



DEPARTMENT NOTICE

23-186

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Department General Order 5.07 “Rights of Onlookers” Update Packet #100

The purpose of this Department Notice is to announce the revision of Department General Order 5.07, Rights of Onlookers, adopted by the Police Commission on September 6, 2023. The Police Commission agreed to a 90-business day implementation period and therefore, members will be held accountable for this policy starting January 19, 2024.

The updates in this policy include, but are not limited to, the following:

- The rights of onlookers, in most circumstances, to remain in proximity of a police contact with a subject, including the audio or video recording of the interaction;
- Exceptional circumstances that may override such rights;
- Guidance during vehicle stops;
- Restricted areas where onlookers are not permitted.

Lieutenants, sergeants, and training coordinators should read, review, and discuss this policy during line ups.

Members are expected to have a working knowledge of all directives applicable to their respective assignment and comply with their provisions, per DGO 3.01.13 Accountability and Acknowledgement. Members shall obey all written orders, policies, and procedures, per DGO 2.01 General Rules of Conduct, Written Orders.

Department General Order update packet #100 is attached to this notice and is available to members on the PowerDMS site.


WILLIAM SCOTT
Chief of Police

Per DN 23-152, all sworn & non-sworn members shall electronically acknowledge this Department document in PowerDMS within (30) thirty calendar days of issuance. Members whose duties are relevant to this document shall be held responsible for compliance. Any questions regarding this policy should be made to sfpd.writtendirectives@sfgov.org who will provide additional information.

Rights of Onlookers

5.07.01 PURPOSE

The purpose of this policy is to protect the rights and safety of onlookers, detained or arrested persons, and the safety of Department members while maintaining the integrity of a crime scene, restricted area, and/or investigation.

5.07.02 POLICY

The San Francisco Police Department's highest priority is safeguarding the life, dignity, and liberty of all persons. Members shall demonstrate this principle in their daily interactions with the community they are sworn to protect and serve. The Department recognizes that onlookers have a First Amendment right to observe, photograph, and record members during the performance of their duties in public as well as other areas (such as a person's home, business, or common areas of public and private buildings) where an individual has the right to be present, so long as the observation, photography, or recording does not threaten officer or public safety nor interfere with a member's performance of duties.

Onlookers may observe, record activity, and express themselves (including making comments critical of a member's actions) so long as an onlooker's conduct or presence does not unlawfully interfere with an investigation or compromise the safety of members or others. Onlookers also have a Fourth Amendment right to retain a recording they have made without government seizure unless otherwise noted.

The term "members" refers to sworn members unless otherwise indicated.

A. Onlookers Witnessing or Recording Contacts by Members

Members shall allow onlookers not involved in an incident to remain in the vicinity to observe, photograph, or record (video or audio) members in the performance of their duties including but not limited to, detentions and arrests that occur in public areas or private areas where the person has the right to be present (e.g., a person's home, business, or common areas of public and private buildings).

Members shall allow the onlooker to remain in proximity to the interaction to overhear and record the encounter between the suspect and the member, except when one or more of the following occur:

1. The member has specific and articulable concern(s) that officer or public safety could be jeopardized.

2. An onlooker obstructs or delays a member lawfully exercising their duties or violates the law.
3. An onlooker, by words or actions, threatens violence or illegal activity by words or attempts to incite others to violate the law.
4. A member determines there is a specific and articulable need for a confidential conversation.
5. A member has a specific and articulable concern that evidence will be destroyed.
6. An onlooker is inside a restricted area not normally available to the public (e.g., inside a crime scene, restricted areas of a police station, etc. *See* 5.07.02.E).

B. Guidance During Vehicle Stops

Members have the authority during traffic stops to control the movements of all vehicle occupants for safety purposes. This authority does not preclude a passenger from recording law enforcement during the stop provided the passenger does not pose a safety risk (e.g., by suddenly reaching into a backpack, a purse, pockets, where a weapon could be stored) or obstructs or delays the member in the performance of their duties.

C. Violations / Compliance / Arrests

1. As an alternative to arresting an onlooker who is in violation of Penal Code sections 148, 647c, or other related offenses (e.g., 22 SF Municipal Police Code), members may warn and order onlookers to relocate to a position no further than necessary to end the violation or ensure scene safety.
2. If a member determines that an onlooker should be arrested for obstructing or delaying law enforcement while recording police activity and there are no other charges, the officer shall request a supervisor respond to the scene. The supervisor shall assess the situation and approve any subsequent enforcement action.
3. Onlookers shall be allowed to record their interactions with the police if there is no specific and articulable safety issue or violation of the law. However, if an onlooker is to be arrested, members may order the arrested person to cease recording.

D. Onlooker Recordings

1. Onlookers will commonly record police activities and interactions to include police arresting, citing, detaining, or contacting members of the public in addition to recording police during demonstrations. Onlookers have a First Amendment right to record police officer actions except as noted in 5.07.02A. Recording, in and of itself, does not constitute a violation of law and does not establish reasonable suspicion to detain or probable cause to arrest.
2. Generally, onlookers have a Fourth Amendment right to retain a recording they have made. Members may obtain the onlooker's recording with consent or warrant (see DGO 5.16 Search Warrant).

If a member develops probable cause to believe an onlooker's recording (not an arrestee) has evidence that may be important to the prosecution of a crime, the member may request, in a non-coercive manner, that the onlooker voluntarily provide the recording. If the onlooker consents to provide a physical recording device or digital storage device, the member shall provide the onlooker with a property receipt (see DGO 6.15 Property Processing). The member must memorialize consent via body worn camera or applicable Department form (e.g., consent to search form).

E. Inquiries

1. Members shall permit onlookers, who are not in violation of any law, to exchange contact information with detained persons.
2. Members may also ask onlookers who are witnesses to a detention or arrest for their names and contact information. However, the onlooker has the right to refuse to provide this information.

F. Restricted Areas

1. Onlookers are not permitted in designated crime scenes.
2. Onlookers are not permitted to be in restricted areas, designated by signage, of Department facilities, station parking lots or areas, government buildings, and critical infrastructure. As it pertains to Department facilities, these restricted areas include non-public entrances/exits (e.g., booking area exterior door, exterior gun locker areas, etc.) of police stations and areas designated for marked police vehicles. Unless there is an articulable safety concern, members shall provide persons who are discovered in a restricted area with a warning and an opportunity to comply, prior to effecting an arrest.
3. Onlookers are permitted to observe or record restricted areas from a public place. In the absence of reasonable suspicion to detain, members are encouraged to engage onlookers recording a restricted area via a consensual encounter to assess the situation.

G. Body Worn Camera – Members shall comply with all applicable Body Worn Camera policies when interacting with onlookers.

References:

DGO 5.03 Investigative Detentions
DGO 5.16 Search Warrant
DGO 6.02 Physical Evidence and Scene Preservation
DGO 6.15 Property Processing
DGO 8.10 Guidelines for First Amendment Activities
DGO 9.01 Traffic Enforcement
DGO 10.11 Body Worn Cameras