

#	DPA Recommendations for DGO 10.12	SFPD response	SFPD explanation	Open/Closed
R1	SFPD's first definition is for Counter UAS (C-UAS). Please provide clarity on SFPD's C-UAS authority and capability. "Counter-UAS," is defined in 49 U.S.C. § 44801(5) as a system or device capable of lawfully and safely disabling, disrupting, or seizing control of an unmanned aircraft. However, the Preventing Emerging Threat Acts of 2018 only provides DHS and DOJ with the authority to control or disable drones. As of 2020, USDOJ's report on drone use by public safety agencies stated that the Act's authority was limited to federal agencies because of concerns that counter-drone technologies are unsafe, specifically highlighting the possibility that jamming signals could interfere with other critical radio signals.	Recommendation will not be included in draft DGO	To avoid any interpretive confusion, the additional text: "(Pursuant to 19B compliance)" can be added to the C-UAS definition. However, CUAS is a large umbrella term with crossover to a fully functional UAS program. The detection, tracking, and identification pieces are critical to a safe UAS program because they provide airspace awareness and may not fall directly under 19B (TBD by City Attorney). The "mitigation" aspect of CUAS, where a hostile UAS is physically or electronically dealt with, is separate and does fall under 19B policy jurisdiction. SFPD does not currently have C-UAS capabilities, nor is viable C-UAS technology currently available to be operated by SFPD. However, this policy grants the Program Manager authority to coordinate with partner agencies that do have C-UAS authorities and capabilities. If C-UAS technology reaches the point where it can be implemented in SFPD's drone program, the DGO will allow its use under the direction of the Program Manager. In addition, the Department prefers not to refer to the 2020 guidelines, as DPA recommends, relating to this ever-evolving technology.	Closed
R2	SFPD's Purpose section states that UAS will be in strict compliance with constitutional and privacy rights. To achieve this, DPA recommends drafting guidance around First Amendment activities to safeguard free speech and assembly. For example, there is no discussion of when DGO 8.10 applies to drone usage, no discussion about generalized surveillance around First Amendment events, consideration of different standards near protests and public assembly, or how operator actions could create a chilling effect. SFPD Previously concurred with DPA's 2021 Audit Recommendation to ensure that revisions	Recommendation will not be included in draft DGO	DGO 8.10 is not directly associated with this policy. DPAs 2021 audit of 8.10 provided six findings. Most of the findings pertained to record disposal and reporting. One finding requested that DGO 8.10 be updated to provide guidance as to when the order applies to criminal investigations. The Department concurred with a majority of the findings and has implemented them. However, DGO 8.10 is wholly separate from this policy. The drone is merely a tool to assist members. The Department's drone unit is focused on utilizing UASs to apprehend criminals and is not interested in using this tool to monitor First Amendment participants.	Closed
R3	DPA recommends SFPD draft guidance for operators explaining how drones differ from officers on foot with respect to "reasonable expectation of privacy". The US Supreme Court has opinions on aerial observation, guidance should take into account persistent surveillance vs brief observation, lawful position vs illegal position, the use of zoom to enhance senses, surveillance without individualized suspicion.	Recommendation will not be included in draft DGO	While SFPD affirms that individuals have the Right to Privacy and freedom of expression in conformance with and consistent with federal, state, and local law, UASs will only be deployed in certain situations unfolding in public spaces, unless a search warrant has been authorized or a warrant exception applies. The US Supreme Court ruled that individuals do not have a reasonable expectation of privacy against observations made from a lawful altitude and emphasized that what is knowingly exposed to the public—even from an aircraft—cannot be expected to remain private. SFPD will be using the drones in publicly navigable airspace as extensions of their own eyes, which is generally not considered a Fourth Amendment violation. In addition, SFPD must adhere to the rules set forth in AB 481, AB 856, AB 2655, and FAA restrictions regarding privacy, altitude, recording, etc. Officers flying a UAS are not exempt from the rules that apply to officers not flying drones. The Department does not concur that this needs to be restated in this policy.	Closed
R4	DPA recommends that SFPD solicit feedback on the retention period for "Public Footage" from local privacy and civil liberty organizations prior to simultaneous concurrence.	Recommendation will not be included in draft DGO	SF Admin Code 96I.2(e) states that, "[the Department] must not retain any public footage for longer than 30 days unless a sworn member holding the rank of Captain or higher has determined that a longer retention period is necessary due to an open criminal investigation...and provided further, that the Department's use of UAVs under this subsection (e) shall not be subject to the requirements of Chapter 19B of the Administrative Code." As this is already defined in city law, <u>there is no need to further define.</u>	Closed
R5	DPA recommends SFPD draft audit criteria for the program manager to "ensure any audits are conducted and reported." This should at a minimum follow the guidance by CA POST Records Management Guide to determine the type of audit, how often audits should occur, the process, and the questions they are trying to answer.	Recommendation included in training, Department Manual, or other procedural or guidance document	Audit processes are too specific to be included in this Department General Order. Audit criteria/details will be included in a Unit Order.	Closed

