

June 11, 2007

Honorable Mayor and City Council:

The Administration would like to thank the City Council for scheduling a Special City Council meeting on June 21, 2007 to discuss various police related reports. This is an opportunity to receive information on the performance of the San Jose Police Department's (SJPD) and, more particularly, the procedures of the Internal Affairs Unit (IA) of the SJPD. The Administration welcomes the opportunity to hold a public discussion with the City Council on the various recommendations circulating regarding force response, classification of complaints or allegations, investigative quality, and SJPD procedures:

It is acknowledged that the above topics are very complex issues that directly impact community relations, public perception, and workforce procedures. The Administration values and respects diverse perspectives and desires a productive public dialogue. The Administration also values a public policy decision-making process that is based on accurate data, comprehensive analysis, and measurable outcome or effectiveness. We are confident that the public and City Council will engage in a dialogue that leads to sound public policy. The Administration looks forward to discussions that focus on performance improvements, increased effectiveness, and better service for the public.

The reports issued by the Independent Police Auditor (IPA) and IPA and Human Rights Commission (HRC) contain several recommendations regarding the SJPD. The Administration has also advanced some recommendations relative to the SJPD for Council consideration. Additionally, the San Jose Internal Affairs Peer Review Study, authored by Macias Consulting Group, also offers some recommendations for the City Council to consider. It is acknowledged that these are very dense reports that require thorough discussion and review of the implications of recommendations. In some instances, given the complexity of the issue, the public policy recommendations may require further analysis and consideration by the City Council prior to making public policy.

In closing, while the Administration's response raises serious concerns about the statistical data and resulting recommendations contained in the Independent Police Auditor's Annual Report, it is important to note that these concerns in no way lessen the San José Police Department's continuing commitment to working with all members of the community to ensure we maintain the highest standards in delivering police services.

  
Les White  
City Manager

  
Rob Davis  
Police Chief



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**ADMINISTRATION'S RESPONSE TO  
VARIOUS POLICE RELATED REPORTS**

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June 21, 2007

Special City Council Meeting





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# EXECUTIVE SUMMARY

The current community and policing efforts support the City of San Jose's needs well. This model has rated high when comparative analyses are conducted, community and workforce polls are taken, and crime statistics are evaluated at a national level. Moreover, these efforts are further supported by the very low ratio of complaints that the City of San Jose receives each year. San Jose is fortunate in that it is the nation's 10<sup>th</sup> largest city, with a population of over 950,000, and that out of over 400,000 calls for service per year, the City received 211 complaints.

On June 21, 2007, the City Council will discuss various reports related to police services. These reports make various findings and present recommendations for City Council consideration. This single report represents the Administration's response and is structured to respond to each report one-by-one, followed by a Conclusion Section and Recommendation Section on all matters. Following is a brief summary of the Administration's position on each report.

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## **Report 1: 2006 Independent Police Auditor Annual Report (IPA Report)**

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The IPA Report provides various findings, data analysis, and public policy recommendations. The Administration has five concerns with the IPA's report, which are: (1) unwarranted call for a shift in oversight model; (2) incompatible role of IPA and misstatements; (3) redefining the "Inquiry" category & subsequent Inclusion of inquiries as complaints; (4) improper statistical analysis; and, (5) public policy recommendations that are based on misstatements and flaws. The IPA Report largely bases its argument for increased authority on the SJPD's alleged mishandling of "inquiries" (or "overuse" of this category) and "overuse" of the Procedural Complaint category. This section responds to the IPA's argument and, particularly, the discussion in Concern 5 clarifies and responds directly to the issue of the Command Review and, Procedural Complaint category.

The proposed new authorities recommended by the IPA would significantly alter the IPA's role, expanding responsibilities to a model more akin to a Civilian Police Oversight Model or Parallel Investigation System. Given that some of these recommendations require a City Charter amendment and "Meet and Confer" obligation with the San Jose Police Officers' Association, these recommendations should be evaluated with a higher level of deliberation than other recommendations published by the IPA.

Additionally, since these recommendations result in the introduction of a shift in the current Internal Affairs & Auditing Systems model, the City Council needs to deliberate on whether the data, current conditions, and/or national trends support a fundamental paradigm shift in the City's current oversight model. Prior to a shift, and particularly in this instance, the City Council should be assured that expanding the IPA responsibility can meet certain criteria, such as the following: (1) the IPA's proposed new model should perform better than the current model (e.g., Internal Affairs Unit and IPA Audit System) with regards to cost, efficiency and effectiveness, cycle time to process complaints, satisfaction and volume/workload; (2) given the SJPD is already rated favorably when compared to other law enforcement agencies and meeting Commission on Accreditation of Law Enforcement Agencies (CALEA) standards, and enjoys high community satisfaction and workforce satisfaction rates, any change should further improve these ratings; and, (3) the proposed new IPA model should present clear and transparent procedures that demonstrate the ability to sustain the above criterion and that are reflective of a collaborative process in which the IPA and SJPD's interests are satisfactorily addressed. Finally, the City Council should first be assured that efforts have been exhausted to improve the current model and that the model is no longer useful or tailored for the San Jose community.

Last, the Administration recognizes the high value placed on accurate and complete analysis and that the public relies on the IPA Report to uphold this standard. The Administration raised the matter of incomplete statistical analysis with the IPA during a meeting on May 17, 2007 and through a detailed written memo (dated May 18, 2007) on the draft IPA Report. The Administration requested that the appropriate statistical analysis be completed prior to final report issuance. Since it was not clear that the appropriate statistical analysis methods would be applied prior to the completion of the IPA Report, the Administration obtained an independent statistical analysis that is based on correct methodology. The

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recalculated data which are included in this report do not sustain the IPA's statistical analysis or findings. When the correct statistical analysis is reviewed, the City Council will need to consider whether the statistical analysis supports the IPA's public policy recommendations. The Administration suggests that it does not.

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### **Report 2: Summary Report of Forums Regarding the Police in San Jose & Supplemental HRC Recommendations**

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The Administration believes it is important for the public to have avenues to voice concerns or questions about the services the City and its staff provides, and appreciates the IPA and HRC's efforts and hard work in organizing the two community forums. The two community forums described in the report gathered information regarding police services. It is important to note that some of the information described incidents in other jurisdictions and events that occurred many years ago. Absent information clarifying jurisdictions and time frames, as requested of the IPA earlier by the Rules & Open Government Committee, it is difficult to fully understand the issues as they relate to the SJPD.

In this section, the Administration suggests additional tasks that should be conducted in order to fully characterize public opinion on police services. However, and more importantly, the recent interaction between the HRC and SJPD during the Cinco de Mayo holiday, and the HRC's positive findings of SJPD resulting from this experience, is a good foundation to begin discussions and understanding mutual interests. The HRC and SJPD should explore additional opportunities to continue these discussions and interactions. Furthermore, as a starting point, the SJPD proposes to reestablish the Citizens' Police Academy, with priority participation granted to HRC members.

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### **Report 3: San Jose Police Department 2006 Annual Force Response Report (AFRR)**

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This report reflects the first year that this data has been collected and the data is presented in raw form, with few conclusions. Since the data only reflects one year of activity, a multi-year comparative analysis is not possible. In order to draw meaning out of this report, additional analysis is required. Additionally, given these constraints, this section of the report offers qualitative information to supplement the absence of statistical analysis. This section of the report provides some survey findings of a TASER study conducted by selected law enforcement agencies.

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### **Report 4: San Jose Internal Affairs Peer Review Study (IA Study)**

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This independently report authored by Macias Consulting Group provides a comparative analysis of the SJPD IA Unit's performance as it compares to other law enforcement agencies. The IA Study notes seven matters for the City Council to consider. Four of the recommendations particularly focus on changing the Inquiry category to better focus the nature of issues that this category captures and to redefine Inquiries to "non-complaints."

The Administration believes that the IA Study's findings are fair and provide an accurate representation of the day-to-day operations of the SJPD IA Unit. Macias has identified activities to enhance the efficiency and effectiveness of the SJPD's operations, but notes that it generally meets or exceeds the Commission on Accreditation for Law Enforcement Agencies (CALEA) standards and, when compared to other law enforcement agencies, SJPD ranked in the top or middle tier. As stated, San Jose is fortunate in that it is the nation's 10<sup>th</sup> largest city, with a population of over 950,000, and that out of over 400,000 calls for service per year, the City received 211 complaints. This is a very low ratio when compared to other cities and this is a direct result of superior community and policing efforts.

This report concludes with a summary statement and a list of recommendations that are presented to the City Council for consideration. In some instances, some of the action items have already been implemented, or are in process of evaluation; in this case, the Administration is requesting validation of these actions.

# SJPD RATES HIGH NATIONALLY AND BY THE COMMUNITY AND WORKFORCE

The SJPD is a top rated law enforcement agency that has received recognition from various groups and is often noted as one of the top law enforcement agencies in the United States. These recognitions are further supported by: comparative national crime statistic assessments; statistically valid community surveys; statistically valid employee/workforce surveys; and, an independent comparative analysis of SJPD to other law enforcement agencies, as recently conducted in the IA Study (authored by Macias Consulting Group).<sup>1</sup>

The City of San Jose has been designated for five consecutive years as “the nation’s safest big city in America” by Morgan Quitno Press based on FBI crime statistics.<sup>2</sup> The City deeply values this coveted ranking and fully acknowledges that the foundation of this recognition rests primarily on San Jose residents, businesses, and visitors. SJPD, and other partnering departments, also play a significant role in this recognition, and the residents of San Jose have acknowledged a productive and respectful resident-police officer relationship through the years.

As an example, in December 2005, the public opinion poll titled “City of San Jose Community Survey, Report of 2005 Survey Results” conducted by Fairbanks, Maslin, Maullin & Associates (Fairbanks), a firm specializing in opinion research and public policy analysis, provided statistically valid data that residents of San Jose hold a high feeling of safety. This statistically valid public opinion poll measured various elements of city service and was conducted in such a manner that it can accurately be characterized as representative of all San Jose residents. Of particular note, when asked the following question, the feelings by San Jose residents revealed the following as illustrated in Table 1:

*“Can you tell me how safe you feel during the day/night when walking \_\_\_\_\_? Do you feel safe, unsafe, or neither safe nor unsafe?”*

**Table 1: Proportions Who Feel Safe Walking Around at Various Times and Places in San Jose, 2000-2005**

Question	2005	2003	2001	2000
In your neighborhood during the day	90%	90%	92%	92%
In the city park closest to your residence during the day	84%	84%	85%	80%
In your neighborhood during the night	72%	68%	72%	70%
In the downtown area during the day	71%	65%	69%	62%
In the city park closest to your residence during the night	51%	44%	49%	46%
In the downtown area during the night	43%	38%	40%	34%

Source: Figure 18, “City of San Jose Community Survey, Report of 2005 Survey Results” conducted by Fairbanks, Maslin, Maullin & Associates (pg 31)

<sup>1</sup>Macias Consulting Group (Macias) is a statewide management consulting firm with offices in Walnut Creek, Sacramento, Los Angeles and San Diego. Macias was established in 1992 by Kenneth A. Macias, DPA, MBA, CPA and offers an array of professional management consulting services with employee resources of over 100 individuals. MCG specializes in government and performs city, county, and state-requested studies and evaluations on a myriad of issues, ranging from financial analyses to program evaluations. MCG’s experience in police operations includes conducting comprehensive law enforcement studies for the Cities of Elk Grove and Fresno that included the participation of many of Northern California law enforcement agencies.

<sup>2</sup> The methodology for determining America’s Safest City and Metro Area involves a multi-step process. First, 2005 city and metro area crime rates per 100,000 population (the most recent comparable final numbers available, released by the FBI in September 2006) for six basic crime categories — murder, rape, robbery, aggravated assault, burglary and motor vehicle theft — were plugged into a formula that measured how a particular city or metro area compared to the national average for a given crime category. The outcome of this equation was then multiplied by a weight assigned to each of the six crime categories. Each of the six crimes was given equal weight. By weighting each crime equally, cities are compared based purely on their crime rates and how they stack up to the national average for a particular crime category. These weighted numbers then were added together for a city or metro area’s final score. Finally, these scores were ranked from lowest to highest to determine which cities and metropolitan areas were safest and most dangerous. While this methodology appears rather complicated, it results in fairer treatment because a city or metro area’s crime record is measured against the national average. The farther below the national average, the higher (and better) a city or metro ranked in the final Safest Cities and Metros list; the farther above the national average, the lower (and worse) a city or metro ranked in the final list. In all, 371 cities and 344 metro areas were included in the survey.

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In the statistically valid public opinion survey, Fairbanks concluded that:

...there was little change in residents' perception of local safety from 2000 to 2003. However, in the current study (December 2005) perceived safety ratings have increased slightly when it comes to being in the downtown area at night (up five points), a nearby park at night (up six points), and in the downtown area during the day (up six points). Therefore, since 2000, the proportion who feel safe downtown at night and during the day has increased by a total of nine points.

Also of note in the Fairbanks public opinion poll is the extremely high rate of "feelings of safety" amongst San Jose residents, for example: in 2005, 90%; in 2003, 90%; in 2001, 92%; and, in 2000, 92%. This demonstrates that the majority of San Jose residents enjoy exceptionally high feelings of safety and that this measure has remained very stable over the past years; which, is further supported by the City's multi-year recognition of the "nation's safest big city in America."

As San Jose residents enjoy a high level of satisfaction with feelings of safety in San Jose, SJPD workforce also enjoys a high level of job satisfaction and believes that the City's workforce demonstrates high value on diversity, customer service, honesty and integrity. In December 2006, Fairbanks conducted a valid workforce opinion poll titled "*City of San Jose, 2006 Employee Survey.*" This opinion poll measured various elements of the workforce and is statistically valid as representative of the workforce. The data from the workforce opinion poll are available by each department and highlights of the Police Department's are noted below:

- 77% of SJPD staff report that the customer is a priority for them when making decisions about how to provide service.
- 84% of SJPD staff rate their job satisfaction as very satisfied to somewhat satisfied.
- 72% of SJPD staff agree/strongly agree that the City values diversity and differences in the workplace.
- 77% of SJPD staff agree/strongly agree that employees in their work group display honesty and integrity in the workplace
- 73% of SJPD staff agree/strongly agree that their work group effectively addresses the diversity of their customers while delivering services.
- 70% of SJPD staff report that their immediate supervisor provides effective leadership and direction.

The Macias IA Study made further findings that demonstrate that the SJPD (specifically, IA Unit) rates favorably when compared to other law enforcement agencies. First, the Macias IA Study found that SJPD's citizen complaint handling procedures met, and in some cases exceeded, the best professional practices recommended by the Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA). Additionally, the Macias IA Study made findings based on peer review benchmarks or per capita calculations and found that:

- SJPD's effectiveness at citizen complaint handling, in terms of number of days to close a complaint, ranks mid-range (110 days) in comparison to other law enforcement agencies, which range from 30 to 198 days. SJPD is better than the average with respect to number of days to close a complaint.
- Complaints received by SJPD have remained stable at 2.75 complaints for every 10,000 in 2004; 2.48 complaints for every 10,000 in 2005 and 2.56 complaints for every 10,000 citizens in 2006.
- SJPD ranked third highest among the nine law enforcement agencies at about .17 complaints per officer. The peer city benchmark was .42 complaints per officer. Separately, the Administration calculated the percentage that SJPD was below the benchmark and found that SJPD's complaint per officer ratio was 60% better when compared to the peer city benchmark.

The above key findings show that when SJPD is evaluated against peer city benchmarks, its performance is favorable when examining: cycle time for closing complaints, complaints per capita; and, complaints per police officer vs. peer review benchmark metric.

The ability to sustain these demonstrated successes for multiple years is based on the City's service delivery model. For over 14 years the San Jose Police Department has been committed to community

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policing, and the data listed above and later in this report, regarding SJPD, supports this strong value. The SJPD is committed to providing the highest quality of public service at every opportunity and contact with those served. The SJPD's overall neighborhood policing strategy is beat-officer based, with beat officers serving as the nucleus of our neighborhood policing efforts. Through this service delivery model, the community and SJPD have developed a number of nationally recognized crime prevention, school, and community-based programs that have been effective at problem solving, prevention, intervention and enforcement. The results of this effective policing model, in a city with a population of over 950,000 and over 400,000 calls for service per year, is that the City received 211 complaints. This is a very low ratio when compared to other cities and this is a direct result of superior community and policing efforts.

As acknowledged in the cover letter, these are topics that are very complex that directly impact community relations, public perception, and workforce procedures. The intent of providing statistically valid data to characterize the public and workforce opinion is to acknowledge that when valid opinion polls are administered, the ratings of both the public and workforce on police services are very high. Additionally, when examining past or recent statistical studies, SJPD fared favorably. The Administration values and respects diverse perspectives and desires a productive public dialogue. The Administration looks forward to discussions that focus on performance improvements, increased effectiveness, and better service for the public.

