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Dear Supervisors Dorsey, Walton, and Safai, and Clerk Victor Young,

Re: Proposed Initiative Ordinance – Administrative Code
Police Department Policies and Procedures and Use of
Technology
Hearing Date: November 13, 2023

The Bar Association of San Francisco (BASF) and its nearly 7,000 members write to express our grave concerns regarding the “Proposed Initiative Ordinance - Administrative Code – Police Department Policies and Procedures and Use of Technology.”

BASF is the largest legal organization in Northern California and is dedicated to criminal justice reform. In 2015, BASF established the Criminal Justice Task Force (CJTF), consisting of judges, prosecutors, public defenders, law enforcement, private counsel, civil liberties advocates, and others, to advance and support systemic reforms in San Francisco. BASF has a long history of supporting best practices and innovative ideas in the area of criminal justice reform, and has been deeply involved with modernizing and improving policing by the San Francisco Police Department (SFPD). We attach a brief history of our involvement.

We appreciate the complexity of policing and we support the adoption of police policies that will withstand Constitutional challenges while supporting a nimble and modern police department. Policing and police policy development are highly prescribed and regulated by the Constitution, State law, DOJ Recommendations that bind the San Francisco, and well-established critical City ordinances. This work, in a word, is complicated.

And because it is so complicated -- it is **not** in the interest of San Francisco or best practices to promulgate policing operational policy at the ballot box.

Our position is consistent with BASF's and Chief William Scott's clearly stated positions in 2018 when the Police Officers' Association asked voters to decide on a ballot initiative regarding SFPD's adoption of Tasers. In his letter to the Director of San Francisco's Department of Elections, Chief Scott wrote: **“it is not a national best practice to promulgate policing operational policies...by voter majority or a four-fifths vote of a legislative entity such as the Board of Supervisors. This responsibility to set and make policy adjustments and the responsibility to manage the operations of the Department should rest with the Police Commission and the Chief of Police respectively.”** He added, and we agreed then and now, that **a ballot initiative which sets police policy is the “antithesis of the spirit of many of the US DOJ COPS Office recommendations.”**

Notably **the majority of the Board of Supervisors, including then-Supervisor London Breed** joined Chief Scott and BASF in opposing the 2018 ballot initiative for the same reasons the current Ballot proposal should be withdrawn or opposed.

As noted by Chief Scott, the primary responsibility to set policy rests with the Police Commission. The authority for the Commission's responsibility is found in Sections 4.102 and 4.109 of the City Charter. The U.S. DOJ at page 141 of its 2016 [Collaborative Reform Initiative Report](#) unequivocally states: **“Therefore, the Police Commission is the authority that publishes policy for the SFPD.”** As such, the US DOJ Recommendations have established a complex process and timeline, expressly identifying the role of the Commission, SFPD, and the Working Groups to accomplish compliance with the 272 Recommendations.

Without seeking an amendment to the City Charter through ballot initiative, this proposed ballot measure is a back door effort to circumvent the Police Commission; as such, it is clearly vulnerable to legal challenge.

In addition, the City has entered into a series of Memorandums of Understandings (MOUs) with the California Department of Justice commencing [February 5, 2018](#) requiring that: **“The Mayor's Office and SFPD will implement all 272 recommendations as set forth in the US DOJ Report pursuant to a timetable and work plan [referenced further in the MOU].”** To date, while significant progress has been made, the work is not yet complete. Several DOJ Recommendations as well as the MOUs are jeopardized by this ballot measure.

Finally, the ballot measure conflicts with at least two important City ordinances, notably 96A and 19B, both of which were drafted with great care and research, giving rise to additional legal challenges.

As we describe in our lengthy memo which follows, each part of the ballot measure has significant problems.

The Collaborative Initiative Reform, as promulgated the US DOJ and followed by the SFPD and the Police Commission works and is working. Significant and complicated reforms are in place

due to the hard work of everyone who rolled up their sleeves and committed to work together. The work is complex and should be.

This ordinance, should it remain on the ballot and succeed, will set all progress back, and subject this City to countless legal actions given all the ways in which it contravenes laws and regulations.

