



**DANIEL LURIE**  
MAYOR

CITY AND COUNTY OF SAN FRANCISCO  
**POLICE DEPARTMENT**  
HEADQUARTERS  
1245 3<sup>RD</sup> Street  
San Francisco, California 94158



**PAUL YEP**  
INTERIM CHIEF OF POLICE

October 31, 2025

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

**Re: Response to the Public Defender's Requests to Revise DGO 5.08 "Plainclothes, Non-Uniformed, and Undercover Officers"**

The Department learned during the October 1<sup>st</sup> Police Commission meeting that the Public Defender's Office had submitted a letter regarding proposed revisions to DGO 5.08, "Plainclothes, Non-Uniformed, and Undercover Officers". The letter was sent directly to the Commission Office at approximately 3p.m., just two and a half hours before the meeting began, and the Department was not copied on the 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 meeting where the matter was discussed publicly. This last-minute submission effectively prevented the Department from participating meaningfully in the policy discussion and disrupted the established review process.

As a result, approval and implementation of the long overdue update to DGO 5.08 has been further delayed, along with the rescission of several Bureau Orders required under Commission Resolution 23-51. The Department remains committed to transparency and collaboration in the policy development process and has prepared this written response to the Public Defender's letter for the Police Commission's consideration.

**1. Request: "Eliminate the Vague Exception 5.08.04(A)(1)(c) Carves Out Permitting Plainclothes Officers to leave BWCs Deactivated."**

**Response:** The Public Defender mischaracterized the intent of this section by quoting it incompletely. The full section, relating to Plainclothes and Non-Uniform Enforcement Operations, states, "Activate Body Worn Camera (BWC), unless granted an exemption based on the task/operation, or activation could compromise the identity of confidential informants and undercover operatives. If BWCs are not activated, rationale must be documented" (5.08.04(A)(1)(c)).

This provision is a safety requirement. BWCs may be deactivated only in rare cases where activation would expose undercover officers, reveal confidential informants, or compromise ongoing surveillance. Every instance of non-activation must be documented, creating a clear audit trail that the Department can track frequency, rationale, and authorization. That is

accountability in action, not an exception open to “overuse, misuse, and inconsistencies” as the Public Defender states.

The claim that the policy is “silent” on who grants the exemption is also incorrect. Section 5.08.04(A) governs enforcement procedures. Pre-planned actions must be approved by a Lieutenant and Sergeants may approve spontaneous events or exigent circumstances. Because BWC activation is tied to the task or operation, an officer cannot simply decide to deactivate their BWC without documented authorization.

The request to list “specific circumstances in which officers can deactivate their BWCs” may sound tidy on paper but ignores operational reality. Criminal investigations led by plainclothes officers cannot be reduced to checklists as the very purpose of these specialized units are discretion, flexibility and the ability to target specific or high-level criminal patterns. Eliminating this exemption would not enhance transparency, it would cripple investigations and put both officers and the public at risk. To make the intent clearer, the Department has modified the language to read:

“Activate Body worn Camera (BWC), unless granted an exemption based on the task/operation, for example when activation could compromise the identity of confidential informants or undercover operatives. If BWC’s are not activated, rationale must be documented.”

**2. Request: “Revise 5.08.04(C)(3) to Require Plainclothes Officers to Call for Marked Backup Immediately and Not “As Soon As Practical”.**

**Response:** The full text of 5.08.04(C)(3) reads “When initiating vehicle stops, members shall request a marked backup unit as soon as practical,” meaning as soon as it is safe to do so. This phrasing aligns with several other DGOs, including: DGO 8.11, *Investigation of Officer-Involved Shootings and Discharges* (2005), DGO 8.12, *In-Custody Deaths* (sent to meet and confer by the Police Commission), DGO 6.10, *Missing Persons* (2025), and DGO 5.01, *Use of Force Policy and Proper Control of a Person* (2024).

The Public Defender’s reference to “masked ICE agents” is a scare tactic meant to provoke fear, not reflect fact. Plainclothes SFPD officers are local law enforcement operating under strict policy; they must identify themselves as police, display their star, and activate their BWC per 5.08.04(A)(1). Additionally, the Department issued Department Notice 25-092 in September prohibiting the use of facial coverings for the purpose of concealing officer’s identities during enforcement actions “to avoid confusion, to differentiate SFPD enforcement operations from federal immigration operations, and maintain our high level of community trust”, with very limited exceptions. Likening our officers to federal agents conducting immigration raids is counterproductive and detracts from the intended impact of this policy.

