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## MEMORANDUM

**TO:** Mayor London N. Breed  
Members of the Board of Supervisors  
Members of the San Francisco Police Commission  
William Scott, Chief of Police  
Paul Henderson, Executive Director, Department of Police Accountability

**FROM:** ALICIA CABRERA  
Deputy City Attorney

**DATE:** March 19, 2024

**RE:** Implementation of Proposition E

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On March 5, 2024, the voters approved Proposition E (“Prop E”), an initiative ordinance that addresses various policies and procedures of the Police Department (the “Department”). If the Board declares the results of the March 5 election on April 2 as we anticipate is likely, then Prop E will become effective on April 12. A number of questions have arisen about what the Department and the Police Commission (the “Commission”) must do to implement Prop E. To assist the Commission and the Department, we write to provide guidance on Prop E’s requirements and its implementation.

Prop E applies to the Commission in several notable respects. Among other things, it requires a community engagement process before the Commission changes policies or procedures regarding Department operations; and it requires the Commission and Department to consider administrative burdens on officers before changing such policies or procedures. These changes will apply immediately once Prop E takes effect.

Prop E also modifies the Department’s recordkeeping, use-of-force, and vehicle pursuit policies, and establishes a technology policy allowing officers to use body-worn cameras and drones under certain circumstances. The Department and Commission need to determine which existing policies Prop E affects. To the extent Prop E conflicts with provisions of existing Department General Orders (“DGOs”), the conflicting provisions may remain in effect until October 1, 2024. The Commission must by then revise the DGOs, and any conflicting provisions that remain in place cease to be effective after that deadline. The Department must train officers on any revised DGOs within six months after the changes are adopted.

Finally, Prop E also limits the Commission from imposing new restrictions on the Department’s use of technology unless approved by the Board of Supervisors (the “Board”); streamlines the process for the Department to install community safety cameras; and permits the Department to use surveillance technology for at least one year before the Board may disapprove the Department’s use of the technology. These elements of Prop E will become operative immediately as soon as Prop E takes effect.

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### I. Police Department Policies and Procedures

#### A. Community Engagement Process – When Required

Prop E requires the Commission and the Department to engage in a community engagement process before the Commission may amend “any proposal to establish, modify, or abolish policies or procedures related to Department operations.” (Admin. Code § 96I.1(a).) The purpose of this process is to “describe the existing policies and procedures,” “solicit feedback on their implementation and impacts,” and “identify possible changes” rather than to consider or advocate for specific draft proposals.

Prop E does not require a community engagement process in two situations. First, the Chief may waive community engagement based on several considerations: whether the proposed change is unlikely to have a substantial impact on the Department’s ability to serve the community, the amount of public feedback already received on the subject matter, the need for immediate action, and other factors that the Chief deems appropriate. If the Chief waives the community engagement process, then the Chief should notify the Commission in writing and include a brief summary of the facts and circumstances under Prop E that supported the Chief’s decision. Second, the community engagement requirement does not apply where the Commission is considering policy revisions to existing DGOs to implement Prop E. We discuss this second exception below in Section II, F.

Where a community engagement process is required, the Commission and Department should follow the steps summarized below, in Section I, B.

#### B. Community Engagement Process - Steps Required

If community engagement is required, the first step is that the Commission must post a notice on its website. We recommend that the notice identify the general subject matter of the policies that the Commission wishes to review, with citations to the specific policies if known. The Department then has 90 days from the date of the notice to hold public meetings on the policies in question, with at least one meeting at each district station. Prop E’s requirement to post notice before the community engagement process is in addition to the separate 10-day posting requirement for adopting any rule or regulation set forth in Charter section 4.104(a). (Admin. Code § 96I.1(c).)

The Commission President and the Chief are required to jointly select a neutral facilitator for these community meetings. The role of the facilitator is to chair the meetings and post online

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written summaries of the discussion and feedback received. To ensure the facilitator is neutral, we recommend selecting a person who has the training, experience, or skills to facilitate and encourage discussion among community members, the Commission, and the Department. The facilitator helps to ensure that the meetings fulfill their intended purpose, namely, “to describe the existing policies and procedures, solicit feedback on their implementation and impacts, and identify possible changes, rather than to consider specific draft proposals or to advocate for particular positions or changes.” (Admin. Code § 96I.1(a).)