We have committed and continue to commit to doing all that we can to support a modern and nimble police department able to respond to this City's complex policing needs with safety and respect. We stand ready to help in all ways needed and possible, but given the grave consequences of this proposed ordinance we felt it was incumbent on us to raise these important concerns at this time. We hope you will find our input helpful.

Sincerely,



Vidhya Prabhakaran
President, Board of the Bar Association of San Francisco

cc: David Chiu, City Attorney, David.Chiu@sfgov.org
Chief William Scott, william.scott@sfgov.org
San Francisco Police Commission Secretary stacy.a.youngblood@sfgov.org

A Brief History of the Bar Association of San Francisco’s Collaboration on Criminal Justice Reform

BASF attorneys have served on every Working Group organized by SFPD and/or the San Francisco Police Commission since 2016, volunteering thousands of hours of legal expertise in collaboration with SFPD, the Police Commission, community members and the Departments of Justice for United States and California to assist SFPD’s compliance with the law, best practices and, the 272 Recommendations of the U.S. Department of Justice (USDOJ) [Report](#) issued in 2016. Our work has informed us well regarding both SFPD’s achievements and its challenges.

As a legal organization, we have taken on this work because we strongly support effective law enforcement; public safety and effective policing are serious concerns to every San Franciscan and this large legal organization. Our work with SFPD has been collaborative and rewarding; our attorneys have formed strong bonds with SFPD leadership as well as the rank and file.

With SFPD and the Commission, we examine best practices from a host of other jurisdictions, recommendations of the [Police Executive Research Forum](#) (PERF), the [International Association of Chiefs of Police](#) (IACP), meet with subject matter experts, as well as representatives of the California Department of Justice and contracted consultants to SFPD, attend SFPD’s training sessions alongside officers, and undertake the significant legal research needed.

Because of these collaborations, we understand the many challenges facing SFPD as outlined by the US DOJ Report, but also, our own findings as set forth in our [Data Collection and Analysis Report](#). In 2016, we examined SFPD’s IT infrastructure recommending significant IT investment and the creation of a single database platform to free up officer time to do what they do best.

The Department’s General Orders, as made clear by the US DOJ needed updating. The US DOJ was critical of both SFPD and the Police Commission given the significant number of out of date General Orders. Working with community partners, the SFPD and Police Commission worked hard to ensure its ability to meet the DOJ’s 272 Recommendations, guarantee compliance with California’s [Racial Identity and Profiling Act of 2015](#) as well as San Francisco’s [Administrative Code Section 96A](#)’s reporting requirements.

And BASF will be there to help every step of the way.

BASF’s Specific Concerns With the Proposed Initiative Ordinance

1) Section 96I.1 – The “Community Engagement Process” Portion of the Mayor’s Proposed Ordinance Violates the United States Department of Justice 2016 Recommendations to SFPD and Is Redundant to Reforms SFPD and the Police Commission Have Already Undertaken.

In Section 96I.1, the ordinance purports to increase community and law enforcement participation in SFPD policymaking process by adding a 90-day community feedback period for SFPD and the Police Commission to hold **ten (10)** community meetings ostensibly to solicit public comment on any proposed changes to a policy. (Section 96I.1.a) Before the Police Commission would be allowed to begin its own meetings to revise a policy or assemble a Working Group, the ordinance would require, at the close of the 90-day period, a Meet & Confer between the Commission and SFPD to determine whether “the community meetings are complete.” (*Ibid.*) The ordinance also directs that any Working Group convened to revise SFPD policy “should” include “merchants, business owners, victim of crimes, and law enforcement personnel.” (*Ibid.*)

BASF strongly opposes this “Community Engagement Process” section because it adds unnecessary red tape to the SFPD policymaking process and appears designed to mire Commission reforms in procedural delay. Also, this section creates the false impression that the ordinance is solving a community outreach problem when in reality, no such problem exists with the caveat that more outreach can always be done to include marginalized communities of color, a group that the Mayor’s ordinance sadly omits as important to include in policy revision Working Groups. (Section 96I.1.a) Moreover, this section is redundant to community outreach that SFPD and the Commission already engage in and adds nothing new except bureaucratic delays that undermine important reforms SFPD already made. Because we have participated in all of the Working Groups formed by either SFPD or the Commission over the last eight (8) years, we can confirm they all have included a broad cross-section of San Francisco residents and most certainly, law enforcement personnel and subject matter experts.