# ADMINISTRATION'S RESPONSE

This section provides a discussion of each of the reports presented for discussion and responds to public policy recommendations included in each report. Specifically, this memorandum provides the Administration's comment on the:

**Table 2: Summary of Reports for Council Consideration**

Report	Report Title
1	2006 Independent Police Auditor Annual Report (Independent Police Auditor)
2	Summary Report of Forums Regarding the Police in San Jose & Supplemental HRC Recommendations (Human Rights Commission/Independent Police Auditor)
3	San Jose Police Department 2006 Annual Force Response Report (Police Department)
4	San Jose Internal Affairs Peer Review Study (Macias Consulting Group)

Additionally, there is a Conclusion Section and Recommendation Section in this report that the Administration believes summarizes the issues and advances the appropriate recommendations to move forward.

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## REPORT 1: 2006 INDEPENDENT POLICE AUDITOR ANNUAL REPORT

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The policy recommendations presented in the IPA Report would result in a shift in the IPA's role as auditor to one that provides administrative oversight/direction to SJPD (e.g., classification oversight or limited authority to conduct investigations). These proposed new authorities recommended in the IPA Report are akin to responsibilities of a Civilian Police Oversight Model or Parallel Investigation System. Given that these recommendations may introduce a shift in the current Internal Affairs & Auditing Systems model, the City Council should consider whether the data, current conditions, and/or national trends support such a fundamental paradigm shift in the City's current oversight model. More importantly, public discussion and review is needed on whether this paradigm shift would result in improved effectiveness and outcome. A review of case studies would also be prudent on the effectiveness of other agencies that have shifted to a Civilian Police Oversight or Parallel Investigation model to obtain background on the triggers that led to the shift, items to consider for implementation, and current performance in other agencies. This should be coupled with a review of the IPA's current level of service, capacity to absorb additional workload, and general performance.

Prior to moving forward on the IPA proposed changes, some of which would require a City Charter amendment or an obligation to "Meet and Confer" with the San Jose Police Officers' Association, the City Council should feel convinced that the SJPD and/or IA Unit is no longer effective and that the IPA can better meet certain criteria, such as the following:

- Perform better than the current model (e.g., Internal Affairs Unit and IPA audit system) with regards to cost, efficiency and effectiveness, cycle time to process complaints, satisfaction and volume/workload,
- Improve SJPD's statistical sampling results with regard to level of service/performance when compared to other law enforcement agencies, valid community satisfaction rates regarding "feeling of safety", and valid workforce satisfaction rates,
- Present clear and transparent procedures for the public that demonstrate the ability to sustain the above two criterion and that are reflective of a collaborative process in which the IPA and SJPD's interests are satisfactorily addressed, and that everyone understands.

In addition, the City Council should first be assured that efforts have been exhausted to improve the current model and that the model is no longer useful or tailored for the San Jose community.

Aside from the lack of balance and judgmental tone used in its portrayal of the IA Unit and SJPD procedures and practices, the report contains many inaccuracies in the description of the SJPD's procedures, data, and facts. This is a concern for the Administration because it would be unproductive to cite every detail at issue in the IPA Report, rather the Administration is focusing its response by presenting a high level review of concerns regarding the framework on which the IPA Report relies. As stated, the IPA Report largely bases the argument for increased authority on its contention that the SJPD mishandled "inquiries" (or "overuse" of this category) and "overuse" of the Procedural Complaint category.

The sections that follow supports the Administration's position that the findings in the IPA Report do not warrant the beginnings of a paradigm shift, rather opportunities to strengthen the current model and to reinforce the role of the IPA and SJPD. The Administration has five concerns with the IPA's report:

- Concern 1:** Unwarranted Call For Shift In Oversight Model
- Concern 2:** Incompatible Role Of Auditor And Misstatements;
- Concern 3:** Redefining the "Inquiry" Category & Subsequent Inclusion of Inquiries as Complaints;
- Concern 4:** Improper Statistical Analysis; And,
- Concern 5:** Public Policy Recommendations That Are Based On These Misstatements and Incomplete Information To Begin A Shift To A Civilian Police Oversight Model.

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## C O N C E R N 1 : U n w a r r a n t e d C a l l f o r S h i f t I n O v e r s i g h t M o d e l

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The SJPD fully acknowledges that the primary role of the IPA is to audit the citizen complaint process and investigative performance relative to the IA Unit. From these audits and analyses, the IPA is responsible for issuing findings and public policy recommendations. Inherent in the Internal Affairs & Auditing Systems model is that there will be agreement, disagreement, and a productive level of tension between the SJPD and IPA toward advancing the goals of this police oversight model.

Disagreement and tension are natural products of this process and are a reflection that meaningful debate is taking place and the absence of complacency by involved parties; most important, that the oversight model and processes are working. Disagreement in findings/conclusions between the SJPD and IPA does not mean that a shift in IPA authority or oversight model is needed.

### Discussion of Police Oversight Models

The examples that follow demonstrate that the SJPD and IPA hold distinct roles and responsibilities in the citizen police complaint process that are consistent with an Internal Affairs & Auditing Systems model. In this model, the IA Unit is solely responsible for investigating all citizen complaints. Additionally, in an Auditing System model, citizen complaints are monitored and audited once a police department's IA Unit completes the investigations. The auditing system does not allow for a parallel or separate investigation

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of complaints. No auditing system allows for the investigation of complaints by a Police Auditor. This model contains the necessary "checks and balances" in that roles and authorities are clearly defined, eliminates conflicts of interests by either party, and preserves independent audits.

In a Civilian Police Oversight model, an independent civilian investigative board, comprised of members of the public, has full investigative power. These agencies conduct investigations on all citizen complaints. In some cases, findings are advisory to another authority (e.g., City Manager, Police Chief, or City Council) or are entirely sustained, and generally have some sort of appeal process. Mediation between complainant and police officer can also be a feature of this model. Some boards have other duties that are not related to police oversight, but this is entirely tailored after the specific needs of the community, Administration, and/or City Council.

In a Parallel Investigation System, the police department and the civilian oversight board investigate citizen complaints. The police department generally performs the majority of investigations, given that a police department generally has more resources/capacity than an oversight board. Also, the oversight board conducting the parallel investigation is generally limited to investigations received from a complainant by the board. In some cases, given the complexity of the investigation, the board may refer the investigation to the police department to oversee the entire investigation. The Macias IA Study notes that one of the peer agencies – Oakland Police Department/Citizen Police Review Board – had this type of system and that it does not audit cases. The City of Oakland is the only city studied that had this type of system currently in place.

As the Macias IA Study determined, "All the officials reported that oversight systems were established based on the needs of their community." A shift in model must be supported by a City Council determination that there has been a significant downward change in performance of the current model or community conditions. The below data, coupled with the recalculated statistics provided later in this report, do not demonstrate a significant change in SJPD performance. In fact, the recalculated data show that despite increases in population and calls for service, the SJPD has been able to sustain rather low ratios of complaints for its population, calls for service, and sworn police officers.

#### Review of Disagreement Activity Regarding Audits and Classifications

The data suggest that there is largely agreement and thoughtful deliberation between the SJPD and IPA. In the IPA Report, Illustration 3-K, "Five-Year Overview of IPA Determinations of Audited Complaints," the data show that there is an **86% rate of "Agreed with Findings"** by the IPA of IA Unit activity, but that there is a downward trend with this data category. This statistic means that 86% of the time, the IPA agreed with the determinations made by the IA Unit either after the first review or further action.

A review of the SJPD and IPA activity regarding classification of complaints or allegations shows a high level of agreement as well.<sup>3</sup> For example, of the 346 cases that the IA Unit closed out in CY2006, the IPA formally disagreed with the classification of complaints or allegations in 18 cases (5%). **This means that there was agreement between the IPA and IA Unit in 95% of classification of complaints or allegations.**

The IA Unit reviewed the IPA complaint or allegation classification disagreements on the 18 cases, and subsequently agreed with the IPA and changed the classifications of complaints or allegations in five of the eighteen cases. In three other cases of complaint disagreement, the IPA appealed to the City Manager. The IPA prevailed in two of the three cases. **The IPA's impact on requesting further review by either the IA Unit or City Manager resulted in changes in seven of the 18 cases (39%).** The Administration's position is that a disagreement does not equate to failure or poor performance by either office, but is an example that the current model is working and that thoughtful deliberation takes place regarding cases. Moreover, based on the data presented (disagreement in 18 of 346), there does not appear to be a

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<sup>3</sup> On the matter of classification of complaints and allegations, the Police Department has an articulated process for classifying complaints, along with the allegations that fall within the complaints. These procedures are outlined in the Internal Affairs Unit Guidelines and provide for the IPA to bring forward to the SJPD and the City Manager any concerns or disagreements with classifications.

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reportable issue, other than giving credit that the IA Unit in virtually all cases (95%) appropriately assigned the proper complaint classification.

The IPA also provided information to the IA Unit on eight "inquiries" where it was believed the classification was inappropriately classified as "Inquiry." In response to the IPA's concerns, the IA Unit contacted these eight individuals to ensure that their concerns were appropriately addressed. These individuals were also offered the opportunity to have their concerns addressed as a complaint. None of these individuals opted to have their concerns be handled as a complaint.

The above data suggests not only that the IPA had sufficient authority, and success with challenging classification, but that the IA Unit has a very high rate of correct classification.

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## C O N C E R N 2 : I n c o m p a t i b l e R o l e o f A u d i t o r & M i s s t a t e m e n t s

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### Incompatible Role of Auditor

The recommendations also change the fundamental nature of the IPA's role without demonstrating that the necessary quality control mechanisms are planned for or in place to sustain audit quality and independence. As described in the 1999 IPA Year End Report (page 1):

The major difference on how the two models function is that civilian review boards are usually investigative bodies which focus a major portion of their resources on a case by case approach versus **an auditor model which focus on identifying and changing the underlying causation factor that give rise to complaints** [emphasis added].

The nature of the recommendations, some of which require a City Charter amendment and a "meet and confer" obligation with the San Jose Police Officers' Association, focus on increased authority for the IPA with respect to complaint classification and investigative authority, rather than focusing on recommendations for the SJPD to implement that would result in reducing and/or addressing the factors impacting the conditions leading to complaints.

The result from the recommendations, if approved, would be a shift from an independent auditor to one that influences the decision making process of some day-to-day functions that are the current responsibility of the IA Unit. The Administration is concerned that the IPA's standard and independence for conducting audits is lessened when involvement in management and/or administrative decision-making is introduced (i.e., classification and investigation).

As a general matter of practice, audit and management practices should be kept strictly separate so that internal conflicts of interest do not surface, or any other related controls/practices that may lessen the integrity of an audit. As a general standard for organizations that conduct audits, individuals that conduct audits shall not be involved in decision-making processes that are later subject to his/her audit (e.g., City Auditor's standard). This standard provides assurance of the auditor's independence and quality. Although it is not clear to the Administration on which professional audit standards the IPA adheres or whether or not the IPA has a compliance requirement to uphold generally practiced audit standards, it should be noted as reference only that the Government Auditing Standards state in Section 3.14:

Audit organizations should not perform management functions or make management decisions. Performing management functions or making management decisions creates a situation that impairs the audit organization's independence, both in fact and in appearance, to perform audits of the subject matter and may affect the audit organization's independence to conduct audits or related subject matter.

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Regardless of this generally practiced audit standard, the Administration has a concern that the new authorities recommended by the IPA do not provide assurances that internal procedural controls would be maintained to ensure strict separation between the auditing and administrative responsibilities. Absent these assurances, it is unclear whether the IPA's audit quality or independence can be sustained when involved in management matters subject later to an IPA audit.

### Misstatements

Additionally, the Administration is concerned that the IPA Report misstates: current IPA authority; SJPD's official definition for the "Inquiry" category; and, auditor/monitor oversight agencies in the IPA comparative review. Collectively, these misstatements skew the IPA Report findings toward a Civilian Oversight model.

On the matter of misstated authority, the IPA Report states (Page 3): "...In 2004 and 2006, the City Council adopted recommendations which granted IPA delineated authority in officer-involved shootings and in-custody deaths: however, the municipal code has not been updated to reflect such action." The IPA does not have any delineated authority for officer-involved shootings and in-custody deaths, which by use of the term "authority" denotes incident oversight and/or investigative authority. The IPA's consolidation, by reference, of these two types of "delineated authority" leads a reader to conclude that the "delineated authority" is at the same level for both types of incidents; this is not the case.

The IPA currently has a greater role relative to officer-involved shootings, which is: may report to the scene; receives briefing from on-scene Commander; and, reviews investigation to ensure that the SJPD adhered to policy and procedures. The IPA's current role relative to in-custody deaths is to receive copies of homicide reports. These are two very distinctly different roles.

As background, on February 28, 2006 (Item 8.3), the City Council approved a recommendation presented by both the IPA and City Manager that accepted "the IPA's recommendation that the *IPA receive copies* of the homicide reports for the SJPD's officer-involved shootings and in-custody deaths." [Emphasis added] Later in the February 2006 report, the IPA was specifically limited to reviewing reports and was prohibited from making copies of the files and under specific instruction to secure files in a locked file and to only allow review by IPA confidential staff [Tab 1].

Additionally, in Chapter Two (page 16) of the IPA Report, a comparative review of "Mandates of Auditor/Monitor Oversight Agencies" between the City of San Jose model and other cities is presented. In this section, the IPA Report compares the City of San Jose to other oversight agencies based on jurisdiction and size as the IPA as further support for a shift in authority and model; however, there are misstatements included in this analysis. The table begins with reference to "City/State" of those cities included in the study and goes on to list auditor/monitor oversight agencies for the respective "City/State." The SJPD's validation of the auditor/monitor oversight agencies listed found that all correlate to the respective city police department, except for the City of Los Angeles.

For Los Angeles, the IPA identifies the "Office of Independent Review" as the oversight agency for Los Angeles, which is not correct. The Office of Independent Review is the auditor/monitor oversight agency for the **Los Angeles County Sheriff's Department**. The absence of clarification from the IPA results in a reader thinking that the "City/State" for the City of Los Angeles falls under civilian oversight when it does not. The mission of the Office of Independent Review for the **Los Angeles County Sheriff's Department** is as follows:

The Office of Independent Review ("OIR") is a civilian oversight group that was created by the Los Angeles County Board of Supervisors and began its work in 2001. The mission of OIR is to monitor the Los Angeles County Sheriff's Department ("LASD") and provide legal advice to ensure that allegations of officer misconduct involving LASD are investigated in thorough, fair, and effective ways. (Source: <http://laoir.com/mission.html>)

The Office of the Inspector General is the oversight agency of the Los Angeles Police Department (LAPD). Specifically, the mission statement for the Office of the Inspector General is as follows:

The mission of the Office of the Inspector General (OIG) is to provide strong, independent and effective oversight of the Los Angeles Police Department (LAPD) and to ensure that the LAPD, its officers, and employees act with honesty, integrity, dignity, and respect towards the public, as well as **ensuring that both the OIG's as well as the LAPD's responsibilities under the Federal Consent Decree with the U.S. Department of Justice (Consent Decree) are being met.** In addition, the OIG conducts community outreach to educate the community about the OIG, the Police Commission (Commission), and the LAPD on a periodic basis, but especially in the wake of high-profile use of force incidents and other newsworthy developments of particular interest to the community. The OIG carries out its mission through three discrete sections: the Complaint Section, the Audit Section, and the Use of Force section. (Source: <http://www.lacity.org/oig/isgig1.htm>) [Emphasis added]

This misstatement leaves a reader to think that the LAPD is subject to the Office of Independent Review, a civilian oversight model, when it is not. Furthermore, comparative analysis of the LAPD to SJPD would be inaccurate. The LAPD, as stated above, is under Federal Consent Decree. A Consent Decree results from a lawsuit, initiated by the U.S. Department of Justice, where a Federal Court issues a decree, or a set of conditions, dictating how a local or state government program should be operated. When a police department engages in a pattern or practice of illegal activity, the Court will issue a Consent Decree and an outside monitor is assigned to ensure conformance with the Decree. Given the increased role of the federal government in a local police department, and the local law enforcement's requirement to comply with federal mandates, it is not appropriate to compare a law enforcement agency under Consent Decree because the findings could be skewed by the impact of the Consent Decree. For such reasons, the Macias IA Study disqualified any law enforcement agencies (e.g., Los Angeles and Detroit) that were under Federal Consent Decree because an accurate comparative analysis of the agencies service delivery could not be performed while superseded by federal mandates. The Office of Inspector General ensures that LAPD meets the Consent Decree requirements.

Another misstatement included in Footnote 12, which states: "The oversight agencies chosen for the comparison are auditor/model agencies of similar size and jurisdiction as the IPA..." IPA states these agencies are similar in size and are the basis for inclusion in the comparative study. Because there is the absence of data to show how these auditor/monitor agencies are of similar size, the SJPD has evaluated this criterion based on population.<sup>4</sup> Based on the IPA's own selection process, there are two agencies that conservatively do not meet the IPA's criteria, which are: Boise and Los Angeles.<sup>5</sup> These two cities differ dramatically in both population and number of police officers; but, do have civilian oversight models. Inclusion of these two cities skews the analysis toward civilian oversight models.

