



Independent Police Auditor

## Office of the Independent Police Auditor

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September 28, 2010

Honorable Mayor and Members of the City Council  
200 East Santa Clara Street  
San José, CA 95113

Dear Mayor Reed and Members of the City Council:

Enclosed is the Independent Police Auditor's (IPA) 2009 Year End Report submitted for your approval. This annual report details complaints received, closed, and audited during the 2009 calendar year. It provides an overview of the classification of cases, officer demographics, complaints by Council District, and our multi-faceted community outreach program. The report also provides information on some significant aspects of civilian oversight law, both in the State of California and in the City of San José.

In April 2010, the City Council appointed Judge LaDoris Cordell to the IPA position and the office has been re-energized by her enthusiasm and commitment. This report, however, focuses on activities during 2009. I want to acknowledge the IPA staff for their dedication and hard work. Throughout that year, the IPA staff worked diligently to fulfill our mandated duties, with a particular emphasis on receiving police misconduct complaints, monitoring investigations, and conducting community outreach. I thank the IPA Advisory Committee (IPAAC) for their time, support and input throughout the year. They are a valuable resource to the IPA Office and to the City of San José.

On behalf of the IPA staff, I recognize the San José Police Department for their excellent quality of its service to the San José community. In particular, I acknowledge the Internal Affairs Unit for providing information critical to the preparation of this report and for their cooperation and collaboration throughout the year.

Thank you for your ongoing support of the Office of the Independent Police Auditor. I look forward to presenting this report at the October 19<sup>th</sup> City Council Meeting. I welcome your comments and am available to answer questions or provide further information at any time.

Respectfully submitted,

Shivaun Nurre

Acting Independent Police Auditor

## INDEPENDENT POLICE AUDITOR & THE IPA TEAM

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**Shivaun Nurre, Acting Independent Police Auditor** – Ms. Nurre was appointed to the position of Assistant Police Auditor in January 2007 and Acting IPA in January 2009. She has ten years of public sector experience as a Deputy County Counsel for Santa Clara County. Her legal experience spans the areas of civil litigation, employment law, criminal justice and workers compensation. She obtained an undergraduate degree in history from the University of California at Riverside and then worked for several years at the Congressional Research Service within the Library of Congress before obtaining her Juris Doctor from the University of California at Davis. Ms. Nurre is a member of NACOLE and the American Inns of Court.

**Vivian D. Do, Data Analyst** – Ms. Do joined the Office of the IPA from the private sector eight years ago with specialized experience in information technology. Ms. Do enjoys the working environment at the IPA where she can focus her technical skills on computer and technology related needs, including data analysis, database management and desktop publishing. Her skills are an integral part of the process of producing the IPA annual reports. Ms. Do earned a Bachelor of Science degree from San José State University, California.

**Diane Doolan-Diaz, Community Specialist /Complaint Analyst** – Ms. Doolan-Diaz joined the Office of the IPA in March of 2006 with over ten years of experience advocating for individuals who have physical, mental and developmental disabilities. Ms. Doolan-Diaz is the former Program Director of the Mental Health Advocacy Project, the past Vice-President of the California Coalition of Mental Health Patients' Rights Advocates, and a former instructor in the Crisis Intervention Training Academy of the San José Police Department. She earned her Juris Doctor from the University of California Hastings College of Law. Her Bachelor's degree was obtained in her state of origin, from Southern Connecticut State University. Ms. Doolan-Diaz is a certified mediator and volunteers for both the City of San Jose's Collaborative Resolution Program and the County of Santa Clara's Dispute Resolution Program. She is fluent in English and speaks conversational Spanish.



## INDEPENDENT POLICE AUDITOR & THE IPA TEAM



**IPA Office**

Shivaun Nurre and Jessica Flores discuss documenting a complaint.

**Jessica Flores, Office Manager** – Ms. Flores joined the IPA office in June of 2006. She attended Administrative Assistance classes at West Valley College and uses that training as the front lobby receptionist. She greets visitors, answers questions for complainants, and directs them to appropriate sources. She enters case information on databases, creates and maintains case files, and helps where ever needed.

**Suzan L. Stauffer, Complaint Examiner** – Ms. Stauffer joined the IPA with more than 20 years of experience working in the justice field, including experience with police procedures, prosecutions, investigations, community service, training and violence prevention. A Bay Area native, Ms. Stauffer earned a Juris Doctor from the University of San Francisco and a Bachelor of Arts degree from Stanford University. She served as a prosecuting attorney in both California and Hawaii before coming to the City of San José and is a California State Certified Mediator. In 1993 Ms. Stauffer designed and implemented the award winning Safe Alternatives & Violence Education Program (SAVE) for the City of San José.

# INDEPENDENT POLICE AUDITOR ADVISORY COMMITTEE

## Mission

The Mission of the Independent Police Auditor Advisory Committee (IPAAC) is to assist the Office of the Independent Police Auditor by providing information on ways to improve the police complaint process, by promoting public awareness of a person's right to file a complaint, and by increasing the accountability of the San José Police Department to the public.

## Purpose and Objectives

The purpose of the IPAAC is to identify, mobilize, and coordinate resources in order to assure maximum public, private, agency, and individual commitment to effective police oversight.

The objectives are to:

1. Promote the mission of the IPA and inform the IPA of the needs, problems, and/or issues that surface in various communities.
2. Promote high standards of quality police service and civilian oversight in the City of San José.
3. Increase the visibility of the IPA through support of community events and public forums.

## Participation

Participation is exclusive to those individuals selected by the Independent Police Auditor and who reside, do business, or have significant human interest in police oversight for the City of San José or neighboring communities. The IPA convenes meetings of the IPAAC on an average of three (3) times per year.

## 2009 IPAAC Participants

**Elisa Marina Alvarado**, Teatro Visión (2008 - present)

**Linda Young Colar**, 100 Black Women (2007 - present)

**Jeffrey Dunn**, Santa Clara County Office of the Public Defender (2006 - present)

**Larry Estrada**, Santa Clara County La Raza Lawyers (2000 - present)

**Nancy S. Freeman**, Former Juvenile Justice Commission Member (2005 - present)

**Aila Malik**, Fresh Lifelines for Youth (2007 - present)

**Sundust Martinez**, Indigenous Peoples Council, Native Voice TV (2004 - present)

**Socorro Reyes McCord**, Community Peace & Justice Advocate (2007 - present)

**Sofia Mendoza**, Formerly with the Community Child Care Council (1999 - present)

**Rev. Jethroe (Jeff) Moore II**, NAACP of Silicon Valley (2005 - present)

**Aejaie Sellers**, LGBT Community Activist (2006 - present)

**Merylee Shelton**, San José City College (1999 - present)

**Wiggys Sivertsen**, San José State University (1999 - present)

**Dennis Skaggs**, San José Downtown Association (2007 - present)

**Alofa Talivaa**, Community Activist (2007 - present)

**Alfredo Villaseñor**, Community Child Care Council of Santa Clara County (2001 - present)





## INDEPENDENT POLICE AUDITOR ADVISORY COMMITTEE



### **IPA Advisory Committee (IPAAC) Members and IPA Staff**

Top Row: Diane Doolan-Diaz, Dennis Skaggs, Socorro Reyes McCord, Shivaun Nurre, Reverend Jeff Moore, Alfredo Villaseñor, and Nancy Freeman.

Seated: Sundust Martinez, Wiggy Sivertsen, Merylee Shelton, Elisa Marina Alvarado, and Sofia Mendoza.

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## EXECUTIVE SUMMARY

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### Chapter One: Office of the Independent Police Auditor – Updates on Recommendations

One of the IPA responsibilities is to prepare reports for the City Council that provide analysis of complaints received and closed, identification of trends, and discussion of new and past recommendations. This 2009 Year End Report does not advance new policy recommendations but rather provides an update regarding significant developments during calendar year 2009.

- Changes to the misconduct complaint process were implemented July 2008. Throughout the summer of 2009, City staff met to evaluate these changes. The IPA agreed with much of the City Manager’s report regarding the first year of implementation. The IPA’s primary issue of concern was the City Manager’s proposed definition of the “Courtesy” allegation because it did not contain an affirmative duty to treat the public with courtesy and needed stronger direction limiting the use of profanity.
- News coverage in October 2008 called into question SJPD’s approach to public intoxication. Following Council action, the City Manager created the Public Intoxication Task Force (PITF). In June 2009, the City Manager provided several recommendations to the City Council and Mayor: (1) to develop a program that would forgo prosecuting an individual for Penal Code §647(f) until a sixth arrest in a rolling 12-month period; and, (2) to develop procedures by which an officer documents objective evidence to support an arrest under Penal Code §647(f). In the fall of 2009 the City Manager reported that a protocol had been implemented. The SJPD enhanced its training program, created a policy requiring the offering of a PAS test to those suspected of public intoxication, and mandated that such arrest documentation be reviewed a supervisor.
- In March 2009, the City Manager announced that the Chief of Police had signed a letter of intent with the Consortium for Police Leadership and Equity (CPL), a research consortium that attempts to promote police transparency and accountability by facilitating research collaborations between law enforcement agencies and social scientists. Per the research agreement, CPL would conduct research regarding, among other issues, the role of race in suspect stops. Throughout 2009 CPL provided quarterly reports to the Public Safety, Finance and Strategic Support Committee.





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### Chapter Two: Key Civilian Oversight Laws & Regulations

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Every jurisdiction that employs police officers has some discretion in developing its complaint process; however, each process must also abide by state statutes. Current law regulating police misconduct complaint processes attempts to strike a balance among competing interests. The law mandates that police departments have a complaint process and that records of complaints must be maintained for five years. But the law also bestows a high level of confidentiality on these records and any release of information is strictly regulated.

In San José, the establishment and authority of the IPA were approved in 1996 by a vote of the city's residents. The IPA operates under the authority of the San José City Charter and the Municipal Code, and in a manner consistent with the state laws. Because the Charter has specific language regarding IPA duties and functions, IPA authority cannot exceed those responsibilities expressly stated in the Charter. The Code, which can be changed by vote of the City Council, cannot expand authority beyond the scope provided by the City Charter.

Access and use of information contained in police misconduct complaint files is very restricted. For example, departments employing police officers are restricted in using such information when making punitive or promotional decisions. Another example arises within the context of criminal court proceedings. Under the California Evidence Code, a criminal defendant may bring a motion to compel the disclosure of police misconduct complaints that contain information relevant to the defense. The so-called "Pitchess process" is intended to strike a balance between the need of the criminal defendant for all relevant and reasonably accessible information and the legitimate concerns of the police officer to shield from disclosure confidential information not essential to an effective defense. The 2006 California Supreme Court decision of *Copley Press v. Superior Court* requires that all jurisdictions in California must comply with the strict confidentiality provisions outlined in the state statutes.

### Chapter Three: Year End Statistics

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This chapter provides information about types of cases, classifications, the audit process, findings reached by the Internal Affairs (IA) Unit, and officer discipline. In 2009, a total of 317 concerns about the conduct of San José police officers were raised by individuals who contacted the IPA or IA with allegations of police officer misconduct. Of the 317 concerns, 213 cases were determined to be complaints — meaning they arose from circumstances in which an officer's conduct could potentially result in discipline. With the exception of one POLICY COMPLAINT, the remaining concerns were classified as NON-MISCONDUCT CONCERNS (NMC), explicitly defined as "not a complaint" under the Revised Complaint Process (RCP).

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Contrary to the trend in recent years, the rate of complaints in relation to population decreased slightly in 2008 and decreased dramatically in 2009. Given the considerable amount of media attention the SJPD received throughout 2009, the IPA staff anticipated receiving the same number of concerns reported in 2008 – if not more. Although no one factor was identified as the sole cause for this decrease, several possible explanations are discussed.

Each complaint may contain a single allegation or multiple allegations. The 213 external complaints received in 2009 contained a total of 527 allegations. The four types of allegations most frequently reported in these complaints were *Procedure, Force, Arrest/Detention, and Courtesy*. When IA completes an investigation, it makes a finding on each allegation in the complaint; the standard of evidence used is “preponderance of evidence.” In 2009 IA made findings on 1,031 allegations in external cases. Fifty percent (50%) of the total number of allegations were closed with a finding of EXONERATED. The second most common finding was NOT SUSTAINED (20%). Only 39 allegations resulted in a SUSTAINED finding – 4% of the external allegations investigated and closed in 2009. The low percentage of allegations closed with SUSTAINED findings has remained relatively constant over the past four years – between 2% and 4%.

Once IA completes its investigation and enters a finding on each allegation, the case is forwarded to the IPA for audit. The number of complaints forward by IA to the IPA for auditing in 2009 was 296. The IPA completed audits on 238 complaints, closing 69% as “agreed” and 20% as “disagreed.”

### Chapter Four: Use of Force

The San José Police Department’s use of force was the subject of ongoing controversy in 2009 — a year in which there were several high-profile incidents. Community members called for concerted City efforts to monitor officers’ use of force, identify problem officers, rebuild trust in the police, facilitate greater community dialogue and create greater public access to police records. The City Council accepted the Mayor’s recommendation that the City Manager convene a working group to review the force used during 2009 to effect resisting arrest arrests. The Use of Force Advisory Group was convened in December 2009 and began reviewing police reports where force was used and the only charge was resisting arrest.

The use of unnecessary or excessive force is one of the most serious allegations reported against an officer. The IPA is required by the Municipal Code to audit all the investigations of Force Cases conducted by Internal Affairs. The number of Force Cases reported in 2009 was 59, a significant decrease compared to the 117 Force Cases reported in 2008. One *Force* allegation was



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SUSTAINED in 2009. The majority of the *Force* allegations were closed with a finding of EXONERATED meaning that the IA investigation determined that the level and type of force used by the officer were reasonable and justified based on the circumstances of the particular event. There were three officer-involved shootings in 2009 and one fatal in-custody incident. The IPA has been given specific responsibilities regarding such incidents, including responding to the incident scene for a contemporaneous briefing and later participating on the shooting review panel.

### **Chapter Five: Subject Officer Demographics**

In 2009 the San José Police Department reported a total of 1,345 sworn officers, the lowest number of officers since 2006. The SJPD is comprised of officers from a variety of backgrounds and cultures. The number of subject officers in 2009 identified with specific ethnicities continues to closely mirror their total representation in the Department. The seniority of officers named in complaints suggests that officers in their first four years of employment are named in the largest number of complaints. In 2009, the IPA released a table which provided information about how many complaints were received about any one officer over a cumulative period.

### **Chapter Six: Training and Trends**

Pursuant to California state standards, the SJPD offers training to ensure that officers continually refresh their skills. The training provided in 2009 included the areas of racial profiling, tactical communications, and arrest techniques. Individuals with serious mental health issues can present unique challenges to officers during their encounters with police. In 1999 the SJPD instituted a crisis intervention training program (CIT) offered to experienced officers on a voluntary basis. In 2009, CIT was added to the SJPD Basic Police Academy Training so that CIT is now provided to all recruit officers as part of their initial training.

For many years, the SJPD looked solely at the police misconduct complaint process to identify officers exhibiting possible problem behaviors. Other jurisdictions track additional factors to obtain a more complete picture of individual officer conduct and also identify department trends. In 2009, the City Manager decided that more proactive steps should be made to see what “best practices” can be brought to San José. The SJPD is currently in the process of examining different models used in other jurisdictions.

### **Chapter Seven: Community Outreach**

Community outreach is a mandated function of the Office of the Independent Police Auditor (IPA). Outreach makes IPA services visible and accessible to the community, assists the IPA in

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assessing the needs of diverse communities and helps to create public confidence in both the IPA and the police misconduct complaint process. IPA outreach efforts encompass a wide range of activities, such as, meetings, resource fairs, community presentations, mailings, media interviews and press conferences. In 2009 the IPA staff attended 166 events involving approximately 4,925 community members. Over 4,000 materials were distributed by the IPA in 2009 to over 30 schools, agencies and groups at a wide variety of community outreach events and meetings.

Members of ethnic minority groups, immigrants and youth have been the subject of focused efforts over the last several years. Interactive youth presentations are based on the IPA's *A Student's Guide to Police Practices* (Student Guide), a valuable tool used to educate youth about their rights and responsibilities when interacting with police officers.

### **Chapter Eight: Cases By Council District**

Chapter Seven provides a discussion of complaints and allegations by the council district in which they occurred. Historically there has been interest in the breakdown, by council district, of complaint incident locations. As in years past, most cases were described as occurring in District Three which includes the downtown area.



# OFFICE OF THE INDEPENDENT POLICE AUDITOR— UPDATES ON RECOMMENDATIONS

## I. The Office of the Independent Police Auditor

### A. Establishment

The Office of the Independent Police Auditor was established in 1993 with the passage of an ordinance by the San José City Council. The Independent Police Auditor (IPA) was created to provide civilian oversight of the police misconduct complaint process and to make recommendations to improve San José Police Department (SJPD) policies. In response to a grassroots effort to establish oversight in San José, the City Council reviewed information and heard testimony from community members, professionals in oversight, activists, and members of law enforcement before establishing the auditor model of oversight to reach out to the diverse San José community and to help enhance police/community relations.