In 2016, in its COPS Report evaluating SFPD, the US Department of Justice (US DOJ) criticized SFPD and the Police Commission for taking too long to amend or create new General Orders, which are SFPD’s rules governing the conduct of officers. The US DOJ noted, “[m]any of the actual policies contained in the General Orders Manual have not been updated in decades. Many of the DGOs retain issue dates from 1994. This is a significant concern for the assessment team.” (2016 US DOJ COPS Report, p. 148.) (Best practice is to update DGOs every three years.) The US DOJ thereafter made a specific finding that, “The process to update Department General Orders is overly protracted and does not allow SFPD to respond in a timely manner to emerging policing issues. As a result, many of the Department General Orders are from the mid-1990’s and do not fully reflect current policing practices.” (*Id.*, Finding 70, p. 166). US DOJ recommended, “The SFPD should work with the Police Commission to develop a nimble process for reviewing and approving existing and new Department General Orders [.]” (Recommendation 70.1, 166-167)

To remedy the problem of unnecessary delays in updating SFPD policies, the Commission and SFPD formed a host of Working Groups which successfully drafted Department General Orders (DGOs) ultimately adopted by the Police Commission. And in July of 2022, Chief Scott and the Commission President, Cindy Elias, created a new DGO 3.01, SFPD's policy on amending or initiating new Department General Orders (DGOs). Under 3.01, the DGO development process has developmental stages with timed deadlines so General Orders are completed promptly and without unnecessary delay.

Since DGO 3.01 was enacted a year and three months ago, SFPD and the Commission, working together, adopted 20 new or updated DGOs. Six (6) more DGOs have been approved by the Commission and are now pending in Meet & Confer with the Police Officers Association. Approximately ten (10) more are in the final stages at SFPD and will be submitted to the Commission in the coming months.

Also, in the last year, there have been three (3) highly successful and inclusive Working Groups: DGO 8.10 (First Amendment Activities), DGO 10.11 (Body Worn Cameras) and DGO 7.01 (Detention and Arrests of Youth).

All of these achievements have well-addressed US DOJ concerns about an overly protracted policy making process and have ushered SFPD out of the 1990's and into 2023. The ordinance adds layers of bureaucracy through "community engagement" and fails to recognize these many and important accomplishments as directed and approved by the Cal DOJ. Moreover, the proposed ordinance exacerbates, delays, and undermines SFPD's and the Commission's reforms around updating policies in a timely manner, again in violation of the US DOJ's directive to expedite the policy development process.

Furthermore, the notion of community outreach need not be codified in an ordinance because it is redundant to outreach that SFPD and the Commission already undertake. Specifically, DGO 3.01 contains a Public Comment section that requires SFPD to publicly post on its website a draft policy and solicit feedback from the community and rank and file of the SFPD for thirty (30) business days. Very early in the development process, SFPD alerts the community on its social media, that a specific DGO is being revised. The new drafted DGO is publicly posted and SFPD disseminates the draft to every police officer via email and they are asked for feedback. SFPD and the Department of Police Accountability (DPA) thereafter jointly review the comments and provide an individual response to each person who provides feedback. Each commenter is told whether their suggestions will be included in the new DGO and the reasons in support of that decision. DPA and SFPD then prepare a joint report summarizing the responses to the public comments and forward it to the Commission for review and consideration when a DGO is presented to the Commission for approval.

In addition to a robust public comment for any new or updated policy, SFPD's Policy Development Unit actively recruits merchants, law enforcement members, and other pro-law enforcement people to include in their community Working Groups as was evident in the recent Working Group revising General Order 10.11, SFPD's body-worn camera policy, a Working

Group BASF participated in. It is important to note that 90% of Working Groups are convened by SFPD. SFPD can and does fill the Working Groups with pro-law enforcement community members in addition to criminal justice and other subject matter experts from various fields and communities. The ordinance is simply redundant and unnecessary to the work SFPD already does.