**Table 3: Population and Number of Police Officers in the Comparative Review of the IPA Report**

City	Population Size	# of Police Officers (Size)
Boise	198,500	267
Denver	570,000	1,548
Portland	513,627*	989
Sacramento	457,387*	668
Tucson	507,362*	1,008
Los Angeles	4,018,080	9,355
San Jose	950,000	1,349

\*Source: 2005 U.S. Census; all other population figures were accepted from the IPA report (page 64)

<sup>4</sup> A review of staffing levels would be unproductive without fuller discussion of organizational structure and more detail of authority and, therefore, population was taken to be the most straightforward reference when the IPA noted "size."

<sup>5</sup> [http://www.fbi.gov/ucr/05cius/data/table\\_78.html](http://www.fbi.gov/ucr/05cius/data/table_78.html)

Despite several requests by the City Manager, the Administration has not been afforded the opportunity to obtain documents relative to the IPA's comparative review to better understand the comparative review. This is in contrast to the Administration's activity to collaborate with the IPA on the Macias IA Study by having the IPA participate in selecting the participating cities and developing the survey questionnaire. Additionally, the Administration provided an advanced review, with the ability to provide input, of the draft Macias IA Study prior to its completion. Given this condition, and the above misstatements, the Administration has concerns about the accuracy of the comparative review and that it is skewed toward civilian oversight models.

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### CONCERN 3: Redefining the "Inquiry" Category & Subsequent Inclusion of Inquiries as Complaints

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This section discusses how the IPA has independently assigned and published a new definition for the "Inquiry" category, in order to sustain certain findings to base the proposed public policy recommendations. The IPA Report includes findings about the complaint data and the complaint classification that is not fully accurate and in some cases, misleading. In one notable area, the report combines the "Inquiry" and various "Complaint" categories, when these are two different populations of data. As a result, the complaint data is artificially inflated. The "Inquiry" category should be excluded since it is not considered a "Complaint" category by SJPD definition--and many of other police agencies as demonstrated in the IA Study. The Administration presents recalculated charts that reflect the corrected data. As background, in April 2005, SJPD and IPA began recording allegations in cases classified as inquiries.

#### Redefining the "Inquiry" Category

The IPA Report defines the "Inquiry" category, by stating:

An "inquiry" is one of the current classifications. **SJPD defines an inquiry as: "...a complaint** that is immediately resolved by an intake officer to the satisfaction of the citizen, without requiring more extensive investigation. An inquiry that is not immediately resolved to the citizen's satisfaction can be reclassified and be fully investigated. **This definition is subjective** and relies entirely upon the assessment of the intake officer and the subject officer's supervisor." [emphasis added] (IPA Report, Page 9)

With the revised definition, the IPA Report later states that there has been an increase in complaints classified into the "Inquiry" category. For an accurate statistical analysis, the IPA Report should have included a completely separate analysis of inquiries in order to sustain findings related to this separate category. The IPA Report is responsible for publishing accurate definitions for "Inquiry" and "Complaint" categories to base statistical analysis. Also, while the IPA argues that there has been an increase in "Inquiry" category, the IPA has not normalized these figures against population changes and calls for service to determine whether a true increase has occurred.

The SJPD Duty Manual, Section C 1700, is the authoritative document for issuing definitions for classifications. The IA Unit assigns contacts, inquiries, and complaints based on definitions as articulated in the SJPD Duty Manual. The SJPD is the single source for establishing definitions and officially defines the "Inquiry" category as such:

**INQUIRY DEFINED: Citizen contact** with a Department member regarding an issue of concern that is immediately addressed and resolved to the satisfaction of the citizen. A concern that is not satisfactorily resolved can become a complaint. [Emphasis added]  
(Source: SJPD Duty Manual, Section C-1703)

The IPA's definition of "Inquiry" is not used by the SJPD and the IPA definition suggests that an "Inquiry" is viewed as a complaint, when it is not. SJPD Duty Manual, Section C1700, provides more specific definitions based on complaint classification type. Aside from the various complaint categories and

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definitions, the SJPD Duty Manual contains two other categories: (1) Citizen Contact<sup>6</sup> and (2) Inquiry. These categories are not defined, nor administered, as complaint categories, but are documented for statistical purposes. It is important to note that for the "Inquiry" category, aspects of the nature of the inquiry are documented, logged by the IA Unit, and, as recently adopted by the SJPD in April 2006, the police officer name is now tracked. It should be noted that the Macias IA Study found that the SJPD exceeds the average level of information tracked and does a very thorough job of documentation.

It is important to note that it is the individual initiating the inquiry influences the classification of a case into the "inquiry" category; a case can only be classified as an inquiry if the individual chooses not to file a formal complaint. The ability for the SJPD to apply subjective discretion is limited in that the individual contacting the IPA and or IA Unit influences the disposition of the issue. Furthermore, an individual has up to 12 months to request that the inquiry case be reclassified and formally investigated. The absence of the correct definition and the IA Unit's procedures in the IPA Report is a concern because it leaves a reader to conclude that the Police Department is classifying the Inquiries, when in actuality, it is the individual's decision not to file a complaint.

While the IPA Report points to the number of inquiries as "a matter of concern," there are a number of factors that could result in an upward trend for the "Inquiry" category, such as: increased SJPD outreach, increased IPA outreach, increase in individual concerns with police conduct, increase in traffic court contacts, increase in collaborative relationships with the SJPD and community, increase in residents' desire to resolve issues informally (as opposed to filing a complaint), etc. A population increase can also affect the number of contacts, inquiries, and complaints. It should be noted that many of these potential causal factors are, in fact, benign or could even be characterized as positive.

The Macias IA Study further contemplates the definition of "Inquiry" and suggests that the category is too broad and includes some miscellaneous contacts that were not within the jurisdiction of the SJPD (i.e., traffic court contacts). As a result, four of the seven items for consideration presented by the IA Study concentrate on better focusing the "Inquiry" category to accurately reflect what the category is and is not. Specifically, in its "Conclusion on Complaint Processes" section (page 20) the Macias IA Study states:

SJPD developed a citizen complaint process consistent with professional best practices that are suggested by accreditation bodies for law enforcement agencies. SJPD has met or exceeded six of the seven suggested practices for the acceptance, handling, and resolution of citizen complaints which suggests SJPD has all the applicable components necessary to administer and oversee the handling of citizen complaints.

Additionally, SJPD's acceptance and definition of "Inquiries" is generally consistent with other law enforcement agencies. A common thread throughout most of the agencies is that "Inquiries" were not considered a major concern because the agencies either tracked the information and did not report on them, or did not track them at all. Differences did occur in the types of issues or concerns accepted among those agencies that collected "Inquiries." For instance, SJPD was the only the law enforcement agency that accepted citizen concerns that were traffic stop related. Most of the other law enforcement referred these matters to the court system. The number of traffic violations accepted by SJPD was generally small in comparison to total inquiries received; however, it does place a burden on staff to record and resolve these complaints when they are better handled in the court system.

Similarly, SJPD's classification of complaints is generally consistent with other law enforcement in that each of them, except the San Francisco Police Department, accepted informal and formal complaints. The San Francisco Police Department classified all issue or concerns regardless of the type of allegation a formal complaint.

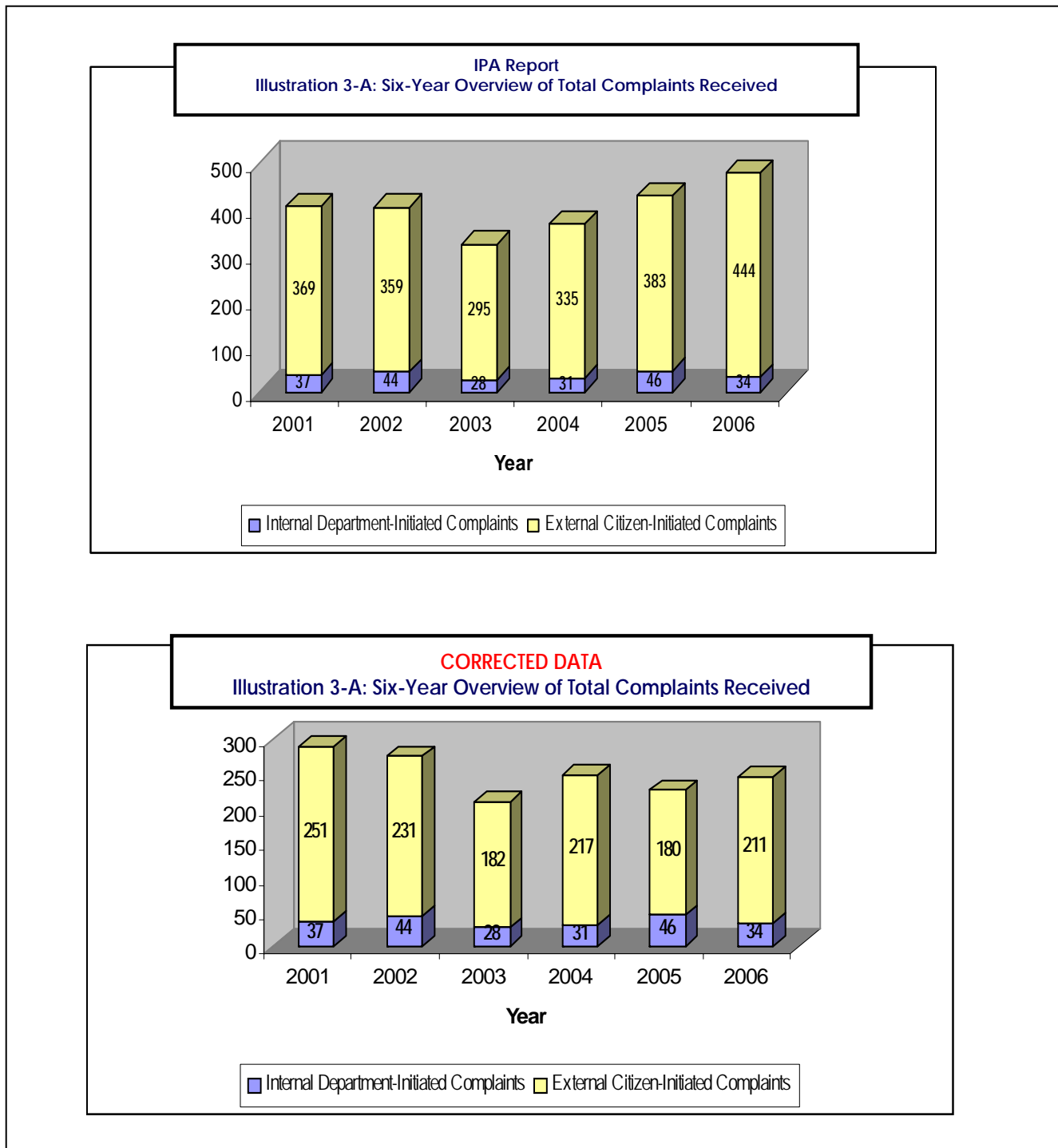
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<sup>6</sup> A Citizen Contact is a case that does not involve an expressed dissatisfaction with police services provided by the San Jose Police Department or one of its members.

## Inclusion of Inquiries as Complaints

The IPA's decision to combine the "Inquiry" category with the "Complaint" category to conduct statistical analysis on SJPD "Complaints" is of great concern. The Administration has recalculated the data using the correct SJPD definitions for the "Complaint" and "Inquiry" categories. The corrected table and data demonstrated how the IPA Report statistical analysis skews the findings in a manner that adversely describes the SJPD performance relative to complaints. The recalculated illustrations remove the "Inquiry" category from the complaints. The following illustrations show the IPA charts followed by the corrected charts:

Table 4: IPA Report, Illustration 3-A and Corrected Data Based on Correct Category Definitions



As demonstrated above, the IPA states that there were 444 complaints for CY 2006 that were "External-Initiated Complaints." When the correct definitions are applied, there were only 211 complaints for CY 2006 that were "External-Initiated Complaints." The IPA misstatement results in a total count for "Complaints" that is more than double than the correct number of "Complaints".

Moreover, as the Macias IA Study suggests, the current "Inquiry" category is too broad and the definition needs refinement. One example that demonstrates that it is inappropriate to combine the "Inquiry" with the "Complaint" category is that traffic disputes are included in the "Inquiry" category. These disputes are reflected into the "Inquiry" category but, should be resolved in Traffic Court. Currently, the IA/IPA shared database does not have the capabilities to track separately traffic related inquiries. Such information would need to be manually extracted by reviewing each individual case summary, a labor intensive task. The IA Unit conducted such review with the over 200 Inquiry cases filed in 2006 and found that 13% of the cases, or 28 cases, were traffic related cases. Inclusion of traffic disputes that are resolved by Traffic Court further skews the IPA Report results.

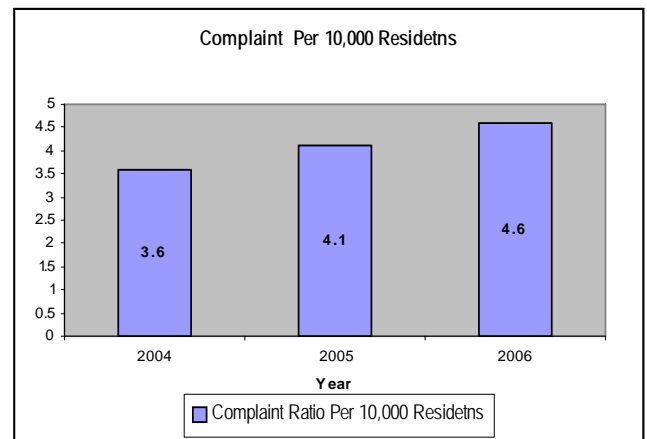
Illustration 3-B of the IPA Report has also been recalculated by the Administration to demonstrate how inclusion of the "Inquiry" category further skews the IPA Report findings when complaints are examined in relations to population and calls for service. When the IPA's "Inquiry" category is consolidated with the "Complaint" category, the analysis shows that for, CY 2006, there are 4.6 complaints per 10,000 residents and 10.8 complaints per 10,000 calls for service and that there has been an upward trend in these numbers over the past two years.

Table 5.a IPA Report, Illustration 3-B

**Illustration 3-B: Complaints in Relation to City of San Jose Population and SJPD Calls for Service**

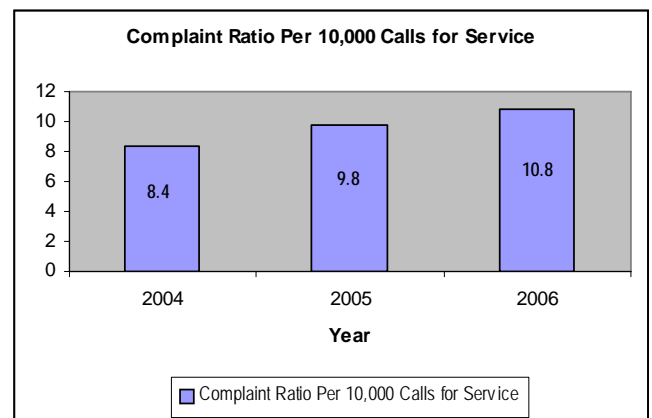
**Complaints in Relations to Population**

Year	San Jose City Population	% Population Change	External Complaints Received	% Complaint Change	Complaints per 10,000 Residents
2004	931,232	N/A	335	N/A	3.6
2005	941,116	1%	383	14%	4.1
2006	957,915	1.80%	444	16%	4.6



**Complaints in Relations to SJPD Calls for Service**

Year	Calls for Service	% Calls for Service Change	External Complaints Received	% Complaint Change	Complaints per 10,000 Calls for Service
2004	404,000	N/A	335	N/A	8.4
2005	393,196	-2.7%	383	14%	9.8
2006	413,731	5.20%	444	16%	10.8



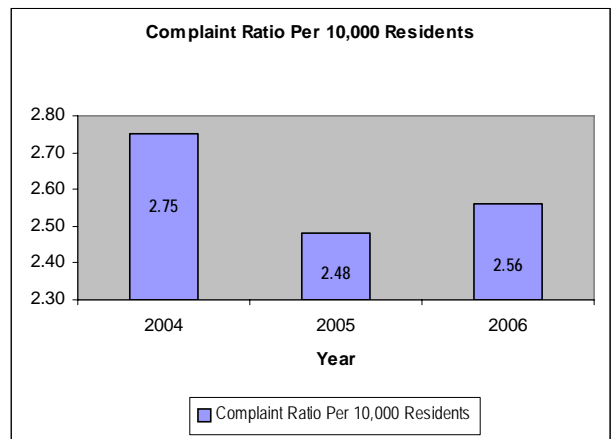
The Administration has recalculated the data based on applying the correct SJPD definitions for the "Complaint" and "Inquiry" categories for Illustration 3-B. The data show how the IPA Report statistical analysis further skews the findings in a manner that adversely describes the SJPD performance relative to complaints in relation to population and calls for service. When the "Inquiry" category is appropriately taken out of the "complaint" category statistical analysis, the analysis shows that for CY 2006 there are 2.56 complaints per 10,000 residents and 6.16 complaints to 10,000 calls for service and these data have remained relatively constant over the past two years. The recalculated tables, based on SJPD Duty Manual definitions, do not show an upward trend as the IPA Report argues and are significantly lower than the IPA Report findings. Below is the recalculated Illustration 3-B:

