

July 29, 2022

The Honorable Cindy Elias  
 Acting-President, Police Commission Office  
 San Francisco Police Headquarters  
 1245 3rd Street  
 San Francisco, CA 94158  
[cindy.elias@sfgov.org](mailto:cindy.elias@sfgov.org)



*Submitted via electronic mail*

**Re: Proposed Changes to DGO 9.01**

Dear Acting-President Elias,

The proposed revision to DGO 9.01 marks an important step toward reducing the racial disparities in San Francisco Police Department (SFPD) stops and searches by limiting both the reasons for a stop and the questions officers can ask after making one. The Coalition to End Biased Stops is looking forward to the Police Commission (Commission) Working Group and community listening sessions beginning next month so that these reforms can be instituted without delay. We also wish to propose four modifications to make the proposed policy stronger:

1. **Include a more comprehensive list of banned violations (9.01.04(A)-(B));**
2. **Limit exceptions for “matching description” stops (9.01.04(C));**
3. **Limit questioning and searching following a stop (9.01.05); and,**
4. **Expand the data collection and reporting provision in the policy (9.01.06).**

These modifications are necessary to truly bring an end to pretext stops and their inevitable consequences of over-policing, mass incarceration, and violence, all of which are disproportionately felt by communities of color.

Data shows that police disproportionately target Black and brown drivers, cyclists, and pedestrians. Stops conducted by police for alleged traffic infractions — to fish for evidence of unrelated crimes — are unnecessary, unfair, and demeaning, systematically persecuting community members for “driving while Black or brown.” Further, they do little to reduce crime and are akin to a “needle-in-a-haystack” strategy.<sup>1</sup> A 2020 study of the Fayetteville, North Carolina, police department found deprioritizing investigatory stops (or pretext stops) was not associated with an increase in non-traffic crime or violent crime.<sup>2</sup> In fact, *both went down* after the department deprioritized pretextual stops.<sup>3</sup> As Daunte Wright’s murder last year painfully illustrated — as have the many police killings that have followed — pretextual traffic stops

<sup>1</sup> National Public Radio, Rethinking Traffic Stops (Feb. 9, 2019), <https://www.npr.org/2019/02/09/692955849/rethinking-traffic-stops#:~:text=Frank%20Baumgartner%20is%20a%20professor,evidence%20the%20stops%20depress%20crime>.

<sup>2</sup> Fliss, M.D., Baumgartner, F., Delamater, P. et al., *Re-prioritizing traffic stops to reduce motor vehicle crash outcomes and racial disparities*, Inj. Epidemiol. 7, 3 (2020), <https://doi.org/10.1186/s40621-019-0227-6>.

<sup>3</sup> Id.

can be a flashpoint for confrontations that result in police misconduct and violence, and they often funnel over-policed and marginalized people into the criminal legal system.<sup>4</sup>

The Commission and SFPD Chief Bill Scott have lamented the consistent racial disparity in stops and searches. The data substantiates that — like many other police departments across the Bay Area and nation — SFPD overpolices communities of color by every metric: who gets stopped, searched, and caught up in the criminal legal system. This has remained disturbingly consistent for too long.<sup>5</sup> Other localities, such as Berkeley (CA), Los Angeles (CA), Minneapolis (MN), Philadelphia (PA), Cambridge (MA), Montgomery County (MD), Virginia, Washington, D.C., Nashville (TN), and Connecticut, have all taken some or significant steps toward eliminating pretextual stops. The SFPD must now do likewise, and it should do so by implementing a robust policy that will truly and decisively end the failed practice of pretext stops.

### **1. INCLUDE A MORE COMPREHENSIVE LIST OF BANNED VIOLATIONS (9.01.04(A)-(B))**

The current policy contains a limited set of banned violations that can no longer be used as the basis for a stop; however, this list should be expanded to include codes that either effectively criminalize poverty or contribute to persistent racial disparities in stops and searches.<sup>6, 7</sup>

While the prohibition on consent searches removes one incentive for police to stop drivers and pedestrians, it leaves many avenues open for police to use pretext stops to fish for evidence of unrelated crimes. Police would remain free to initiate stops in the hopes of identifying items in “plain view,” “fresh burnt marijuana,” “furtive glances/movements,” “nervous demeanor,” or any other nebulous, subjective observations that could give rise to an increased suspicion of an unrelated offense. Banning only some stops leaves others open to be abused. For example, banning jaywalking (CVC § 21955) means little if an officer can also detain a person for walking in a bike path (CVC §21966), as often happens before a person does jaywalk.

