



Memorandum

TO: MAYOR AND CITY COUNCIL

FROM: Councilmember Sam Liccardo
Councilmember Rose Herrera

SUBJECT: 2013 INDEPENDENT POLICE
AUDITOR YEAR END ANNUAL
REPORT

DATE: April 24, 2014

APPROVED: Sam Liccardo P.P. Rose Herrera ^{ms} **DATE:** 04/24/14

RECOMMENDATION:

1. Accept the report of the Office of the Independent Police Auditor, and
2. Direct the City Manager and City Attorney to either:
 - A) Implement recommendation #15 of the Independent Police Auditor by revising the Duty Manual to call for the termination of any officer who misrepresents a material fact in an Internal Affairs or criminal investigation, and is found to have done so intentionally, for the purpose of avoiding responsibility for substantial misconduct, or,
 - B) Allow the Chief of Police to return to Council within sixty (60) days to propose a superior alternative that explicitly and unequivocally conveys the message that misrepresentations of this type will result in termination.

DISCUSSION

It seems worth noting what we do not know, because under the City Charter personnel decisions typically remain beyond the awareness or control of the Council. We do not purport to know all of the facts underlying the incidents-- described on pages 61 and 63-64 of the Independent Police Auditor's 2013 Year End Report-- giving rise to the discipline of two officers. We do not know what, if any, mitigating circumstances might have justified the officers' continued employment after lying to investigators in response to allegations of sexual and other misconduct on duty. We do not purport to know whether some barrier in state law or a union contractual provision might have prevented their termination.

We do know, however, that we must send an unequivocal message to our workforce that our community expects that our officers will uphold the highest standards of ethics, and we will not tolerate lying to conceal misconduct.

A testifying officer's prior acts of falsehood, under the *Brady* line of jurisprudence, must be turned over to the defense in any criminal case. That officer thereby becomes a burden as a prosecution witness, as any defense attorney will impeach the officer's testimony with evidence of his or her prior

documented falsehood. The officer's continued employment with the San José Police Department in any patrol or investigative capacity impairs future efforts to convict defendants who are properly charged with criminal conduct if they are required to testify.

Accordingly, we seek to draw a clear line. We expect that our many highly ethical, professional police officers will have no difficulty staying well away from that line.