Table 5.b: Illustration 3-B, Corrected Data Based on Correct Category Definitions

**RECALCULATED--Illustration 3-B: Complaints in Relation to City of San Jose Population and SJPD Calls**

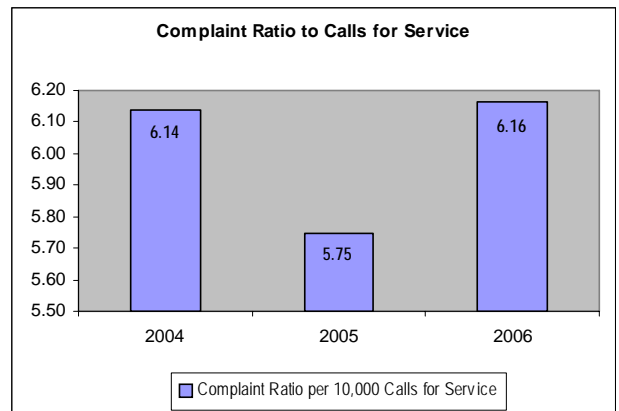
**Complaints in Relations to Population**

Year	San Jose City Population	% Change	Complaints (Without Inquiry)	% Change	Complaints per 10,000 Residents
2004	931,232	N/A	248	N/A	2.75
2005	941,116	1.1%	226	-8.9%	2.48
2006	957,915	1.8%	245	8.4%	2.56



**Complaints in Relations to SJPD Calls for Service**

Year	Calls for Service	% Change	Complaints (Without Inquiry)	% Change	Complaints per 10,000 Calls for Service
2004	404,000	N/A	248	N/A	6.14
2005	393,196	-2.7%	226	-9%	5.75
2006	413,731	5.20%	255	13%	6.16



**C O N C E R N   4 :   I m p r o p e r   S t a t i s t i c a l   A n a l y s i s**

The Administration recognizes that high value is placed on accurate information and requested that Macias Consulting Group independently recalculate the data based on correct statistical methodology. To perform the correct statistical analysis, Macias Consulting Group was provided with the IPA data tables and granted access to the IA Unit's IA Pro database to independently evaluate the data. The discussion that follows presents the concerns with the IPA methodology and corrected recalculations, as entirely recalculated by Macias Consulting Group.

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The Recalculated Data & Findings (This Section was authored by Macias Consulting Group)

The attached letter (Tab 2) summarizes our analyses and findings on complaint data received by the SJPD from 2004 through 2006. Macias specifically examined (1) [statistical] significance of percent changes in complaints against SJPD from 2004 to 2006, and (2) examined the complaint levels against the population at large, calls for service and the number of sworn police officers. The scope of the review was primarily limited to the Complaint and Allegation data provided by the Internal Police Auditor (IPA) in their April 2006 Annual Report (Draft), Illustrations 3-D and 3-F. To supplement our analysis, we [Macias] extracted selected data on procedural complaints, excessive use of force, discrimination and racial profiling contained in the IPA/SJPD citizen complaint database.

In April 2005, the SJPD Internal Affairs (IA) and IPA began recording allegations in cases classified as Inquiries. As a result, the data reported in the IPA's 2006 Draft Report combines "Inquiries" with complaints when they are two different populations of data. The Macias analysis excluded "Inquiries" from the analysis to eliminate a skewing of the data. Moreover, Macias excluded "Inquiries" since they are not considered complaints by the SJPD and many of other police agencies.

The IPA examined the incorrect units of complaints and allegations. The SJPD identified during a review of the citizen complaint database (IA Pro), 23 inquiries for CY 2005 were reported, but no allegations were listed. This has skewed the allegation data for 2005. Also, while the IPA reported that multiple allegation could exist per complaint, there was no data available to show whether instances of double counting occurred. The Macias analysis did not examine the number of allegations, but rather the number of complaints that involved specific types of allegations. This was done to ensure that the analysis was done on a per complaint basis, which provides a more accurate depiction of the level of complaints handled by SJPD. Conducting the analysis on a per allegation basis inaccurately describes the extent of the problem because there can be multiple allegations of the same type on one complaint. For example, Macias noted that one complaint contained three or more allegations of improper procedure.

The Macias analysis found that complaint levels remained relatively constant or they were at very low levels between 2004 and 2006. Specifically, the results show:

- Overall complaint levels remained constant from 2004 to 2006.
  - Complaint levels remained steady when normalized against the population at large
  - Complaint levels remained low as proportion to calls for service
  - Complaint levels remained low on a per sworn officer basis

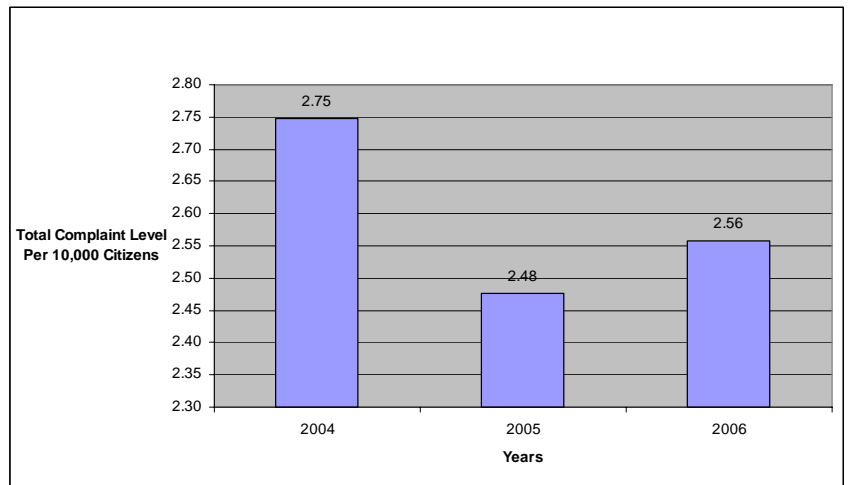
[Note: Three bullets above added by the Administration to provide supporting detail of first bullet]
- Complaint levels involving improper procedures have remained constant.
- Complaints levels involving unnecessary force allegations remained constant.
- Complaints level involving discrimination allegations remained constant, but the trend pattern shows an upward movement.
- Racial profiling complaints have increased, but remain at low levels.

In three different examinations of the data, Macias found no actual increase or decrease in complaint levels, except for in complaints containing racial profiling allegations. The number of complaints involving racial profiling and discrimination were extremely low which would preclude suggesting the presence of a potential problem. Nonetheless, further monitoring of complaints levels is needed to help serve as a mechanism to detect or identify systemic patterns and trends.

**Finding 1: Complaint levels remained relatively constant from 2004 to 2006.**

The analysis on all complaints (e.g. Informal and Formal complaints) shows that levels have remained relatively constant over the past three years. As shown in Chart 1.0, complaints levels, when adjusted to city population, ranged from 2.48 to 2.75 per 10,000 citizens over the time period examined. The variances among the complaint levels among the three year period examined are not sufficient to suggest that an actual decrease had occurred. The analysis also showed that between 2004 and 2005, the number of complaints declined as the population increased. While no known causal

**Chart 1: Complaint Levels per 10,000 Citizens, CY 2004 to 2006**

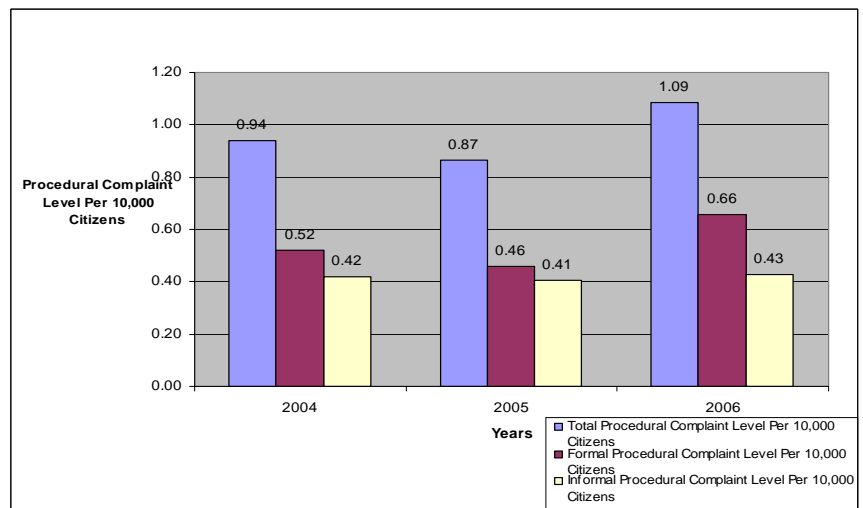


factor could be determined from the data, the decline during this time may stem from the increased handling of inquiries to the satisfaction of the citizen before the Inquiry is raised to the level of a complaint.

**Finding 2: Complaint levels involving improper procedures have remained constant.**

The analysis on all complaints (e.g. Informal and Formal complaints) with improper procedure allegations shows that levels have remained relatively constant over the past three years. As shown in Chart 10.0, complaint levels, when normalized to the population at-large, were at .94 per 10,000 in 2004 and at 1.09 per 10,000 citizens in 2006. The variances among the complaint levels within the three year time period examined are not sufficient to suggest that an actual increase had occurred.

**Chart 10: Complaint Levels With Improper Procedure Allegations, CY 2004 to 2006.**



The analysis on Formal complaints with improper procedure allegations similarly shows that levels remained relatively low and constant over the time period. As shown in Chart 10.0, Formal complaint levels were at .52 per 10,000 in 2004 and at .66 per 10,000 citizens in 2006. The variances among the complaint levels within the three year time period are not sufficient to suggest that an actual increase or decrease had occurred.

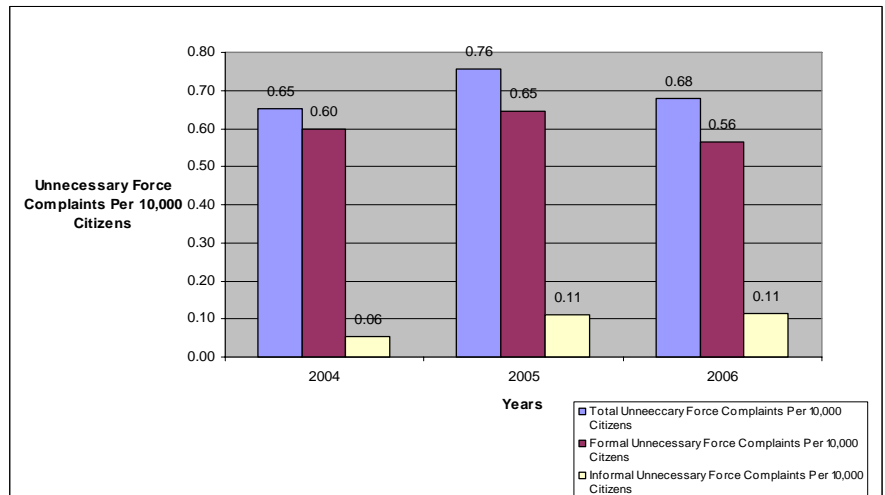
The analysis on Informal complaints with improper procedure allegations continues to show that levels remained low and constant over the time period. As shown in Chart 10.0, Informal complaint levels were at .42 per 10,000 in 2004 and at .43 per 10,000 citizens in 2006. The variances among the complaint levels within the three year time period are not sufficient to suggest that an actual increase or decrease had occurred. The low levels of complaints show no indication of potential problems.

**Finding 3: Complaint Levels Involving Unnecessary Force Allegations Remained Constant.**

The analysis on all complaints (e.g. Informal and Formal complaints) involving unnecessary force allegations show that levels have remained constant, and at low levels, within the three year time period. As shown in Chart 13.0, complaints levels, when adjusted to the City population were less than 1.0 per 10,000 citizens between 2004 and 2006. The differences in the complaint levels among the three years are not sufficient to suggest that an actual increase/decrease had occurred.

The analysis on Formal complaints with unnecessary force allegations similarly show that levels remained relatively constant over the time period. As shown in Chart 13.0, Formal complaint levels ranged from .60 per 10,000 in 2004 to .56 per 10,000 citizens in 2006.

**Chart 13.0: Complaint Levels Involving Unnecessary Force Allegations per 10,000 Citizens, CY 2004 to 2006.**

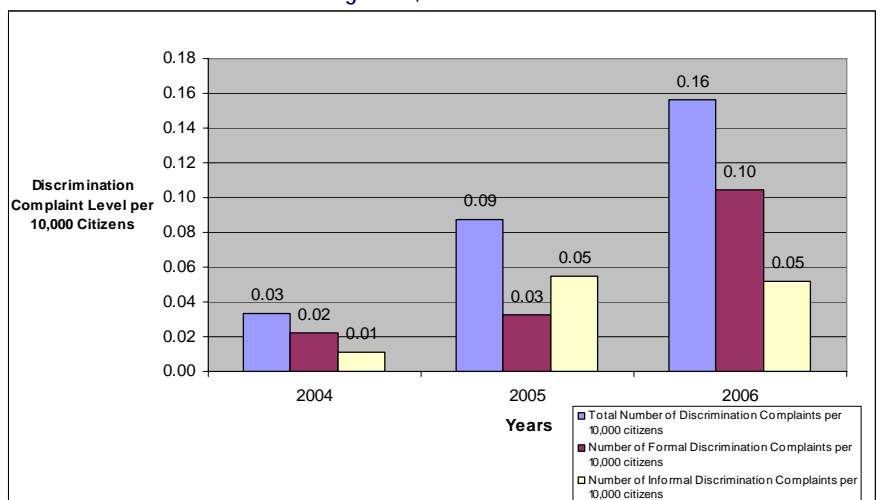


The analysis on Informal complaints with unnecessary force allegations continue to show that levels remained relatively constant over the time period. As shown in Chart 13.0, Informal complaint levels were at .06 per 10,000 in 2004 and at .11 per 10,000 citizens in 2006. The low levels of complaints suggest that a potential problem did not exist.

**Finding 4: Complaint Levels Involving Discrimination Allegations Relatively Remained Constant, but the Trend Pattern Shows Upward Movement.**

The analysis on all complaints (e.g. Informal and Formal complaints) with discrimination allegations shows a general trend upward when adjusted for city population. However, as shown in Chart 16.0, the complaints levels were low at .03 per 10,000 citizens in 2004 and .16 per 10,000 citizens in 2006. The differences in the complaint levels among the three years are not sufficient to suggest that an actual increase had occurred, but a pattern upward is present.

**Chart 16: Complaint Levels per 10,000 Citizens Involving Discrimination Allegations, CY 2004 to 2006**



The analysis on Formal complaints with discrimination allegations similarly shows low levels, but an upward trend. As shown in Chart 16.0, Formal complaint levels ranged from .02 per 10,000 in 2004 to .10 per 10,000 citizens in 2006. The variances among the complaint levels within the three year time period are not sufficient to suggest that an actual increase or decrease had occurred.

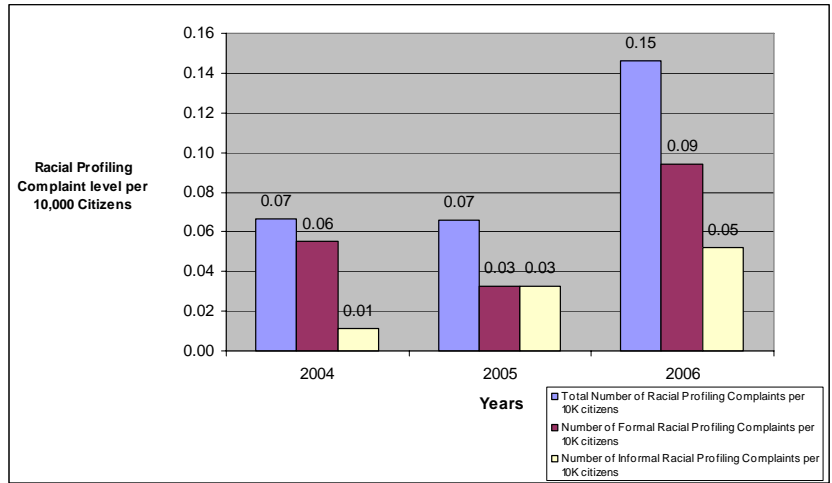
The analysis on Informal complaints with discrimination allegations shows more constant levels. As shown in Chart 16.0, Informal complaint levels were .01 per 10,000 citizens in 2004; .05 per 10,000 citizens in 2005;

and .05 per 10,000 citizens in 2006. Monitoring of the data is necessary to detect the occurrence of continued trend patterns.