San Francisco can and should lead the country in adopting the most comprehensive and effective policy at ending pretextual stops, as we have done in the past, such as with the revised DGO 5.17. Given the central role that pretextual traffic stops play in a law enforcement culture that overpolices, alienates, and traumatizes people of color, the Commission should take more than piecemeal steps to reduce police incentives to make these stops. To curtail biased policing and ensure safer and more effective law enforcement, police must be categorically prohibited from stopping drivers and pedestrians for the violations identified in Appendix A.

### **2. LIMIT EXCEPTION FOR “MATCHING DESCRIPTION” STOPS (9.01.04(C))**

The current draft policy allows an exception to the prohibited list of stops when “a person or motor vehicle matches the description of a suspect or suspect vehicle in a murder [...] or any other felony where the risk of death or life-threatening injuries is imminent if the suspect is not immediately

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<sup>4</sup> Woods, Jordan Blair, *Traffic Without Police*, Stanford Law Review, Vol. 73, 2021, <https://ssrn.com/abstract=3702680>.

<sup>5</sup> San Francisco Police Department, Quarterly Activity & Data Report, Quarter 4 2021, 46-47, <https://www.sanfranciscopolice.org/sites/default/files/2022-03/SFPDQADR4thQuarterReport20220307.pdf>.

<sup>6</sup> See Appendix A for a complete list of proposed banned violations.

<sup>7</sup> See Appendix B for supporting reasons to include the additional code sections.

apprehended.” This exception can too easily be abused as little nexus need exist between the person stopped and the “suspect” other than that their descriptions must generally “match” — a term the policy leaves conspicuously undefined. Further, the potential for false identification exists — an issue exacerbated by cross cultural racial misidentification.<sup>8</sup> This can lead to violent outcomes given the underlying reasons for the exception are similar to the factors for evaluating the use of force, severity of the crime, and “imminent threat.”

Moreover, the fig leaf of a stop for a broken-tail light becomes unnecessary when an officer has reasonable suspicion to stop an individual suspected of kidnapping, for example.<sup>9</sup> Allowing stops based on descriptions falling short of reasonable suspicion allows for the same biased-fueled policing that has defined pretext stops for generations.

When an officer lacks reasonable suspicion to conduct a stop for exceptions articulated in the current policy, an officer must rely on factors beyond whether a person “matches” the description of a suspect’s perceived race or gender, such as length and color of hair, height, build, age, and other physical characteristics only after confirming the accuracy of the underlying information related to the description. Further, officers should seek approval from a supervisor and document the reasons justifying the stop in associated police records.

### **3. LIMIT QUESTIONING AND SEARCHING FOLLOWING A STOP (9.01.05)**

The policy allows an officer to ask questions regarding unrelated criminal activity, ask permission to conduct a consent search, or ask if a person is on probation or parole following any stop made for an infraction if the officer develops “reasonable suspicion or probable cause for a criminal offense” during the stop. While it is encouraging that the policy seeks to limit searches and questioning, these questions unduly incentivize officers to conduct a stop to fish for evidence and thereby, ensure that pretextual stops continue to occur.

The policy allows officers to weaponize the exception to the rule since reasonable suspicion is a nebulous concept and an arbitrarily low bar that sweeps in too much innocent conduct. For example, nervous movement (or “furtive gestures”) too often unfairly constitutes elements of reasonable suspicion when many, especially people of color, are simply — rightfully — nervous of a police encounter due to a history of being profiled by police.<sup>10</sup> Asking unrelated questions after a stop only increases this nervousness and contributes to the perception that the stop was motivated not by traffic safety, but by a desire to question the driver, bicyclist, or pedestrian about something unrelated. Far too often, people of color bear the brunt of these unrelated questions by suffering the indignity of prolonged detention in handcuffs and unfounded suspicions of crime.<sup>11</sup>

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<sup>8</sup> Taki V. Flevaris and Ellie F. Chapman, *Cross-Racial Misidentification: A Call to Action in Washington State and Beyond*, 38 Seattle U. L. Rev. 861 (2015).

<sup>9</sup> See, e.g., *Navarette v. California* (2014) 572 U.S. 393 (finding reasonable suspicion for a CHP officer to stop a driver based on a description of erratic driving); *People v. Dolly* (2007) 40 Cal.4th 458 (finding reasonable suspicion to pull over a car where an anonymous 911 caller described a suspect who threatened him with a gun and provided a description of the car and general location); *People v. Lindsey* (2007) 148 Cal.App.4th 1390 (finding reasonable suspicion to stop defendant whose race, hair style, and clothing matched the description the 911 caller provided).