Similarly, the Police Commission is also committed to community and law enforcement outreach. BASF is aware that the Commission has held town hall meetings specifically for law enforcement members to get feedback on important new policies such as traffic enforcement and vehicle pursuits. Last year, the Commission convened a Working Group on DGO 9.07, a proposed policy regarding limiting pretext stops. BASF also participated in that Working Group and can attest that there were more police officers participating in that Working Group than community members including the President of the Police Officers Association. The Commission also held listening sessions throughout the City with the support of the Humans Rights Commission soliciting feedback regarding that policy. Thus, both SFPD and the Commission are committed to community outreach in adopting new policies, including making sure that police officers, the end users of any policy, are fully heard.

In short, this section of the ordinance is redundant to work already being done and will cause needless delays in adopting DGOs risking SFPD's compliance with US DOJ reform measures directing that SFPD speed up its policymaking process to comport with best practices.

2) Section 96I.2(a) and (b) - The Provision of the Ordinance Purporting to Limit a Police Officer’s Administrative Tasks to 20% Is Unenforceable and Will Harm Important Reform Measures Aimed to Address Racial Disparities in Investigating Detentions

In section 96I.2, the ordinance aims to reduce officers’ administrative tasks to 20% of their overall time. First, this provision is unenforceable because police officers do not track their time. Whether a task takes up 20% of an officer’s time will vary from officer to officer, and from task to task, and will lead to endless litigation if this convoluted ordinance is enacted.

BASF has recommended and continues to support and recommend IT improvements, permitting officers to enter data into a single system from which various reporting requirements can be extracted. These time-saving improvements have been supported by BASF since the early formation of our Task Force as evident in our 2016 Data Collection and Analysis [Report](#). If the goal of the ordinance is to reduce officer’s administrative tasks, the Mayor can best accomplish this goal by improving and adequately funding IT infrastructure of the SFPD.

Second, this ordinance appears to invalidate the SF Administrative Code 96A, enacted in 2015, which requires officers to submit demographic data for all police encounters and requires SFPD to regularly analyze and report on that data. Section 96I.3 (b) of the proposed policy states that the new ordinance “shall override any conflicting provisions in ordinances regardless of the effective date of such ordinances.” (*Ibid.*) If the new ordinance is enacted, its language effectively repeals many important requirements of SF Admin Section 96A sponsored by Supervisor Malia Cohen , to shed light and reduce racial disparities in policing..

Third, this section harms the essential reform put into place to address US DOJ and community concerns that SFPD had a long track record for detaining people of color and engaging in discretionary searches in disproportionate numbers as compared to white people despite findings that people of color had a lower incidence of possessing contraband. Specifically, on May 12, 2021, following a robust community Working Group on racial bias and investigative detentions, the Commission adopted a revised DGO 5.03, SFPD’s policy on investigative detentions. To increase transparency and accountability around SFPD detentions of people of color, DGO 5.03 requires officers to write an incident report and issue a certificate of release, with information on how to file a DPA complaint, when they detain a person (excluding traffic stops). Chief Scott supported, and advocated for this documentation of investigative detentions, believing it was an important step toward reducing racial disparities in detentions.

The proposed ordinance will directly harm this reform measure notwithstanding that SFPD data still shows significant racial disparities in SFPD detentions, searches, and uses of force that

SFPD cannot explain. BASF believes that empirical evidence demonstrates that public safety and reasonable reforms are not mutually exclusive.

Fourth, documenting with the body-worn camera in lieu of a written report undermines the 21st Century policing tenet of transparency. Unlike incident reports, body-worn camera footage is not readily available to the public through a public records request. We know that even the DPA struggles to get officers' body-worn camera footage in their Charter-mandated disciplinary investigations because confidential CLETS information must be redacted before DPA can review it which is a time-consuming process. Moreover, the task of tagging and cataloguing body-worn camera footage is far more onerous than the required documentation captured in a report. If multiple officers are involved, the tag/catalog tasks increase exponentially and clearly the IT support needed is completely unavailable to accomplish these tasks.

BASF has and will continue to advocate to reduce administrative time through innovation and technology so that officers can attend to what they do best, but to simply create an arbitrary threshold with first investigating and implementing the requisite IT support is shortsighted and will subject this City and Department to countless violations of current reporting requirements, as well as lawsuits. If this ordinance passes, the City will harm the efforts to move toward having a modern, 21st Century police department, because SFPD policing practices will be more hidden and external audits of police practices impossible.