**Finding 5: Racial Profiling Complaints Have Increased, but Remain at Low Levels.**

The analysis on all complaints (e.g. Informal and Formal complaints) with racial profiling allegations found the number of racial profiling complaints have increased from six in 2004 to 14 in 2006, these complaint levels, however, are extremely small and while differences can be found to be statistically significant, statistical significance says nothing about the practical significance of a difference. In other words, the analysis also shows the number of complaints received is not large enough to show the existence of a potential problem.

**Chart 19: Complaint Levels per 10,000 Citizens Involving Racial Profiling Allegations, CY 2004 to 2006**



The analysis of all complaints with racial profiling allegations when adjusted for city population shows low levels at .07 complaints per 10,000 citizens in 2004 and at .15 per complaints per 10,000 citizens in 2006, as shown in Chart 19.0.

The analysis on Formal and Informal complaints with racial profiling allegations similarly shows low levels. As shown in Chart 19.0, Formal and Informal complaint levels were less than .10 for each type of complaint during the three year time period.

Administration’s Comments on Macias Analysis

The Administration suggests that the independently recalculated data demonstrate that the findings made in the IPA Report are substantially incorrect. The data show that all levels of complaints have remained relatively stable or are considered low for the City’s population and, particularly, when compared to other law enforcement agencies (as demonstrated in the Macias IA Study).

The results of the discrimination and racial profiling are significant because the City has implemented efforts aimed at promoting outreach and transparency with the community. These efforts include community forums and outreach to discuss and identify areas in citizen complaints that need attention by the SJPD. However, discrimination and racial profiling allegations remained at very low level. The Administration, in no way, intends to discount discrimination and racial profiling allegations rather it is our desire is to demonstrate that the numbers are low. As Macias has determined, the data analysis do not suggest the presence of a potential problem, but should be monitored.

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## CONCERN 5: Public Policy Recommendations That Are Based On Misstatements and Incomplete Information To Begin A Shift To A Civilian Police Oversight Model

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The IPA Report makes the following new public policy recommendations:

1. That the Mayor and City Council:
  - Direct the City Manager to direct the SJPd to implement a complaint process which utilizes objective criteria for complaint classification in collaboration with the IPA.
  - Grant the IPA concurrent authority over the classification of complaints.
2. That the Mayor and City Council:
  - Direct the City Manager to direct the SJPd to conduct administrative investigation in all critical incidents in which an officer's use of force or any other department action results in death or serious bodily injury.
  - Mandate that the IPA review the administrative investigation in all such cases.
3. That the Mayor and City Council consider granting the IPA specific limited authority to investigate. Exercise of such authority would be limited to:
  - Investigation of community-initiated complaints which IA did not investigate;
  - Investigation of critical incidents in which any SJPd action resulted in death or serious bodily injury and the SJPd did not conduct an administrative investigation;
  - Investigations of complaints or critical incidents that are deemed by the IPA to be incomplete.

Given that the IPA Report contains misstatements at various levels which result in conclusions and public policy recommendations that are based on incomplete information, the City Council should consider whether there is sufficient basis to initiate the beginnings of a shift in oversight model and increased authority for the IPA. Particularly, the IPA Report largely bases the argument on increased authority from mishandling of "inquiries" (or overuse of this category) and overuse of the Procedural Complaint category. This section of the report further clarifies these issues.

The Administration suggests that the noted misstatements, recalculated data, and the findings in the Macias IA Study, do not warrant adoption of the IPA Report recommendations. Listed below is the Administration's response to each of the public policy recommendations.

**Recommendation 1: That the Mayor and City Council: (1) Direct the City Manager to direct the SJPd to implement a complaint process which utilizes objective criteria for complaint classification in collaboration with the IPA. (2) Grant the IPA concurrent authority over the classification of complaints.**

The IPA Report makes various comments on the SJPd practice of classifying less case into the Command Review category and more into the Procedural Complaint category. The Administration believes that the basis for Recommendation 1 is to correct this alleged condition. The IPA Report does not provide key information to thoroughly understand the IPA's newly requested authority within each category and the newly requested investigative requirements within each category.

Below is a discussion on the Administration's high-level concerns with the IPA's recommendation to develop criteria for complaint classification and concurrent authority to classify which is followed by clarification on the Command Review and Procedural Complaint categories.

### Complaint Classification and Concurrent Authority to Classify

The SJPd Duty Manual contains definitions and procedures for the contact, inquiry, and various complaint categories. The Administration believes that the current definitions, and application of them, are sound

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and objective. This is supported by the statistical data, as referenced earlier in this report, which shows that the IPA agrees with 86% of audited complaints and 95% rate of agreement with classification of complaint and allegations.

The Administration endeavors to identify areas to continuously improve service delivery and the Administration will on its own reexamine the definition for each classification, and any related criteria, to ensure that there is objectivity when applied. It is important to note that the Macias IA Study found that the SJPD needed to further refine its "Inquiry" categories and the Administration will utilize this opportunity to evaluate all classification definitions; but, the Administration believes that IPA involvement is not warranted.

As background, the reason for classifying the cases into different category types is directly related to the value of granting appropriate investigative resources. The reasons are to:

- Streamline the investigative process so that cases which do not require full investigation are resolved sooner while cases requiring more time are given appropriate time and staff resources to investigate;
- Track Formal, Informal and Procedural complaints by officers' names as part of an "Early Warning System" that identifies officers qualifying for Intervention Counseling;
- Comply with motions for discovery in criminal and civil proceedings (e.g., Pitchess Motions); and,
- Identify patterns and trends.

Additionally, there is the Intervention Counseling Program (ICP) in place to track officers with significant complaint histories for the purpose of identifying potential problems and providing guidance, through ICP, the SJPD is able to identify officers with three Formal Complaints or a combination of five Formal/Informal complaints of any other type in a 12-month period. Officers meeting these criteria are scheduled to participate in Intervention Counseling (IC). Intervention Counseling involves: (1) A review of the complaints filed against the subject officer without regard to the findings; and, (2) A meeting(s) of the subject officer with his/her supervisor and Deputy Chief as well as with the Internal Affairs Lieutenant (i.e., Command Staff). IC is not a form of discipline but an opportunity for Command Staff to informally talk to the subject officer about training or work related topics which assist with identifying issues that give rise to the complaint.

Additionally, the City Council should consider the inappropriateness of the IPA's involvement in the development of criteria for complaint classifications, since the IPA will later audit the classification of cases into these categories. As discussed earlier regarding the IPA role, it appears that there is an inherent conflict of interest that can impact audit quality in future reports, since the IPA would be involved in a management function (i.e., development of criteria for complaint classification). It should also be noted that the IPA currently has sufficient authority to classify complaints in three (3) categories:

1. **Citizen Contact:** A Citizen Contact is a type of communication that does not involve an expressed dissatisfaction with the police services provided by the San Jose Police Department or one of its members. A Citizen Contact refers to an informational type of contact from the public that can cover a broad range of issues, including a member of another police agency.
2. **Inquiry:** An inquiry refers to a case that is immediately resolved to the satisfaction of the individual which does not give rise to a complaint. Any concern that is not immediately resolved can become a complaint.
3. **Pre-Class:** Pre-Class is the classification assigned to a complaint before any investigation is conducted. This classification is utilized when the IA Unit has not yet had the opportunity to formally interview the complainant and/or obtain any investigative documents associated to the complaint. This category is commonly used by the IPA intake staff in situations where the complaint does not fall into the category of either a "Citizen Contact" or an "Inquiry." Within 30 days of the received date, IA Unit has to conduct an interview/investigation and classify the Pre-class as 1) Citizen-Initiated (Formal complaint), 2) Procedural, Policy, Command Review, Complaint Withdrawn, or 3) Inquiry.

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More importantly, regarding the matter of authorizing the IPA concurrent authority to classify complaints, the Administration is opposed to granting the IPA concurrent authority over the classification of complaints. Listed below are additional concerns:

1. This recommendation particularly focuses on the IPA's ability to influence classification of complaints in the "Pre-Class" category. This raises the issue of the IPA's ability to classify a case without the ability to investigate the nature of the complaint; therefore, if this recommendation is approved, it would also inherently grant the IPA some investigative authority in order to correctly classify complaints into appropriate categories.
2. Given that the IPA Report consolidated two separate sets of data (e.g, "Inquiry" and "Complaints"), the Administration is extremely concerned about adoption of this recommendation and believes that the IPA has not demonstrated the appropriate classification duty, nor provided compelling data, that suggest that such a recommendation is warranted.
3. The IPA Report does not address how final decision-making would be administered if there is disagreement between the IA and IPA for categorizing a complaint and a process for determining whose decision prevails.

As a final comment, under the current system, the IPA may bring concerns or issues with the classification of a case to the attention of the IA Unit Lieutenant. If concerns are not resolved, the IPA may elevate the matter to the Chief of Police and ultimately to the City Manager for final determination. As stated, in 2006, the IPA made recommendations in 18 of 346 cases involving disagreements with classification of allegations and the IPA, in seven of those cases, successfully sought reclassification. This demonstrates that there is a mechanism in place to arbitrate disagreements between the two offices and that the IPA utilizes it when deemed necessary. Given that there was agreement on the onset for 328 of the 346 cases, this also shows that the IA Unit's practice of classification in virtually all cases is appropriate (95%).

#### Command Review/Procedural Complaint Classification

As stated earlier, the IPA Report makes various comments on the SJPd practice of classifying less cases into the Command Review category and more into the Procedural Complaint category. The IPA Report does not provide key information regarding each category for a reader to thoroughly understand the IPA's authority within each category and the investigative requirements within each category. Below is a discussion on this practice.

A Command Review is the lowest level of complaint reserved for minor transgressions in a Rude Conduct or Improper Procedure allegation. In a Command Review, the subject officer and his/her immediate supervisor meet with the IA commander. During this meeting, the subject officer is advised that s/he is a subject of a complaint. **While a complaint has been filed against the officer, it does not imply that the allegation did occur. The officer is not required to provide a statement, nor are questions asked. There is no investigation.** Once a **Command Review** is completed, the **IPA does not have the authority to challenge the classification.** A Command Review is where the individual wishes to file a complaint where IA determines the allegation to be minor in nature. In contrast, in the "Inquiry" category, the individual does not wish to file a complaint. The IPA stated that many of the inquiries should have been classified as Command Reviews; however, based on the above definition, the "Command Review" category is utilized when an individual wants to file a complaint and the "Inquiry" category is utilized when an individual does not; there is no correlation between these two categories.

A **Procedural Complaint** requires a more extensive investigation and documentation than a Command Review. In contrast to the "Command Review" category, **the IPA has the authority to challenge the classification of Procedural complaints.** The IA Unit has adopted a more stringent classification process and complaints are classified more frequently as either Procedural, or Citizen-Initiated. The Administration does not understand why the IPA would argue for more Command Reviews classifications that would actually decrease IPA authority and/or accountability with respect to challenging classifications.

As a final comment, based on the Macias IA Study, the above SJPd practice is consistent with other law enforcement and oversight agencies nationwide.

**Recommendation 2: That the Mayor and City Council: (1) Direct the City Manager to direct the SJPD to conduct administrative investigation in all critical incidents in which an officer's use of force or any other department action results in death or serious bodily injury. (2) Mandate that the IPA review the administrative investigation in all such cases.**

It is important to note first that the "critical incidents" that the IPA makes reference to in the IPA Report are in actuality a homicide criminal investigation and a traffic accident investigation. The IPA has misstated the cases as "critical incidents" to support the public policy recommendation. The "critical incidents" are in actuality criminal investigations, in which the Santa Clara County District Attorney's Office determines whether or not to file charges in criminal cases. The Santa Clara County District Attorney's Office provides appropriate and additional review in such cases.

Recommendation 2 contains an inherent suggestion that there is a lack of oversight by SJPD relative to use of force cases resulting in death or serious injury. Quite the contrary, in an officer-involved shooting or in-custody death case, there are several layers of investigation and review such as review by the Department's Homicide Unit, Internal Affairs Unit, and the District Attorney's Office. Moreover, in officer-involved shootings that result in death, there is an automatic review by the County's Grand Jury. The Police Department followed the appropriate procedures in these cases.

The Department also currently has comprehensive guidelines in place for addressing administrative reviews of use of force incidents. These guidelines are articulated in SJPD Duty Manual, Section L 2605 and are generally summarized as follows:

**Table 6: Summary of Administrative Review Guidelines**

<b>SUMMARY OF THE ADMINISTRATIVE REVIEW GUIDELINES (SJPD DUTY MANUAL, SECTION L 2605)</b>	
1.	A supervisor will personally respond to evaluate and actively participate in the investigation of any incident that results in an injury or the appearance of an injury to an officer or other person as a result of an enforcement action. A supervisor will respond to evaluate and actively participate in the investigation of any incident where an officer or other person requires first aid as a result of an enforcement action. A complaint of pain only will not require a supervisor response. The collection and preservation of physical evidence shall be one primary objective of the immediate supervisor.
2.	In all cases, the supervisor will approve the "Crime Report" (Form 200-2) and/or Supplementary Crime Report" (Form 200-3a) prepared by the officer(s) documenting the use of force. When necessary, the supervisor will investigate the circumstances and document the facts of the incident; for example, photographs, video taping, tape-recorded statements from witnesses and the gathering of other relevant evidence or statements. If appropriate, the supervisor may submit a Supplemental Crime Report (Form 200-03) documenting his/her supervisory actions. The supervisor may, after a review of the circumstances, forward a copy of all relevant reports to the Internal Affairs Unit.
3.	In all cases of a reportable use of force, the supervisor will ensure that the officer using force will complete a "Force Response Report Form" (Form FRS-001). The supervisor will review and sign off the form after completing the final portion of the Force Response Report titled "Supervisor Review and Summary." The supervisor will read and review all reports associated with the incident for completeness as detailed in Duty Manual section R 1802, Authority and Responsibility of Supervisors. The supervisor will then approve the reports only if they are properly completed.
4.	In addition, supervisors are required to respond personally to evaluate and actively participate in the investigation of any incident that results in an injury or the appearance of an injury to an officer or other person as a result of an enforcement action. A supervisor will respond to evaluate and actively participate in the investigation of any incident where an officer or other person requires first aid as a result of an enforcement action. When appropriate, the supervisor may forward all relevant reports to the Internal Affairs Unit.

In a use of force incident, an officer is required to document the use of force in a criminal report. In addition, a separate Force Response Report form must be completed by the officer, which is then

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reviewed and approved by a supervisor. The criminal report and all other supplemental reports must also be reviewed and approved by a supervisor. Force Response Reports are submitted to the Operation Support Services Division (OSSD). These forms are attached to the criminal reports when submitted. OSSD is responsible for routing Force Response Reports to the Research and Development Unit, where staff will enter the data into a database for reporting on Department-wide use of force.

Further, SJPD currently has a unit that provides for additional internal quality control over all of the Department's policies and procedures. The Performance Audit Detail (PAD) receives direction from the Chief's Office to conduct audits on a variety of different topics. PAD currently has the assignment to conduct an in-depth analysis of all reportable use of force cases for the year 2006.

As demonstrated above, the SJPD has the appropriate guidelines. Below are additional concerns with this recommendation:

1. Approval of this recommendation would grant the IPA investigative review authority which would be later subject to its own audit, which is inappropriate for reasons already outlined in this report.
2. Given the above guidelines, there is no evidence that the IPA's review of administrative investigations result in a more effective, thorough, objective and fair review.
3. Since there is no SJPD definition for "critical incidents," and it can be broadly interpreted, the IPA would likewise be given overly broad authority. The authority to review the complete administrative investigation, as recommended in the IPA Report, would result in access to investigations that are not initiated by a complainant and is, therefore, overly broad in nature.
4. Of particular concern is that the IPA fails to list the criteria that would be used for selecting the cases she would become involved with, which leads to an inherently broad span of control. The IPA recommends "Mandate that the IPA review the administrative investigation in all such cases," but there is no criterion or limit placed on the recommendation.

Misstatements contained in the report paint an incorrect picture of investigation of criminal cases for which the IPA bases its overly broad recommendation.

**Recommendation 3: That the Mayor and City Council consider granting the IPA specific limited authority to investigate. Exercise of such authority would be limited to: (1) Investigation of community-initiated complaints which IA did not investigate; (2) Investigation of critical incidents in which any SJPD action resulted in death or serious bodily injury and the SJPD did not conduct an administrative investigation; (3) Investigations of complaints or critical incidents that are deemed by the IPA to be incomplete.**

As previously stated, the IPA Report's argument relies on the premise that the SJPD has mishandled the "Inquiry" category by inappropriately overusing it for "Complaint" cases. The IPA follows by suggesting that increased authority to investigate will remedy this condition. It is important to note that granting IPA investigative authority begins the shift toward Civilian Oversight Model or Parallel Investigation System. As explained earlier, these models contain investigative authorities. The current Auditing System model does not afford investigative authority to a police auditor.

By the various misstatements in the IPA Report, combined with the subjective action to combine the "Inquiry" category data with the "Complaint" category data, the Administration suggests that the IPA has not demonstrated the appropriate duty to obtain limited authority to investigate.

Following is a specific discussion of the Administration's response to the three provisions contained in Recommendation 3.