In 1996 San José residents voted to amend the City Charter to make the IPA a permanent branch of city government. The change to the City Charter also directed the City Council to appoint the police auditor to serve four-year terms and established that the midterm removal of the police auditor required a vote of approval of at least ten of the eleven City Council members. See **Appendix A** for the complete San José Charter Section 809.

### B. Independence

The IPA is an independent body as set forth in Title 8 of the San José Municipal Code, Section 8.04.020, A and B:

- The police auditor shall, at all times, be totally independent, and requests for further investigations, recommendations, and reports shall reflect the views of the police auditor alone.
- No person shall attempt to undermine the independence of the police auditor in the performance of the duties and responsibilities set forth in Section 8.04.010.

See **Appendix A** for the complete San José Municipal Code, **Section 8.04**.

# Chapter One



# CHAPTER ONE | OFFICE OF THE INDEPENDENT POLICE AUDITOR—UPDATES ON RECOMMENDATIONS

## C. IPA Reports

IPA reports are prepared pursuant to the requirements of the San José Municipal Code Section 8.04.010 (D). This section states that the IPA annual reports shall:

- Include a statistical analysis documenting the number of complaints by category, the number of complaints sustained, and the actions taken;
- Analyze trends and patterns; and,
- Make policy recommendations.

## D. IPA Mission

The mission of the Office of the Independent Police Auditor is to provide independent oversight of and instill confidence in the complaint process through objective review of police misconduct investigations. By providing outreach to the San José community and making thoughtful policy recommendations to the City Council, the IPA works to promote accountability and to strengthen the relationship between the San José Police Department and the community it serves.

IPA guiding principles:

- The IPA strives to ensure that all concerns reported by members of the public are classified and investigated at the appropriate level based upon the premise that any case brought forward containing misconduct issues will be classified as a complaint with associated allegations, findings and officer names tracked.
- The IPA reaches out to inform the community about the complaint process and to listen and respond to broader community concerns.

- The IPA carefully considers aggregate data from complaints, community concerns and public policy in crafting recommendations aimed toward improving the quality services of the San José Police Department.

## E. IPA Functions

The primary functions of the IPA are:

- To serve as an alternative location for individuals to file a complaint against a San José police officer;
- To monitor and audit SJPD complaint investigations to ensure they are thorough, objective, and fair;
- To conduct community outreach and provide information about the services the office provides to the community;
- To make recommendations to enhance and improve policies and procedures of the SJPD; and,
- To respond to the scene of and review officer-involved shooting investigations.

## II. Updates on Recommendations

### A. Revised Complaint Process (RCP)

In the 2006 IPA Year End Report, the IPA recommended that a new complaint process be implemented — one that used objective criteria for complaint classification. In June 2007 the City Council directed the City Manager, the SJPD and the IPA to develop a Revised Complaint Process (RPC) based upon objective criteria and definitions. Numerous revisions were made to



## CHAPTER ONE | OFFICE OF THE INDEPENDENT POLICE AUDITOR—UPDATES ON RECOMMENDATIONS

streamline and improve the complaint process. The SJPD Internal Affairs (IA) and IPA offices began using the revised complaint system in July 2008. Under this revised system, the definitions of both complaint types and allegations were changed from those used under the former process. Staff from the City Manager’s Office, SJPD and IPA met throughout the summer of 2009 to conduct an evaluation of the RCP’s initial year. The City Manager issued a formal one-year report outlining that evaluation.<sup>1</sup> Staff agreed that for the initial year (7/1/08 – 6/30/09), the implementation of the RCP focused primarily on training staff and ensuring uniformity in approach and application of the new process. Areas for additional refinement were identified. For the second year assessment (7/1/09-6/30/10), the Police Department anticipated focusing on developing performance measures to evaluate whether the RCP had met the goals and objectives identified during the creation of the revised process.

The IPA agreed with much of the City Manager’s evaluation. The IPA’s primary issue of concern was the City Manager’s proposed definition of the *Courtesy* allegation. Prior to the RCP, a *Courtesy* allegation included clear direction that officers would be “courteous to the public and tactful in the performance of their duties.” The revised

definition did not include this affirmative duty. Instead the proposed definition focused on the appropriate use of profanity. In a 2009 memorandum, the IPA suggested consideration of a two-fold modification to the proposed courtesy definition: (1) inclusion of a clear affirmative duty to treat the public with courtesy and respect and (2) stronger direction limiting the use of profanity to exceptional circumstances.<sup>2</sup> The IPA recommended the creation of training guidelines reflecting the Department’s view on the utilization of profanity; the IPA also recommended that the Department implement tracking to capture the effects of the revised definition. The courtesy definition proposed by the City Manager in October 2009 was not implemented in 2009.<sup>3</sup>

### B. Public Intoxication Task Force

News coverage in October 2008 called into question SJPD’s approach to public intoxication arrests pursuant to California Penal Code Section 647(f) [“PC §647(f)”]. Newspaper articles and editorials asserted that SJPD arrest rates for PC §647(f) were disproportionate in comparison with arrest rates in other jurisdictions and raised concerns about selective enforcement.<sup>4</sup>

<sup>1</sup> City Manager Figone Memorandum, *One Year Report on the Police Department’s Revised Citizen Complaint Process and In-Custody Death Training Review Panel*, October 8, 2009.

<sup>2</sup> Acting Independent Police Auditor Nurre Memorandum, *One Year Report on SJPD Revised Complaint Process — Courtesy Definition*, October 21, 2009. See **Appendix H** for a copy of this memorandum.

<sup>3</sup> The courtesy definition adopted July 1, 2008 is currently used. It states that “Department members will not inappropriately use profane or derogatory language or use obscene gestures during a contact with a member of the public. SJPD Duty Manual §C1308.

<sup>4</sup> Sean Webby, *Drunkness Arrests in San Jose Outpace Other California Cities*, Mercury News, October 18, 2008 and *Arrest Numbers Point to Over-Enforcement of Drunkness Law*, Mercury News Editorial, October 21, 2008.

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According to California Penal Code section 647(f), certain factors must be present for a Public Intoxication violation. The person arrested must be:

- (1) in a public place; and,
- (2) under the influence of alcohol or any drug; and,
- (3) either:
  - (a) in such a condition that he or she is unable to exercise care for his or her own safety or the safety of others or
  - (b) by reason of his or her being under the influence of alcohol or drugs, interferes with or obstructs or prevents the free use of any street, sidewalk, or other public way.

In November 2008, the City Council reviewed and discussed statistics related to PC §647(f) arrests and the SJPD's policies for handling such arrests. The IPA was requested to prepare a report about complaints that alleged issues regarding public intoxication arrests. In its report, the IPA recommended to Council that the City Manager be directed to institute a policy that an officer making an arrest for PC §647(f) must complete a chemical test on that person.<sup>5</sup> The IPA urged the Council to take timely affirmative steps to assure the community that its police officers were applying the public intoxication statute in a fair and equitable manner.

The City Council voted unanimously for the creation of a task force to address public intoxication arrests including identifying non-criminal alternatives to arrests. The City Manager created a Public Intoxication Task Force (PITF); members included the Acting IPA, the City Manager, the Chief of Police, the District Attorney

and the Public Defender. A number of community groups and organizations were also represented. The PITF met five times between January and May 2009.

During the course of the PITF's work, each member was provided with samples of redacted SJPD incident reports (282 reports) involving arrests made in 2007 for public intoxication.<sup>6</sup> In addition to the SJPD reports, the District Attorney's Office provided the PITF with 78 redacted Santa Clara County Law Enforcement Reports related to criminal complaints of PC §647(f) filed by the District Attorney's office during July 2006, May 2007 and July 2008.

In early May 2009 some of the community organizations withdrew their participation from the PITF, expressing dissatisfaction at the limited scope of the Task Force and the City's refusal to release further underlying documents.

<sup>5</sup> The IPA 1994 *Third Quarterly Report*, recommended that, among other things, chemical testing should be an option for any person arrested for drunk in public if one was requested.

<sup>6</sup> Some Task Force members urged the City to release all 4,661 police reports from 2007 for public intoxication instead of the random sample. The City declined; it stated that such a task would require excessive time and resources.



## CHAPTER ONE | OFFICE OF THE INDEPENDENT POLICE AUDITOR—UPDATES ON RECOMMENDATIONS

In June 2009 the City Manager summarized the work of the PITF and provided several recommendations to the City Council and Mayor.<sup>7</sup> The recommendations included direction to develop and implement the following:

1. A pilot program that would not seek prosecution of an individual for any single PC §647(f) arrest until that individual was arrested for a sixth offense in a rolling twelve-month period.
2. Procedures by which an officer should obtain and document objective evidence to support findings to arrest under PC §647(f) including:
  - a. offering Preliminary Alcohol Screening (PAS)<sup>8</sup> testing and documenting the results; and,
  - b. improving officer training with a focus on identifying those who are subject to arrest for PC §647(f), pursuing alternatives to arrest, and properly documenting the supporting evidence if the suspect is arrested.

In fall 2009 the City Manager reported that:

1. Through coordination with the District Attorney's Office, the County Department of Corrections and the local Superior Court, a protocol was implemented whereby an individual would:
  - a. after his/her release from custody on a PC §647(f) arrest, receive a *Notice of No Complaint* and a *Certificate of Detention* indicating that no charges would be sought at that time;

b. have his/her state and local criminal history data updated to reflect a detention and not an arrest; and,

c. not be prosecuted for any single PC §647(f) arrest until that individual was arrested for a sixth offense in a rolling twelve-month period.

2. The SJPD training unit created a new PC §647(f) report forms and enhanced its training program to promote the uniform, accurate and timely documentation of probable cause elements.

3. The Department had expanded Police Academy training on public intoxication arrests from a one-hour to a three-hour block including scenario testing and report writing.

4. The SJPD was offering a PAS test to those suspected of public intoxication.

5. The SJPD mandated that all PC §647(f) arrest documentation be reviewed and approved by a supervisor.

Study of data from July through December 2009 showed a decrease in arrests for violations of PC §647(f) as compared with the same time frame in 2008.<sup>9</sup> The PAS test was offered in approximately 91.5% of the cases. When the PAS was offered, individuals declined to complete the test in 81% of the cases. Of the 1,091 arrestees, 52% were Hispanic, 30% were Caucasian, and 10% were African-American.

<sup>7</sup> City Manager Figone Memorandum, *Public Intoxication Task Force*, May 19, 2009.

<sup>8</sup> The preliminary alcohol-screening (PAS) test is a hand-held breath-testing unit used by law enforcement. The PAS device provides an immediate measure of blood alcohol concentration. The PAS test will only show that the individual had a certain blood alcohol concentration, but those results do not prove intoxication.

<sup>9</sup> Chief Robert Davis Memorandum, *Status Report on the Implementation of Public Intoxication Pilot Project*, April 6, 2010. Chief Davis noted that there were 1,091 public intoxication arrests from 7/1/09 to 12/31/09. This number represents a 54% decrease compared with the same period in 2008 in which there were 2,382 public intoxication arrests.

## CHAPTER ONE | OFFICE OF THE INDEPENDENT POLICE AUDITOR—UPDATES ON RECOMMENDATIONS

Some PITF participants suggested that many PC §647(f) arrests arose from incidents in which the suspect was merely uncooperative and/or failed to follow an officer’s direction. Because of that suggestion, questions were raised about whether the proposed changes to the public intoxication arrest protocol would result in more arrests under California Penal Code Section 148(a)(1) as an alternative to PC §647(f). Penal Code Section 148(a)(1) [“PC §148(a)(1)”] states that any person who “willfully resists, delays or obstructs” an officer during the performance of his/her duties has committed a criminal offense. Both PC§647(f) arrests and PC §148(a)(1) arrests are viewed by many as “discretionary arrests” because the elements of the offense may be based on elements which are more subjective compared to those elements necessary for “non-discretionary arrests.”<sup>10</sup>

As part of addressing community concerns about use of force, the City Manager assembled a task force including the City Auditor and the IPA to review PC §148(a)(1) arrests. Review of all PC §148(a) arrest records was initiated in late 2009; review of additional records and discussion continues in 2010. The City Manager provided an initial assessment of the Task Force efforts in early 2010 and will continue to provide additional assessments throughout the review process.

According to California Penal Code 148(a), an officer may arrest a person who willfully

- resists
- delays
- or obstructs

a police officer when the officer is discharging his/her duties.

<sup>10</sup> The Consortium for Police Leadership and Equity (CPL) project intends to study and report out on patterns of “discretionary” and “non-discretionary” arrests in San Jose based on ten years of local arrest data.



## CHAPTER ONE | OFFICE OF THE INDEPENDENT POLICE AUDITOR—UPDATES ON RECOMMENDATIONS

### Update: Consortium For Police Leadership And Equity In San José

On March 17, 2009, City Manager Debra Figone announced that the Chief of Police had signed a letter of intent with the Consortium for Police Leadership and Equity (CPL), a research consortium that attempts to promote police transparency and accountability by facilitating research collaborations between law enforcement agencies and social scientists.<sup>A</sup> Per the research agreement, CPL would complete these specific tasks:

- Conduct research designed to gauge the role of race in suspect stops and arrests and focus on comparing discretionary with nondiscretionary stops;
- Analyze use of force and victims of crime among major demographic groups in the City;
- Conduct research on factors that potentially exacerbate any observed inequalities in treatment and outcome;
- Assess SJPD's current statistical data reports and make recommendations regarding collecting and presenting statistical data; and,
- Conduct research with the goal of ensuring positive communications between the diverse communities of San José and the SJPD.

The SJPD provided to CPL researchers ten years of data indicating the number of arrests, suspects, and victims related to all felony and misdemeanor crimes; such data was further broken down by different racial groups. Similar data was supplied for ten comparable cities.

Throughout 2009 CPL provided quarterly reports to the Public Safety, Finance and Strategic Support Committee (PSFSSC). The CPL reported preliminary data showing:

- In comparing discretionary vs. non-discretionary arrests, initial analysis did not reveal a pattern of racial bias based on police discretion. Specifically Hispanics were arrested at close to the same rate for discretionary crimes compared with the arrest rate for non-discretionary crimes.<sup>B</sup>
- The percentage of Hispanic suspects arrested for discretionary crimes had not significantly increased over the past ten years.<sup>C</sup>

In 2009 CPL researchers interviewed numerous San José community members and patrol officers; subsequent efforts focused on conducting additional interviews to ensure a balanced representation. In July 2009, Dr. Goff met with members of the IPA Advisory Committee and listened to their issues and concerns regarding police/community relations. In its November 2009 report, the CPL stated that many community members desired a mechanism to communicate more directly with the Police Chief; CPL noted that the level of community trust might benefit from opening more dialogue between the community and the SJPD command staff.

The CPL is currently undertaking several different research projects assessing the equitable delivery of police services to all community members. These projects include: an analysis of arrests for different racial groups in San José over a twenty-year period, and an examination of the relationship (if any) between officer attitude and officer behavior.

Coordinating multiple research projects across various research institutions — namely UCLA, Berkeley, Stanford, and SUNY Stony Brook — is a multi-year process. In 2010 the CPL will continue to provide quarterly updates to the City and the IPA will report on significant findings in its next year end report.

<sup>A</sup> Information on CPL from CPL website at <http://cpl.psych.ucla.edu/>

<sup>B</sup> Dr. Phillip Goff presentation to the Public Safety, Finance, Strategic Support Committee November 19, 2009. Dr. Goff indicated that using eight discretionary and eight nondiscretionary misdemeanor crimes, the CPL research showed that Hispanics were arrested at a rate of 53.98% for the eight discretionary misdemeanors compared to a rate of 53.87% for the eight nondiscretionary misdemeanors.

<sup>C</sup> Id.

## KEY CIVILIAN OVERSIGHT LAWS & REGULATIONS

# Chapter Two

**I**n previous year-end reports, the Independent Police Auditor (IPA) discussed the complaint process focusing narrowly on the City’s procedure of handling police misconduct complaints. This chapter attempts to explain the complaint process within in a broader context of state and local laws and regulations. Every jurisdiction that employs police officers has some discretion in developing its complaint process; however, each process must also abide by state standards. Those state standards are set either by legislative enactments (statutes) or are developed by legal determinations in lawsuits (case law). Elements of the complaint process which are set by state standards cannot be changed by the City even if the Council made changes to the municipal code and even if the San José community voted to change the City’s charter.

This chapter provides information on some significant aspects of civilian oversight law, both in the State of California and here in San José. “Snapshots” are included to provide brief summaries of important laws and regulations.<sup>11</sup> Detail is provided on a few core elements which have repeatedly generated questions and concerns during our 2009 outreach efforts.

### I. Complaints About Officer Misconduct: A State Level Overview

#### A. Background

Before the mid 1970s, there was no uniform practice in California requiring law enforcement entities to accept, investigate and track complaints made by citizens against the police. A landmark case arose out of Los Angeles County where County Sheriff Peter Pitchess was the first to maintain a complaint system which recorded and tracked complaints against deputies under his employment. In 1972, a defendant who was charged with battery on four Los Angeles

<sup>11</sup> The “snapshots” within this chapter provide basic information about the laws and regulations mentioned. Exceptions to the laws and regulations are not provided here – such detail generally applies to limited circumstances and is very fact specific. Complete information may be found by referencing the citations noted.

