



**Board of
Police Commissioners**

POLICY PRESENTATION

THURSDAY, MARCH 3, 2022



BOPC POLICY PRESENTATION OBJECTIVES

Summarize

- Summarize **DPD Manual Directive on Search and Seizure 202.2.**

Provide

- Provide **overview of DPD's proposed revisions to the Search and Seizure Manual Directive** for today's discussion and pending approval.

Discuss

- Discuss **BOPC Policy Staff Recommendation and Request** for BOPC action.



SUMMARY OF BOPC POLICY AUTHORITY

- In alignment with City Charter Sections 7-802; 7-803; and 7-806, the Board:
 - ❖ Has supervisory control and oversight of the Detroit Police Department as provided in Article 7, Chapter 8;
 - ❖ In consultation with the Chief of Police and with the approval of the Mayor, establishes policies, rules, and regulations;
 - ❖ The Chief of Police (COP), the Chief Executive Officer of the police department, administers the department consistent with the policies, rules, and regulations established by the Board and shall organize the department with the approval of the Board; and
 - ❖ The COP recommends rules, regulations, and procedures to the Board for its approval.



SUMMARY OF BOPC POLICY- APPROVAL PROCESS

- In alignment with City Charter Sections 7-802; 7-803; and 7-806, the Board:
 - ❖ On February 2, 2022, the Department presented the Search and Seizure Manual Directive 202.2 to the Board for review and approval.
 - ❖ BOPC Staff immediately posted the directive to the website for public feedback and recommendations for 30 days.
 - ❖ BOPC Staff in connection with the Board's Policy Committee Members reviewed and evaluated the policy in connection with best practices and case law.
 - ❖ Today, BOPC holds a public hearing consistent with its policies for transparency and accountability prior to Board action on the policy.



SEARCH & SEIZURE MANUAL DIRECTIVE 202.2

- **FOURTH AMENDMENT**

- ❖ “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”



U.S. Constitution Amendment IV.



SEARCH & SEIZURE MANUAL DIRECTIVE 202.2

- Search & Seizure Manual Directive is separate and distinct from the Department's "Search Warrant Execution" Directive or policy on "No-Knock Warrants"
 - ❖ Current Manual Directive discusses Search & Seizure requirements overall
 - ❖ Provides general procedures for a Search Warrant
 - ❖ Provides the exceptions to the Search Warrant Requirement
 - ❖ Is not intended to outline the specific requirements, activities, or mandates for conducting / executing a Search Warrant



SEARCH & SEIZURE MANUAL DIRECTIVE 202.2

- **DPD Policy Provisions Overall:**

- ❖ **Purpose** – establishing guidelines and procedures for conducting searches.
- ❖ **Policy** – outlines the requirement for members to adhere to the Fourth Amendment to the U.S. Constitution
- ❖ **Definitions** – provides definitions for key terms
- ❖ **Procedures** – Outlines for preliminary procedures for a search warrant & exception to the warrant requirement



SEARCH & SEIZURE MANUAL DIRECTIVE 202.2

- **DPD Policy Overall:**

- ❖ Provides requirements for each of the exceptions to the Search Warrant Requirement – *See also 202.2 – 4.2*
- ❖ Discusses Searches and Seizures of Persons [Three (3) Categories] including procedures and requirements for performing and recording police activity
- ❖ Outlines Requirements of Searches of Cellular Telephone Devices
- ❖ Includes Related Procedures & Related Forms



SEARCH & SEIZURE 202.2_{CONTINUED}

- **DPD's Proposed Revisions – Four (4) Revisions:**
 - ❖ Update the **definition** of “Search” to ensure consistency throughout the manual directive system.
 - ❖ Incorporate **case law (*Fernandez v. California*)** regarding Co-occupant Objection to Consent (discussing the exception when an objecting co-resident is lawfully removed, lawful consent from the remaining resident is valid).
 - ❖ Incorporate **case law (*People v. Mead*)** to reflect new legal content from the Michigan State Police’s Legal Update No. 140 (discussing the passenger’s reasonable expectation of privacy in personal belongings involving a consent search)
 - ❖ Add ***Related Procedures / Related Forms***



SEARCH & SEIZURE 202.2_{CONTINUED}

- **BOPC Staff Overall Observations & Recommendation:**

- ❖ Incorporates Safety for all parties involved (i.e. DPD Members and persons investigated) *See also 202.2 Policy*
- ❖ Incorporates Applicable Case Law, best practices, and pragmatic considerations
- ❖ Officer Discretion (used fairly, responsibly, and legitimately) & Good Judgment in all situations
 - BOPC Committee also recommends more consideration for constitutionally protected classifications regarding race, gender, and or other constitutionally protected areas.



SEARCH & SEIZURE 202.2_{CONTINUED}

- **BOPC Staff Overall Observations & Recommendation:**
 - ❖ Revised Manual Directive is in line with relevant case law, best practices, and constitutional measures.
 - ❖ OCI Citizen Complaints Reveal the following relevant to Search and Seizure:
 - Electronic Activity Log does not have “STOP” and / or “FRISK” as check boxes to allow easy recording of such actions. Enhancing the Activity Log and additional training is needed regarding members recording the Investigatory Stop or Stop and Frisk as required by policy. See *also* 202.2 – 12.3 Investigator Detentions (Tier 2) Recording the Investigatory Stop or Stop and Frisk



SEARCH & SEIZURE 202.2_{CONTINUED}

- **BOPC OCI Staff Overall Recommendation:**

- ❖ **Final Recommendation:** The BOPC Committee recommends an additional week to review this policy in connection with the Search Warrant Execution Policy to ensure best practices and constitutional standards.

**OPPORTUNITIES
FOR PUBLIC
FEEDBACK ON
POLICIES**

Public Feedback

Manual Directive revisions posted to the website.

Weekly opportunities to comment on policy directives under Board review.

Direct public feedback solicited on revisions to these policies at separate times:

February 2, 2022

February 7, 2022

March 2, 2022

Based on metrics for outreach, more than 7,900 BOPC stakeholders had an opportunity to share feedback and again to 8,300 BOPC stakeholders

The Board received some feedback on the policy and / DPD policy in general.

GovDelivery | BOPC Email | Facebook

Minimal feedback on the policy under review today.



REFERENCES

U.S. Constitution Amendment I.

U.S. Constitution Amendment IV.

U.S. Constitution Amendment V.

U.S. Constitution Amendment VI.

U.S. Constitution Amendment XIV.

City of Detroit Charter 7-802, 7- 803, and 7-806.

President's Task Force on 21st Century Policing

National Association of Civilian Oversight of Law Enforcement (NACOLE)

Detroit Police Department Manual Directive System

QUESTIONS?