After the 90-day period, the Commission President and Chief are required to consult and discuss whether the community meetings are complete. After that consultation, the Commission may begin to hold public meetings on the proposed changes, even if the Department has not yet completed all the steps in the community engagement process. But, Prop E does not require an additional community engagement process for each version of the proposed policy or procedure that the Commission considers in connection with its review.

In addition to the community engagement process, the Commission or the Department may jointly or separately convene a working group to consider changes to the policy or procedure, after the 90-day consultation. The working groups should include subject matter experts, community members with experience in the criminal justice system, merchants, business owners, victims of crimes, and current and former police officers. *Id.* Although not legally required, we recommend that the Commission and the Department work together to convene one working group comprised of the appropriate members with those qualifications, rather than creating multiple working groups. The working groups may be subject to open meeting and public records laws, so the Department or Commission should contact our Office for advice before forming a working group.

## II. Improving the Efficiency and Effectiveness of the Department

### A. Administrative Tasks

Administrative Code section 96I.2(a) establishes a City policy that officers should primarily spend their time on core law enforcement and crime prevention functions as opposed to administrative tasks that take them out of the field. This policy applies to all officers regardless of their assignment. Prop E also specifically establishes a policy that patrol officers should spend no more than 20% of their on-duty time on administrative tasks, except tasks required by law such as completion of arrest reports. The Department and the Commission should use good faith efforts to review all policies and procedures to achieve these goals. But, the policy is not

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legally binding; the Department may allow patrol officers to spend more time on administrative tasks if necessary. And, the policy does not change any officer's job duties: each patrol officer must perform administrative tasks as necessary even if those tasks take more than 20% of the officer's time in a given day or week.

#### B. Recordkeeping and Reporting

Administrative Code section 96I.2(b) requires the Commission and the Department to revise all policies and procedures to reduce recordkeeping and reporting requirements to the extent required by law, and provides that officers may comply with any requirements with the use of technology such as body-worn cameras. (*See also* Admin. Code § 19I.1(e), which also authorizes officers to use technologies such as body-worn cameras to comply with reporting and recordkeeping requirements.)

#### C. Use of Force Policy

Administrative Code section 96I.2(c) memorializes the existing Use of Force Policy that requires officers, to the extent possible, to use rapport-building communication, crisis intervention approaches, and de-escalation tactics before they resort to using force. However, Prop E amends the requirements for when officers must report and document uses of force. Officers are limited to providing a written report for use of force when: (1) the use of force resulted in a physical injury; or when the officer believes the use of force likely caused a physical injury; or when a person complains of a physical injury; or (2) an officer removed a firearm from a holster and pointed the firearm at a person or used it to compel a person to comply. In all other instances involving a reportable use of force, the officers must satisfy these reporting requirements using body-worn cameras to the extent possible. And any use-of-force policy adopted by the Commission or the Department must minimize duplicative reporting by multiple officers regarding the same incident.

#### D. Vehicle Pursuit Policy

Administrative Code section 96I.2(d) authorizes officers to engage in a vehicle pursuit if they have reasonable suspicion or probable cause to believe that a felony or violent misdemeanor crime has occurred, is occurring, or is about to occur. In evaluating whether to engage in a vehicle pursuit, officers must weigh the seriousness of the crime and the likelihood that the pursuit will prevent the crime or lead to the apprehension of a suspect against potential dangers to the community and officers against the risk of a collision, injury or death. Prop E also authorizes the use of unassisted aerial vehicles, commonly referred to as drones, in lieu of or in

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addition to other vehicles. The Department must submit an annual report to the Commission including the total number of vehicle pursuits; the reason for the pursuits; the number of pursuits that resulted in a collision; the number of pursuits that resulted in death or injury to an officer or member of the public; and the number of pursuits that were found to be within or outside of policy. The Department's use of drones for vehicle pursuits is not subject to any of the requirements of the City's Surveillance Technology Ordinance, Administrative Code Chapter 19B ("Chapter 19B"), including the prohibition on use of facial recognition technology.

#### E. Technology Policy

Under Administrative Code section 96I.2(e), the Department is required to 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. Prop E authorizes the Department's use of technology for legitimate law enforcement purposes, and provides that no Department staff may access any public footage unless a commissioned officer has determined that access is necessary for an open criminal investigation. Prop E also mandates the destruction of any public footage within 30 days unless a commissioned officer authorizes a longer retention period due to an open criminal investigation. Prop E prohibits the City from imposing any new restrictions on the Department's use of technology unless approved by the Board as discussed below in Section IV.