## CHAPTER TWO | KEY CIVILIAN OVERSIGHT LAWS & REGULATIONS

deputies subpoenaed records about complaints of excessive force by those same deputies. Sheriff Pitchess declined to provide the files, stating that a criminal defendant had no right to such records. When the case was appealed, the California Supreme Court disagreed with the sheriff and ruled that a criminal defendant has the right to request and receive some of the information contained in civilian complaint records if that information is shown to be relevant to the defense.<sup>12</sup>

In the years following that decision, commonly known as *Pitchess*, the State Legislature learned that some police departments were shredding documents so that they would be unavailable for disclosure. In an effort to stop such practices, legislation was introduced in 1978 that provided that such records must be retained. The

legislation limited the release of the information, however, to that which a court deems relevant.<sup>13</sup>

### B. Current Law

Current law regarding police misconduct complaints attempts to strike a balance among competing interests. The law mandates that police departments have a complaint process and that records of complaints must be maintained for five years. But the law also bestows a high level of confidentiality on these same records and any release of information is strictly regulated. Similarly, the employing agency is restricted in using complaint information in assessing whether an officer should be promoted. Other examples of provisions reflective of community concerns, officer concerns, and concerns about the accessibility of information are as follows:

<p><b>Confidentiality:</b> Penal Code §832.7(a)</p>	Records about police officer misconduct complaints filed by members of the public <b>are confidential</b> and <b>shall not be</b> disclosed in any proceeding except as permitted under the Evidence Code.
<p><b>Procedure Required:</b> Penal Code §832.5(a)(1)</p>	Every department that employs police officers (1) <b>must</b> have a procedure to accept and investigate complaints filed by members of the public, and, (2) <b>must</b> provide a written description of the complaint process to the public.
<p><b>Required Details:</b> Penal Code §832.7(b), (e)</p>	The department <b>shall</b> release a copy of the complainant’s statement <b>to the complainant</b> . The department <b>shall</b> provide timely written notice about the disposition of the complaint <b>to the complainant</b> .
<p><b>Records Maintenance:</b> Penal Code §832.5(b)</p>	Complaints and corresponding investigations must be kept for a minimum of five years.
<p><b>Limited Use by Department:</b> Penal Code §832.5(c)</p>	Complaints determined to be frivolous, unfounded or exonerated and any reference to such complaints <b>will not</b> be kept in the officer’s personnel file. The department <b>may not</b> use these complaints for punitive or promotional purposes except as permitted under the Government Code.

<sup>12</sup> This California Supreme Court case is *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, 535.

<sup>13</sup> Senate Committee on Judiciary Bill analysis report SB 1436 (1977-78 Regular session) p.7.

## CHAPTER TWO | KEY CIVILIAN OVERSIGHT LAWS & REGULATIONS

### II. Local Authority Is Limited By Charter And Code

Although state law governs some key elements of complaint processes in California, other aspects, including the organization and administration of the process, can be developed to meet the needs of individual communities.<sup>14</sup> For example, whether a city includes concerns about civilian employees of the police department in its misconduct complaint process is a local choice.

#### A. San José Charter

In San José, the establishment and authority of the IPA were approved in 1996 by a vote of the city’s

residents.<sup>15</sup> The IPA operates under the authority of the San José City Charter and the Municipal Code, and in a manner consistent with the state laws described in this chapter. Because the Charter has specific language regarding the duties and functions of the IPA, the authority of the office cannot exceed the responsibilities expressly stated in the Charter. Any change to those duties and functions granted by the City Charter requires approval by a vote of the City Council and confirmation by a vote of the people of San José.

### SNAPSHOT – SAN JOSÉ CHARTER

AUTHORITY	LIMITATIONS
IPA is appointed by council for a 4-year term and can only be removed during the term for failure to perform or negligence if 10 council members agree removal is warranted.	Term is limited to 4-years; a majority of council members (6 out of 11), is required to renew the 4-year contract for another term.
IPA is directed to review the Internal Affairs investigation of complaints against police officers.	Review is limited to determining whether or not the investigation was complete, thorough, objective and fair.
IPA is directed to make recommendations regarding Police Department policies and procedures.	Recommendations based on IPA’s review of complaints are presented to the City Council and require Council approval.
IPA is directed to conduct public outreach.	Outreach is intended to educate the public about the role of the IPA and the complaint process.

<sup>14</sup> *San Francisco Police Officers’ Assn. v. Superior Court* (1988) 202 Cal.App 3d 183, 190.

<sup>15</sup> In the past few years, several police oversight agencies across the nation have been closed by city leaders for budget or other reasons. However, because San José’s IPA office was established by the City Charter, the office cannot be eliminated by the Council for political or financial reasons.

## CHAPTER TWO | KEY CIVILIAN OVERSIGHT LAWS & REGULATIONS

### B. San José Municipal Code

The San José Municipal Code (Code) provides additional definitions and instructions pertaining to the operation of the IPA is IPA office. The Code is created by city council enactments and change can be made via the same mechanism — a vote of the city council.<sup>16</sup> Such changes can only

be made if they are consistent with the City Charter. The Code cannot expand authority if the scope of that authority is limited by the City Charter. Without granting or limiting powers established by the City Charter, the Code provides guidelines on how the IPA, in relation to the police department is to be managed. Key provisions of the Code are as follows:

### SNAPSHOT — SAN JOSÉ MUNICIPAL CODE

CODE SECTION	DUTIES and RESPONSIBILITIES
8.04.020	<b>Independence:</b> The IPA shall, at all times, be totally independent. No person shall attempt to undermine the independence of the IPA in the performance of IPA duties.
8.04.010(E)	<b>Confidentiality:</b> The IPA shall comply with all state laws regarding confidentiality of police department records as well as the privacy rights of all individuals involved in the process.
8.04.010(D)	<b>Reporting function:</b> The IPA shall file annual public reports for the city council; such reports shall include data about complaints, analyze trends, and make recommendations.
8.04.010(A)	<b>Auditing function:</b> The IPA shall review Internal Affairs (IA) investigations of complaints against police officers to determine if the investigation was complete, thorough, objective and fair. The IPA shall review all complaints which allege unnecessary force and no less than 20% of all other complaints.
8.04.010(A)	<b>Interview participation:</b> The IPA may attend any witness interviews — including police officers interviews — conducted by IA. The IPA may not question directly but may suggest questions to IA staff.
8.04.010(A)	<b>Appeal process:</b> If the IPA believes that further investigation is warranted, a written request will be made to the Chief of Police. The IPA may make a written appeal of the Chief’s response to the City Manager.
8.04.010(B)	<b>Officer Involved Shootings:</b> The IPA shall participate in the SJPD’s review of officer involved shootings.

Again, code provisions may be changed by a vote of the council members and no vote of the people is required. However any changes to the Code

must be consistent with existing Charter provisions.

<sup>16</sup> Depending on the subject, the necessary vote is either majority or supermajority.



## CHAPTER TWO | KEY CIVILIAN OVERSIGHT LAWS & REGULATIONS

### III. What Gets Disclosed?

As mentioned above, California law deems investigations of complaints against police officers to be personnel matters and therefore confidential. Disclosure about specific misconduct complaints is very restricted.

#### SNAPSHOT – STATE LAW LIMITS ACCESS TO INFORMATION

The Complainant	In-Court Proceedings	The Employing Agency	Others
Gets a copy of his/her own statement made in the complaint process	Can be disclosed in any criminal or civil proceeding only by complying with the process outlined in the Evidence Code. [See box “Pitchess Process”]	Can access complaints for punitive or promotional purposes only as permitted by the Government Code	Agencies may disseminate data regarding the number, type or disposition of complaints if the information does not identify individual officers
Gets notice of the “disposition” of the complaint; no information is provided about discipline, if any	Limited exceptions for grand jury, district attorney, Attorney General	Can access to identify officers who require counseling or additional training	

#### Pitchess: Intended to balance rights of the officer and the accused

Under the Evidence Code, a criminal defendant may bring a motion to compel the disclosure of police misconduct complaints that contain information relevant to the defense.\* The accused is entitled to that information which, upon a showing of good cause and materiality, is evidence or may lead to the discovery of evidence that will assist him in preparing his defense. Courts typically review the complaint files in private before disclosing any information responsive to the defendant’s motion. Limited information is provided and that information is generally given under a protective court order which restricts any additional disclosure of the information. The so-called “Pitchess process” (named after the case from Los Angeles case described earlier in this chapter) is intended to strike a balance between the need of the criminal defendant for all relevant and reasonably accessible information and the legitimate concerns of the police officer to shield from disclosure confidential information not essential to an effective defense.

\* Evid. Code 1043(b), 1045; Penal Code 832.7, 832.8 *Pitchess v. Supervisor Court* (1974) 11 Cal.3d 531, 535).

## CHAPTER TWO | KEY CIVILIAN OVERSIGHT LAWS & REGULATIONS

### IV. Recent Court Decisions: More Uniform State-Wide Confidentiality

In the past, some jurisdictions with different police oversight models provided more information on misconduct complaint proceedings and the individual officers involved. This led to some criticism that the oversight process in San José was unnecessarily opaque relative to other jurisdictions. However, following a 2006 California Supreme Court decision<sup>17</sup> all jurisdictions in California must comply with the strict confidentiality provisions outlined in the state statutes.<sup>18</sup>

In August 2006, the California Supreme Court in *Copley Press v. Superior Court* held that records of an administrative appeal sustaining misconduct charges are confidential and cannot be disclosed to the public. The decision prevents the public from learning what discipline, if any, was imposed on the police officers as a result of misconduct.

Before the *Copley Press* case, California Penal Code Section 832.7 prevented public access to citizen complaints held by the police officer's "employing agency" — thus internal affairs records including any records regarding officer discipline were confidential. However, if an officer made an appeal regarding discipline to an outside body,<sup>19</sup> it was unsettled whether the

appeal records were confidential because the outside body was not the officer's "employing agency." The *Copley Press* decision ended the distinction between "employing agencies" and outside bodies — both were deemed to perform similar functions relative to discipline and misconduct complaints — and both were charged with complying with the confidentiality provisions of Penal Code 832.7.

Decisions by the California Supreme Court apply throughout California — thus, under *Copley Press*, all cities and counties are limited by the confidentiality requirements of the ruling.<sup>20</sup> Some cities and counties which had previously been more transparent about misconduct complaints resulting in officer discipline or other information about individual officers are now much more limited in what they may disclose. These jurisdictions include: San Francisco Police Department, Berkeley Police Review Commission, Los Angeles Police Department, Oakland Citizens Police Review Board, and the Los Angeles County Sheriff.

<sup>17</sup> *Copley Press, Inc. v. The Superior Court of San Diego County* (2006) 39 Cal. 4th 1272.

<sup>18</sup> California Penal Code Sections 832.5 and 832.7 and California Evidence Code Sections 1043 and 1045.

<sup>19</sup> Such as a civil service commission or a civilian review board.

<sup>20</sup> The *Copley Press* decision pertained specifically to San Diego County. The Supreme Court decision resulted in subsequent lawsuits by various jurisdictions to determine how the decision applied to its peace officer records, see for example *Berkeley Police Association v. City of Berkeley* (2008) 167 Cal.App.4th 385.

## CHAPTER TWO | KEY CIVILIAN OVERSIGHT LAWS & REGULATIONS

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Since the *Copley Press* decision, there have been some attempts in the California legislature to bring more openness to the police misconduct complaints process; however, efforts to amend the state law have not been successful.<sup>21</sup>

There remain other avenues which may provide access to information about alleged misconduct records by police officers. For example, the media can direct its reporters to scour press releases and court documents filed in criminal cases and to attend court proceedings. Individual complainants are not precluded from speaking about their personal experiences. In sum, however, those local governmental or quasi-governmental bodies which in the past provided a greater degree of information about police misconduct complaints no longer do so.

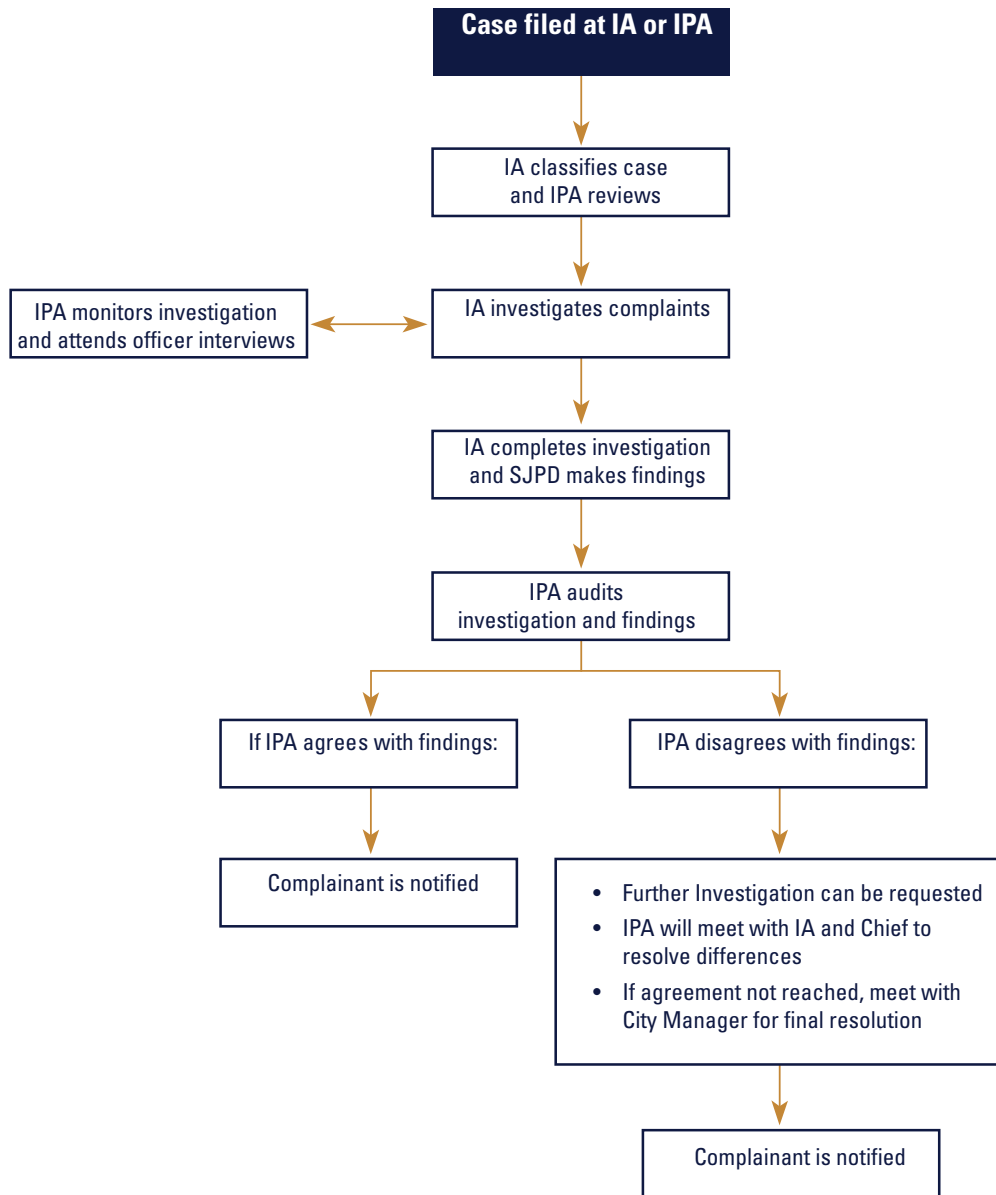
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<sup>21</sup> Senate Bill 1019 was introduced in the 2007-2008 session. No vote was taken on the bill by the Assembly Public Safety Committee and thus the bill died due to inaction.



# YEAR END STATISTICS

## THE COMPLAINT PROCESS FLOW CHART

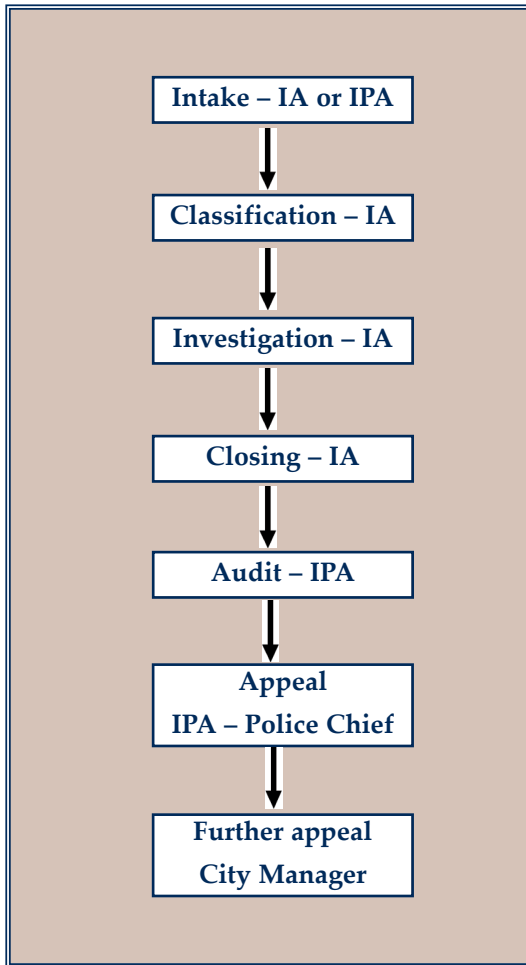


# Chapter Three



## CHAPTER THREE | YEAR END STATISTICS

### MECHANICS OF THE COMPLAINT PROCESS



#### **STEP ONE: Intake**

For most law enforcement agencies the filing of a complaint is the first step in the complaint process. A complaint can range from something basic, such as a concern about a rude officer during a traffic stop, to a more serious matter, such as an allegation that an officer used unnecessary force during an arrest.