3) Section 96I.2(b) and (c) - The Proposed Ordinance Creates Bad Policy Around Use of Force Reporting in that It Contradicts US DOJ Recommendations and Attempts to Correct a Problem that Does Not Exist; the Police Commission Already Reduced the Administrative Burden for Police Officers in Late 2022 by Adopting a Use of Force Policy Written by SFPD’s Internal Use of Force Experts that Raised the Threshold for Reportable Force

The proposed ordinance will create bad policy by decreasing officers’ documentation requirements for use of force incidents. (Section 96I.2(c).) Allowing insufficient documentation puts officers at risk and every officer we have consulted believes sufficient time to document is in their best interest.

First, this section is poorly written because the use of force incidents that would require written documentation (as opposed to officers just relying on body-worn camera footage) under the proposed ordinance, depends on an officer’s *subjective belief* that the use of force was likely to have caused physical injury no matter how unreasonable that belief might be. Use of force standards always employ a reasonableness test that is wholly absent here, which will cause confusion, clearly subjecting this ordinance to legal challenge.

Second, section 96I.2(c) violates numerous US DOJ findings in their 2016 assessment, which directed officers and their supervisors to *increase and improve* their use of force reporting to allow the department greater oversight over use of force incidents.

Specifically, the US DOJ found as follows: “The Use of Force Log captures insufficient information about use of force incidents.” (US DOJ 2016 COPS Assessment of SFPD, Finding 4, p. 38.) “SFPD does not consistently document the types of force used by the officers.” (*Id.*, Finding 5, p. 39) “SFPD needs to develop and train to a consistent policy for use of force.” (*Id.*, Recommendation: 5.1, p. 39.) “The SFPD needs to hold supervisors and officers accountable for failure to properly document a use of force incident.” (*Id.*, Recommendation 5.2, p.40.) “Use of force logs and incident reports need to be analyzed soon after a given incident to allow for timely discovery of emerging officer safety issues or identification of potential problems in the policing response.” (*Id.*, p. 12.) “Supervisors should be held accountable for ensuring accurate and complete entry for all use of force data reporting.” Thus, the proposed ordinance contravenes the US DOJ recommendations and would bring SFPD back to a pre-reform era negating eight (8) years of hard work by SFPD implementing the US DOJ recommendations to improve use of force documentation, all in violation of the City’s agreement with the California Department of Justice.

Third, the proposed ordinance is redundant to changes the Police Commission has already made to reduce the administrative burden on officers in their use of force reporting. After George Floyd’s murder in 2021, SFPD revised DGO 5.01, including lowering the threshold of reportable force to any incident where an officer uses physical force to overcome resistance, no matter how minimal, to ensure a person’s safety when they interact with the police. That version of DGO

5.01 became effective on April 12, 2022. Thereafter, SFPD officers expressed concerns that categorizing minimal physical contacts as reportable uses of force was having the unintended consequence of taking police officers and their supervisors off the streets to write and review reports for minor incidents instead of doing police work. The Commission listened to the officers' concerns.

A short time later, on December 8, 2022, the Commission corrected the problem by adopting a new version of DGO 5.01 written by internal SFPD use of force experts in the SFPD's Field Tactics Force Options Unit. The new DOC 5.01 raised the minimum level of reportable force to "1) force that is reasonably likely to cause pain or injury or 2) causes transitory pain, 3) the subject reports physical pain or injury, or 4) pointing a firearm at a person. (DGO 5.01.07, pp. 8-9.) The current version of DGO 5.01, which removed the administrative burden problem, was encouraged by the Police Commission after hearing officer concerns, though it was written by internal SFPD experts. DGO 5.01 is now popular with the rank and file at SFPD and does not need fixing. Thus, the ordinance is redundant to work the Commission already undertook in 2022 and just adds a layer of confusion.

The Ordinance is unhelpful for the many police officers who welcome and need the opportunity to document use of force incidents to justify their actions in case of an internal review or a potential civil litigation. Relying on body-worn camera in lieu of written reports does not afford officers the same opportunity to justify why they took the actions they did. Simply narrating the reasons for the use of force in real time on body-worn cameras does not give officers time to think and reflect as they are able to do with a written report.