#### F. Conflicts with Existing DGOs and Implementation Timeframe

Prop E requires the Commission to review and amend all existing DGOs to determine whether those DGOs conflict with Prop E. At minimum, the Commission must review and amend DGO 3.01 (Written Communication System), 5.01 (Use of Force), 5.03 (Investigative Detentions), 5.05 (Response and Pursuit Driving), and 5.06 (Citation Release). (Admin. Code § 96I.3(b).) And, Prop E's mandate applies to all DGOs—"regardless of the effective date of any such [DGOs]." *Id.* To the extent an existing DGO conflicts with Prop E, the Commission must modify it by the revision deadline of no later than October 1, 2024. *Id.* Failure to adhere to that deadline will invalidate the conflicting provisions of the existing DGO while keeping the rest of the DGO intact.

Determining whether a provision conflicts with Prop E will require a case-by-case analysis. We advise that the Department and Commission prioritize the specifically enumerated DGOs and also conduct an overall review of the DGOs that are currently in the meet-and-confer process with the collective bargaining units. After completing that review, the Department and Commission should conduct a general review of all other policies and procedures to conform to the requirements of Prop E. Revisions that are merely conforming existing DGOs to the legal

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requirements of Prop E are not subject to the community engagement process. The Department and Commission may consult with the City Attorney's Office on whether other policy changes will be subject to the community engagement process.

Prop E also overrides conflicting provisions in existing ordinances unless the ordinance provisions are legally required under the Charter or State or federal law. For example, as discussed below, Prop E expressly overrides or amends certain procedures required under Administrative Code Chapters 19 and 19B as they apply to the Department. We will work with the Department, Commission and the Board to identify any other ordinances that conflict with or should be updated in light of Prop E.

#### G. Training deadline

The Department is required to train officers within six months after the Department or Commission adopt changes to any policies or procedures to implement Chapter 96I. This training requirement applies to policies and procedures that the Department or Commission adopt before and after October 1, 2024.

#### H. Meet and Confer

Prop E does not change the meet-and-confer process required under State law. The Commission and the Department should confer with our Office and the Department of Human Resources regarding the meet-and-confer requirements for amending existing policies and procedures.

### III. Public Safety Camera Ordinance

Prop E amends Chapter 19 of the Administrative Code to streamline the process for the Department to install public safety cameras that film public streets, sidewalks, or common areas of public housing complexes. Under existing law, the Commission must hold a hearing before the Department may erect any public safety cameras. Prop E changes that process. Under Prop E, the Chief must provide at least a 30-day public notice of a proposed public safety camera in the affected community. The Chief must hold a community meeting in the neighborhood being considered for the public safety camera to elicit feedback. The Chief must review and consider the feedback from community members before making a final decision. Lastly, the Chief must make a finding that installing the camera is likely to improve public safety in that area based on public safety considerations, such as the nature and frequency of criminal activity in the area and information provided by members impacted in the community.

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If the Chief approves installing the public safety camera, then the Department must erect a sign providing notice of the camera unless doing so would undermine the effectiveness of enhancing public safety. The Department must annually report to the Board and the Commission, beginning in the first quarter of 2025.

Public safety cameras approved under this process are not subject to the Chapter 19B process for surveillance technology. The retention period for public safety camera data is 30 days unless a commissioned officer extends the retention period for an active investigation.

#### IV. Surveillance Technology other than Drones and Public Safety Cameras

Prop E allows the Department to acquire and use surveillance technology as long as it submits a policy to the Board within one year of the use or acquisition—even if Chapter 19B would otherwise require Board approval in advance—and the Department may continue to use the surveillance technology unless or until the Board affirmatively disapproves the policy by ordinance. The Department must submit a proposed policy within a year after the date the Department first used or acquired the technology—whichever is earlier. Failure to submit a policy within a year is a violation of Chapter 19B. But, Prop E specifically exempts drones and Public Safety Cameras from Chapter 19B, so the requirement for the Department to submit a proposed policy to the Board does not apply to them.

#### V. Amendments to Prop E

Prop E authorizes the Board to amend certain of its provisions. Before January 1, 2027, the City may amend Prop E by an ordinance approved by a supermajority of at least eight Supervisors. After that, a simple majority from the Board may amend Prop E by ordinance. But, the Board may not amend Prop E's modification to Chapter 19B, which provides that the Department may use surveillance technology subject to the Board's ability to disapprove that use by ordinance after one year the Department first uses or acquires the technology—whichever is earlier.