DGO 10.12 DPA Rec Grid and SFPD Responses
Stage 2

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R6	DPA recommends that SFPD provide the Police Commission with scheduled updates on the use and effectiveness of the drone program, similar to updates on vehicle pursuits, EIS, etc.	Recommendation will not be included in draft DGO	The DGO already requires monthly flight log reports, publicly posted on the website, that log date, reason, case/CAD number, location, and flight duration. These publicly available reports demonstrate the program's utility. Vehicle pursuit reports were required through Prop E, and the EIS reports, we would argue, do not necessarily demonstrate the system's effectiveness. Any report that requires patrol officers with a new administrative burden will have to be considered a potential conflict with Admin Code 96I. While DPA does not specify the criteria for determining efficacy, the SFPD Crimes Strategies Division includes an Office of Institutional Research. This office is working on department-wide initiatives with external academics to evaluate the effectiveness of several initiatives, including the drone program. As this DGO is for sworn members to focus on aspects of public safety, the work of the Office of Institutional Research will not be included in this policy.	Closed
R7	DPA recommends explicit controls around who can access or share "public footage". (See DPA DGO 8.10 Audit 2020, Finding 3 - SFPD did not purge records as required by DGO 8.10. There, DPA audited this requirement and found that while DGO 8.10 permitted retention of audio and video recordings for two years, SFPD maintained files that went back to the 2003 anti-war demonstrations and 13 files dated between 2008 and 2010.)	Recommendation will not be included in draft DGO	The DGO explicitly empowers the UAS Program Manager to manage the access and sharing of footage. Public footage is also clearly defined along with its retention schedule. SF Admin Code 96I.2.(e) specifically dictates a retention period no longer than 30 days. The UASs are attached to technology far more advanced than recording equipment filed in physical filing cabinets, so we are unable to draw a comparison between emerging technology and physical files from 2008. For clarification, evidence.com has robust audit logs and records of access, which is the primary reason it is used to store UAS footage.	Closed
R8	DPA requests additional clarity on authorizing operators to clear calls for service without the need for a member on the ground. Several DPA cases have sustained members for neglect of duty related to clearing calls for service. How will "drone clearance" be documented? Does SFPD have examples of cases they would clear by drone?	Recommendation will not be included in draft DGO	Without DPA providing insight into these complaints, PDD is unable to properly address DPA concerns. However, PDD is open to reviewing a policy recommendation from DPA to address their concerns regarding clearing calls when submitted.	Closed
R9	DPA recommends SFPD solicit community feedback about "reasonable expectation of privacy, the 4th Amendment, and drone exemptions, pursuant to San Francisco Admin Code Sec. 96.I.1. This should include community meetings at each district station and a working group to synthesize the feedback into a policy recommendations. Soliciting citywide feedback during this policy development will help demonstrate the Department's stated goal of maintaining strict compliance with constitutional and privacy rights. Since there is no controlling case law on point, incorporating feedback from residents and subject matter expert stakeholders creates a documented record that privacy considerations were proactively addressed. This could both strengthen public trust in the Department's use of this new technology and protect the City against eventual challenges to law enforcement use of UAVs.	Recommendation will not be included in draft DGO	SF Admin Code 96I is triggered by the Police Commission posting a notice and not by the Department. While this process can be waived by the Chief of Police, that waiver is submitted when the DGO is submitted to the commission. The process is prescribed in the admin code and will be followed, if needed. If waived, the public shall have the opportunity for input during the public review phase and again at the commission hearing. Further, this DGO has many of the components that were already vetted by the city's Privacy Surveillance Advisory Board (PSAB), which has experience reviewing and approving drone policies for other city agencies. "Subject matter expert stakeholders" have been consulted, specifically the Federal agencies that authorize and certify the use of drones. SFPD fully expects that privacy advocates will challenge law enforcement's use of drones, just as they have for body-worn cameras, traffic cameras, and public safety cameras. This is expected with any emerging technology used in policing. SFPD welcomes the opportunity to have the Court form case law to direct drone usage and implementation, and is prepared to pivot if the law requires. However, as Proposition E passed with 54% of the vote, the city already had strong community support and trust in the SFPD regarding drone use.	Closed