<sup>10</sup> See, e.g. Justin T. Picket, Amanda Graham & Francis T. Cullen, *The American Racial Divide In Fear Of The Police*, 60 Criminology 291 (2022).

<sup>11</sup> Christina Pazzanese, *How Unjust Police Killings Damage the Mental Health of Black Americans*, Harv. Gazette, May 13, 2021,

A ready alternative also exists that makes asking these questions superfluous: probable cause for an arrest — for example, based on illegal items in plain view — permits an officer to conduct a separate, concurrent investigation of that offense. As such, the policy should exclude the reasonable suspicion and probable cause exceptions available to officers to ask questions about an unrelated alleged offense during the course of any stop for an infraction made pursuant to the California Vehicle Code or San Francisco Transportation Code.

#### **4. EXPAND THE DATA COLLECTION AND REPORTING PROVISIONS IN THE POLICY (9.01.06)**

To monitor the impact and efficacy of the policy, SFPD should report to the Police Commission on a regular basis on all traffic stops, including those made pursuant to 9.01.04(A)-(B). Further, SFPD should report the number of complaints against officers based on all traffic stops to identify further ways to improve community relations and limit pretextual stops not identified in the policy. At a minimum, an officer must document any questions asked about probation or parole status — not just when a search is conducted — so that the department is aware of how often and why its officers are asking members of the public if they are already involved in the criminal legal system.

Absent these above changes, the policy as proposed would put San Francisco in the same place as other cities who have made incremental change to policing strategy, leaving wide latitude and exceptions open for officers to exploit that will continue to disproportionately harm communities of color. As the past six years of reform have indicated, without a strong policy where the exceptions do not swallow the rule, little will likely change as already overpoliced communities of color will continue to bear the brunt of the trauma inflicted by police violence. The safety of our communities matter.

Thank you for taking on this issue, and we look forward to working with you to make the policy as strong as it needs to be. For questions about our position, please write to Wesley Saver at [wsaver@glide.org](mailto:wsaver@glide.org).

Sincerely,

Abolition Today Podcast  
Accountability Associates  
ACLU of Northern California  
Advancing Justice - Asian Law Caucus  
AIDS Legal Referral Panel  
Alexander Tenants Association, Inc.  
All of Us or None  
Arab Resource and Organizing Center  
Asian American Bar Association of the Greater Bay Area  
Booker T. Washington Community Service Center  
California Coalition for Women Prisoners  
Calle 24 Latino Cultural District  
Causa Justa :: Just Cause

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<https://news.harvard.edu/gazette/story/2021/05/how-unjust-police-killings-damage-the-mental-health-of-black-americans/>.

Center on Juvenile and Criminal Justice  
Chinatown Community Development Center  
Chinese for Affirmative Action  
Chinese Progressive Association  
Clarence Dyer & Cohen  
Coalition on Homelessness, San Francisco  
Coleman Advocates for Children and Youth  
Community Forward SF  
Community Resource Initiative  
Community United Against Violence (CUAV)  
Compass Family Services  
Council on American-Islamic Relations, San Francisco Bay Area Office  
Courage California  
Critical Resistance Oakland  
Curry Senior Center  
Day Moon  
Democratic Socialists of America, San Francisco  
Delivering Innovation in Supportive Housing (DISH)  
Do No Harm Coalition  
DOPE Project  
DPH Must Divest  
East Bay Community Law Center  
Ella Baker Center for Human Rights  
End Poverty Tows Coalition  
Episcopal Community Services  
Equal Justice USA  
Even/Odd  
Eviction Defense Collaborative  
Faith in Action Bay Area  
Faithful Fools  
Farming Hope  
GLIDE  
Haight Ashbury Neighborhood Council  
Hamilton Families  
Harm Reduction Therapy Center  
Harvey Milk LGBTQ Democratic Club  
Healing 4 Our Families & Our Nation  
HealthRIGHT 360  
Homeless Prenatal Program  
HomeRise  
Hospitality House  
Housing Rights Committee of SF  
Immigrant Legal Resource Center  
Instituto Familiar de la Raza  
Islamophobia Studies Center  
Justice for Chinedu  
Justice Policy Institute  
La Raza Community Resource Center