Provision 1: The IPA's first provision provides authority to investigate "community-initiated complaints" which the IA did not investigate. All "Complaints," whether citizen-initiated or department-initiated, are investigated by the SJPD, and there is no "community-initiated" complaint category in the SJPD Duty Manual nor does the IPA provide a definition for this newly presented category. The recommendation includes an inherent inaccuracy in that it suggests that the SJPD does not investigate some complaints,

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while the SJPD has articulated earlier in this report how it assigns resources based on the nature of complaint and the correlating rates of agreement between the SJPD and IPA with classification.

Further, the absence of an IPA definition for “community-initiated” complaints results in ambiguity for IPA authority if this recommendation is adopted by the City Council. Despite the fact that the “Inquiry” category is not a “Complaint,” the Administration would like to provide comment if the IPA is referring to the “Inquiry” category in Recommendation 3 as “community-initiated.” If this is the matter for which the IPA refers, it should be noted that the IPA currently has the authority to audit the “Inquiry” category. Note that the Administration has already stated that, as of April 2007, SJPD has implemented a process to track police officer names in the “Inquiry” category which will be the subject of a six month pilot program for purpose of identifying “value-added” and cost.

Provision 2: The IPA Report also does not sufficiently present data on the extent that weaknesses exist in the SJPD’s investigation, specifically critical incidents. As stated previously, the “critical incidents” that the IPA makes reference to in the IPA Report are in actuality a homicide criminal investigation and a traffic accident investigation. The IPA has misstated the cases as “critical incidents” as a measure to support the public policy recommendation. The “critical incidents” that the IPA makes reference to in the IPA Report are in actuality criminal investigations, in which the Santa Clara County District Attorney’s Office determines whether or not to file charges in criminal cases. The Santa Clara County District Attorney’s Office provides appropriate and additional review in such cases.

The “critical incidents” category is undefined and overly broad. “Critical Incidents” can be in-custody deaths, use of force, hostage situations, extensive pursuit, extensive investigation for major crimes, etc. The IPA’s requested authority is not limited to certain critical incidents scenarios and, therefore, as written would result in an over-broad level of investigative authority. The City Council (and SJPD and the public) should clearly understand the limits of the IPA’s authority before it considers granting them.

Provision 3: While the IPA recommends “specific limited authority” for all three provisions of this recommendation, the Administration is concerned that the IPA has not put forward necessary criteria to limit the proposed specific limited authority for critical incidents “that are deemed by the IPA to be incomplete.” The above recommendation would result in IPA authority that is overly broad when there is the absence of clear limits for investigative authority. Without criteria or clear limits, the ability to “deem” an investigation as incomplete would be based on a subjective finding by the IPA. This is a cause for concern for the Administration.

Of additional concern, is that the IPA Report does not address how final decision-making with respect to investigative conclusions would be administered if there is disagreement between the IA and IPA and a process for determining whose decision prevails. Before the City Council considers this significant shift in the IPA authority, the City Council, and SJPD, should clearly understand the life-cycle of the investigative authority and the disposition if disagreement arises. There should be no ambiguity or uncertainty with authorities, roles, procedures, and outcome when beginning to implement a shift toward a new oversight model.

### Closing Comments

The IPA Report largely bases the argument on increased authority from the SJPD’s mishandling of “inquiries” (or overuse of this category) and overuse of the Procedural Complaint category. The above response to each public policy recommendation directly responds to the IPA’s fundamental argument for advancing a paradigm shift and increased authority. Additionally, the Administration suggests that the noted misstatements, recalculated data, and the findings in the Macias IA Study do not warrant adoption of the IPA Report recommendations.

When the above are taken together (e.g., incompatible role for IPA, misstatements, creation of new “Inquiry” category definition, inclusion of “Inquiry” category into “Complaint” statistical analysis, and improper statistical analysis), the distorted inaccuracies create an impression that the SJPD citizen complaint process and IA Unit are not effective; and, therefore, the IPA requires more authority to correct

this condition. This is not the case when the correct definitions are applied along with the appropriate statistical analysis. These inaccuracies are not the foundation for the City Council to consider a paradigm shift in the City's police oversight model.

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## REPORT 2: SUMMARY REPORT OF FORUMS REGARDING THE POLICE IN SAN JOSE & SUPPLEMENTAL HRC RECOMMENDATIONS

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On April 20, 2007, the HRC and IPA issued a report titled "*Summary Report of Forums Regarding the Police in San Jose*" (HRC/IPA Report) that summarized testimony offered at two IPA and HRC co-sponsored community forums ("The Police in San Jose: What's working, what isn't and what can be improved?") on November 30, 2006 and January 18, 2007 (Tab 3). Prior to the issuance of the summary report by the HRC and IPA, the Administration provided a response on March 15, 2007 that provided initial comments on the City's response to the two forums (Tab 3). The HRC/IPA Report provided detail of comments made by attendees during the two community forums on police conduct and operations.

The HRC/IPA Report recommended the following:

- (A) That the City Council request the City Manager to direct the SJPD to do the following:
  - (1) Prioritize and implement officer training to (a) reinforce existing San Jose Police Department policies regarding respectful treatment of the public; (b) improve communication between police officers and the public; and, (c) increase racial, ethnic and cultural sensitivity among police officers.
  - (2) Report to the Council on a semi-annual basis for a two year period starting in September of 2007 on the status of the above recommendation.
- (B) Request that Council review and consider community concerns about police accountability raised during the community forums, in IPA reports, and in the 2005-2006 Santa Clara County Grand Jury Report; take measures to strengthen the City's police oversight process; and, consider the call for increased civilian oversight in San Jose.

The Administration believes it is important for the public to have avenues to voice concerns or questions about the services the City and its staff provides, and appreciates the IPA and HRC's efforts and hard work in organizing the two community forums. The Administration and the SJPD take any citizen complaint seriously and, especially, those that allege serious police officer misconduct. For this reason, the Chief of Police attended both public forums to invite the public to directly file any concern or complaint with the IPA or IA Unit. The invitation was extended in Spanish and English. Only one complaint has been filed arising out of these public forums.

Since March 2007, the Administration has had more time to consider the various issues raised by the HRC/IPA Report. The initial Administration response focused on responding to the issues raised during the sessions, such as:

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|---|---|
| (1) Communication, Respect and Dignity;   | (6) Cinco de Mayo;                          |
| (2) Racial Profiling;                     | (7) Downtown San Jose;                      |
| (3) Issues with the Complaint Process and | (8) Positive Comments about the Police;     |
| Calls for a Police Review Board;          | (9) Lack of Police Service for Alviso; and, |
| (4) TASER;                                | Response to the HRC's                       |
| (5) Excessive Force;                      | recommendations.                            |

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The report reinforced the Administration's values regarding community input on city services, particularly police services. In many instances throughout the initial response, the Administration acknowledged that its values rest on respect and dignity as crucial components toward the delivery of services. The initial response also highlights the Administration's high value on workforce training and community outreach and includes thorough discussion on training opportunities and community interactions that have strengthened service delivery effectiveness and community relationships.

While the values expressed in the March response are accurate, the Administration would like to highlight some concerns that the Administration did not surface at that time. First, the HRC/IPA Report represents that approximately 450 individuals attended the forums (and over 90 individuals offered live or written testimony). It is worth noting that this number of attendees represents attendees that were: participants in both forums; students who attended the forums as part of a school assignment; media representatives; City staff; and, officials. While this is rather insignificant at first glance, it becomes important when the number of attendees is used to make community findings and suggest that it may be representative of community perspective.

Second, the HRC/IPA Report cites testimony of incidents regarding police conduct. The testimony did not provide clarification on when the incidents took place, the jurisdictional law enforcement agency, and any other circumstances that would truly inform the status of SJPD quality of service. At the April 25, 2007 Rules Committee, Mayor Reed led a discussion and asked the IPA to seek clarification of the testimony so that the City Council could be appraised of the specific incidents concerning the San Jose Police Department and time frame for which these alleged incidents took place. It was observed at the forums, that some alleged incidents were current and related to the SJPD, while others had exceeded their statute of limitation (e.g., they were many years ago) and/or belonging to other law enforcement agencies. Clarification from the IPA of the nature of the incidents would be very helpful toward accurately characterizing the nature of the testimony as it relates specifically to the SJPD and as the issues are considered by the City Council. As of the writing of this report, this information is still outstanding.

Third, the HRC/IPA Report cites that the issues expressed at the community forums "...have been raised in the past and mirror concerns discussed in the 2005-2006 Santa Clara County Grand Jury report *"Racial Profiling by San Jose Police Department - Perception vs Reality"* (Tab 4). The IPA/HRC Report does not mention that the Grand Jury Report, dated on May 1, 2006, made a finding that although there were concerns raised by some in the community that some officers were intimidating them, the Grand Jury stated, "...there is no formal racial profiling program sanctioned by the SJPD." Similarly, on February 18, 2007, during the time that the community forum findings were being circulated, the San Jose Mercury News underscored the same point when it published an article that found that after more than 100 hours spent by San Jose Mercury News staff on the streets in Downtown San Jose, they did not witness racial profiling (Tab 5). Specifically, the San Jose Mercury notes "To move beyond the rhetoric, *Mercury News* reporters fanned out across the downtown on selected weekends during a seven-month period, delving into the city's nightlife from the perspectives of the policy, clubs, and customers. In more than 100 hours on the streets, they did not witness racial profiling."<sup>7</sup>

The HRC/IPA Report recommends that "...Council request the City Manager to direct the SJPD to prioritize and implement officer training to (a) reinforce existing San Jose Police Department policies regarding respectful treatment of the public; (b) improve communication between police officers and the public; and, (c) increase racial, ethnic and cultural sensitivity among police officers."

The HRC/IPA Report recommendation does not acknowledge that the SJPD prioritizes officer training in these areas and that these issues are highly valued by the Chief of Police. The Administration and

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<sup>7</sup> James Hohmann, Rodney Foo, Marian Liu and Leslie Griffy, "Balancing Act," San Jose Mercury News February 18, 2007: A1

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Police Department believe that an officer's responsibility to communicate and treat residents with respect and dignity is a crucial component of a police officer's job. For this reason, the SJPD is continuously developing and implementing training for officers on various topics (e.g., Crisis Intervention Training (CIT), Ethics Training, and Community Relations) to help them better serve and meet the expectations and needs of the community. In 2004, for example, the SJPD created a series of training videos called "Community in San Jose" to help officers better understand the different communities in the City and how to communicate more effectively with our diverse residents. The training videos are presented during daily briefings to all Patrol Division officers. This two-pronged approach of outreach provides training to teach officers about the members of the various cultures with whom they might interact, and it also serves as an outreach tool to the various members of the community who volunteer their input regarding their beliefs and culture.

SJPD's unique and comprehensive approach to diversity training has resulted in over 70 requests from other law enforcement agencies for copies of these videos for use in training cultural diversity to their personnel. The SJPD Video Unit has also received three prestigious awards for this work: The Digital Video Award presented by DV Magazine; a "Communicator Award" presented by a private TV production group; and, the 2006 "Film Video - Government Relations Telly Award," which honors local, regional and cable TV productions. Future video productions include training videos about the Eastern European and gay/lesbian cultures.

Also, to ensure that new officers understand the SJPD's policies and philosophy in regards to treating residents with respect and dignity, Chief Davis teaches an eight-hour Ethics Course at the San Jose Police Academy, a course he has personally taught for over 10 years. Chief Davis is one of few police chiefs of a major American city who continues to teach/training at a police agency level. SJPD is also in the process of developing a special series of classes that will afford residents the opportunity to experience some of the training modules that SJPD recruits complete, learn about SJPD policies and procedures as well as the SJPD organization. Human Rights Commissioners will be invited and given priority to participate in the training.

Lastly, the HRC/IPA Report did not note that the Police Chief opened and closed each session with commentary about the willingness and desire of the SJPD to hear of police misconduct. The Police Chief invited each individual to follow-up with the IPA and/or IA Unit to file a complaint. It is important to note, that despite the various invitations on behalf of the Police Chief, and extensive outreach conducted by the HRC and IPA, only one complaint has been filed with the SJPD of alleged police misconduct.

#### HRC Supplemental Recommendations

On June 7, 2007, the Human Rights Commission issued a supplemental report with the following recommendations:

- **Recommendation 1:** All officers will carry business cards and will be required to give them out on request, for any stop or arrest.
- **Recommendation 2:** Police will adopt a procedure for connecting non-English-speaking persons with the AT&T language services available through the San Jose Police Department dispatch.
- **Recommendation 3:** Sensitivity and cultural awareness training will be required of all members of the Police Department and implemented in a cascading manner where each level is responsible for participating in the training of the officers and their immediate subordinate level.

The Administration values the work and contributions of the Human Rights Commission. The recent interactions between the HRC and SJPD have been very productive toward understanding concerns of mutual interest and police operations. For example, for the Cinco de Mayo holiday, the Chief of Police invited the Human Rights Commission members to participate in "ride-alongs" in the Downtown

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and East Side areas. Four Commissioners had the opportunity to experience first-hand Cinco de Mayo activities and commended the SJPD for its professionalism and excellent service delivery during the weekend-long celebrations. Some Commissioners further expressed that everything they witnessed was of the highest standards and in complete contradiction to reports the Commission has received from community organizations on alleged police abuse and misconduct. These acknowledgements were confirmed by email and escalated to receipt at the Mayor/City Council level (Tab 6).

The opportunity for the HRC and SJPD to interact and partner during the Cinco de Mayo holiday has proven to be an effective method to increase awareness for both SJPD and HRC on issues of mutual interest. The Administration welcomes a dialogue with the HRC on additional opportunities to continue these interactions. In response to the above recommendations, the Administration would like to suggest the following clarifications:

**Recommendation 1: All officers will carry business cards and will be required to give them out on request, for any stop or arrest.**

**Response:** In 1998, the IPA recommended, and the SJPD adopted the recommendation to “Establish a procedure to require officers to identify themselves to civilians in writing.” Current Department procedure outlined in the SJPD Duty Manual requires that officers identify themselves in writing via a business card upon request. Furthermore, an officer’s lack of a business card at the time of the request, does not excuse the officer from identifying him/herself and other alternative ways are used to provide the officer’s information such as using the SJPD Incident Card (“orange card”). Currently, staff has been exploring the printing cost to ensure all field officers have business cards and intends to implement this recommendation next fiscal year.

**Recommendation 2: Police will adopt a procedure for connecting non-English-speaking persons with the AT&T language services available through the San Jose Police Department dispatch.**

**Response:** The SJPD currently has 267 sworn-officers with bilingual skills; 194 of them speak either Spanish or Vietnamese. The SJPD also has an ongoing contract with “AT&T Language Line Services” to provide emergency language translations over the telephone through its Communications Dispatch Center. This service is available to any officer during an emergency field contact or investigation as well for pre-planned contacts such as individual interviews in a complaint against an officer.

The way a police officer handles translation needs during patrol field contacts (e.g., calls for service, issuing tickets, traffic/pedestrian stops and consensual contacts) or preplanned investigations (e.g., interviews, interrogations, Miranda warnings) depends on the seriousness of the investigation and the evidentiary value of the translation. In low level of importance contacts or emergency situations where information needs to be obtained/dispensed, the officer may utilize non-police individuals in the immediate context of the call to translate. If the officer knows a bilingual officer working the immediate area, the officer may request that language-skilled officer to respond for assistance. If no officer is available in the immediate area, a request for language assistance can be made to the Communications Dispatch Center to search citywide for an on-duty bilingual officer. For investigations or contacts that can be preplanned, the officer usually arranges for another sworn officer to assist. Non-sworn personnel are sometimes utilized in translations for minor or limited emergency contacts. Outreach organizations such as “Next Door” and “Victim-Witness Assistance” can also provide language assistance to SJPD on occasion if personnel with the desired language skills are available.

**Recommendation 3: Sensitivity and cultural awareness training will be required of all members of the Police Department and implemented in a cascading manner where each level is responsible for participating in the training of the officers and their immediate subordinate level.**

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**Response:** See above for information on SJPD training efforts.

The Administration suggests that the public policy recommendations put forward by the HRC/IPA Report and by the HRC supplemental recommendations represent opportunities to identify partnership/interactions to increase awareness of areas of mutual interest and that these discussions should continue prior to any formal action taken by the City Council.

Additionally, the input provided at the two community forums, which is neither statistically significant nor validated, is an incomplete foundation to base public policy decision-making or to characterize public opinion. While these issues are extremely sensitive and complex, in no way does the Administration desire to minimize the expressed concerns, rather the Administration desires to have the public and City Council formulate public policy on solid data and accurate circumstances.

To determine public opinion on these very complex, sensitive matters, the Administration would request that a statistically significant public opinion poll be conducted to measure and evaluate:

- General community attitude toward the SJPD.
- General community evaluation of the services provided by the SJPD.
- General community perception of the most important issues facing the Police Department (e.g., racial profiling by the SJPD; communications skills, excessive use of force).
- General community knowledge of the Citizen Complaint Process.