Persons can contact either the IPA or the SJPD's Internal Affairs Unit (IA) with concerns about the conduct of a San Jose police officer and may do so via mail, telephone, facsimile, e-mail, or in person. Complainants may file a complaint even if they do not have a direct connection to the incident or the persons involved. A complaint may also be filed anonymously.<sup>22</sup> Information about the incident is entered into a shared IA/IPA database.

With the complainant's consent, interviews are recorded to ensure the information provided by the complainant is captured accurately. Each of the concerns articulated by the complainant is identified and assigned the most applicable allegation.

#### **STEP TWO: IA Classification**

After a case is received by the IPA and allegations have been identified, the case is forwarded to IA for classification and investigation. The Internal Affairs Unit is responsible for classifying all complaints. Classification is an important management tool allowing IA to identify the level of seriousness of each complaint and devote staff time accordingly. Generally speaking, classification determines the level of a case receives and whether allegations and officer names are permanently retained and tracked.

<sup>22</sup> Although a direct connection is not required, first-hand information is often needed for successful investigation of a complaint.



## CHAPTER THREE | YEAR END STATISTICS

The classification system was changed by the Revised Complaint Process (RCP) adopted in 2008.<sup>23</sup> All matters received in 2009 have been classified under the revised process. The RCP recognizes three classifications:

- CONDUCT COMPLAINTS
- POLICY COMPLAINTS
- NON-MISCONDUCT CONCERN (explicitly defined by SJPD policy as “not a complaint”)<sup>24</sup>

### **STEP THREE: IA Investigation**

Internal Affairs conducts the investigation of complaints, a process by which reports, statements and evidence are collected to determine what proof supports the complainant’s allegations. The evidence is then analyzed in light of relevant SJPD policies and procedures. A written finding is generated by IA for each allegation.<sup>25</sup>

### **STEP FOUR: IA Closing**

The complaint is closed when the IA investigation has been completed and written findings made. An IA document summarizing the investigation and findings is forwarded to the IPA for audit.

### **STEP FIVE: IPA Audit**

The IPA audits the IA investigation to examine whether it is thorough, fair and objective.

### **STEP SIX: Appeal**

If disagreement on how a complaint was investigated is not resolved through informal dialogue, the IPA prepares a formal memorandum to the Chief of Police; this memorandum details the IPA concerns and supporting analysis. If no consensus is reached with the Chief of Police, the IPA may write a formal memorandum to the City Manager for final resolution. The audit/closing process results in one of three recorded outcomes for the IPA:

- agreed,
- agreed after further action, and
- disagreed.

Identification of allegations, classification and findings is an important part of the complaint process. Throughout this chapter and the remainder of the report *allegations* of misconduct are noted in *italics*. CLASSIFICATION of complaints are identified with SMALL CAP lettering. The FINDINGS made by IA on each closed allegation is also noted with SMALL CAP lettering.

<sup>23</sup> Matters received prior to July 2008 were classified under the former complaint process.

<sup>24</sup> SJPD Duty Manual [2008 Revision] §C1706.

<sup>25</sup> The investigation may “drop” an allegation meaning that no finding is rendered on that allegation. Sometimes the investigation analysis provides a discussion explaining why the allegation was dropped.

## CHAPTER THREE | YEAR END STATISTICS

### I. Background

This chapter describes the involvement of the Office of the Independent Police Auditor (IPA) in the police misconduct complaint process including receiving complaints, monitoring Internal Affairs (IA) investigations, and auditing completed investigation reports. Information about the types of cases received and/or closed in 2009 is detailed in this chapter. The data includes information about the classification of cases, the audit process, findings reached by IA, and officer discipline.

Prior to the establishment of the IPA, complaints against San José police officers were reported exclusively to officers assigned to IA. Since 1993, the IPA has offered an alternative non-police venue for filing complaints and has provided independent review of misconduct complaint investigations to ensure timely, objective and thorough analysis by IA investigators. The IPA follows the mandates of the San José Municipal Code and the California Penal Code sections 832.5 and 832.7 that provide procedures for investigation of citizen complaints.

### II. Complaints Received and Classification

In 2009, a total of 317 concerns about the conduct of San José police officers were raised. One hundred twenty-three persons contacted the IPA and 194

persons contacted IA with allegations of police officer misconduct. **Table 1 in Appendix C** provides detail about the number and classification of concerns filed by members of the community.

All matters received during 2009 were processed under the Revised Complaint Process (RCP) which was implemented in July 2008<sup>26</sup>.

#### A. Classification of External Matters Received

Two hundred thirteen (213) matters were classified as CONDUCT COMPLAINTS in 2009.<sup>27</sup> One complaint was classified as a POLICY complaint.<sup>28</sup> In addition to the 214 complaints received, there were 103 matters which were classified as NON-MISCONDUCT CONCERN (NMC). An NMC is an allegation about an officer's conduct which would not lead to officer discipline; an NMC is explicitly defined as "not a complaint" under the RCP. Thus, of the 317 matters raised by persons contacting the IPA or IA, 213 cases, 67%, were determined to be complaints — meaning they arose from circumstances in which an officer's alleged conduct could potentially result in discipline. The IPA has the ability to appeal the classification of each matter, including NON-MISCONDUCT CONCERNS, if informal discussions with IA staff about classification prove unsuccessful.<sup>29</sup> While the RCP is still being evaluated, there has been general consensus among the staff of IA and IPA about the changes to, and application of, the classification process this year.

<sup>27</sup> For more information about the Revised Complaint Process see the IPA 2008 Annual Report starting at page 13. See also City Manager Figue Memorandum, *One Year Report on the Police Department's Revised Citizen Complaint Process and In-Custody Death Training Review Panel*, October 8, 2009.

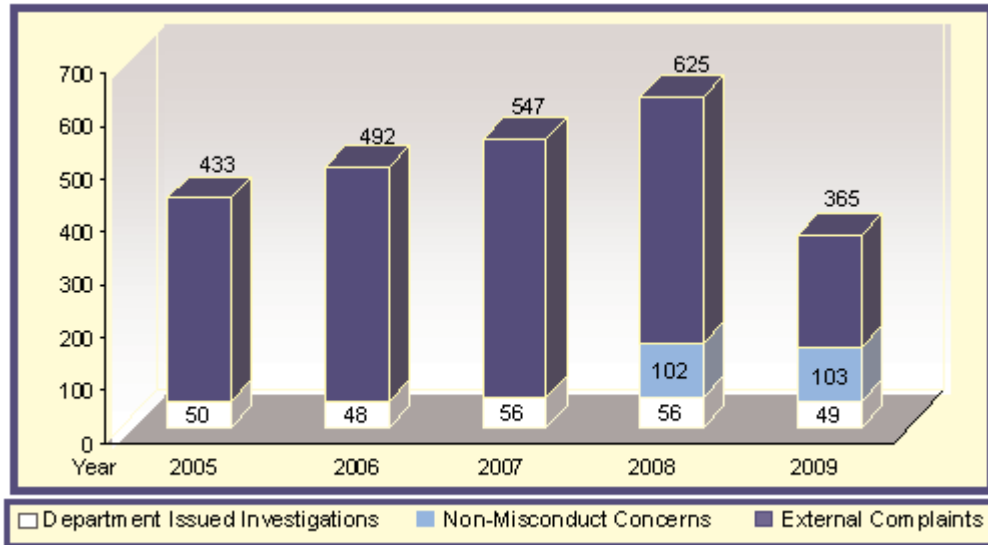
<sup>28</sup> Investigations of CONDUCT COMPLAINT may or may not include interviews of the subject or witness officers.

<sup>29</sup> A POLICY complaint expresses dissatisfaction with an SJPD policy; it is not a complaint about an individual officer's conduct. Policy complaints are forwarded to SJPD's Research and Development Unit for information and review.

<sup>29</sup> By informal agreement, each NON-MISCONDUCT CONCERN is forwarded to the IPA for review before the matter is forwarded to the subject officer's supervisor. The matter is closed as a NON-MISCONDUCT CONCERN after a response from the supervisor affirming that the matter has been addressed with the subject officer.

## CHAPTER THREE | YEAR END STATISTICS

Illustration 3-A: Five-Year Overview of Total Matters Received



### B. Department Initiated (DI) Cases

The San José Police Department has the authority to initiate complaints that do not arise from a citizen complaint; those matters vary from relatively minor conduct such as failure to file timely reports to serious matters such as criminal misconduct. In 2009 the Department-initiated 49 internal cases against San José police officers<sup>30</sup>. Under the RCP, the Department does not consider these matters to be “complaints” and instead refers to them as “investigations.” Due to changes implemented by the RCP, information about Department-initiated investigations is no longer available to the IPA<sup>31</sup>. Thus the IPA is no longer able to include information on DI cases in the IPA Year End report. Starting in 2008 the

Department agreed to provide a written report about these internal investigations directly to City Council on an annual basis.

### C. Reported Concerns

Contrary to the trend in recent years, the total number of concerns — both complaints and NON-MISCONDUCT CONCERNS — reported in 2009 decreased dramatically. See **Table 2** in **Appendix C** for a four-year overview of total matters received. The number of investigated complaints was lower in 2009 than the number of complaints investigated in 2007 and 2008; the number of investigated complaints in 2009 more closely approximates those investigated in 2006.

<sup>30</sup> Staff from IA and IPA offices meet in early January of each year to run reports on the prior year’s data; this data run provides an annual “snapshot” of the data for each calendar year. In January 2010, IA and IPA staff noted that there were 49 DI cases initiated during 2009. At the time of drafting this report, IPA staff noted that the number of DI cases initiated by the Department during 2009 had increased from 49 to 69. That number may increase again by the time this report is printed. See 2007 IPA Year End Report starting at page 9 for a discussion of late-entered DI cases.

<sup>31</sup> Before the RCP, the IPA had limited access to information in cases classified as DEPARTMENT- INITIATED. When the Department initiated a complaint, the IPA received a printed face sheet which provided a short summary of the incident, the allegations, the incident location and officer names. When the Department closed the complaint, the IPA received another printed closing sheet which indicated the findings on each of the allegations and the level of discipline, if any. The IPA included this data in its mid-year and year end reports.

## CHAPTER THREE | YEAR END STATISTICS

### NON-MISCONDUCT CONCERNS

The Revised Complaint Process (RCP) included a new classification — the non-misconduct concern (NMC). The IPA was initially concerned that the NMC would simply replace the former INQUIRY classification in which investigation was limited and officer names were not retained. When first implemented, the NMC protocol did not include early notice to the IPA about NMC classification. This led to concerns that the IPA would be unaware and thus unable to challenge any specific NMC classification of those incidents which the IPA believed should be fully investigated as a CONDUCT COMPLAINTS.

There was an advantage, however, to this new approach. Unlike the INQUIRY classification, when an officer receives a NMC the corresponding protocol includes notice to the subject officer's supervisor and a request that the matter be raised with the officer. Although IA determines that the alleged conduct of the officer — if proved — would not result in discipline, the NMC protocol provides a means to notify the subject officer and his/her supervisor that a member of the community was concerned enough to alert SJPD or the IPA about the officer's behavior.

To address the concern about timely notification, IPA and IA staff worked together to adopt a protocol that gave the IPA early notice that a case was being classified as a NMC and the opportunity to review the matter. In the event there was a question about the underlying concern, or the documentation that IA relied on to determine the NMC classification, the IPA was provided the opportunity to review the initial IA investigation and documents before the matter was forwarded to the supervisor for discussion and subsequent closure. The IPA was provided with a mechanism to challenge the classifications both informally and formally. There were 103 matters closed as NMC in 2009. The few matters that raised concern were informally discussed with IA; no NMC classification matters resulted in a formal disagreement. An NMC is not tracked for purposed of the Department's Early Warning System.

#### **Examples of NON-MISCONDUCT CONCERNS**

- A complainant felt an officer was rude and sarcastic but the officer did not use profanity or derogatory language.
- An officer searched a complainant whose terms of probation included a search clause.
- An officer ignored a complainant's noise complaint because the volume was under the legal limit.
- Complainant said that an officer erred in giving her a traffic ticket — no other improper conduct was alleged.<sup>32</sup>

In each of these matters, IA determined that the reported conduct — assuming that it occurred — did not rise to a level where discipline could be imposed. Each was classified as an NMC. The concern was forwarded to the officer's supervisor for discussion with the officer and then closed.

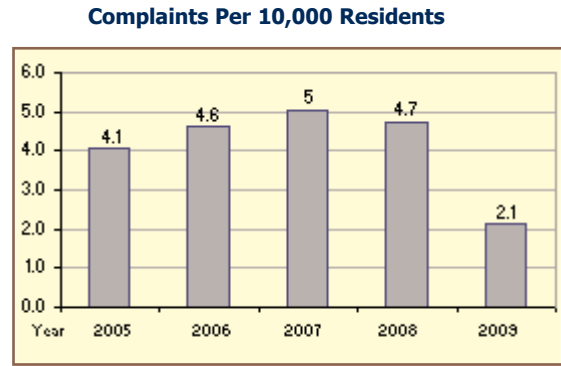
<sup>32</sup> Under the RCP, concerns which contain no other allegations other than a dispute about a traffic ticket are not fully investigated as conduct complaints.

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### D. Complaints in Perspective

There are many factors that can influence the number of complaints reported and most are difficult to measure; these factors include the change in the definitions of a complaint, outreach efforts by the IPA and the SJPD, the number of police contacts and arrests, variations in population levels, types of police calls, and police deployment strategies. The charts in **Illustration 3-B** present comparative data on increases in population and numbers of complaints over the last four years. Complaints reflect only those received by the IA or IPA through the police misconduct complaint process; these numbers do not reflect matters alleging improper police conduct which have been filed as civil claims through the legal system.<sup>33</sup> The rate of complaints in relation to population decreased slightly in 2008 and decreased dramatically in 2009. The RCP, used exclusively in 2009, limits complaints to those cases in which the allegations may lead to discipline; as stated earlier in this chapter, all other matters are deemed to be NON-MISCONDUCT CONCERNS and therefore not counted as complaints. However, even if NON-MISCONDUCT CONCERNS were included in the calculation, the 2009 rate would still be lower than the previous five years.

**Illustration 3-B: Complaints in Relation to City of San José Population**



Population data: CA Department of Finance

### III. What Is Causing The Significant Drop In Complaints?

The San José Police Department received a considerable amount of media attention throughout 2009. Many of the articles in the most-circulated newspaper in the area, The San José Mercury News<sup>34</sup>, were critical of the Department and of individual officers. Given that media coverage, the IPA staff anticipated receiving the same number of concerns reported in 2008 – if not more. However, the 2009 statistics reflect a 32% drop in the number of external matters received and a 45% drop in the number of classified complaints relative to 2008 numbers.

No one factor can be identified as the sole cause, but several factors offer possible explanations for the decrease in reported complaints:

<sup>33</sup> Example of these civil matters are claims filed with the City Clerk through the Government Tort Claims Act or complaints filed in the state or federal courts.

<sup>34</sup> The Audit Bureau of Circulations reported that between March 30, 2009 and September 30, 2009, the San José Mercury News had a daily circulation of 225,175. The Mercury News is listed as number 26 in the Audit Bureau's list of top 100 newspapers in the US by daily circulation. *Audit Bureau of Circulations 9/20/09*.



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- **Positive Change:** Beginning in late 2008 and continuing through 2009, the City and SJPD efforts have been more focused relative to prior years on identifying issues regarding police services and on implementing solutions. These efforts, some of which were completed in 2009 and others which are underway, include community relations,<sup>35</sup> police accountability,<sup>36</sup> training,<sup>37</sup> and other innovations.<sup>38</sup> It may be that the reduction in the number of persons complaining about officers is a result of improvement in officer conduct and/or better community relations brought about by these efforts.

- **Outreach:** With reduced staffing in 2009 during the search for a new IPA, outreach efforts were lower relative to prior years. Because outreach raises awareness of the office and informs the community about the complaint process, it is possible the drop in the number of complaints was, in part, a function of the limited outreach.

- **Publicity:** Publicity, both positive and negative, has an impact on community response. In 2009 there was significant publicity about the

IPA office. Media coverage about the office focused on the City's efforts to recruit a new IPA as well as community debate about why the prior IPA's was not reappointed and whether the San José auditor model of oversight is effective. Media coverage can influence the number of complaints reported in a given year.