Larkin Street Youth Services  
Latino Task Force  
LavaMaeX  
Lawyers' Committee for Civil Rights of the San Francisco Bay Area  
League of Women Voters of San Francisco  
Legal Aid at Work  
Legal Services for Children  
Legal Services for Prisoners with Children  
Lutheran Social Services of Northern California  
Marie Harrison Community Foundation, Inc  
Mobilization for Adolescent Growth in Our Communities  
National Harm Reduction Coalition  
No New SF Jail Coalition  
PODER  
PolicyAction  
Raphael House  
Ruth Williams Memorial Theater BVOH  
Safer Together  
San Francisco AIDS Foundation  
San Francisco Bicycle Coalition  
San Francisco Community Health Center  
San Francisco Hepatitis C Task Force  
San Francisco Interrupting Racial Profiling  
San Francisco Lowrider Council  
San Francisco Muslim Community Center  
San Francisco Public Defender  
San Francisco Pretrial Diversion Project  
San Francisco Rising  
San Francisco Taxpayers for Public Safety  
San Francisco Tenants Union  
San Francisco Transit Riders  
Secure Justice  
Silicon Valley De-Bug  
Skywatchers  
Southeast Asian Development Center  
SPUR  
Sunset Youth Services  
Support Life Foundation  
Swords to Plowshares  
Tenderloin Neighborhood Development Corporation  
Tenderloin/SoMa/West SoMa Community Planners  
Tenderloin Traffic Safety Task Force  
The Gubbio Project  
The Kitchen  
The Women's Building  
Transgender, Gender-Variant, & Intersex Justice Project  
Urban Services Y - Community Action Agency  
Walk San Francisco

Western Center on Law & Poverty  
Western Regional Advocacy Project  
Yemeni Alliance  
Yemeni American Association  
Young Women's Freedom Center  
Youth Law Center  
Youth With A Mission San Francisco

Encl: Appendix A, Appendix B

Cc: San Francisco Police Commission via [sfpd.commission@sfgov.org](mailto:sfpd.commission@sfgov.org)

**APPENDIX A**  
**TRAFFIC ENFORCEMENT & CURTAILING THE USE OF PRETEXT STOPS**

**9.01.01**

**PURPOSE**

The goal~~s~~ of this General Order is to reduce racial bias in the enforcement of our traffic laws, **reduce the racial disparities in stops and searches**, and in particular, to curtail the use of pretextual stops. These stops—which use the traffic code as a pretext to conduct stops and searches absent any concrete evidence of criminal wrongdoing—are disproportionately carried out against people of color and provide no demonstrable public safety benefit. ~~Limiting this ineffectual practice will free up valuable resources to focus on strategies proven to stop and prevent crime.~~ To that end, our traffic enforcement efforts should be focused on what matters most: ensuring the safety of our sidewalks and roadways **while minimizing the harms caused by over-policing communities of color.**

**9.01.02**

**DEFINITIONS**

The following terms are defined as follows for purposes of this General Order:

A. **Pretext Stop.** A member effects a pretext stop where a member uses reasonable suspicion or probable cause of a traffic or code violation as a pretext to initiate a stop motivated by a desire to investigate another **unrelated matter** ~~crime that is unrelated to that violation.~~

B. **Biased Stop.** A biased traffic or pedestrian stop is one where ~~there is no matching suspect description and~~ a person's apparent race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, mental or physical disability, socio-economic status, dress, appearance, or neighborhood **taken separately or together** is a motivating factor **or is given undue weight (in violation of DGO 5.17.III.A.3)** in a member's decision to stop a person or vehicle.

C. **Reasonable Suspicion.** Reasonable suspicion is a set of specific facts and circumstances that would lead a reasonable person to believe that a crime is, was, or is about to occur and the person under suspicion is ~~reasonably~~ connected to the crime. Reasonable suspicion to detain is also established whenever there is any violation of the law. Reasonable suspicion cannot be based solely on a hunch or instinct **but must be based on existing, articulable facts and circumstances.**

D. **Probable Cause.** Probable cause is a set of specific facts that would lead a reasonable person to objectively believe and strongly suspect that a crime was committed by a person.



### 9.01.03

#### POLICY

A. **Pretext Stops Limited.** Except as provided in 9.01.04(C), pretext stops are banned.

B. **Biased Stops Banned.** Biased stops are illegal, unconstitutional, and antithetical to the values that the Department espouses. They are banned under all circumstances. [See DGO 5.17 for more.](#)

### 9.01.04

#### LIMITING STOPS FOR LOW-LEVEL OFFENSES

A. **Banned Motor Vehicle Stops.** Except as provided in 9.01.04(C)-(D), a member shall not stop or detain the operator of a motor vehicle, or issue a citation for any of the following offenses:

~~[Note: The Department, DPA, and Commissioner Carter Oberstone discussed the pros and cons of including a list of offenses for which stops are banned. The offenses enumerated in this section constitute a non-exhaustive list of violations that the Working Group might wish to consider for possible inclusion.]~~

