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President C. Don Clay
Police Commission
San Francisco Police Commission
1245 3rd Street, 6th Floor
San Francisco, CA 94158

Re: Response to the Public Defender's Initial Request to Vote No on DGO 10.12, *UAS Operations*

On September 2, 2026, the Commission Office forwarded a copy of the Public Defender's letter, dated September 1, 2026, regarding the proposed DGO 10.12, *UAS Operations* to the policy team. The Public Defender sent their letter directly to the Commission Office at approximately 4:58pm on Tuesday September 1st while the DGO was scheduled to be heard by the Police Commission the next day and the Department was not copied on this correspondence.

Because the letter was sent at the last minute and the Department was not included in the communication, there was no opportunity to review the comments or provide an informed response before or during the commission meeting where the matter was discussed publicly.

The Department remains committed to transparency and collaboration with the policy development process and has prepared this written response to the Public Defender's letter for the Police Commission's consideration.

1. Assertion: "The Commission Retains the Authority to Revise DGO 10.12"

Response: Correct. The Department proposed a DGO to ensure the Police Commission has oversight and approval authority over the most authoritative written directives for SFPD members. SFPD's drone use was ushered in by two legislative initiatives: SF voters approving SF Admin Code 96I and the Board of Supervisors (BOS) approving an equipment use policy for drones pursuant to Government Code 7070-7075. These initiatives did not consider the Police Commission's role. This prompted the Department to include the commission which has the most applicable experience and knowledge about the law enforcement process.

The Public Defender mischaracterized the language of Proposition E ("96I"); 96I.2(e) states that SFPD "shall use technology to the maximum extent possible to improve its efficiency and effectiveness in combatting crime, and to reduce dangers to the public, subject to the City's

policies to protect privacy and civil liberties.” The proposed DGO includes authorized uses and prohibitions, addressing not only the City’s policies to protect privacy and civil liberties, but general acknowledgements and protections of the public’s First and Fourth Amendment rights.

The Police Commission oversees the policy direction of the Department and, as such, the policy team brought the proposal to the Commission to approve a DGO.

2. Assertion: “The Policy Expands Drone Usage Beyond Current Statutory Authority”

Response: Gov. Code 7071(a) requires the BOS to approve by ordinance a military equipment use policy prior to using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body pursuant to this chapter. Gov. Code 7071(e)(1) requires the BOS to annually review this ordinance and vote on whether to renew it. There currently is an SFPD UAV Use Policy, approved by the BOS in September 2024, per Gov. Code 7071.

As the Department explained at the September 2, 2026, Commission meeting, the use policy under Gov. Code 7071 and proposed DGO 10.12 differ in the wording used to describe the scope of authorized use, not in the scope of actual use itself. The Department has identified those wording differences and will seek an ordinance amendment to the Gov. Code 7071 policy to acknowledge and reference DGO 10.12, if adopted.

Contrary to the claim of an expansion to the policy, the DGO now includes additional restrictions which will require final approval by the BOS in the forthcoming amended UAV Use Policy.

3. Assertion: “The Proposed Policy Openly Invites Invasion of Privacy” & “Competing Instructions on Privacy Will Confuse Officers”

Response: The Public Defender’s claim rests on a false premise that the Department is currently or will in the future use drones for “near constant repetitive surveillance.” Due to this misperception, the policy team offered an amendment to the proposed policy at the September 2nd Commission meeting, expressly prohibiting “general surveillance.”

In addition, the Public Defender recommends an incident-based deployment standard which, in the law enforcement drone context, is a framework where drones are automatically dispatched when a 9-1-1 call is triggered, limiting drones to reactive and targeted use. The workflow starts with 9-1-1 call, CAD Alert, ShotSpotter detection or other emergency events, and then automatically triggers the drone dock to open automatically. The drone will start its flight based on a pre-programmed route to the incident through GPS and then provide live intelligence to the

ground units. To propose this approach to drone usage is counter to the Public Defender's stated position in other sections of their letter and appears to reveal a basic misunderstanding of this term.

The Public Defender references *People v. Cook*, a case that does not stand for the principle that police cannot use aircrafts at all but did hold that police need a warrant for a specific kind of use. The policy team has offered a revision to the prohibitions section affirming the need for a warrant for specific uses, which is already current practice.

The Public Defender's letter also notes *Chatrie v. United States*. *Chatrie* addressed geofence warrants for cellphone location data and did not involve drones or aerial observation. To the extent its principles on retrospective searches and location privacy inform drone use, DGO 10.12 already addresses them by limiting footage retention to 30 days, restricting access to Captain-approved criminal investigations, and prohibiting general surveillance.

The Public Defender uses a term "drone patrol" which typically means pre-programmed routes which are commonly used by commercial security for construction sites or car dealerships. The authorized uses and prohibitions listed in the policy proposal ensure that the drones are not being used for general surveillance but may assist members assigned to patrol while responding to calls for service.

While legislative changes have allowed for the Department's use of drones, legislative policy language is rarely written in terms easily and uniformly translated by Department members. Because the language in both 96I and Gov. Code 7070-7075 does not clearly align with common vernacular or operational terminology, the policy team and the subject matter experts thought it important to craft a DGO that specifically applies to SFPD member activities, operations and our policy portfolio. As such, we disagree with the Public Defender's assessment that the DGO will "confuse officers".