Moreover, the use of body-worn cameras in lieu of written reports, as would be allowed under Section 96I.2(b),(c) and (e)(1), is problematic because it would prevent DPA from performing a use of force audit under their City Charter authority. DPA does not have unfettered access to body-worn camera footage because under State law, DPA does not have CLETS access to confidential records. As a result, SFPD must engage in a time-consuming task of laboriously redacting body-worn camera footage, before DPA can review it. Not only would this ordinance obstruct the DPA's ability to conduct a use of force audit as required, it would add time-consuming administrative burdens to SFPD and make use of force incidents less transparent because body-worn camera footage is not readily available to the public like incidents reports are, thereby contravening DOJ Recommendations.

4) Section 96I.2(d) - BASF Strongly Opposes Lowering the Standard for Vehicle Pursuits Because It Will Imperil Public Safety and It Is Contrary to National Best Practices for Congested Urban Cities

BASF strongly opposes the proposal to allow for vehicle pursuits “if the officer has a reasonable suspicion or probable cause that a felony or violent misdemeanor crime has occurred, is occurring, or is about to occur.” (Section 96I.2(d).) Officers understand police pursuits pose grave safety risks to pursuing officers, fleeing persons, and innocent bystanders. As one officer put it, “It’s too dangerous to chase people who may be on drugs or out of their minds through a densely populated City.”

To be clear, SFPD officers want and need drones and other modern technology, such as GPS launchers, for active pursuits which would allow police to capture suspects without the need for dangerous car chases that threaten so many lives in this congested City. The collective wisdom of veteran Field Training Officers is that no vehicle pursuit is safe. BASF supports the use of all technology that complies with San Francisco’s 19B regulations and does not violate Constitutional safeguards. Lowering the standards for vehicle pursuits is dangerous .

San Francisco is the epicenter for innovation, and instead of implementing regressive policies that endanger the community, we should equip SFPD with the appropriate technology, subject to the City’s 19B process, to ensure that the technology SFPD needs is effective, safe, and protects civil liberties.

DGO 5.05, SFPD’s vehicle pursuit policy last updated in 2013, under the leadership of then Chief Greg Suhr and Commission President Suzy Loftus authorizes vehicle pursuits only if the person is 1) suspected of a violent felony or when there is an articulable, reasonable belief that the individual needs to be immediately apprehended because of the risk the individual poses to public safety. (DGO 5.05, section IV.) The current DGO 5.05 is a restrictive policy that adopts national best practices for congested cities due to the inherent danger of vehicle pursuits.

From 1979 to 2013, more than 5,000 bystanders and passengers were killed in police pursuits and tens of thousands more were injured. (USA Today Report, 2015.) *From 2015 to 2021, there was an average of 370.5 fatal crashes per year due to police pursuits.* (US DOJ, Vehicle Pursuits – A Guide for Law Enforcement Executives on Managing the Associated Risks, 2023, relying upon FARS data.) In 2020, 532 people died because of police vehicle pursuits including three officers. (National Highway Administration). California Highway Patrol analyzed California pursuits in 2021, found that there were a total of 12, 513 pursuits; 20.1% resulted in crashes; 35.3% were injury crashes; 1.7% were fatal crashes (44 fatal crashes which resulted in 52 deaths.) (CHP Report to the Legislature, Senate Bill 719, 2021 data.)

In a recently promulgated best practices report, the US DOJ said, “Agencies may choose to reduce the risk of pursuits by reducing the number of pursuits. One way to do this is through a restrictive pursuit policy under which officers may engage in pursuits in specific situations such as when a suspect commits a violent felony.” (US DOJ, Vehicle Pursuits – A Guide for Law Enforcement Executives on Managing the Associated Risks, 2023, p. 18). The US DOJ also

stated that Bureau of Justice Statistics show that agencies that leave pursuits to officer discretion have double the rate of vehicle pursuits than those with restrictive policies. (*Ibid*).