The survey would also solicit suggestions for improving police services. Upon completion, the input gathered from the two forums, IPA's clarification/validation of circumstances provided in the testimony, and the statistically significant public opinion poll can be evaluated collectively to determine themes/trends that are based on more complete public opinion determination methods.

Last, and most importantly, the SJPD will reinstitute the Citizen's Police Academy, and absorb the program for next fiscal year in its proposed FY 2007-2008 operating budget, to work to educate and outreach to the public about police operations and procedures. HRC members will be granted priority for participation in the Academy. Upon the first year, the SJPD will provide the City Council with a review of the program so that it can determine whether it would like to fund this one-year pilot program permanently.

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## REPORT 3 : SAN JOSE POLICE DEPARTMENT 2006 ANNUAL FORCE RESPONSE REPORT

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In the spring of 2004, the SJPD started issuing a TASER device to every patrol officer and immediately right after began conducting a self-initiated voluntary study to assess the effective deployment of the device as well as training needs. The first voluntary assessment covered May 1 through October 31, 2004 (the time the majority of the TASER devices were issued). A second *TASER Usage Study* was subsequently released, which combined statistics on TASER usage from the initial report with an additional six-month period (November 1, 2004 through April 30, 2005), thus providing statistics for the entire first year of the SJPD's use of TASER devices.

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Since the initial release of the TASER reports, the Department recognized the need to expand the TASER study to also include information on all use of force data to quantify and qualify the force being used by officers. In August 2005, the SJPD voluntarily designed a "Force Response Report," to track not only TASER use but all other reportable uses of force by police officers.

On March 15, 2007, the SJPD issued the first Annual Force Response Report (AFRR). (Tab 7). The AFRR describes the background leading to the collection of such data and issuance of the report. It is important to note that the report specifically speaks to all reportable force used by the SJPD during the period of January 1, 2006 to December 31, 2006 and that this is not a "police officer use of force" report as commonly referred.

The AFRR provides descriptive highlights of activity data and draws few conclusions, such as:

- In 2006, the SJPD received 413,731 calls for service.
- Of the 413,731 calls for service, reportable force was used in 1,239 incidents (0.3%) to take uncooperative suspects into custody.
- Of the 1,239 use of force incidents, there were 1,517 officer force response reports. Note: In cases where reportable force was used by more than one officer during a single incident; or more than one suspect had forced used on him/her during a single incident, there would be more than one force response report for a single incident.

The AFRR reflects the first year of comprehensive data collection of this type and, therefore, the ability to provide comparative, multi-year data analysis to extract performance themes/trends is not feasible. Additionally, the Administration would like to caution a reader that the statistical analysis for the data, as presented in the report, is incomplete.

In order to fully understand the implications of the data and make conclusions, a more rigorous statistical data analysis is needed. The statistical analysis would need to be based on valid methods that determine the relationship, if any, between force response, geographic location of force response, race/ethnicity of individuals involved, the type of response used based on the day and time of the week, and any other factors that would result in a comprehensive analysis.<sup>8</sup> Then the overall percentage change from the base (once multi-year data are available) year would have to be evaluated to determine the statistical significance of the change. This analysis will help determine whether a statistically significant increase has occurred related to police officer force response or not, and if there is cause for concern. Additionally, the data would need to be normalized against the trend data for population changes, total calls for police service, and total sworn police officers.

The required statistical analysis is complex and requires a third party to perform such analysis. The analysis, however, would provide an accurate picture of data for which the Administration could initiate performance improvements, if any, and the City Council could base public policy decision-making. For these reasons, the AFRR is not a report for which to draw conclusions.

It should be noted, however, that a number of law enforcement agencies nationwide have issued TASER devices to their patrol officers. A sampling of research conducted and available for review by law enforcement agencies include:

- TASER Report: Madison Wisconsin Police Department; 2005
- Michigan Municipal Risk Management Authority Law Enforcement Advisory Committee, Less Lethal Weapons-Model Policy and Procedures for Public; Summer 2005
- How TASERS are Used by the Cincinnati PD; Cincinnati Police Department

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<sup>8</sup> Analysis of the relationship between (1) the type of response used and race and age of individuals involved; and, (2) correlation between the type of injury incurred with the type of force response used.

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- TASER Task Force Medical Findings Transcripts Orange County Sheriff's Office Florida; July 28, 2005
  - Wisconsin Department of Justice Law Enforcement Standards Board Advisory Committee Recommendations for Training for Employment of an Electricomuscular Incapacitation Device, June 7, 2005

Additionally, the California Police Chiefs Association (CPCA) conducted a statewide survey in 2005. Of the 308 state agencies who responded to this survey, 223 (72%) authorize the TASER as a less lethal form of force.<sup>9</sup> Of the 223 agencies that allow the use of the TASER, the survey found that a total of approximately 30,374 police officers who either carry or have direct access to the TASER device. According to the 2003 FBI statistics, in California, there are roughly 38,000 municipal police officers represented by the 331 municipal police chiefs in CPCA.<sup>10</sup>

In the 2005 survey, the last survey question was one of the most telling: *"In your opinion, since the implementation of your TASER program, how many times would lethal force have been necessary to neutralize a suspect if TASER's had not been available?"* The question-elicited responses from many of the CPCA members who believed that at least 402 times when the TASER was deployed, it saved the officer from using a greater degree of force including deadly force.<sup>11</sup>

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## REPORT 4: SAN JOSE INTERNAL AFFAIRS PEER CITY REVIEW STUDY

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Included in the materials submitted for this Special City Council Meeting is the San Jose Internal Affairs Peer Review Study completed by Macias Consulting Group (Macias IA Study). This report was initiated at the August 15, 2006 Council meeting, when the SJPD was directed to prepare a final report (that was in collaboration with the IPA) that studied similar large city police department Internal Affairs (IA) and audit functions. The City Council requested the SJPD to assess:

- How SJPD and other law enforcement agencies define "Inquiries" and complaints, including how the classification process is administered,
- The investigation standards used by SJPD and other law enforcement agencies in processing procedural complaints, especially whether the subject officer is interviewed;
- How other agencies utilize the civilian oversight role in in-custody death investigation and officer-involved shooting (OIS) cases; and
- How other selected law enforcement agencies address the issue of racial profiling. This study would aid in identifying options that would enhance customer complaint handling.

The Administration worked with the IPA to develop the survey questions and select cities to be surveyed. The SJPD's Research & Development and Internal Affairs Units administered the process to collect survey responses. When these two milestones were complete, the City Manager's Office led discussions with the SJPD regarding the final report preparation and implications for SJPD issuing the report. The Administration recognizes the high value placed on, along with importance of, this requested report and desired to eliminate any perceived or real conflicts of interest that may arise when an agency issues a report on itself as it compares to other agencies. The Administration continued its obligation to coordinate with the IPA by ensuring that the IPA received an advanced

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<sup>9</sup> The statewide survey had a 93% response rate.

<sup>10</sup> TASER Survey,; California Police Chiefs Association, May 1, 2005.

<sup>11</sup> Ibid.

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draft of the IA Study and an approximately 10 day period to communicate concerns, edits, and/or ask questions of the report.

In order to eliminate any perception of conflict of interest and obtain an independent analysis of the SJPD's Internal Affairs Unit, the Administration elected to consult with Macias Consulting Group. This decision was made to obtain independent authorship and analysis to ensure that any conflicts of interests on behalf of the SJPD or IPA would not be integrated into the final report and that the issuance of this report could withstand any potential criticism regarding its independence. The report issued by Macias Consulting Group accomplishes these concerns.

While the Administration recognizes that the final preparation of the report is slightly different from what Council originally directed, it should be noted that having an independent, highly-regarded consulting/auditing firm conduct this study results in a report that is without conflict of interests and, in the end, yields a better quality document for the City Council to base its decision-making processes.

### Macias IA Study Findings

The Administration has reviewed the Macias IA Study and considers it as a fair and an accurate representation of the day-to-day operations of the SJPD IA Unit. The report accurately reflects the information collected by the SJPD during the course of the survey collection phase. The Administration also believes that a third party assessment of the SJPD and IA Unit procedures, as compared to other law enforcement agencies, is helpful in assessing public policy recommendations and next steps.

It is important to note some key findings the Macias IA Study revealed. The findings showed that SJPD fared favorably when compared to other law enforcement agencies and that other independent studies found serious problems with the citizen complaint oversight model. Given these significant independent findings, it appears that increased authority granted to the IPA is unwarranted at this time, either as increased audit, administrative, and/or investigative authority.

Key findings of the study regarding SJPD include:

- SJPD's citizen complaint handling procedures met the best professional practices recommended by the Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA).
- The accuracy rate reported previously by the IPA suggests that SJPD is successful at correctly classifying complaints and based on the information collected, no barriers to the acceptance of Inquiries or complaints were identified among most of the peer law enforcement agencies.
- SJPD's effectiveness at citizen complaint handling, in terms of number of days to close a complaint, ranks mid-range (110 days) in comparison to other law enforcement agencies, which range from 30 to 198 days. Separately, the Administration calculated the average number of days to close a complaint, for agencies included in the comparative analysis, and found that the averaged equaled 125.75 days, SJPD is much better than the average.
- Complaints received by SJPD have remained generally stable at 2.75 complaints for every 10,000 in 2004; 2.48 complaints for every 10,000 in 2005 and 2.56 complaints for every 10,000 citizens in 2006.
- SJPD ranked third among the nine law enforcement agencies at about .17 complaints per officer. The peer city benchmark was .42, SJPD is 60% better than the peer city benchmark.
- In other cities with citizen complaint processes, it is not clear whether independent civilian oversight agencies have a significant impact on the citizen complaint process. Independent studies available for the two agencies with civilian external monitors cited serious problems with citizen complaint processing.
- SJPD is similar to many other law enforcement agencies in its policy prohibiting racial profiling and one of the few that provides the greatest level of transparency.

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## Macias IA Study Considerations

Based on the results of the Macias IA Study, Macias has identified items for the Administration and/or City Council to consider that it believes would result in greater efficiencies and effectiveness of the SJPD's operations. The items for consideration as included in the Macias IA Study are as follows:

- **Consideration 1:** Eliminating the collection of disputes, inquiries, or other complaints pertaining to traffic violations until the matter is addressed by traffic court.
- **Consideration 2:** Establishing policies on the types of "Inquiries" that will be formally tracked and captured.
- **Consideration 3:** Changing the name of the "Inquiries" category to "Non-Complaints".
- **Consideration 4:** Establishing policies that state that "Inquiries" are not considered complaints, but continue to require the reporting on "Inquiries" by the IPA.
- **Consideration 5:** Train SJPD or City employees to mediate complaints.
- **Consideration 6:** Continue to support the IPA's role in the auditing of IA activities regarding the citizen complaint process.
- **Consideration 7:** Require an independent and annual evaluation of key performance measures of the SJPD citizen complaint process that were included in this study. This evaluation could be performed by the IPA or other analysts in other City departments.

Below is a discussion of the considerations and the Administration's response to each:

### **Consideration 1: Eliminating the collection of disputes, inquiries, or other complaints pertaining to traffic violations until the matter is addressed by traffic court.**

**Response:** The SJPD agrees that implementation of this suggestion would result in the SJPD adopting practices that are more uniform with other law enforcement agencies and that would better focus the limited resources of the IA Unit. This consideration would result in more consistent practices for the SJPD with what other cities are doing nationwide. This consideration would reduce the number of "Inquiries" and would appropriately have traffic disputes resolved in Traffic Court. The number of "Inquiries" would be more accurately reflected of issues that are relevant to IA Unit functions and would serve a better purpose for the IPA annual reports.

Currently, the IA/IPA shared database does not have the capabilities to track separately traffic related inquiries. Such information would need to be manually extracted by reviewing each individual case summary, a labor intensive task. The IA conducted such review with the over 200 Inquiry cases filed in 2006 and found that 13% of the cases, or 28 cases, were traffic related cases.

The Administration believes that any effort to reduce the workload to allow the IA Unit to better focus its resources on more relevant items is a good step toward improved services.

### **Consideration 2: Establishing policies on the types of "Inquiries" that will be formally tracked and captured.**

**Response:** The Administration agrees with this consideration. The SJPD would like to develop and conduct a six-month pilot evaluation program on "Inquiries" in an effort to establish a criteria and/or policy for formal tracking of types of "inquiries."

The "Inquiry" category is broadly defined and the types of "Inquiries" at this time are not captured sufficiently to extract trends/themes. Capturing this data would allow for a more accurate understanding of the nature of the "inquiries" and would serve a better purpose for the IPA's annual reports.

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The Administration would like to reinforce that the reasons for classifying the cases into different category types is directly related to the value of granting appropriate investigative resources accordingly, for example:

- Streamline the investigative process so that cases which do not require full investigation are resolved sooner while cases requiring more time are given appropriate time and staff resources to investigate;
- Track Formal, Informal and Procedural complaints by officers' names as part of an "Early Warning System" that identifies officers qualifying for Intervention Counseling;
- Comply with motions for discovery in criminal and civil proceedings (e.g., Pitchess Motions); and,
- Identify patterns and trends.

The Administration believes that any effort to refine the focus of the IA Unit functions and align resources according to highest priorities is a good step toward improved services.

**Consideration 3: Changing the name of the "Inquiries" category to "Non-Complaints".**

**Response:** The Administration agrees with this consideration. The adoption of a more accurate category title would result in more consistent practices with other law enforcement agencies, would be a self-evident category for the public, and would better focus the category type.

As stated, the term "Inquiry" as defined implies a process where there is investigation, examination and/or analysis. The term does not thoroughly provide the manner in which "inquiries" are developed. Inquiry is currently defined by the SJPd as such:

Any contact with a citizen in reference to any issue of concern that is immediately resolved to their satisfaction of the citizen which does not give rise to a complaint. Any concern that is not immediately resolved to their satisfaction can become a complaint.

As stated previously, an individual influences the classification of a case as an Inquiry; this means that a case can only be classified as an Inquiry if the individual chooses not to file a formal complaint. Furthermore, an individual has up to 12 months to request that the Inquiry case be reclassified and formally investigated.

**Consideration 4: Establishing policies that state that "Inquiries" are not considered complaints, but continue to require the reporting on "Inquiries" by the IPA.**

**Response:** The SJPd agrees with this suggestion (refer to the responses in Considerations 1-3 above).

The Administration believes that any effort to refine the focus of the IPA audit function and align resources accordingly is a step toward improved services and serves a better purpose for the IPA annual reports. The Administration has concerns at various levels of the IPA's "Inquiry" action (e.g., definition and categorization into complaint category) as published in the IPA Report. The IPA reporting must be based on SJPd Duty Manual definitions and the subsequent recommendations should work toward strengthening the current model. It is imperative that there is mutual agreement and understanding between the IPA and SJPd with "what and how" of the SJPd will be subject to audit.

**Consideration 5: Train SJPd or City employees to mediate complaints.**

**Response:** Based on a previous IPA recommendation (dated 1999), the SJPd currently has an independent third-party mediation process which is made available to complainants and officers.

As background, in 1999, the IPA recommended, and the SJPD agreed, implementation of a Voluntary Mediation Program as an alternative process for resolving citizen complaints where the alleged misconduct is minor in nature, involves officer demeanor or comportment; or where there is misunderstanding about an enforcement action, neglect of duty or police procedure. Allegations such as rude conduct, improper procedure, missing property, damaged property, racial profiling are some examples of allegations that may be considered for mediation. Use of Force complaints and allegations of criminal behavior are not eligible for mediation and officers may only participate in one session in a 12-month period.

The Program, paid by the SJPD, requires that both parties agree to participate in the process and sign confidentiality agreements. The process provides the complainant and the subject officer an opportunity to meet in the presence of an independent, trained mediator (a retired judge from Judicial Arbitration & Mediation Services [JAMS]) to express concerns about an incident and explain their view and hear the other side. Sessions are conducted at a neutral location, usually selected by the mediator. Mediation sessions are concluded in one session and a session may run one to three hours long. Participation in the mediation process results in the subject officer's name being removed from the complaint.

**Table 7: Voluntary Mediation Program**

BENEFITS OF THE CURRENT VOLUNTARY MEDIATION PROGRAM
<p><b>Speed:</b> A mediation session can be scheduled within days of the complaint intake. Resolution of the complaint is possible within hours as opposed to the extended period of time it takes to formally investigate a complaint.</p>
<p><b>Cost:</b> Time and money can be saved by mediating complaints and avoiding prolonged investigations and possible litigation.</p>
<p><b>Privacy:</b> The process is confidential, thereby avoiding exposure of the complaint and any confidential information.</p>
<p><b>Informal Atmosphere:</b> The setting where the mediation takes place is relaxed and informal but respectful. The process focuses on common interests and understanding difference with a view towards improving citizen-police relations.</p>
<p><b>Safe Environment:</b> The mediator will ensure the communication is both respectful and productive and remains focused on the relevant topics.</p>
<p><b>Personal Involvement:</b> The mediation process allows the complainant and the officer some involvement in the resolution.</p>

The Administration would also like to surface some challenges facing the Program, which include: lack of community awareness of the Program; lack of police officer awareness of the Program; low history of Program utilization; and, cost of the Program (e.g., the SJPD appropriates \$5,000 annually; each session ranges \$300-\$500). Rather than training staff to mediate complaints, the Administration believes that the Voluntary Mediation Program is a superior model and that emphasis should be placed on increasing awareness of the Program. An outreach effort to increase awareness about this Program is an area that the IPA and SJPD can partner.