- **Confidence in the process:** Community confidence in the complaint process is another factor that can influence the number and type of complaints that are filed in any given year. During community presentations and one-on-one meetings, members of the public have expressed a lack of confidence in the process. Although skepticism about the efficacy of the complaint process has been voiced repeatedly in past years, IPA staff perceived a rise in the number or intensity of these concerns in 2009. Reflecting a different perspective, the 2009 Community Satisfaction Survey conducted by the City reflected an increased awareness of, and confidence in the IPA — the highest level of confidence reported since 2003.<sup>39</sup>

- **Retaliation or Fear:** Another concern

<sup>35</sup> Efforts include holding a Spanish-Speaking Citizen's Police Academy, developing a Community of San José video for training, and engagement with the Consortium for Police Leadership in Equity (CPLE).

<sup>36</sup> Efforts include implementing a work plan to expand the current SJPD Early Warning System, providing enhanced training on report writing, implementing a requirement that all in-custody arrests receive supervisory review and the coordination of random spot checks to assess quality in arrest reports.

<sup>37</sup> Efforts include providing more extensive training for officers and supervisors in making arrests for public intoxication, resisting arrest and disturbing the peace.

<sup>38</sup> Innovations include implementing a pilot program outfitting officers with mobile cameras, coordinating a public intoxication arrest program with the District Attorney, the Santa Clara Department of Correction and the Superior Court, and offering training to managers and employees of restaurants/bars which furnish alcohol.

<sup>39</sup> City of San José 2009 Community Satisfaction Survey, Report of Findings, page 44. Fairbank, Maslin, Maulin, Mertz & Associates. #320-416. January 2010. The Report stated that "roughly three in five respondents (59%) indicated that they were at least 'somewhat' confident the IPA provides effective police oversight in San José, a 10 point increase from 2005 and **the highest level of confidence tested since 2003**. Additionally 195 respondents, nearly one in five, indicated they were 'very' confident in the IPA's police oversight role, also the largest number of respondents expressing strong confidence in the office."

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which has been raised by members of the community over a number of years is a fear of the police and/or fear of retaliation by the police if one files a complaint. In 2009 this sentiment seemed to be more prevalent in the community following two high profile incidents, both of which involved members of the Asian community.

### IV. Allegations

An allegation is an unproven accusation that a police officer violated a Department or City policy, procedure, rule, regulation or the law.<sup>40</sup> A complaint may contain a single allegation or include a number of concerns. For example, a person may complain that an officer discriminated against him, articulating a single allegation of misconduct; alternatively, a person may complain that an officer discriminated against him, was rude, and used unnecessary force — reflecting three allegations in a single complaint. Between January and December 2009, 213 external complaints<sup>41</sup> containing 527 allegations were received; the number of times each allegation was reported is listed below.

ALLEGATION RECEIVED	2009	
	#	%
Procedure	143	27%
Force	102	19%
Arrest or Detention	77	15%
Courtesy	71	13%
Search or Seizure	60	11%
Bias Based Policing	29	6%
Conduct Unbecoming an Officer	26	5%
Neglect of Duty	14	3%
Missing/Damaged Property	5	1%
<b>Total Allegations</b>	<b>527</b>	<b>100%</b>

<sup>40</sup> SJPd Duty Manual §C1705 [2008]

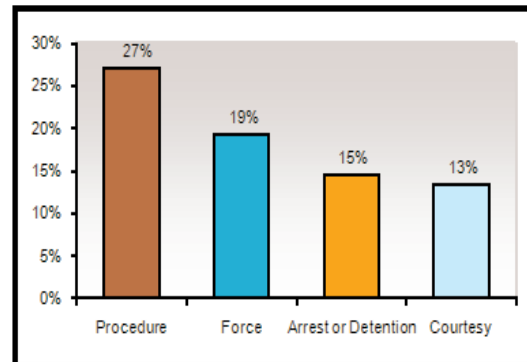
<sup>41</sup> These 213 complaints are external complaints filed by individuals during 2009; the number does not include those allegations contained in 49 Department-Initiated cases.

<sup>42</sup> On occasion, findings of EXONERATED or NOT SUSTAINED may result in informal corrective action — namely counseling and training. See SJPd Duty Manual §§C1722, C1804 and C1812.

### A. Allegations Most Frequently Received

The four types of allegations most frequently reported in the 213 external complaints received in 2009 were *Procedure*, *Force*, *Arrest/Detention*, and *Courtesy*. In prior reports, the IPA included data reflecting multi-year comparisons of the allegations most frequently reported. However, the data this year reflects only external cases. Comparisons to data of prior years cannot be made because the data contains allegations from both external and internal complaints.

Illustration 3-C: Allegations Most Frequently Received in 2009



### B. Findings on Allegations

The complaint process begins with the filing of a complaint; the case is considered closed when IA completes its investigation and a finding is made on each allegation in the complaint. In general, officer discipline is imposed only if there is a SUSTAINED finding on an allegation.<sup>42</sup> The standard of evidence used by IA is “preponderance of evidence,” thus for a SUSTAINED finding the evidence must indicate that it is more likely than not that a violation of the Duty Manual occurred.

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The possible findings for any one allegation are:<sup>43</sup>

- SUSTAINED
- UNFOUNDED
- NOT SUSTAINED
- NO FINDING
- EXONERATED
- WITHDRAWN
- WITHIN PROCEDURE
- NO MISCONDUCT DETERMINED
- COMMAND REVIEW

In 2009 IA made findings on 1,031 allegations in external cases. Fifty percent (50%) of the total number of allegations were closed with a finding of EXONERATED. The second most common finding was NOT SUSTAINED (20%). Only 39 allegations resulted in a SUSTAINED finding – 4% of the external allegations investigated and closed in 2009. SUSTAINED findings were made on allegations of *Improper Procedure/Procedure, Rude Conduct/Courtesy, Unofficer-Like-Conduct/Conduct Unbecoming an Officer, Unlawful Arrest* and *Unnecessary Force*. Of 1,031 allegations, 131 or 13% were determined to be UNFOUNDED; this finding means that the investigation conclusively proved either that the acts complained of did not occur or that the officer named in the allegation was not involved. See **Table 3** in **Appendix C** for detail on external allegations and corresponding findings.

Findings are based on an objective analysis, weighing all the information obtained during the investigation. The investigation of a misconduct complaint requires an investigator to gather, review, and compare information from a variety of sources such as statements from the complainant, officers and witnesses, police reports, photographs, and sometimes medical records.

At times the actions of an officer are improper or unnecessary and reflect a violation of Department policy or procedure. When the evidence is sufficient to determine that the alleged misconduct occurred the investigator will make a finding of SUSTAINED. In a case where actions of the officer were proper and necessary under the circumstances, the finding would be EXONERATED.<sup>44</sup> If it appears that some questionable conduct occurred, but after reviewing available information and statements, the investigator determines that no clear finding of misconduct can be made, the finding will be NOT SUSTAINED. In each complaint the investigator must conduct a full and fair review of all the available information and determine whether or not the alleged misconduct occurred. The section below provides a more detailed description of each of the findings and how they were applied to the complaints closed in 2009.

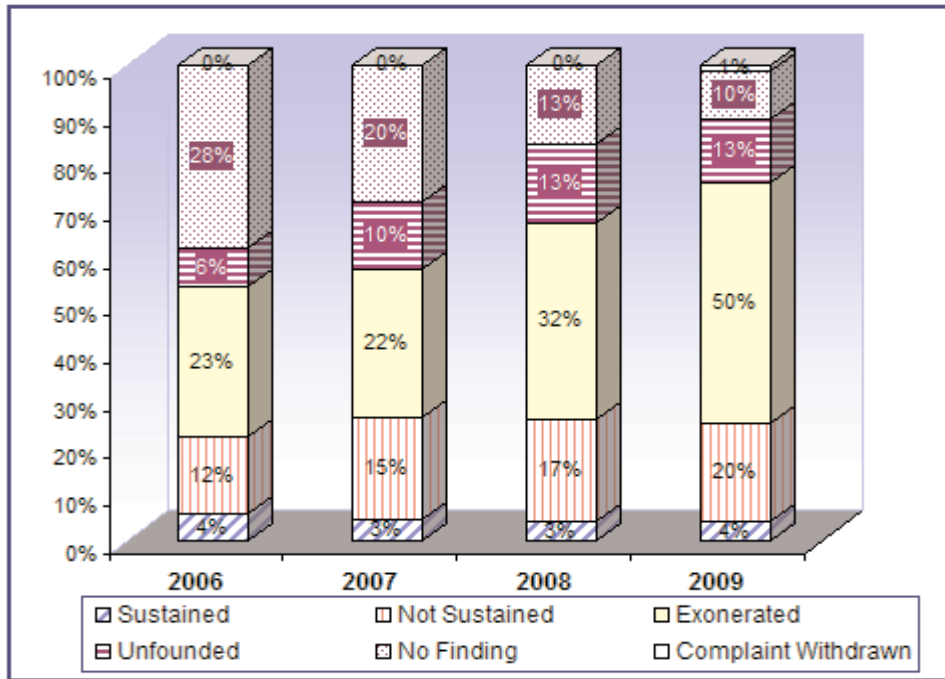
<sup>43</sup> The last three findings listed, WITHIN PROCEDURE, NO MISCONDUCT DETERMINED and COMMAND REVIEW, apply only to complaints classified under the former process; these findings are no longer used under the RCP. These findings are still pertinent to this report because this report reflects some cases which were received under the former process and but which were closed in 2009.

<sup>44</sup> For example, the complainant may object to the search of her car by an officer, but if the complainant is on probation with a search clause the officer's action is lawful and proper.



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Illustration 3-D: Allegation Findings in External Cases – Four-Year Overview



**1. SUSTAINED.** The finding of SUSTAINED may result in discipline ranging from counseling and training to termination. According to the SJPD Duty Manual, a SUSTAINED finding is made if *the investigation disclosed sufficient evidence to prove clearly the allegation made in the complaint.*<sup>45</sup> [Emphasis added]. The low percentage of allegations closed with SUSTAINED findings has remained relatively constant over the past four years – between 2% and 4%. A concern is whether the use of the qualifier *clearly* is impacting the objective application of the preponderance standard. The term preponderance means “the greater weight of the evidence” or “the evidence that has the most convincing force.”<sup>46</sup> The weight

of the evidence need not be “clear” or “compelling” – it need only be stronger evidence – “however slight that edge may be.”<sup>47</sup> The IPA has urged the City Manager to consider removing the word *clearly* from the SJPD definition to better ensure that the preponderance standard is applied and to avoid confusion with a separate standard called the “clear and convincing evidence standard.”<sup>48</sup>

**2. NOT SUSTAINED.** If the investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation, a finding of NOT SUSTAINED is made. In certain circumstances, this finding may lead to the imposition of counseling or

<sup>45</sup> SJPD Duty Manual §C1723.

<sup>46</sup> Black’s Law Dictionary, 8th edition edited by Bryan Garner 2005.

<sup>47</sup> Id.

<sup>48</sup> Clear and convincing evidence is defined as “evidence indicating that the thing to be proved is highly probable or reasonably certain. This is a higher burden than preponderance of the evidence...” Black’s Law Dictionary.

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training.<sup>49</sup> The percentage of allegations closed with NOT SUSTAINED findings has slowly increased over the past four years – from 12% in 2006 to 20% in 2009. The IPA views this trend as positive and possibly reflective of a more impartial analysis of the evidence and a more objective weighing of witness credibility.

**3. EXONERATED.** According to the SJPDP Duty Manual, an EXONERATED finding is made when the investigation shows that *the act or acts, which provided the basis for the allegation or complaint, occurred, however, the investigation revealed they were justified, lawful and proper.*<sup>50</sup> In certain circumstances, a finding of EXONERATED may lead to the imposition of counseling or training.<sup>51</sup> Allegations deemed to be EXONERATED will not be kept in the officer's personnel file.

The percentage of allegations closed with EXONERATED findings has increased significantly over the past four years – from 23% in 2006 to 50% in 2009. The California Penal Code definition of EXONERATED differs from the Department's in one key aspect – with this particular finding, the Legislature indicated its desire to include the term *clearly*. Penal Code Section 832.5(d)(3) defines EXONERATED as *the investigation clearly established that the action of the peace or custodial officer that formed the basis for the complaint are not violations of law or department policy*. The IPA has recommended that the City Manager include the word *clearly* in the SJPDP definition to ensure compliance with the state statute.

<sup>49</sup> SJPDP Duty Manual §C1723.

<sup>50</sup> SJPDP Duty Manual §C1723.

<sup>51</sup> SJPDP Duty Manual §C1723.

<sup>52</sup> SJPDP Duty Manual §C1723.

<sup>53</sup> Staff from the City Manager's office, IA, and IPA have discussed conducting additional analysis focused on the definition of *bias-based policing* and how best to render an objective determination. It is anticipated that the CPLE will provide some guidance on these efforts.

**4. UNFOUNDED.** According to the SJPDP Duty Manual, a finding of UNFOUNDED is made when *the investigation conclusively proved either that the act or acts complained of did not occur, or that the Department member named in the allegation was not involved in the act or acts, which may have occurred.*<sup>52</sup> Allegations determined to be UNFOUNDED are not kept in the officer's personnel file. The percentage of allegations closed with UNFOUNDED findings has increased over the past four years – from 6% in 2006 to 13% in 2009.

A determination of UNFOUNDED was made on 131 allegations. In 2009, allegations most frequently closed as UNFOUNDED were bias-based policing (31%), procedure (24%) and force (24%). There were 35 allegations of bias-based policing closed in 2009; 27 of these allegations, 77%, were closed as UNFOUNDED. The IPA and the City Manager agree that these figures do not necessarily mean that in 77% of these allegations it was conclusively proved that bias-based policing did not occur. Because of proof problems in the analysis of bias-based policing — the difficulty in proving that an officer's conduct was motivated **solely** by his/her **subjective** attitude or private thoughts — it is difficult to attain the elevated conclusively-proved threshold. The issue of how best to analyze bias-based policing allegations is a challenge which is not unique to San José; police oversight entities in other cities also have been studying this issue.<sup>53</sup>



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**5. NO FINDING.** An allegation is closed as NO FINDING under any of three circumstances:

- The complainant failed to disclose promised information needed to further the investigation;
- The complainant is no longer available for clarification of material issues; or,
- The subject officer resigned or retired from the SJPd before the investigation was completed.

The percentage of allegations closed with NO FINDINGS has decreased over the past four years – from 28% in 2006 to 10% in 2009. This trend is positive and may reflect greater perseverance by IA staff to finalize dispositions on each allegation.

**6. COMPLAINT WITHDRAWN.** If the complainant affirmatively indicates the desire to withdraw his/her complaint, the allegation is closed as COMPLAINT WITHDRAWN. After the officer names are removed, these cases continue to be tracked and monitored for the purpose of identifying trends. In auditing cases with allegations closed as COMPLAINT WITHDRAWN, the IPA staff generally note whether the conversation in which the complainant withdraws is audio-

recorded; if not, the IPA staff may attempt to reach the complainant to verify his/her intentions. The number of complaint withdrawn cases is relatively small; there were fourteen such cases in 2008 and in nine in 2009.

### C. The Sustained Rate

The term *sustained rate* has a unique connotation. Each closed complaint may contain multiple allegations and several subject officers depending on the complexity of the incident. If any closed complaint includes one sustained allegation against any officer, the case is recorded as a sustained complaint – so a sustained complaint is distinct and separate from a sustained allegation. The *sustained rate* in external cases is calculated based upon the number of complaints containing one or more sustained allegations from those cases classified as CITIZEN-ISSUED, CONDUCT COMPLAINT, COMMAND REVIEW, and PROCEDURAL. In 2009, 20 external complaints were sustained; this reflects a 7% sustained rate. In contrast, 16 of the 22 internal DEPARTMENT-INITIATED cases were closed with at least one sustained allegation – a 73% sustained rate.

**Illustration 3-E: Five-Year Overview of Sustained Complaints**

YEAR/TYPE OF COMPLAINTS	Closed Complaints	Sustained Complaints	Sustained Rate*
2005/ External Complaints	110	6	5%
2005/ Internal Complaints	37	31	84%
2006/ External Complaints	116	11	9%
2006/ Internal Complaints	38	37	97%
2007/ External Complaints	239	14	6%
2007/ Internal Complaints	37	32	86%
2008/ External Complaints	348	19	5%
2008/ Internal Complaints	71	55	77%
2009/ External Complaints	291	20	7%
2009/ Internal Complaints**	22	16	73%

\* The sustained rate in external cases is calculated based upon the number of sustained complaints from those cases classified as CITIZEN-ISSUED, CONDUCT COMPLAINT, COMMAND REVIEW, and PROCEDURAL.

\*\* Information on 2009 Internal Complaints relies on data provided by IA and which has not been independently verified by the IPA.

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### V. Complaints Closed and Audited

Once IA completes its investigation and enters a finding on each allegation, the case is forwarded to the IPA for audit. The purpose of an IPA audit is threefold:

- to ensure that IA investigations are complete, thorough, objective and fair;
- to increase public confidence in the complaint process; and,
- to accumulate data used for mid-year and year end reports to Council.

The IPA is mandated by the municipal code to audit:

- all force complaints; and,
- no less than 20% of other complaints.