1. Failure to display both license plates. (Cal. Veh. Code § 5200(a)).
2. Failure to display registration tags or driving with expired registration. (Cal. Veh. Code § 4000).
3. Failure to illuminate license plate. (Cal. Veh. Code § 24601).
4. Driving without functioning or illuminated headlights, unless no headlights are functioning or illuminated and the sun has set. (Cal. Veh. Code § 24400(a)-(b)).
5. Driving without functioning or illuminated tail lights, unless no tail lights are functioning or illuminated and the sun has set. (Cal. Veh. Code § 24600).
6. Driving without functioning or illuminated brake lights, unless no brake lights are functioning or illuminated and the sun has set. (Cal. Veh. Code § 24603).
7. Tinted windows (Cal. Veh. Code § 26708.5).
8. Objects affixed to windows or hanging from **the** rearview mirror. (Cal. Veh. Code § 26708(a)(1)-(2)).
9. Improperly mounted license plate. (Cal. Veh. Code § 5201(a)).
10. Failure to signal while turning or changing lanes, unless the failure creates a condition that substantially increases the likelihood of injury or death. (Cal. Veh. Code §§ 22107, 22108).
11. Littering, unless an object is thrown from a vehicle in a manner that creates a condition that substantially increases the likelihood of injury or death. (Cal. Veh. Code § 23112).
12. Making a U-turn from the far left-hand lane where the driver can see clearly for 200 feet in either direction, and the maneuver is executed in a manner that does not substantially increase the likelihood of injury or death. (Cal. Veh. Code § 22100.5).
13. **Driving with a cracked windshield unless there is no or substantially reduced visibility. (Cal. Veh. Code §26710).**

~~14.~~ 14. Driving without working windshield wipers. (Cal. Veh. Code §§26706-26707).

~~15.~~ 15. Failure to dim headlights. (Cal. Veh. Code §§24401, 24409).

~~16.~~ 16. A sound violation, including a loud muffler or loud music (while driving). (Cal. Veh. Code §§ 27007, 151, 27153).

~~13- 17.~~ 17. Sleeping in a car. (S.F. Trans. Code § 97).

~~14- 18.~~ 18. Any parking infraction, unless the car is unoccupied.

**B. Banned Pedestrian & Bicycle Stops.** Except as provided in 9.01.04(C), a member shall not stop or detain a person, or issue a citation for any of the following offenses:

1. Crossing the street outside of the crosswalk, unless it **doing so** creates a condition that substantially increases the likelihood of injury or death. (Cal. Veh. Code § 21955).

**2. Crossing the street in a crosswalk when there is no walk sign, unless doing so creates a condition that substantially increases the likelihood of injury or death. (Cal. Veh. Code §§ 21456, 21456.1).**

3. Failing to come to a complete stop at a stop sign when no person is in or about to be in the intersection. **(Cal. Veh. Code § 22450).**

~~2- 4.~~ 4. Riding a bicycle on a sidewalk. (S.F. Trans. Code Art. 7, § 7.2.12).

~~3- 5.~~ 5. Riding a non-motorized scooter on a sidewalk. (S.F. Trans. Code Art. 7, § 7.2.13).

~~4- 6.~~ 6. Failure to ride a bicycle as close as practicable to the right-hand curb or edge of the roadway. (Cal. Veh. Code § 21202(a)).

**7. Walking in a bike lane where there is a pedestrian path. (Cal. Veh. Code §21966).**

**8. Riding a bike with faulty brakes, high handlebars, missing reflecting lights or pedal reflectors. (Cal. Veh. Code § 21201).**

**9. Riding a bicycle with more than one person at a time. (Cal. Veh. Code § 21204).**

**10. Obstructing pedestrian traffic by not parking a bike upright. (Cal. Veh. Code § 21210).**

**11. Riding a bike without a helmet. (Cal. Veh. Code § 21212).**

**C. Exceptions.** A member may stop or detain a person or an operator of a motor vehicle, or issue a citation for an offense enumerated in 9.01.04(A)-(B) if:

1. the member lawfully stopped or detained the person or operator of the motor vehicle for any felony, misdemeanor, or infraction not enumerated in section 9.01.04(A)-(B); or