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**Consideration 6: Continue to support the IPA's role in the auditing of IA activities regarding the citizen complaint process.**

**Response:** The Administration agrees with this suggestion. The Administration suggests that there is no need for a change in the current oversight model and that methods to strengthen it should be evaluated. Additionally, the Administration believes in the model and requests that the IPA focus on audit quality and that the IPA Reports focus on identifying and changing the underlying causation factor that give rise to complaints.

**Consideration 7: Require an independent and annual evaluation of key performance measures of the SJPD citizen complaint process that were included in this study. This evaluation could be performed by the IPA or other analysts in other City departments.**

**Response:** The Administration agrees with this suggestion. Whether the evaluation is performed by the IPA or a City department, the Administration recommends that the calculations be validated to ensure correct data analysis prior to presenting the figures to the City Council.

San Jose Police Department Field /Observations

The SJPD had the opportunity to collect survey responses from various law enforcement agencies, as noted in the IA Study. While the information listed below can not be used to draw definitive conclusions, the Administration would like to offer additional observations as noted during the process of collecting the survey responses. Following is a discussion on notable highlights from the various agencies surveyed:

**City of Sacramento**

( Population = 457,387 - Sworn Police Officers = 668)

- The City of Sacramento's IPA model is similar to the City of San Jose's model with the exception that the Sacramento IPA, in addition to auditing the Sacramento Police Department (SPD), also audits other city departments, including the Fire Department, Code Enforcement and Planning.
- The SPD has an "Inquiry" category. In 2006, the SPD received 494 inquiries; the SJPD received 203.
- The SPD lists officers' names and allegations in Inquiry cases. In April 2006, the SJPD began recording police officer names in Inquiry cases. Prior to April 2006, the Department only listed the allegations.
- During the course of the review, the information gleaned from other cities, SJPD felt it is worthwhile to start a pilot program to collect officers' names in "Inquiries." This process began in April 2007. At the end of the six-month pilot program the SJPD will evaluate the program and report their findings to the City Manager's Office.
- The SPD will only investigate traffic citation disputes after the cases have been adjudicated in traffic court. The SJPD accepts and documents traffic disputes as Inquiries before, during and after adjudicated in traffic court. In 2006, 13% or 28 cases of the 223 number inquiries received were traffic related cases.
- Subject officers are not interviewed in all complaints, whether Formal and Informal complaints. The SJPD interviews subject officers in Formal cases.

**City of San Diego**

(Population = 1,272,148 - Sworn Police Officers = 2,070)

- The City of San Diego has a Civilian Review Board (CRB); however, it does not participate in the investigation process, nor monitor interviews. The Board's authority only includes the review of cases involving force, arrest, discrimination, slur or criminal misconduct.
- The San Diego Police Department (SDPD) has a "Miscellaneous" category similar to the SJPD's "Inquiry" category. "Miscellaneous" incidents are not considered complaints.

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- The “Miscellaneous” incidents are not tracked by officer but rather by the complainant, and they are not considered to be part of the police officer’s IA history due to concerns about Pitchess Motions.
  - The CRB does not have the authority to respond on-scene to officer-involved-shootings or in-custody death cases nor are they notified of the incident.

### **City of Oakland**

(Population = 400,619 - Sworn Police Officers = 730)

- The Oakland Police Department (OPD) is currently under a Court Settlement Agreement with the plaintiffs in a case involving Oakland Police officers (the “Riders Case”) to implement best available practices and procedures for police management in the areas of supervision, training and accountability mechanisms. This is to be done with the oversight of an outside monitoring body. The Settlement Agreement further recommended the creation of an Informal Complaint Resolution (ICR) category as a way for OPD to track less serious complaints such as rude conduct, etc.
- The City of Oakland’s Citizen Police Review Board (CPRB) is independent from the Oakland Police Department and can conduct parallel investigations. However, the CPRB does not audit cases.
- More investigators are currently assigned to the OPD Internal Affairs Unit (32 officers) than to the Homicide Unit (13 officers).
- Neither the OPD IA or CPRB handle traffic citation disputes, these are referred to traffic court. The SJPD accepts traffic citation disputes and classifies them as Inquiries.
- CPRB does not have a role in officer-involved shootings (OIS) or in in-custody death cases. However, the CPRB can become involved in such cases if and *only* a complaint is filed directly with the CPRB.
- The CPRB does not take complaints over the telephone. The SJPD accepts complaints via telephone, fax, e-mail, and/or third party. The SJPD also accepts anonymous complaints.

### **City of San Francisco**

(Population = 749,172 - Sworn Police Officers = 2,193)

- The Office of Citizen Complaints (OCC) will respond with the San Francisco Police Department (SFPD) to officer-involved shootings (OIS) and in-custody death cases, but will only conduct an investigation if a complaint is filed. The IPA currently has the authority to respond to the scene of officer-involved shootings and be briefed by the IA Commander. The IPA can also review Homicide and IA reports. The IPA does not authority in in-custody death cases, unless there is a complaint filed.
- In cases were the complainant alleges behavior that is proper, the OCC does not conduct officer interviews.

### **City of Los Angeles**

(Population = 4,018,080 - Sworn Police Officers = 9,500)

- The Los Angeles Police Department (LAPD) is under a Federal Consent Decree. A Consent Decree results from a lawsuit (initiated by the U.S. Department of Justice), where a Federal Court issues a decree, or a set of conditions, dictating how a local or state government program should be operated. When a PD engages in a pattern or practice of illegal activity, the Court will issue a Consent Decree and an outside monitor is assigned to ensure conformance with the Decree.
- The LAPD has an Alternate Complaint Resolution (ACR) process. Participation is the program is voluntary for the officer(s) and the complainant. The allegations must be non-disciplinary in nature and the complainant and officer(s) must sign a confidentiality agreement. The allegations must not be criminal nor can they be for unauthorized force, unlawful search or seizure, dishonesty, domestic violence, alcohol, drugs, sexual misconduct, theft, or retaliation. In addition, the complaint may not be a complaint that was initiated by a judge or prosecutor, due to officer credibility issues. There must also be no apparent pattern of similar behavior by the officer(s). The “mediator” is usually a first line supervisor who has completed the ACR training. A complaint is considered successfully mediated when the issue is resolved to the satisfaction of both parties. An

unsuccessful mediation may result in the initiation of a personnel complaint investigation. The program has proven to be positive but is infrequently used (only a few per month).

**City of Seattle** (Population = 579,215 - Sworn Police Officers = 1,288)

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- The Seattle Police Department has a "Supervisory Referral Category" similar to the SJPD "Inquiry" category.
- The civilian head of the IA Bureau reports directly to the Chief of Police and is in his direct chain of command.
- The Office of Professional Accountability (OPA) does not have a role in officer-involved shooting cases unless a complaint is filed.

**City of Honolulu** (Population = 908,521 - )Sworn Police Officers = 2,005

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- The City of Honolulu does not have a civilian oversight or police auditing program.
- The Police Department requires a signed affidavit before a complaint is accepted.
- The Police Department does not have an "Inquiry" category and not all expressions of dissatisfaction are classified as complaints. In some instances, cases are resolved informally without being classified as complaints.
- The Police Department does not have a definition for racial profiling nor does it conduct racial profiling studies.
- There is no civilian oversight in officer-involved shooting or in-custody death investigations.

**Miami-Dade County** (Population = 2,253,362 - Sworn Police Officers = 3,000)

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- Cases involving minor allegations can be closed without an investigation.
- The County has a "Contact Report Category" similar to the SJPD "Inquiry" category.
- Not all expressions of dissatisfaction are categorized.
- Traffic citation disputes are not accepted as complaints and neither are unlawful arrest allegations, unless there is merit to the complaint.
- There is no civilian oversight in officer-involved shooting or in-custody death investigations.

**City of Denver** (Population = 554,636 - Sworn Police Officers = 1,548)

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- The Denver Police Department (DPD) has an IA "Decline" category for low level complaints that if investigated would drain staff resources and the end result would, at best, be a not-sustained finding due to conflicting statements and a lack of independent witnesses. "Decline" cases are not investigated but they are tracked, and a closing letter is sent to the complainant explaining why the complaint was declined. The Office of the Independent Monitor (OIM) explained that this process is necessary to have a mechanism in place to deal with low level complaints, absent of this mechanism; IA can become ineffective, overwhelmed and major misconduct cases may not receive the proper attention.
- Cases that are resolved at the field or IA level are not documented or considered complaints.
- Traffic citation disputes are not investigated. They are classified as "Declined/Judicial Review."
- In formal and informal investigations, officer interviews are not necessary.

**City of Cincinnati** (Population = 314,292 - Sworn Police Officers = 1,041)

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- The Citizens' Complaint Authority (CCA) requires that CCA investigators have prior law enforcement experience.
- The Cincinnati Police Department (CPD) has a "Daily Rounds" category, similar to the SJPD's "Inquiry" category. The Daily Rounds are kept with a supervisor's file not with IA.
- The CCA has been attempting to move away from using the term "Racial Profiling" and instead has started to use "Biased-Policing."
- Traffic citation disputes are not accepted as complaints.
- Cincinnati is presently under a Federal Consent Decree.

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**City of Milwaukee** (Population = 586,500 - Sworn Police Officers = 1,922)

- Cases that can be resolved to the satisfaction of the citizen are handled at the district level and not by the IA Unit. These incidents are documented separately from IA "Matter of Report."
- The oversight agency is a Police and Fire Commission that has the authority to review the conduct of both the Police and Fire Departments.
- There is no civilian oversight in officer-involved shooting or in-custody death investigations.

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**City of Phoenix** (Population = 1,466,296 - Sworn Police Officers = 2,898)

- The City of Phoenix does not have a civilian oversight program.
- The Police Department has an "Inquiry" category. Inquiry cases are tracked manually outside of the IA Unit.

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**City of San Antonio** (Population = 1,256,509 - Sworn Police Officers = 2,029)

- N/A

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**City of New York** (Population = 8,115,690 - Sworn Police Officers = 35,896)

- There is no civilian oversight in officer-involved shooting or in-custody death investigations, unless there is a complaint filed.
- The Civilian Complaint Review Board (CCRB) feels that it is much better for a complaint to be resolved informally at the precinct level before it rises to the level of a formal complaint.
- Rude conduct or improper procedure concerns that are handled at the precinct level are not recorded by the CCRB or the New York Police Department (NYPD), unless the complaint is filed with CCRB.
- Officers are not interviewed in cases where it is apparent that the evidence would immediately exonerate the officers.
- Under no circumstance the CCRB permits the complainant to bring an advocate to the interview.

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**City of Houston** (Population = 2,045,732 - Sworn Police Officers = 4,779)

- The civilian oversight is not part of the response team in officer-involved shootings cases and in in-custody death cases. The review is done post investigation.

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**City of Chicago** (Population = 2,896,016 - Sworn Police Officers = 13,500)

- The City of Chicago has an Office of Professional Standards (OPS) that reports to the Superintendent of Police and is in the Police Department's chain of command. This office is not a true civilian oversight office.

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**City of Detroit** (Population = 900,000 - Sworn Police Officers = 3,500)

- The Detroit Police Department (DPD) is currently under a Consent Decree.
- The DPD recognizes the need for an inquiry category; however, due to the Consent Decree they are forbidden from having such process.
- In minor cases that will mostly result in a "he said, she said" disposition (as quoted by Detroit, not San Jose), the Office of the Chief Investigator (OCI) will tape record the statements and resolve the case with short summary and recorded statements. This enables the OCI to focus on more serious cases and allows for an expedited audit, if one is completed. The taped interviews facilitate audit process for the Auditor.
- Traffic citation disputes are referred to the appropriate judicial body; however, if the complainant insists on making a complaint the complaint will be accepted and investigated.
- There is no civilian oversight in officer-involved shooting or in-custody death investigations. These cases are investigated by the DPD's Force Investigations Unit.

# CONCLUSION

The Administration would like to thank the City Council for scheduling a Special City Council meeting on June 21, 2007 to discuss various police related reports. This is an opportunity to receive information on the performance of the San Jose Police Department's (SJPd) and, more particularly, the procedures of the Internal Affairs Unit (IA) of the SJPd. This report addresses each of the related reports, specifically: 2006 IPA Annual Report; Summary Report of Forum Regarding the Police Response and Supplemental HRC recommendations; 2006 Annual Force Response Report; and Internal Affairs Peer Review Study.

This single response demonstrates that the SJPd is a highly rated law enforcement agency and that the current model utilized to process citizen complaints, and audit performance, is working. San Jose is fortunate in that it is the nation's 10<sup>th</sup> largest city, with a population of over 950,000, and that out of over 400,000 calls for service per year, the City received 211 complaints. This is a very low ratio when compared to other cities and this is a direct result of superior community and policing efforts.

It is acknowledged, however, that the above topics are very complex issues that directly impact community relations, public perception, and workforce procedures. The Administration values and respects diverse perspectives and desires a productive public dialogue. The Administration also values a public policy decision-making process that is based on accurate data, comprehensive analysis, and measurable outcome or effectiveness.

While the Administration's response to the IPA Report raises serious concerns about the statistical data and resulting recommendations contained, it is important to note that these concerns in no way lessen the San José Police Department's continuing commitment to working with all members of the community to ensure we maintain the highest standards in delivering police services. Prior to the City Council consideration of a City Charter amendment, as some IPA recommendations require, the City Council should feel confident that its decision is based on sound data analysis and accurate depictions. The Administration believes that the data, current conditions, and Macias IA Study demonstrated that a shift in current oversight model is not necessary or that the SJPd and IPA have exhausted efforts to improve the current oversight model.

As the Macias IA Study determined, "All the officials reported that oversight systems were established based on the needs of their community." A shift in model must be supported by a Council determination that there has been a significant downward change in performance of the current model or community conditions. The Administration's response to the IPA Report, the recent good work between the SJPd and HRC, and the Macias IA Study findings, do not demonstrate a significant downward change in SJPd performance or that an oversight shift is warranted at this time.

The Administration looks forward to working with the Office of the Independent Police Auditor toward continued efforts to identify and change the underlying causation factors giving rise to complaints.

# RECOMMENDATIONS

Given the various concerns noted in the various reports related to police and IPA services, the Administration would like to put forward the following recommendations for Council discussion or consideration:

**(1) Regarding the 2006 IPA Annual Report:**

- (a) Recommend that the City Council conduct a review of the Independent Police Auditor's auditing practices, controls, and/or procedures every two years and to report to the City Council on the findings such a report.
- (b) Direction to the City Manager to:
  - (1) Accept the Police Department's self-initiated practice, as of April 2007, of tracking police officers' names on Inquiries for a six month period and direct the City Manager to report on the status of this effort once six months of data are available, along with a staff resource and "value added" impact report.
  - (2) Accept the Administration's self-initiated process of evaluating IA Unit classification definitions.
- (c) Direction to the City Manger and Independent Police Auditor to work together to develop information packets for individuals contacting the IPA or IA Unit.

**(2) Regarding the Community Forums conducted by the HRC and IPA:**

- (a) Direction to the City Manager to work with the SJPD and HRC to identify partnership/interactions to increase awareness of areas of mutual interest regarding police services and to present a workplan to a Council Committee.
- (b) Council determination on whether it would like for the City Manager to develop and present to a Council Committee a workplan, including the costs of such a public opinion poll, to measure and evaluate:
  - (1) General community attitude toward the SJPD.
  - (2) General community evaluation of the services provided by the SJPD.
  - (3) General community perception of the most important issues facing the Police Department (e.g., racial profiling by the SJPD; communications skills, excessive use of force).
  - (4) General community knowledge of the Citizen Complaint Process.
- (c) Suspend any action on recommendations as presented in the Community Forums report, authored by the HRC and IPA, until the above recommendations are completed and receipt of the IPA's clarification/validation of circumstances provided in the testimony is obtained, as directed by the Rules & Open Government Committee.
- (d) Suspend any action on the HRC supplemental recommendations, other than the Administration's efforts to implement business cards for all police officers.
- (e) Accept the SJPD's self-initiated process to reestablish the Citizens' Police Academy and grant priority for participation to HRC members.

**(3) Regarding the Annual Force Response Report**

- (a) Suspend any action or conclusions on the AFRR until a more rigorous statistical data analysis is conducted by an independent third party based on multi-year data.

**(4) Regarding the IA Study, authored by Macias Consulting Group**

- (a) Accept the items for consideration submitted by Macias Consulting Group as included in the IA Study, with the exception of "Consideration 5: Train SJPD or City employees to mediate complaints," given that the SJPD currently has a Voluntary Mediation Program and that focus should be on increases police officer and community awareness.