In 2009, 296 complaints were closed by IA and forwarded to the IPA. The IPA completed audits on 238 complaints.<sup>54</sup>

### A. Issues Reviewed During Audit

Each closed IA case file includes an investigation document containing a summary of the incident, findings on each allegation, and a written analysis supporting those findings. The investigation document may contain summaries of persons interviewed – complainants, civilian witnesses, officer witnesses or subject officers. The investigation file may also contain supporting documentation such as police reports, medical records, radio event chronologies, or photographs.

When the case is audited, IPA staff look for those key factors mandated by the municipal code – namely was the investigation complete, thorough, objective and fair. A number of issues are reviewed on page 34:

<sup>54</sup> See Table 4 in Appendix C.

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ISSUES REVIEWED DURING IPA AUDIT	
Timeliness / tolling	<ul style="list-style-type: none"> <li>Was the investigation completed in a timely manner?</li> </ul>
Classification	<ul style="list-style-type: none"> <li>Was the case properly classified?</li> </ul>
Presence/absence of allegations	<ul style="list-style-type: none"> <li>Do the listed allegations adequately capture the concerns voiced by complainant?</li> <li>Were any allegations removed? If so, why?</li> </ul>
Presence/absence of supporting documentation	<ul style="list-style-type: none"> <li>If pertinent, did the investigator obtain and review documentation such as:                             <ul style="list-style-type: none"> <li>CAD<sup>55</sup></li> <li>Medical records</li> <li>Photographs</li> <li>Police reports/citations</li> <li>Taser downloads</li> <li>Use of force response reports</li> </ul> </li> </ul>
Presence/absence of interviews conducted by Internal Affairs	<ul style="list-style-type: none"> <li>Witnesses — what efforts were taken to identify and contact witnesses?</li> <li>Witness officers — what efforts were taken to identify and interview officers who witnessed the incident?</li> <li>Subject officers — what efforts were taken to identify and interview subject officers?</li> </ul>
Presence/absence of logical objective application of policy to the facts	<ul style="list-style-type: none"> <li>What is the policy/duty manual section which governs the conduct in question?</li> <li>Is this authority applicable to the case or is other authority more pertinent?</li> <li>Does the analysis apply all the factors set forth in the authority to the facts?</li> </ul>
Presence/absence of objective weighing of evidence	<ul style="list-style-type: none"> <li>What weight was given to officer testimony? Why?</li> <li>What weight was given to civilian testimony? Why?</li> <li>Does the analysis use a preponderance standard?</li> <li>Does the analysis logically address discrepancies?</li> </ul>

<sup>55</sup> CAD stands for “Computer Aided Dispatch.” Communication personnel input selected information from 911 calls, officers assigned to the call, and information on the call location and status.

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### B. Audit Outcomes

If there is disagreement on how a complaint was investigated, the IPA has the option of informally contacting the IA investigator to discuss concerns. If informal dialogue does not resolve the issue, the IPA prepares a formal memorandum which is presented to the Chief of Police; this memorandum details the IPA concerns and supporting analysis. If no consensus can be reached with the Chief of Police, the IPA may write a formal memorandum to the City Manager for final resolution.

Internal Affairs is responsible for informing the complainant in writing that his or her case has

been closed and the findings on each allegation. Shortly thereafter, the IPA sends a second closing letter explaining that the case was audited and confirming that it is now closed. Information on any discipline imposed in a specific complaint is confidential and is not released to the complainant or to the public.

The audit/closing process results in one of three recorded outcomes for the IPA: “agreed,” “agreed after further action,” and “disagreed.” Below are the outcomes in the cases audited in 2008 and 2009.

IPA Audit Determination	Explanation	2008 Audits	2009 Audits
Agreed	IPA audit determined that the IA investigation was thorough, complete and objective.	260 (77%)	165 (69%)
Agreed After Further Action	IPA requested and reviewed supporting documentation from IA or requested IA re-examine its analysis.	19 (6%)	25 (11%)
Disagreed	IPA audit determined that the IA investigation was not thorough, complete or objective.	59 (17%)	48 (20%)
<b>Total Complaints Audited</b>		<b>338</b>	<b>238</b>

See **Table 5** in **Appendix C** for detail on audit determinations in investigated cases.

### VI. Discipline Imposed in External Cases

In 2009 discipline was imposed on 20 officers in external CITIZEN-INITIATED cases.

The type of discipline imposed most often was training and/or counseling. Documented Oral Counseling (DOC) and/or training were imposed

on 60% of all officers who received discipline. Four investigations resulted in Letters of Reprimand (LOR). Suspensions were imposed on two officers — 10% of the officers who received discipline; each suspension was 20 hours. In one case the subject officer was terminated.

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**Illustration 3-F: Type of Discipline Imposed on Subject Officers in External Cases**

DISCIPLINE IMPOSED	2008		2009	
	Officer in External Complaints	%	Officer in External Complaints	%
Training	2	9%	1	5%
Training & Counseling	2	9%	5	25%
Documented Oral Counseling (DOC)	7	32%	6	30%
Letter of Reprimand	2	9%	4	20%
10-Hour Suspension	1	5%	0	0%
20-Hour Suspension	1	5%	2	10%
30-Hour Suspension	1	5%	0	0%
160-Hour Suspension	160	5%	0	0%
6-Month Suspension	1	5%	0	0%
Letter of Reprimand & Settlement Agreement	2	9%	0	0%
Settlement Agreement	0	0%	1	5%
Termination	0	0%	1	5%
Retirement before Discipline	1	5%	0	0%
Resigned before Discipline	1	5%	0	0%
<b>Total Discipline Imposed</b>	<b>22</b>	<b>100%</b>	<b>20</b>	<b>100%</b>

## USE OF FORCE

# Chapter Four

This chapter starts with a short summary of current issues and an overview of force. The chapter then provides data derived from Force Cases received in 2009 and from Force Cases closed and audited in 2009.

### I. Current Issues

The San José Police Department's (SJPD) use of force was the subject of ongoing controversy in 2009 — a year in which there were several high-profile incidents. In May 2009, the City Manger reported to the City Council on the concerns and recommendations of the Public Intoxication Task Force (PITF). Some PITF participants suggested that many public intoxication arrests occurred when the suspect was merely uncooperative and/or failed to follow an officer's direction. Because of that observation, a concern was raised whether the proposed changes to the public intoxication arrest protocol would create more arrests under Penal Code Section 148(a) as an alternative to public intoxication. Penal Code Section 148(a) states that any person who willfully resists, delays or obstructs an officer during the performance of his/her duties has committed a criminal offense.

In 2009 news coverage called into question SJPD's approach in utilizing force to arrest those suspected of resisting, delaying or obstructing an officer.<sup>56</sup> In May 2009, SJPD officers fatally shot a Vietnamese man who had seriously injured his brother with a knife; the man was mentally ill. In October 2009, YouTube and other media circulated a grainy cell phone video of a September 2009 arrest made by SJPD of a Vietnamese college student which ignited fierce debate about the officers' force response in making the arrest. Accusations were made by individuals and community groups that the SJPD's force response was disproportionately directed against members of minority communities; some claimed that they feared calling the police for assistance as they believed they would be harmed or mistreated. Community members called for concerted City efforts to monitor officers' use of force, identify problem officers, rebuild trust in the police, facilitate greater community dialogue and create greater public access to police records.

<sup>56</sup>See Sean Webby, *More than a Dozen San Jose Officers Repeatedly used Force in Resisting Arrest Cases, Probe Finds*, Mercury News, December 27, 2009.



## CHAPTER FOUR | USE OF FORCE

The City Council and the City acted on these concerns.

- Council directed the Department to review all City initiatives underway dealing with the use of force by officers and requested Department recommendations with respect to Early Warning Systems, review of force records, training for supervisors and related performance measures.<sup>57</sup>

- The Department created (1) an advisory group to review the use of force training curriculum to ensure compliance with state standards and SJPD policies and (2) a panel to review actual use-of-force incident reports to ensure compliance with procedure and to identify training issues.

- Council accepted the Mayor's recommendation that the City Manager convene a working group to review the force used during 2009 to effect resisting arrest arrests. The City Manager was specifically asked to consider including the City Auditor and the Independent Police Auditor (IPA) as members of that working group. Additionally the City Manager was directed to meet with the San José Police Officers Association regarding the formation of the working group and to reach out to key stakeholders in the community to elicit community input.

In December 2009, the City Manager convened a Use of Force Advisory Group and its members began reviewing police reports for the year 2009 of those incident in which the only charge was resisting arrest and force was used. The work of

the Advisory Group will continue in 2010. Additionally, in 2010, the Department continues to analyze more effective and efficient methods to train officers on use of force, to track the use of force, and to identify problems. Efforts undertaken in 2010 will be reported in the next IPA year end report.

The Council's decision recommending the inclusion of the City Auditor and the IPA in the review of these police reports is significant. Access to these records has, in the past, been closely limited to employees of the Police Department. By creating a top-level review comprised of persons outside the SJPD and by including access to unredacted police reports, the City has acknowledged the significance of these force issues and has taken unprecedented steps to address them.

## II. Force Cases and Allegations

### A. Overview

Police work poses both expected and unexpected dangers, and on occasion the use of force by an officer is necessary. A police officer, who has reasonable cause to believe that a suspect has committed a public offense may use reasonable force to effect an arrest, to prevent escape or to overcome resistance. The use of unnecessary or excessive force is one of the most serious allegations reported against an officer and the IPA is required by the Municipal Code to audit all the investigations of Force Cases conducted by Internal Affairs.

<sup>57</sup>Action or analysis on some, but not all, of these recommendations had been started earlier in the year; Council action in November 2009 requested that recommendations specifically include use of force issues.

## CHAPTER FOUR | USE OF FORCE

This chapter provides information and data about complaints alleging that San José police officers used unnecessary or excessive force. Within this chapter, a “Force Case” is a complaint which includes one or more allegations of improper use of force by a San José officer.

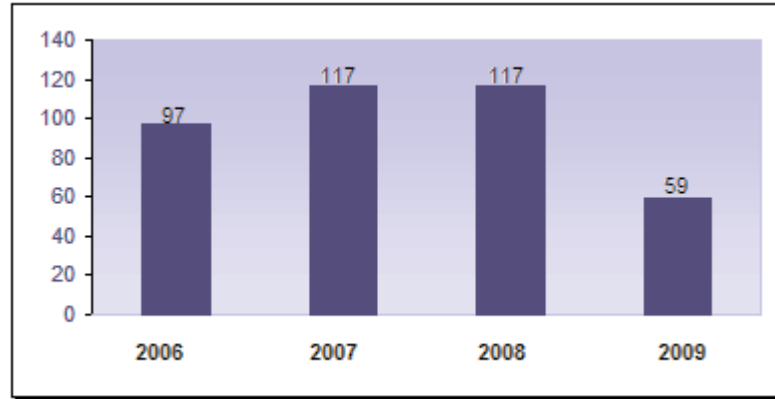
An investigation of a Force Case should answer three questions: (1) was the force response lawful? (2) was the force response reasonable? and (3) was the force response within SJPD policy? An investigation must examine all the facts and circumstances associated with the incident in order to determine whether or not the officer acted reasonably; factors include the severity of the crime, the threat presented by the suspect and the resistance offered by the suspect.

### B. Force Cases

A “Force Case” is a complaint which includes one or more allegations of improper use of force by a San José officer. The number of Force Cases reported in 2009 decreased compared to 2008 data. The lower number of Force cases reported in 2009 is consistent with the reduced number of overall complaints filed in 2009.

**Illustration 4-A** shows a four-year overview of the number of Force Cases filed.

**Illustration 4-A: Force Cases Filed from 2006 through 2009**

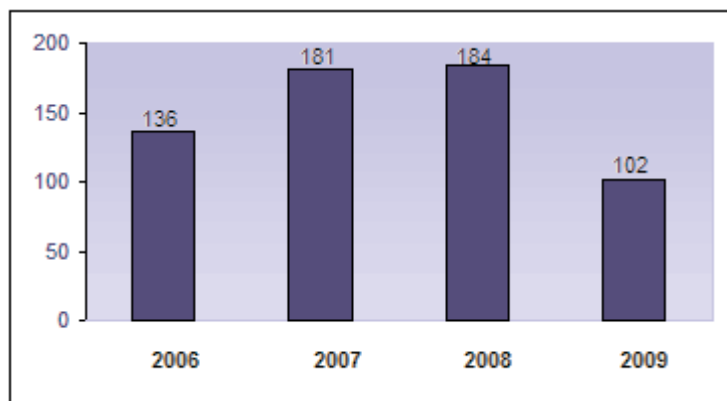


### C. Force Allegations

The annual number of *Force* allegations can be higher than the annual number of Force Cases because each single complaint may contain more than one *Force* allegation. Of the 527 allegations contained in all 2009 external complaints, 102, 19% were *Force* allegations.

**Illustration 4-B** shows the number of *Force* allegations received from 2006 through 2009.

**Illustration 4-B: Force Allegations Filed – Four Year Overview**



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**Illustration 4-C** shows the number of external Force Cases and the number of external complaints received from 2006 to 2009. While the number of Force Cases decreased in 2009, the percentage of complaints with *Force* allegations increased.

**Illustration 4-C: Complaint Filed – Four Year Overview of Unnecessary Force**

YEAR	Total UF Complaints	Total UF Allegations	Total Number of Complaints*	% Total Complaints
2006	97	136	444	22%
2007	117	181	491	24%
2008	117	184	467	25%
2009	59	102	214	28%

\* This illustration does not include the DEPARTMENT-INITIATED complaints and NON-MISCONDUCT CONCERN classification.

### D. Force Cases by Ethnicity

The IPA attempts to capture the ethnicity of complainants during the initial complaint intake as well as through voluntary surveys.

Information on ethnicity was obtained from 224 external complainants in 2009; this is not reflective of the total number of 249 individual complainants named in 214 external complaints filed because the ethnicity of some persons filing complaints is not available.<sup>58</sup> The information in this section and in **Illustration 4-D** shows the number of investigated Force Cases by the ethnicity of the complainant based upon those matters filed in 2009 in which ethnicity data is available.

- Hispanic/Latino complainants filed 45% of the Force Cases and 39% of the total complaints filed in 2009 in which ethnicity data is available.

- African American complainants filed 15% of the Force Cases and 14% of the total complaints filed in 2009 in which ethnicity data is available.

- Caucasian complainants filed 23% of the Force Cases and 24% of the total complaints/cases filed in 2009 in which ethnicity data is available.

The data in this table only reflect the ethnicity of individuals who filed allegations of *Force* and who chose to reveal their ethnicity during the complaint process. It does not reflect the total number of individuals against whom the SJPD used force in 2009 because many of these individuals did not file complaints.<sup>59</sup>

<sup>58</sup> This chart excludes those complainants whose concerns were not classified as an investigated complaint.

<sup>59</sup> Force used during an arrest may or may not generate a complaint; a person may be reluctant to report the force, may be unaware of the complaint process, or may decide to seek redress through filing a civil lawsuit.

## CHAPTER FOUR | USE OF FORCE

**Illustration 4-D: Force Cases by Ethnicity \***

ETHNICITY FROM COMPLAINANT'S SURVEYS & INTAKE	Ethnicity of UF Complainants		Total External Complainants		% of San Jose Population**
	Number	%	Number	%	
African American	15	15%	35	14%	4%
Asian/Pacific Islander	2	2%	6	2%	13%
Caucasian	22	23%	60	24%	36%
Filipino	2	2%	3	1%	5%
Hispanic/Latino	44	45%	96	39%	30%
Native American	1	1%	3	1%	1%
Vietnamese	2	2%	8	3%	9%
Other	3	3%	13	5%	2%
Decline/Unknown Ethnicity	6	6%	25	10%	0%
<b>Complainant's Response to Surveys/Intake</b>	<b>97</b>	<b>100%</b>	<b>249</b>	<b>100%</b>	<b>100%</b>

\* Information on ethnicity of complainants is obtained during intake and from voluntary surveys. Not all complainants reside within the City of San José.

\*\* Source: U.S. Census Bureau, Census 2000.

### E. Force Cases Closed/Audited in 2009

The IPA audited 97 closed Force Case investigations in 2009. Of these closed investigations, 76 were closed as “agreed at first review,” seven were closed as “agreed after further action” and 14 were closed as “disagreed.”

The IPA tracks force data from both complaints filed and from audits of closed investigations.

In order to determine whether any trends or patterns can be detected from Force Cases, the IPA tracks the following information as reported by the complainant: 1) the level of injury caused by the force used; 2) the part of the complainant’s body impacted by the force; and 3) the type of force used by the officer.

IPA Audit Determination	Explanation of IPA Audit of the IA Investigation of Force Cases	2009 Audits
Agreed	IPA audit determined that the IA investigation was thorough, complete and objective.	76 (78%)
Agreed After Further Action	IPA requested and reviewed supporting documentation from IA or requested IA re-examine its analysis.	7 (7%)
Disagreed	IPA audit concluded that the IA investigation was not thorough, complete or objective.	14 (14%)
<b>Total Complaints Audited</b>		<b>97</b>

## CHAPTER FOUR | USE OF FORCE

**Illustration 4-E** and **4-F** contain data that reflect the degree of injury, if any, and areas of the body impacted by force as alleged by a complainant — not the injury level or impact location reported by the officer or contained in medical reports.