4. Request: "Tighten Data Retention and Sharing Requirements"

Response: As the Public Defender acknowledged in their letter, the 30-day retention structure is compliant with SF Admin Code 96I. Retention beyond 30 days requires a determination that footage has evidentiary value by a Captain rank or higher. The actual retention, as with any law enforcement agency, is tied to laws governing evidence or a Court Order. If the footage captured is tied to a homicide, the retention will be longer than if the footage captured vehicle "bipping". For clarification, we have added the 96I language relating to access at the determination of a Captain rank or higher in the policy proposal as well.

The Public Defender mentions their concern about what other agencies can do with footage if SFPD releases it within the initial 30-day timeline. The Public Defender states their belief that SF Admin Code 19B addresses this concern, however, this belief is incorrect. The DGO uses that same data access and sharing standard as 19B policy templates.

No matter if the access, sharing or retention is listed in a 19B policy or a DGO, the policy cannot direct the actions of outside agencies. The current policy proposal ensures that access and retention are determined by a Captain or higher and the data sharing follows the criteria required by the city's own surveillance and privacy rules. The DGO guides and gives SFPD members the authority to consistently set expectations with outside public safety partners.

5. Assertion: There is Case Law that Supports the Public Defender's Stated Concerns.

Response: In response to *People v. Cook*, the policy team saw an opportunity to add a new restriction in the prohibitions section, requiring a warrant for use of a UAS to observe, record or investigate inside places where one has a reasonable expectation of privacy.

California v. Ciraolo, relates to the Santa Clara Police Department receiving an anonymous tip that Ciraolo was growing marijuana in his backyard. The Santa Clara Police Department used a private plane to surveil Ciraolo's backyard to confirm the presence of marijuana to obtain a search warrant. The Supreme Court found that the Department's observation of Ciraolo's backyard did not violate the Constitution as the expectation of privacy protections have never been made legally static. Since the observations were nonintrusive and took place within a public navigable airspace, the surveillance was consistent with the Fourth Amendment. As the Public Defender's letter acknowledges, this Supreme Court case does not support the Public Defender's argument by addressing drones or incident-specific deployment.

The Public Defender's letter cites *Florida v. Riley* in which the Pasco County Sheriff's Office received a tip that Riley was growing marijuana on his property in a greenhouse. The Sheriff's Office used a helicopter to surveil Riley's property to obtain a search warrant and eventually charge Riley with possession of marijuana. The Supreme Court found that the police officer's surveillance did not violate Riley's reasonable expectation of privacy and did not violate Riley's Fourth Amendment rights because anyone could view Riley's property from an aircraft flying above in a navigable airspace. As the Public Defender's letter acknowledges, this Supreme Court case does not support the Public Defender's argument or address drones or incident-specific deployment.

People v. Mayoff is also cited in the Public Defender's letter. In this case, law enforcement conducted aerial surveillance in rural regions to identify marijuana farms. The California Supreme Court found that Mayoff's Fourth Amendment rights were not violated and that this warrantless surveillance search was permitted.

The Public Defender submitted a second letter on September 19, 2026. The following are the Policy Team's responses to the September 19th concerns not already addressed above.

6. Assertion: "Surveillance itself becomes the policy activity" and "Other departments have drawn this line more clearly."

Response: The Public Defender compares SFPD's policy to Oakland, LAPD, San Diego, New York City and Chula Vista. Structure, demand, scale, legal context and outcome metrics differ

greatly which can invite false conclusions when comparing these agencies side by side. For example, Oakland's footage retention is 5 days, NYPD's is 30 days, Chula Vista is up to 90 days, leaving SFPD in the middle of the pack. Regarding internal access, no peer agency has Captain-rank restrictions around access like SFPD is proposing, consistent with Admin. Code 96I.

SF combines a large daytime and visitor surge with almost no adjacent law enforcement agency to share the workload. This is comparable to NYPD more so than Oakland or LAPD, but without NYPD's staffing depth. All that said, the policy team understood the general concern and on September 2nd offered a prohibition of general surveillance. But we are wary of drawing further comparisons to these agency's policies.

7. Request: "Close the Mixed-Purpose Loophole for First Amendment Surveillance"

Response: The SFPD is responsible for ensuring the safety of those who attend and participate in planned or unplanned First Amendment Activities in this city. The verbiage used in this DGO proposal matches the language approved by the BOS in the UAV use policy per Ca. Gov. Code 7070-7075 and that is seen in other DGOs and city approved policies relating to surveillance tools. This language is not an outlier and does allow SFPD to address public safety needs that do occur at large gatherings. The public footage 30-day retention and Captain-rank restricted access serve to protect members of the public.

Conclusion:

The policy team is always open to receiving public feedback and has been responsive in the past as well as during our proven support of facilitating Working Groups. This DGO was not appropriate for a Working Group assignment, as it is beholden to several governing statutes. Drone use was and is already operating under 96I and the approved use policy under Ca. Gov. Code 7070-7075. The Department's desire to provide the Police Commission with a viewpoint on the policy did exactly what it is structured to do: garnered additional public feedback to help inform the policy team of potential additional edits. We have offered amendments to be responsive to the Public Defender and members of the public, where feasible.



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