BASF surveyed a multitude of vehicle pursuit policies from larger cities throughout the United States and found that almost all with a dense population required that the fleeing person committed a violent or forcible felony, or there was an imminent threat to life, before officers could engage in a vehicle pursuit. (See, e.g., Albuquerque, Atlanta, Baltimore, Boston, Cincinnati, Detroit, Jacksonville, Las Vegas, Washington DC, Minneapolis, New Jersey, New Orleans, Oakland, Orlando, Philadelphia, Portland, Prince William County, Seattle). One department banned pursuits for all theft (property) offenses and traffic offenses except for drunk driving. (Chicago). Another department did not post their pursuit policy online, but news reports said that the city relaxed their policy unofficially which resulted in an uptick in pursuits as well as controversial fatalities which were under review by the state Attorney General. (New York; See Gonen, Yoav, et al. “NYPD Car Chases Up Massively with Mayor Adams with Sometimes Fatal Results”, *The City*, dated July 5, 2023, and updated October 12, 2023.). Four departments from less congested regions had broader policies. (Los Angeles, San Diego, Indiana, Houston, Austin). In the absence of a restrictive policy, needless deaths will occur. Two days ago, on November 8, 2023, [eight \(8\) people were killed](#) in southwest Texas when a driver suspected of human smuggling tried to elude law enforcement officers and slammed head-on into an S.U.V.

BASF strongly urges that the way to improve arrest outcomes for property and other more serious crimes is to equip SFPD officers with observational drones that can be used during pursuits and active incidents only. This is a de-escalation tool that would be unlikely to run afoul of civil liberties if drone use was limited to active incidents or pursuits, and not used for surveillance or investigations purposes though BASF defers to the City’s 19B process for new technologies. BASF also supports the use of Tire Deflation Devices (TDDs), including spike strips, which prevent a suspect from fleeing in a dangerous manner. Notably, the Police Commission approved the preemptive use of TDDs, to improve outcomes and reduce the need for vehicle pursuits on September 6, 2023, when it sent a revised DGO 5.01, with new TDD guidelines, to Meet & Confer with the Police Officers’ Association which the Police Commission later adopted on November 1, 2023, following successful labor negotiations. BASF also encourages the City to explore utilizing vehicle location tracking devices such as “GPS Launcher” or “Starchase” rather than lowering the standard for vehicle pursuits which is misguided and dangerous.

5) Section 96I.2(e) - The Proposed Ordinance Undercuts the Protections of both the Community Safety Camera Ordinance (SF Admin. Code Sec. 19) and the Surveillance Technology Ordinance (SF Admin Code Sec. 19B) and Usurps the Power of the Board of Supervisors

The final section of the proposed ordinance and proposed amendments to Chapter 19 and 19B are problematic because, as discussed below, it seeks to eliminate existing oversight and checks and balances when it comes to experimental and potentially intrusive surveillance tools. BASF supports more effective law enforcement by utilizing new technologies but not without appropriate oversight by the Board of Supervisors and the Police Commission to ensure that the tools that SFPD seeks to use are safe, effective, and do not run afoul of our residents' civil liberties and Constitutional protections. The proposed legislation undermines the existing oversight and legal measures that have been in place for years to regulate surveillance of the public. Unregulated mass surveillance, as proposed by this legislation, is dangerous and invites the worst kind of abuses, especially against communities of color. Both the Board of Supervisors and the Police Commission act as important guardians to balance San Francisco's need for effective law enforcement with civil liberty protections that our residents hold dear.

Currently, SF Administrative Code Section 19B requires SFPD to seek approval from the Board of Supervisors before experimenting with unproven surveillance techniques. Problematically, this ordinance would amend Section 19B.2 to permit SFPD to deploy new surveillance (e.g., social media tracking, microphones, and driver location trackers) for up to a year before submitting that system and a set of policies to the Board of Supervisors for approval. Inviting SFPD to try new technologies without public hearings and vetting by Committee on Information Technology (COIT) experts may undermine public safety. New technologies without appropriate parameters can be both dangerous and unduly intrusive.