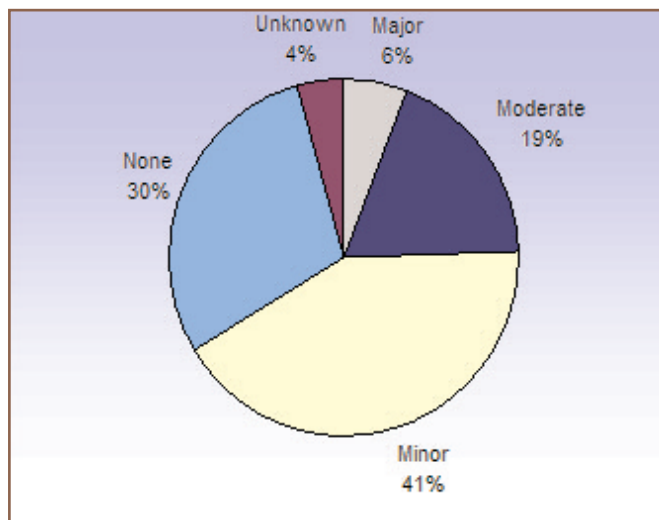
**Illustration 4-E** provides data about the level of injury resulting from the alleged use of force. There are five categories ranging from “major” to “none.” Major injuries require significant medical attention, whereas minor injuries require little or no medical attention. For example, minor injuries can involve minor abrasions, bruising or skin irritation from the use of chemical agents. Moderate injuries include lacerations; major injuries include fractures.

Data from cases closed in 2009 show that minor injuries continue to account for the highest percentage of injury levels; in 2009 there were 40

*Force* Cases which resulted in which minor injuries were alleged. For a four-year overview of data reflecting the complainant’s reported level of injury, see **Table 6** in **Appendix C**.

**Illustration 4-F** provides data reflecting the part of the body that the complainant reported was impacted by the alleged force. The IPA tracks this data to determine if any trends exist in Force Cases. The areas of the body are divided into five categories: head, torso, limbs, multiple body parts and unknown. The unnecessary force alleged in a complaint can impact more than one body area. The IPA closely monitors the number of allegations citing head injuries, as force to the head has the greatest potential to cause serious injuries. There has been a small but gradual increase over the last five years in the number of reported force applications to the head.

**Illustration 4-E: Complainant’s Level of Injury**



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**Illustration 4-F: Location of Force Applications – Four-Year Comparison**

LOCATION OF FORCE APPLICATIONS	2006		2007		2008		2009	
	Number	%	Number	%	Number	%	Number	%
Head	16	18%	23	19%	27	22%	31	25%
Torso	31	34%	18	15%	24	20%	26	21%
Limbs	35	38%	36	31%	30	25%	36	29%
Multiple Body Parts	6	7%	36	31%	38	31%	28	23%
Unknown	3	3%	5	4%	3	2%	2	2%
<b>Total</b>	<b>91</b>	<b>100%</b>	<b>118</b>	<b>100%</b>	<b>122</b>	<b>100%</b>	<b>123</b>	<b>100%</b>

Data about the types of force used is collected to track the frequency as shown in **Illustration 4-G**. The number of types of *Force* alleged is greater than the total number of Force Cases because there can be more than one type of force alleged in the same complaint, and there can be more than one officer alleged to have used force. For example, a complainant may allege that one officer struck him with a baton, and another officer hit him with fists and slammed him against a wall. This example would account for three different types of *Force*

allegations against multiple officers in one complaint.

**Illustration 4-G** shows that the aggregate total of the different types of *Force* allegations has increased from 113 in 2006 to 161 in 2009.<sup>60</sup> The use of hands was the type of force reported most frequently over the last four years ranging from 38% to 42% of force applications. In 2009, the next most frequently alleged type of force was the use of the ground. The use of a baton and the use of knees were the

**Illustration 4-G: Type of Forced Allegation – Four-Year Comparison**

TYPE OF UNNECESSARY FORCE	2006		2007		2008		2009	
	Number	%	Number	%	Number	%	Number	%
Baton	11	10%	19	12%	13	7%	14	9%
Canines	0	0%	0	0%	2	1%	1	1%
Car	6	5%	0	0%	1	1%	5	3%
Chemical Agent	3	3%	6	4%	3	2%	1	1%
Gun	1	1%	2	1%	3	2%	2	1%
Feet	3	3%	6	4%	12	7%	11	7%
Ground	17	15%	13	8%	30	17%	21	13%
Hands	43	38%	64	41%	73	41%	67	42%
Handcuffs	5	4%	14	9%	6	3%	8	5%
Knee	9	8%	8	5%	16	9%	15	9%
Taser	10	9%	13	8%	12	7%	9	6%
Object	0	0%	2	1%	1	1%	0	0%
Other	4	4%	10	6%	4	2%	6	4%
Unknown	1	1%	1	1%	2	1%	1	1%
<b>Total</b>	<b>113</b>	<b>100%</b>	<b>158</b>	<b>100%</b>	<b>178</b>	<b>100%</b>	<b>178</b>	<b>100%</b>

<sup>60</sup> The increase in types of force recorded may reflect changes in how matters have been classified. In general, since 2007 more cases containing *Force* allegations have received full IA investigations. Details describing the type of *Force* used is available only to the IPA through audits of investigated cases.



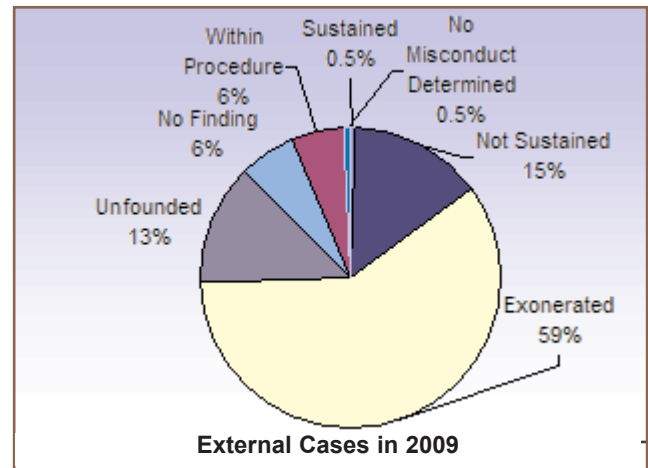
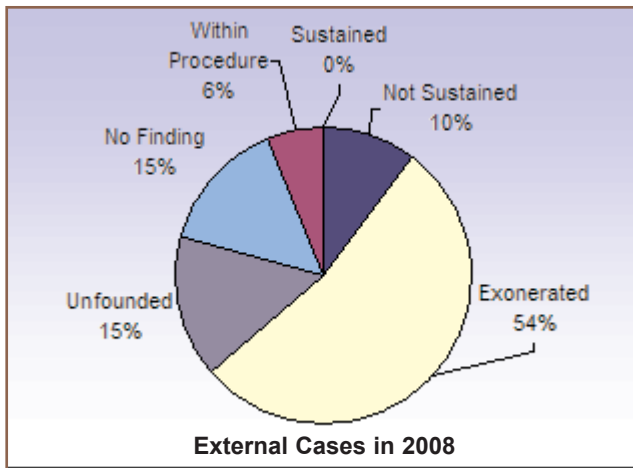
## CHAPTER FOUR | USE OF FORCE

third most frequently alleged types of force. The use of the Taser as a percentage has decreased slowly from 9% in 2006 to 6% in 2009.

**Illustration 4-H** provides general information concerning the disposition of *Force* allegations in closed complaints in 2008 and 2009. One *Force* allegation was *SUSTAINED* in 2009. The majority of the *Force* allegations were closed with a finding of *EXONERATED* meaning that the IA investigation determined that the level and the type of force

used by the officers were reasonable and justified based on the circumstances of that particular event. Six percent of the *Force* allegations were closed in 2009 as *NO FINDING* compared to 15% closed as *NO FINDING* in 2008 — this may reflect greater diligence by IA in complaint investigation and analysis. Thirteen percent were closed in 2009 as *UNFOUNDED* — similar to the percentage in 2008. **Table 7 in Appendix C** provides a detailed table showing the disposition of *Force* allegations in external cases from 2006 to 2009.

**Illustration 4-H: Disposition of *Force* Allegations in External Cases in 2008 and 2009**



## CHAPTER FOUR | USE OF FORCE

### III. Officer-Involved Shooting and In-Custody Fatal Incident

#### 2009: Officer-Involved Shooting and In- Custody Fatal Incident

Case	Ethnicity	Mental Illness History	Person Armed?	Police Weapons Used?	Prior Criminal Record	CIT at Scene?	Cause of Death	Within Policy?
1	African-American	No	Gun	Gun	Yes	Yes	Self-inflicted gunshot to head	Pending
2	Hispanic	No	No	Gun	Yes	Yes	Non-fatal	Pending
3	White/Hispanic	No	No	Taser, baton	Yes	Yes	Drug intoxication <sup>61</sup>	Pending
4	Asian	Yes	Knife	Gun, Taser	No	No	Gunshot wounds	Pending

There were three officer-involved shootings in 2009 and one fatal in-custody incident. When these incidents occur the IPA has enumerated responsibilities. Information about these incidents and the responsibility of the IPA to review such incidents is outlined in this section.

#### A. Officer-Involved Shooting

The SJPD Duty Manual Section L2638 describes when an officer may use deadly force. It states, “An officer may discharge a firearm under any of the following circumstances: . . . When deadly force is objectively reasonable in self-defense or in defense of another person’s life.” When a person is injured or killed as a result of an officer-involved shooting there is community concern and questions arise about the need for the use of lethal force. In recognition of the serious nature of these issues, the

IPA has been given specific responsibilities regarding such incidents including responding to the scene when these incidents occur and participating on the shooting review panel after review of the SJPD investigation.

Every officer-involved shooting that results in death is subject to an intensive investigation and review process that is outlined in the flow chart in **Illustration 4-I**. As the chart indicates, the SJPD Homicide Unit conducts a criminal investigation that is monitored by the Internal Affairs (IA) Unit. The criminal investigation is presented to the county Grand Jury by the Santa Clara County District Attorney to determine whether there is sufficient evidence for instituting criminal proceedings against the officer. The Grand Jury makes one of two determinations:

<sup>61</sup> The April 28, 2009 autopsy report prepared by the Santa Clara County Medical Examiner stated that this individual “died of a cardiac arrhythmia due to profound methamphetamine intoxication due to ingestion of methamphetamine.” The Medical Examiner determined that the manner of death was accident. The report stated that the circumstances suggest that the Taser was not a contributing factor.

## CHAPTER FOUR | USE OF FORCE

- **No True Bill:** If the Grand Jury deems that there is insufficient evidence upon which to initiate criminal action against the officer, IA conducts an administrative review to determine whether the officer’s actions were within department policy.
  
- **True Bill:** If the Grand Jury deems that there is sufficient evidence, a “true bill” of indictment is filed and the officer proceeds through the criminal trial process. If the officer is acquitted of criminal conduct, then IA conducts an administrative review to determine whether the officer’s actions were within department policy.

Thus, although the officer may not receive punishment or penalty in the criminal court, the officer may receive discipline if the department determines that his/her actions were outside of department policy.<sup>62</sup> If the officer is convicted, the officer is generally terminated from SJPD employment.

### **B. IPA Review**

The IPA’s role and responsibilities in connection with any specific officer-involved shooting incidents depends entirely upon whether a citizen has filed a complaint about the incident with IA or the IPA. If there is no citizen complaint about the incident, the IPA’s role is limited.<sup>63</sup>

All Officer-Involved Shooting Incidents	Officer-Involved Shooting Incident In Which a Citizen Complaint is Filed
IPA notified of incident – can respond to scene and be briefed by Internal Affairs (IA) commander at scene	IPA notified of incident – can respond to scene and be briefed by Internal Affairs (IA) commander at scene
IPA can participate in the shooting review panel; IPA is provided with pertinent documents to prepare for panel	IPA can participate in the shooting review panel; IPA is provided with pertinent documents to prepare for panel
Purpose of panel is to determine whether any training or equipment needs exist or if any changes to SJPD policies are warranted; <b>panel does not determine whether the officer acted within Department policy</b>	Purpose of panel is to determine whether any training or equipment needs exist or if any changes to SJPD policies are warranted; <b>panel does not determine whether the officer acted within Department policy</b>
	IPA can attend interviews conducted by Internal Affairs of any witness including subject officers
	The IPA investigation determines whether the officer acted within Department Policy and the IPA audits the IA investigation to determine whether it was fair, thorough, complete and objective
	IPA can appeal IA’s determination to the Chief or Police and to City Manager

<sup>62</sup> A conviction in a criminal trial is based on a “beyond a reasonable doubt” evidentiary standard — that standard is very high. The evidentiary standard used to determine whether the officer acted outside of Department policy is lower; the standard used is the “preponderance” standard.

<sup>63</sup> The Department may initiate an investigation of the officer’s conduct. However, the IPA cannot review or audit department-initiated investigations.



## CHAPTER FOUR | USE OF FORCE

### IN-CUSTODY DEATH TRAINING REVIEW PANEL

In 1999 the SJPD established an officer-involved shooting incident training review panel. The Panel is convened to review officer-involved shootings where a person was wounded or killed in order to determine whether any training or equipment needs exist or if changes to SJPD policies are warranted. This panel, however, was limited to incidents in which an officer fired his/her gun — it does not include a review of other deaths that occurred while a suspect was in police custody.

In January 2008 the SJPD established a separate review panel designed to address incidents in which a death occurs, not as the result of an officer involved shooting, but while a person is in the custody of an SJPD officer.

An in-custody death can occur anywhere at any time. Generally “custody” ends when the person is released from the police department or the jail booking process is completed.\*\* However, when a death occurs while a suspect is under the physical control of SJPD officers, such as being restrained, arrested, transported, or during the jail booking process, the death may be considered “in-custody.” The In-Custody-Death Training Review Panel was created to provide a review of Department policies and procedures related to these deaths.

The In-Custody-Death Training Review Panel consists of individuals selected by the Chief of Police and includes command staff and management level Department personnel, as well as a representative from the City Attorney’s Office and the Office of the Independent Police Auditor. Similar to the protocol following the officer-involved-shooting incidents, this review is limited to discussions of concerns and recommendations relating to Department policy/procedure, training/tactics, officer safety, equipment and communication. The panel does not determine whether the officer acted in or out of policy.

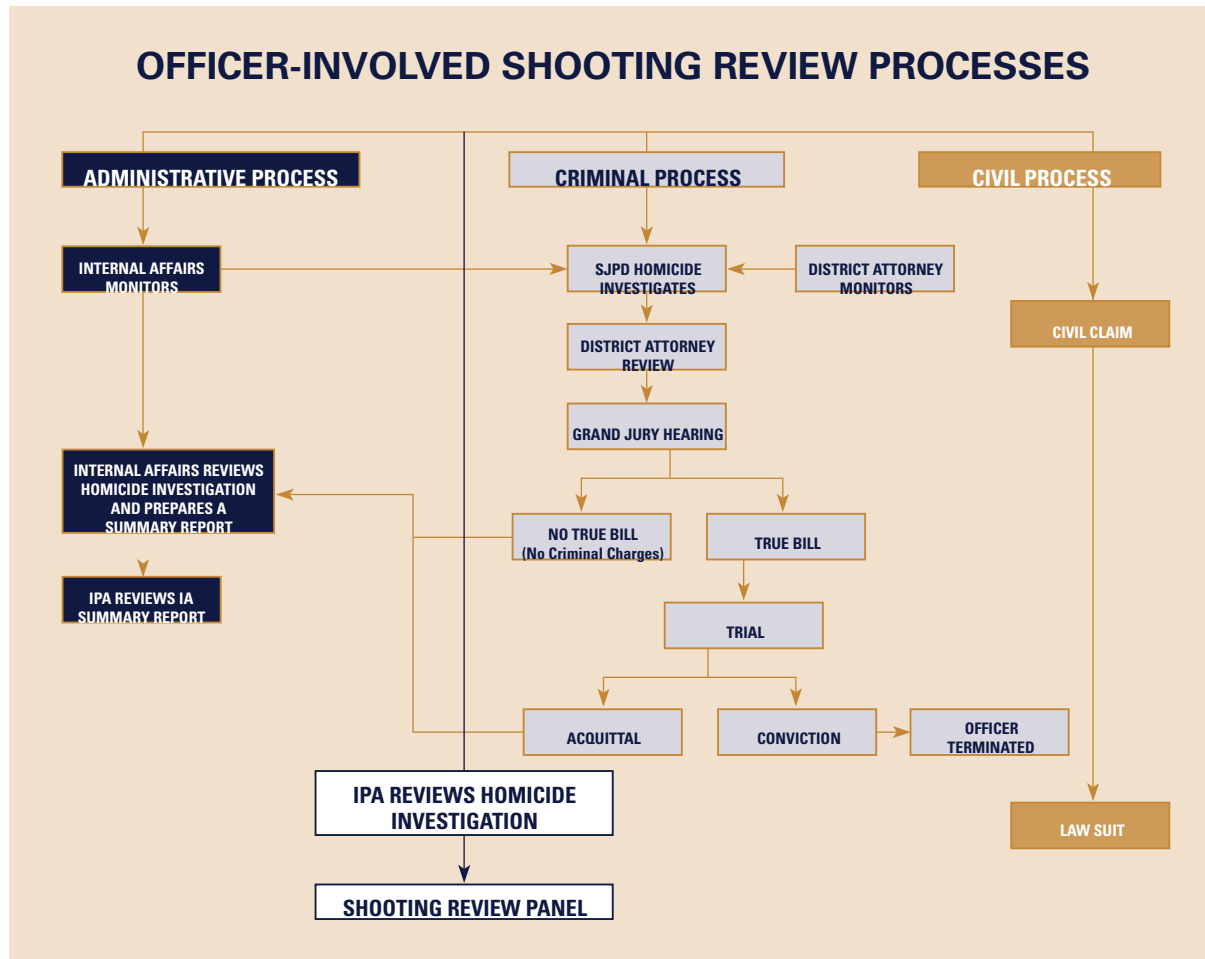
*Unlike the policy for an officer-involved shooting where the IPA is promptly advised of the incident and may respond to the scene, the In-Custody-Death protocol does not indicate when the IPA will be notified, and states that the Chief of Police will determine if the IPA may respond to an In-Custody death scene and receive a briefing.*

*The Internal Affairs investigation determines whether the officer acted in or out of policy. Unless a citizen files a misconduct complaint with IA or the IPA related to the in-custody death, the IPA does not have the authority to audit the Internal Affairs investigation of the event and the IA determination about whether the officer acted in or out of policy.*

\*\* If the death occurs after release, and it is established that a San José officer used reportable force prior to the release, the Chief of Police has the discretion to refer the case to the panel for review.