Plainclothes vehicle stops are inherently higher-risk operations. These officers are not in uniform, they are driving unmarked vehicles, and they are engaging suspects believed to be involved in serious crimes – these are not routine traffic infractions. Such circumstances carry greater unpredictability and danger for everyone involved. It is imperative that officers are allowed to first secure the scene, ensure no immediate threat to life, and stabilize the situation before broadcasting for backup. Forcing an “immediate” call-in before assessing weapons or suspect behavior would be reckless and cost precious seconds when safety and judgement are most critical.

The "as soon as practical" standard balances accountability with operational safety. It ensures a marked unit is called at the earliest safe opportunity while giving officers the flexibility to make sound tactical decisions. While the Public Defender says "immediate" would reduce tense encounters, in reality it could do the opposite by forcing premature radio calls in unstable, high-risk encounters and increasing the danger to both officers and the public.

**3. Request: Restore "shall not" instead of "should not" for undercover/plainclothes in crowd control.**

**Response:** This statement has been modified in the proposed DGO 5.08 draft, so it mirrors the language used in DGO 8.03, *Crowd Control*, which was updated in January 2025.

**4. Request: Require Officers to notify Their Supervisors Before Commencing Out-of-County Work.**

**Response:** The Public Defender again overlooks the operational realities of police work. Section 5.08.08(B) states, "Members shall notify their direct supervisor of any out-of-county surveillance or enforcement action."

The Public Defender believes that officers should be required to notify their supervisor *before* they "begin work outside of San Francisco" to reduce "liability". In practice, this means an officer following a suspect out of the city would have to stop surveillance mid-operation to make a phone call, risking the loss of the suspect or missing the criminal act necessary to justify arrest. The current policy already ensures supervisors are informed and accountability is preserved. Mandating notice before action could undermine operational effectiveness in the field, making this policy incrementally less functionally sound.

The Public Defender's proposal also ignores staffing realities and creates unnecessary ambiguity. These operations often occur outside regular work hours, when supervisors may be on-call rather than on-duty. A supervisor may not immediately answer a call from an officer attempting to provide notification before commencing out-of-county work. In those instances, the Public Defender's proposal is unclear whether the officer may proceed or must wait until their supervisor returns their call. This could mean waiting minutes or even hours, effectively forcing an officer to suspend or abandon surveillance of an active suspect. The proposal offers no practical solution to these operational realities.

The current language maintains the right balance: supervisors are informed, documentation is preserved, and officers retain the flexibility to act when circumstances demand it. The Public Defender's proposal would achieve the opposite by potentially delaying enforcement, jeopardizing operations, and creating risk where none needs to exist. In addition, the Office of the City Attorney is the sole representation of the department's liability, not the Public Defender's office.

**5. Request: Eliminate the exception in 5.08.10(A) That Could Render This Policy Entirely Moot.**

**Response:** The Public Defender description of 5.08.10(A) as allowing the Department to "suspend the policy at will" is fictitious. The procedure in 5.08.10(A) states, "Deputy Chiefs may approve deviations from this policy for specific units, operations, or events. Approved deviations shall be documented." As noted in policy, every approved deviation must be documented, detailing what was authorized, by whom, and why. This ensures oversight, not evasion.

10/31/2025

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Suggesting that the Department should have no flexibility to adapt to high-risk or specialized operations is irresponsible. Some operations are so complex, sensitive, or dangerous that they cannot be fully anticipated or addressed within the four corners of this policy. In those rare circumstances, the Department must retain the ability to adapt. For example, a Deputy Chief may approve a unit temporarily withhold notification to an outside agency if it becomes known that someone within that agency has a personal or professional connection to a target under surveillance. That flexibility can mean the difference between a successful operation and a compromised one.

The Public Defender's argument that this "sets a precedent" for other DGOs misunderstands both policy design and command structure. This clause exists only because plainclothes and undercover work are uniquely complex and unpredictable.

Deputy Chiefs are currently the second-highest ranking commanders in the Department, reporting only to the Chief of Police. They oversee entire bureaus and make critical, time-sensitive decisions that directly impact public and officer safety. If we cannot trust them to make narrowly scoped exceptions in rare circumstances, their authority is meaningless.

This flexibility is not new or untested, it mirrors the current practice as outlined in Field Operations Bureau Order 23-02 and similar language in other directives, including DGO 6.13, *Hate Crimes*, which the Commission recently advanced to meet and confer. Removing it would hinder the Department's ability to respond to evolving threats and place both officers and the public at unnecessary risk.

The San Francisco Police Department's proposal maintains accountability while ensuring the Department can operate effectively and safely. We respectfully request the Police Commission consider their responsibility to safeguard not only the community, but the officers who risk their lives to serve it.

Respectfully,



**DERRICK LEW**

Deputy Chief

Field Operations Bureau