2. the operator is driving a commercial vehicle; or

3. a person or motor vehicle matches the description of a suspect or suspect vehicle in a murder, attempted murder, manslaughter, armed robbery, kidnapping, forcible sex offense, a felony committed against a child, or any other felony where the risk of death or life-threatening injuries is imminent **and substantially likely to occur** if the suspect is not immediately apprehended. **Similarities in the description of race and gender alone are insufficient; rather length and color of hair, height, build, age, and other physical characteristics also should be considered to limit false identification. Under this exception, a member must seek approval from a supervisor before conducting a stop enumerated in 9.01.04(A)-(B) and document the reasons in associated police records (e.g., incident reports and CAD calls).**

**D. Citations Without Stops.** A member may issue a citation for an offense enumerated in 9.01.04(A):

1. If the motor vehicle is unoccupied; or

2. If a member is prohibited from making a stop under 9.01.04(A), and the member can identify the owner of the vehicle, the Department may mail a citation to the owner of the vehicle, or send a warning letter identifying the violation and instructing the owner to correct the defect or otherwise remedy the violation.

#### **9.01.05**

##### **LIMITING SEARCHES & QUESTIONING**

A. In the course of any stop made for an infraction pursuant to the California Vehicle Code or San Francisco Transportation Code, members shall **not only** ask ~~investigatory~~ questions ~~regarding~~ unrelated to the stop. ~~if reasonable suspicion or probable cause for a criminal offense arises during the stop. (Example: If, during a routine traffic stop, officers see a firearm in plain view in the vehicle, they may ask investigatory questions about criminal activity).~~

B. In the course of any stop for an infraction made pursuant to the California Vehicle Code or San Francisco Transportation Code, members shall **not only** ask for permission to conduct a consent search of a person or vehicle ~~if reasonable suspicion or probable cause for a criminal offense arises during the stop.~~

C. In the course of any stop for an infraction made pursuant to the California Vehicle Code or San Francisco Transportation Code, members shall **not only** ask if a person is on probation or parole ~~if reasonable suspicion or probable cause for a criminal offense arises during the stop.~~

*[Note: The Department, DPA, and Commissioner Carter-Oberstone considered whether to place limits on parole/probation searches, but ultimately determined that it may be preferable to address this topic in a separate DGO.]*

#### **9.01.06**

##### **DATA COLLECTION, REPORTING & SUPERVISORY REVIEW**

~~A. Any member who conducts a search, asks an investigatory question, or asks a question about parole or probation status under 9.01.05(A)-(C) shall document the reason for the stop in an incident report and/or chronological record of investigation.~~

~~B.~~ **A.** Members shall record vehicle and pedestrian stop data prior to the conclusion of each shift.

~~€~~ **B.** On duty platoon commanders or officers in charge shall ensure supervisory review, approval, and oversight for all traffic citations and associated body worn camera footage. Such review, approval, and oversight is not required on scene, but platoon commanders or officers in charge shall ensure these tasks are completed by their supervisory personnel.

Additionally, sergeants are responsible for reviewing traffic stop data for members under their direct supervision (PIP Group) on a quarterly basis and must report violations of this policy.

**C.** SFPD and the Department of Police Accountability shall submit a quarterly report to the Police Commission on the following data—collectively and disaggregated—they possess:

1. The race, gender, age, police district, time of day, basis for all traffic stops—including stops made, in part, based on violations in 9.01.04(A)-(B)—disaggregated by violation and by moving or non-moving violation.
2. The results of the traffic stops (e.g., release, warning, citation, and arrest), disaggregated by race, time of day, police district, and moving/non-moving violation.
3. The number of investigatory detentions and traffic stops of drivers, pedestrians, and bicyclists based on a “matching description” pursuant to 9.01.04(C)(3).
4. The number and type of complaints filed, the outcome for each complaint, and the discipline administered for each case, if any, with the Department of Police Accountability or the Internal Affairs Division arising from a traffic stop.
5. The number of criminal cases and criminal charges discharged by the District Attorney or Superior Court because of biased policing, pretextual stops, or illegal searches or seizures resulting from a traffic stop.

#### **9.01.07**

##### **IMPLEMENTATION**

[TBD]

##### **References**

[TBD]

## APPENDIX B

### Supporting Arguments to Ban Additional Vehicle Code Violations

#### Section 9.01.04 (A)

*Driving with a cracked windshield unless there is no or substantially reduced visibility. (Cal. Veh. Code §26710).*

- Replacing a windshield can cost up to \$400.<sup>12</sup> One recent study found that 77% of Black respondents reported not having \$400 in savings - precisely what is required to pay to replace a windshield - in comparison to just 18% of white respondents.<sup>13</sup>
- Costs such as these - and the collateral consequences of entanglement with the criminal legal system - create the systemic obstacles for Black households to build wealth.<sup>14</sup>
- Little legitimate reason exists to issue a ticket - and therefore the safety justification underlying the traffic stop - where visibility has not been substantially reduced.