Additionally, amendments to Section 19.7-8 under the proposed ordinance would require a vote of the supermajority of the Board of Supervisors to change the ordinance or remove cameras for the next three years. The Board provides a democratic check, designed to protect the civil liberties and privacy interests of San Franciscans, against the potentially intrusive use of novel surveillance techniques by law enforcement. The Board of Supervisors is directly accountable to voters and reflects the community's values. BASF strongly disapproves of allowing police officers to experiment with new, mass surveillance tools without any meaningful oversight or regulation for at least a year, and the limitations on the Board's ability to legislate and supervise. BASF supports SFPD's desire to use new technologies to make police work more effective and efficient, but not without oversight by the Board to ensure the new technologies are safe, effective, constitutional, and with guardrails that protect privacy and civil liberties.

BASF finds it concerning that the ordinance also seeks to amend Section 19B.2 to exempt department cameras and vehicular pursuit drones from any oversight or approval whatsoever *at any time* by the Board of Supervisors. If adopted, SFPD will *never* be required to collect data to support the premise that cameras and drones actually improve public safety and are cost-effective. Worse, the amendments in Section 19(a) and (c) of the proposed ordinance provide SFPD unchecked authority to place cameras in any public location, with no independent

oversight by the Police Commission, no mandatory consideration of financial or privacy concerns, and less opportunity for public input than is currently provided by the Police Commission. Current law states a camera may only be installed in a location that the Police Commission finds is experiencing substantial crime and where the potential deterrence effect outweighs any concerns asserted by an affected community. The ordinance’s amendments would no longer require SFPD to conduct any cost-efficiency analysis or weigh the impact on the community. This ensures that there is no meaningful accountability to the public, thereby creating policy inconsistent with the Collaborative Reform Initiative

The proposed ordinance also eliminates the normal public policy making process on new technologies, removes outside experts from consulting on the process, and decreases public participation in decisions about how SFPD surveils the public. In particular, changes to Section 19.4(b) would require SFPD to hold a single meeting when placing surveillance cameras in particular neighborhoods. This change would dramatically decrease public input because it would replace the Police Commission’s long-standing and highly successful practice of convening Working Groups to address significant matters of SFPD policy. The Working Groups approach was approved by US DOJ and has been the norm for years and has facilitated every important reform implemented since US DOJ issued its report in 2016. The Police Commission’s policymaking process already includes frequent public meetings and opportunities for participation and comment to a wide range of community groups, experts, and other interested parties. A single SFPD meeting is insufficient to implement new mass surveillance measures.

Substantively, the proposed Ordinance also dangerously broadens the circumstances in which SFPD can conduct surveillance of the public. Currently, under Section 19, SFPD can only conduct video surveillance to investigate specific crimes. The new legislation would amend Section 19.3(a) to permit SFPD to “monitor active operations,” a term which is vague and undefined, and thus will allow SFPD to leave surveillance ongoing around the clock without any limits. Such massive and unlimited surveillance raises serious constitutional questions and may again trigger challenges to criminal prosecutions. The proposed legislation also eliminates transparency requirements that require public disclosure of where surveillance is occurring. *See* Sec. 19.5(b). Public notice increases the deterrence value of surveillance—it dissuades wrongdoers from committing crimes while on camera—which improves public safety and allows for public accountability for surveillance operations.

Given SFPD’s consistent and troubling racial disparities in law enforcement actions, BASF is concerned that SFPD use of this new proposed authority to conduct surveillance will again target communities of color in San Francisco, without any checks or accountability. In 2016, the US DOJ found that SFPD had serious problems with racial disparities in stopping, searching, and arresting people of color. Specifically, US DOJ found:

- The weight of the evidence indicates that African-American drivers were disproportionately stopped compared to their representation in the driving population (finding 30).

- African-American and Hispanic drivers were disproportionately searched and arrested compared to White drivers. In addition, African-American drivers were more likely to be warned and less likely to be ticketed than White drivers (finding 31).
- Not only are African-American and Hispanic drivers disproportionately searched following traffic stops but they are also less likely to be found with contraband than White drivers (finding 32).

Sadly SFPD's race-disparities in policing continue. If the ordinance passes and SFPD is given virtually unlimited power to conduct surveillance, the racial disparities that SFPD, US DOJ, BASF, and all of the criminal justice partners have worked to minimize for years will instead intensify.

Finally, the legislation also makes it extremely difficult to amend the policy or make improvements should these problems arise. Policies should be more nimble to correct problems as needed.