*Driving without working windshield wipers. (Cal. Veh. Code §§26706-26707).*

- The law targets drivers of cars that appear rundown and adversely impacts economically marginalized communities.
- Pulling someone over for missing windshield wipers when there is no need for windshield is unnecessary and offers an avenue for officers to stop, detain, and harass the occupants of the car.
- A ready alternative exists: officers can ask the driver to wait for the weather issue to resolve, which can readily be determined by looking at a weather app.
- Further, based on 2019 SFPD data, no officer conducted a traffic stop on this basis.

*Failure to dim headlights. (Cal. Veh. Code §§24401, 24409).*

- Good reasons exist to use high-beams: when there is low visibility and when you are unable to see enough of the road ahead to drive safely.
- This violation most often occurs because a person forgets to dim their high beams and is not necessarily tied to a specific criminal intent or an intent to evade detection. Quite the opposite is true as failing to turn your high beams off makes you more visible to an officer.
- In 2019, SFPD officers issued a ticket almost 1.5 times per month.
- Instead of penalizing drivers for this behavior, an officer can flash their high beams at the person with the lights to alert the individual. Other drivers may look to the right side of the road to avoid the lights.
- An individual may also have repaired the headlights themselves and may have done so incorrectly. If a non-professional / owner replaces a headlight - which is a solution many who cannot afford to replace a headlight rely on - the light may have been improperly installed, giving the appearance of high beams.
- What data exists to suggest that this is an actual problem? Technological solutions are on their way. Europe has adopted so-called “smart headlights” that adapt to the changing conditions of

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<sup>12</sup>

<https://www.chase.com/personal/auto/education/maintenance/how-much-to-replace-a-windshield#:~:text=You%20might%20pay%20%24250%20to,the%20cost%20may%20be%20higher.>

<sup>13</sup> *New Study Reveals Stark Picture of Bay Area Poverty Leading up to COVID-19 Pandemic*, Tipping Point, May 14, 2020,

<https://tippingpoint.org/press/new-study-reveals-stark-picture-of-bay-area-poverty-leading-up-to-covid-19-pandemic>.

<sup>14</sup> Christian Weller & Lily Roberts, *Eliminating the Black-White Wealth Gap Is a Generational Challenge*, Center for American Progress, Mar. 19, 2021,

<https://www.americanprogress.org/article/eliminating-black-white-wealth-gap-generational-challenge/>.

the road. They get brighter when needed and dim when necessary. There clearly is a need for people to put on their bright headlights. The technology just needs to catch up and relying on driving in more people to the criminal legal system cannot be the solution.

*A sound violation, including a loud muffler or loud music (while driving). (Cal. Veh. Code §§ 27007, 151, 27153).*

- This law was adopted in 1989, when car stereo culture (and rap music) started to rise to prominence. Early research supports<sup>15</sup> the notion that this law has historically been disproportionately applied to Black drivers.
- SFPD officers have recourse here: tell the individual to turn the music down. Penal code 415 (disturbing the peace) may be a better code to enforce because it requires that the sound violation be willful *and* malicious.
- Loud music is often accompanied by other violations, including drinking in public. Officers remain free to cite violators for other reasons.
- More broadly, the solution is to create space so that communities have those safe, open areas for social gatherings now. The response should not be to have police issue citations. The issue goes beyond just a noise complaint; the issue also encompasses the real concern that police will continue to harass people of color and funnel more Black and brown people into the criminal legal system.

#### **Section 9.01.04 (B)**

*Crossing the street in a crosswalk when there is no walk sign, unless doing so creates a condition that substantially increases the likelihood of injury or death. (Cal. Veh. Code §§ 21456, 21456.1).*

- It is often safe to cross when there is a no walk sign, especially at low-traffic hours.
- Pedestrians commonly cross the crosswalk when there is a no walk sign, and so this can be an opportunity for disparate enforcement, particularly targeting communities of color or those for whom the officer has a “hunch” or a “feeling” that might be involved in criminal activity.
- A reasonable police response to this common occurrence would be to ask pedestrians to stay on the sidewalk, as they often do.
- Some news articles suggest that this is rarely enforced in SF:  
<https://www.sfgate.com/bayarea/article/Confusing-don-t-walk-crossing-law-may-soon-be-12198463.php>

*Walking in a bike lane where there is a pedestrian path. (Cal. Veh. Code §21966).*

- The law here is too vague and provides too much discretion for officers to sweep in conduct that is not inherently dangerous. There is little logical connection to safety when bikers are not present or there is no present danger (from cars, for example).
- Often sidewalks are blocked, and therefore the only path is a street/bike lane. If the data showed that the racial distribution of those who get tickets reflected the population of San Francisco — or the population of pedestrians in San Francisco — and if a strong connection between issuing infractions and improved public safety outcomes were demonstrated, then enforcing this law could make sense; however, that is not the case.
- Insofar as Black people receive a disproportionate number of infractions, that is likely more reflective of decades of underinvestment to make those communities more pedestrian friendly.

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<sup>15</sup>Charles Crawford, *Car stereos, culture and criminalization*, Crime Media Culture, April 2006, [https://www.researchgate.net/profile/Charles-Crawford-5/publication/240717470\\_Car\\_stereos\\_culture\\_and\\_criminalization/links/54262b710cf2e4ce9406fbd1/Car-stereos-culture-and-criminalization.pdf](https://www.researchgate.net/profile/Charles-Crawford-5/publication/240717470_Car_stereos_culture_and_criminalization/links/54262b710cf2e4ce9406fbd1/Car-stereos-culture-and-criminalization.pdf).

More policing and more infractions are not the solution. The solution, instead, is to build more crosswalks and reconfigure pedestrian pathways.

*Riding a bike with faulty brakes, high handlebars, missing reflecting lights or pedal reflectors. (Cal. Veh. Code § 21201).*

- This is the core quality of bike / poverty intervention. The more in disrepair a bicycle is, the more cause police officers have to stop the rider.
- Since 2013, 53 cases have been charged with CVC 21201 as the top charge (per PDR data). All but eight of the cases have been discharged, 33 of those booked were Black, and 13 were likely Latinx. These numbers suggest that even when officers use this stop as a fishing expedition, District Attorneys — multiple DAs going back to 2013 — decline to charge that case. The solution here is to help the people with bicycles that do not comport with the code to fix their bikes, not levy a hefty fine. Failure to appear at an infraction hearing or pay a fine can incur a separate \$300 fine under Penal Code 1214.1.
- Taxing already underserved communities is not the solution. Exacting onerous fines and fees — especially when they disproportionately impact those struggling to meet their own basic needs — perpetuates cycles of poverty.

*Riding a bicycle with more than one person at a time. (Cal. Veh. Code § 21204).*

- This is largely an economic crime. The principal reason two people would ride on a bicycle at the same time is that they lack other means of transportation. Enforcing this traffic violation means that you give officers license to criminalize poverty.
- This is a racial justice issue. Black and Latinx residents make up 45% of very low-income families across the Bay Area and are thus more likely to be targeted by this infraction.
- If children are sharing a bicycle, a warning - without an escalation to a detention and an infraction - is sufficient to address the potential harm

*Obstructing pedestrian traffic by not parking a bike upright. (Cal. Veh. Code § 21210).*

- The issue here is not riding the bicycle on the sidewalk. The issue here is leaving the bike on the sidewalk, and so there is very little direct harm posed by the bicycle.
- To the extent that bicycles can be stood upright, the Mayor's community ambassadors in neighborhoods like the Tenderloin can stand them upright - and so can police without issuing an expensive infraction (up to \$250).

*Riding a bike without a helmet. (Cal. Veh. Code § 21212).*

- An infraction for violation 21212 costs \$25. The cost of a helmet is less than \$20.<sup>16</sup> Officers would be better served distributing helmets, instead of spending up to 30 minutes detaining and citing a child.
- Even at the lowest pay rate for an officer, the City saves money by distributing helmets rather than to pay *one* officer for 0.5hrs (almost \$25 + plus benefits) to issue a ticket.<sup>17</sup> This cost also does not include the paperwork, court time, and other time wasted processing the citation/ticket.

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[https://www.amazon.com/BURSUN-Certified-Ventilation-Adjustable-Multi-Sport/dp/B083LMRXXR/ref=sr\\_1\\_8?crid=1PLYFIUIRVQNL&keywords=bicycle+helmet+kids&qid=1658183045&srefix=bicycle+helmet+kids%2Caps%2C324&sr=8-8](https://www.amazon.com/BURSUN-Certified-Ventilation-Adjustable-Multi-Sport/dp/B083LMRXXR/ref=sr_1_8?crid=1PLYFIUIRVQNL&keywords=bicycle+helmet+kids&qid=1658183045&srefix=bicycle+helmet+kids%2Caps%2C324&sr=8-8).

<sup>17</sup> <https://careers.sf.gov/classifications/index.php?classCode=Q002>.