## CHAPTER FOUR | USE OF FORCE

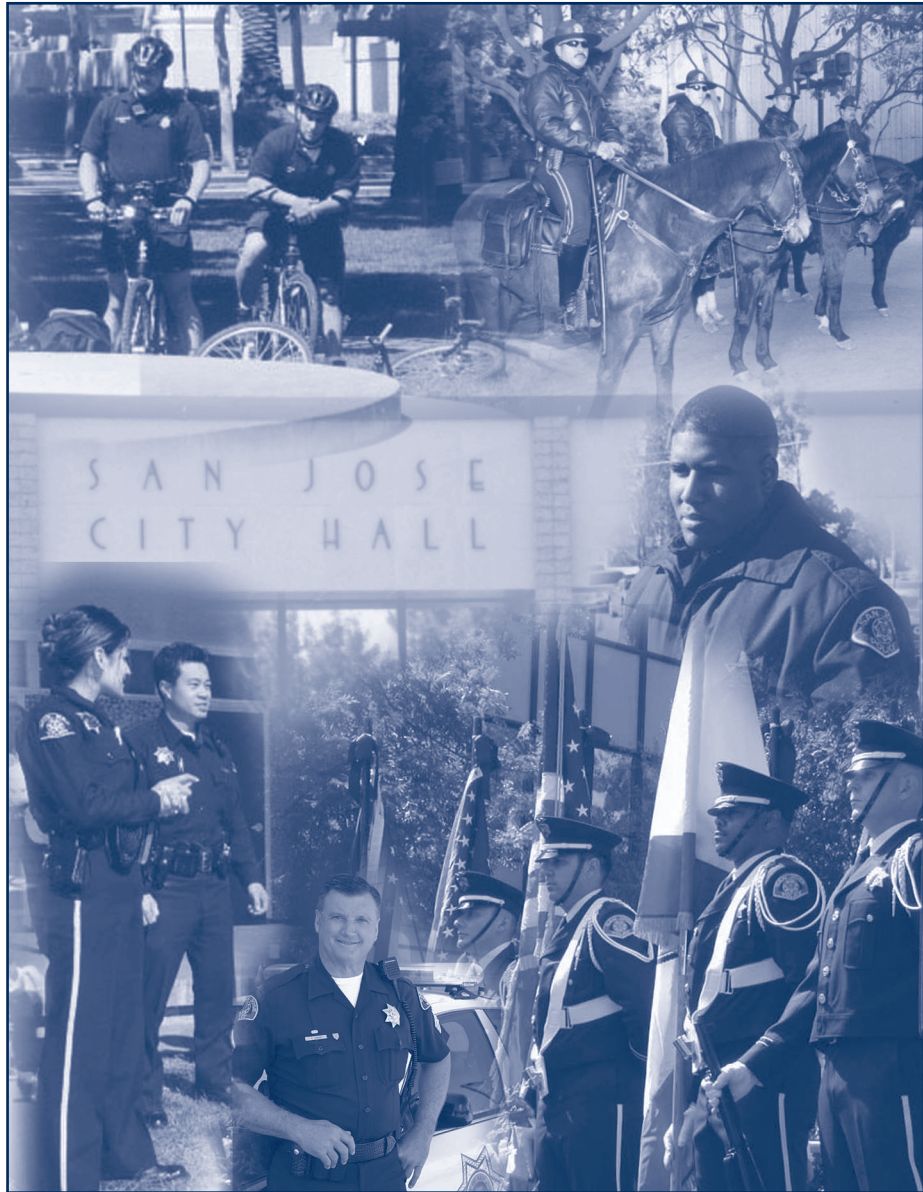
Illustration 4-1: Officer-Involved Shooting Review Process





## SUBJECT OFFICER DEMOGRAPHICS

# Chapter Five



The SJPD officers portrayed in this collage assisted the IPA in designing informational materials. They are not subject officers.





# CHAPTER FIVE | SUBJECT OFFICER DEMOGRAPHICS

## I. Overview

For the past eight years the San José Police Department (SJPD) has maintained a force numbering between 1,320 and 1,390 sworn police officers. In 2009 the SJPD reported a total of 1345 sworn officers; this represents the lowest number of officers since 2006. The population of San José has increased from 892,558<sup>64</sup> to more than one million residents during the same period.

This chapter provides information about the diversity and experience of officers in the San José Police Department and the demographics of the subject officers named in misconduct complaints in 2009.

## II. Subject Officer Demographics 2009

### A. Complaints by Gender of Subject Officers

Since 2006 the SJPD has reported a ten to one ratio of male to female officers. In 2009 male officers

were named in 96% of the misconduct matters filed (subject officers); female officers represented 4% of those named. See **Illustration 5-A**.

### B. Ethnicity of Subject Officers

The SJPD is comprised of officers from a variety of backgrounds and cultures. **Illustration 5-B** provides a general breakdown of the ethnicity of officers employed by the Department as of December 2009 and the ethnicity of the officers named in complaints during the calendar year. The data reveal that the number of subject officers in 2009 identified with specific ethnicities continues to closely mirror their total representation in the Department. Caucasian officers were identified as subject officers in 58% of complaints; Caucasian officers comprise 58% of all SJPD officers. Officers identified as Hispanic/Latino comprise 23% of the Department and were named in 28% of external complaints in 2009.

**Illustration 5-A: Gender of Subject Officers in 2009\***

GENDER	Subject Officers	%	SJPD Sworn Officers	%
Male	210	96%	1214	90%
Female	8	4%	131	10%

\* Not including officers name in DEPARTMENT-INITIATED complaints and NON-MISCONDUCT CONCERN.

**Illustration 5-B: Ethnicity of Subject Officers in 2009**

ETHNICITY	Subject Officers	%	SJPD Sworn Officers	%
Native American	2	1%	8	1%
Asian American/Pacific Islander	10	5%	122	9%
African American	8	4%	60	4%
Filipino American	4	2%	36	3%
Hispanic/Latino	61	28%	312	23%
White	126	58%	776	58%
Not Available	7	3%	31	2%
<b>Total</b>	<b>218</b>	<b>100%</b>	<b>1345</b>	<b>100%</b>

<sup>64</sup> CA Department of Finance.

## CHAPTER FIVE | SUBJECT OFFICER DEMOGRAPHICS

### C. Years of Experience

There appears to be a correlation between the experience of officers and the number of times they are named in complaints. The seniority of officers named in complaints suggests that officers in their first four years of employment are named in the largest number of complaints. Seventy-seven officers with one to four years of experience were identified as subject officers in

2009, 35% of all subject officers. **Illustration 5-C** provides a breakdown of subject officers and their years of experience.

The numbers of years represented by the experience categories are not equally divided; the groupings range from two years for officers with between zero and six years of experience, to 16-30+ years for the most senior officers.

**Illustration 5-C: Years of Experience of Subject Officers in 2009**

YEARS OF EXPERIENCE	Total Subject Officers	%	Total SJPD Sworn Officers	%
0- 1	29	13%	94	7%
2- 4+	48	22%	203	15%
5- 6+	12	6%	19	1%
7- 10+	29	13%	231	17%
11- 15+	49	22%	367	27%
16+	51	23%	431	32%
	<b>218</b>	<b>100%</b>	<b>1345</b>	<b>100%</b>

### D. Subject Officers Named in More than One Complaint

In past years the data collected by the Internal Affairs Unit (IA) and the Independent Police Auditor (IPA) reported the number of officers receiving one or more complaints within the

calendar year. In 2009, 218 officers were named in misconduct matters — 16% of all SJPD officers. Of these officers, 40 were named in more than one complaint. **Illustration 5-D** presents a five-year overview of the number of times an individual officer was named in a complaint.

**Illustration 5-D: Five-Year Overview of Complaints Received by Individual Officers \***

OFFICERS RECEIVING	NUMBER OF OFFICERS				
	2005	2006	2007	2008	2009
1 Complaint	188	177	257	298	178
2 Complaints	30	35	59	67	30
3 Complaints	3	5	18	16	6
4 Complaints	2	0	3	10	3
5 Complaints	0	0	1	2	1
6 Complaints	1	0	0	1	0
7 Complaints	0	0	0	0	0
8 Complaints	0	0	1	0	0
<b>Total Number of Officers Receiving Complaints</b>	<b>224</b>	<b>217</b>	<b>339</b>	<b>394</b>	<b>218</b>

\* Subject officer names are not retained in complaints classified as INQUIRY, NON-MISCONDUCT CONCERN, POLICY, CITIZEN CONTACT OR WITHDRAWN.

## CHAPTER FIVE | SUBJECT OFFICER DEMOGRAPHICS

### III. Complaints over a Cumulative Period

In 2008 the Sunshine Reform Task Force recommended that the IPA provide more detailed information about police misconduct complaints—specifically how many complaints were received about any one officer over a cumulative period.<sup>65</sup> In late 2009, the IPA released a table which provided that information in a manner which preserved officer confidentiality. The data showed that 794 officers were identified in 1,000 investigated complaints filed from 2004-2008. Of this group, 319 officers received only one complaint; 49% of the total. Officers receiving two complaints totaled 199 (25%). Thus, of all officers named in complaints over a cumulative

five-year span, the majority of those officers named in any complaint (65%) received only one or two complaints. A link to this table is provided on the IPA website.

Complaints may contain allegations ranging in severity from Rude Conduct to Unnecessary Force and may be closed with findings of UNFOUNDED, EXONERATED, SUSTAINED, NOT SUSTAINED or NO FINDING. While it is informative to track multiple complaints against a single officer, it is important to remember that only a few allegations are sustained — most allegations are closed as EXONERATED, NOT SUSTAINED or closed with NO FINDING. The consequences of receiving multiple complaints can range from an officer counseling to officer termination.

<sup>65</sup> Sunshine Reform Task Force Phase II Report and Recommendations 8/13/08.

## CHAPTER SIX | TRAINING AND TRENDS

# Chapter Six

**T**his chapter provides information highlighting key training which the San José Police Department (SJPD) provides to its officers. The chapter also includes information on the SJPD's Early Warning System (EWS) used to identify and address problem behavior and recent efforts to enhance that system.

### I. Continuing Professional Training

In California, the Commission on Peace Officer Standards and Training (POST) sets minimum training standards for California law enforcement. POST requires that officers continually refresh and review perishable skills. The SJPD provides additional training beyond POST minimums in areas of interest or concern.

The Department continues to require officers to take twenty-four hours of continuing professional training (CPT) every two years. The training provided in 2009 included classroom and practical training in the areas of racial profiling, tactical communications, arrest and control techniques. The Department also requires officers to complete a four-hour firearms skill training as part of the CPT program. The SJPD uses the Force-Option Simulator training which utilizes state-of-the-art interactive video simulations of real-life scenarios that require officers to react to life-threatening situations. The text box provides information on the training topics in 2009.

## CHAPTER SIX | TRAINING AND TRENDS

### Continuing Professional Training (CPT)

California Police Officers Standards and Training (POST) require that officers continually refresh and review perishable skills every two years. The SJPD Training Unit also provides a minimum of 10-18 hours of training to address legislative and/or Department mandates. These additional hours may include tactical and educational training on a variety of subjects including Force Options Simulator Training, Arrest Control Tactics, Racial Profiling, Professional Policing and Communication Skills, as well as updates on state law.

In 2009:

- 1,315 officer participated in training that addressed Racial Profiling
- 1,304 officer attended Tactical Communications
- 1,321 officers were updated in the California Law Enforcement Telecommunication System (CLETS)
- 905 officers received continuing education in Arrest Control/Defensive Tactics.

The Department also provided training in these topics for individuals who serve as Reserve Police Officers for the City of San José.

## II. Crisis Intervention Training

In a world and a society that is constantly changing, law enforcement strives to stay abreast of new skills, tools and best practices of other agencies. One issue of concern to law enforcement is the increasing frequency of individuals with serious mental health issues. In 1999 the SJPD instituted a crisis intervention training program (CIT) to strengthen officers' awareness of these issues.

The CIT training teaches officers how to better address situations involving persons who are experiencing some type of mental or emotional crisis, thus reducing the possibility of the officers

having to use force to gain control of a situation. This training was originally offered to more experienced officers on a voluntary basis. In 2009 CIT was added to the SJPD Basic Police Academy Training. For the first time CIT was provided to all recruit officers as part of their initial training. Seventy-one San José officers and fourteen non-sworn police department personnel received CIT training in 2009.<sup>66</sup> The Independent Police Auditor (IPA) continues to encourage and support this type of training for SJPD officers in an attempt to help reduce the need for officers to use force, including deadly force.

<sup>66</sup> SJPD also provides this CIT training to emergency call-takers, dispatchers and officers from other law enforcement agencies.

## CHAPTER SIX | TRAINING AND TRENDS

### Crisis Intervention Training (CIT)

In 1999 the SJPD developed Crisis Intervention Team Training (CIT). Experienced officers applied for and received a 40-hour block of instruction designed to address a variety of mental health issues and crisis intervention situations encountered by police officers on a regular basis.

In October 2009 the SJPD Police Academy graduated the first police recruit class in United States law enforcement history to receive a 32-hour block of instruction on mental health issues and crisis intervention. Until this time, crisis intervention training was only available as advanced training for veteran officers.

Experience has revealed that the benefits provided by the CIT training program include:

- Better trained and educated officers and dispatchers
- A decrease in the use of force during crisis events
- Fewer injuries to individuals with mental illness
- Improved interaction between police and mental health service providers

### III. Identifying Trends Or Flagging Problems

#### A. Current SJPD System

The SJPD maintains an Early Intervention System designed to identify and address problem behavior. The Department tracks officers who receive multiple complaints in a twelve-month period. Those officers who are flagged under this system are provided with intervention counseling; the session provides an opportunity for supervisors and Command Staff to speak with the officer informally about personal and work-related issues; concerns classified as NON-MISCONDUCT CONCERNS (NMC) are not tracked for this purpose.

#### B. Best Practices to Identify Trends or Problems

For many years, the SJPD has looked solely at the police misconduct complaint process to identify officers exhibiting possible problem behaviors requiring corrective action. Looking solely at complaints, however, may not provide a complete or accurate reflection of officer behavior, both individually and department-wide.<sup>67</sup> To provide a more complete picture of officer conduct, more factors must be gathered and examined than merely complaints. The best practice currently utilized by other jurisdictions is to take a number

<sup>67</sup> Individuals may not file complaints if they are unaware of the process or afraid of officer retaliation if they complain. Alternatively, they may believe that the complaint process is ineffectual and express their concerns by filing a lawsuit.



## CHAPTER SIX | TRAINING AND TRENDS

of factors into account so that there is a more complete picture of the officer’s behavior.<sup>68</sup> Many agencies use systems which capture more indicators of activity — use of force reports, commendations, and civil lawsuits for example. The system then creates a threshold and those officers whose aggregate indicator activity exceeds the threshold are flagged for examination. The initial course of action for these agencies is generally a sit-down between the officers and his/her supervisors and/or counseling and training. These expanded systems help

agencies (1) identify department trends and (2) identify officers whose activity is different from other officers — which may indicate training or discipline issues.

In 2009, the City Manager decided that more proactive steps should be made to see what “best practices” can be brought to San José. The SJPD is currently in the process of examining different models used in other jurisdictions and meeting with local stakeholders. It is anticipated that the actual development process will start in 2010.<sup>69</sup>

### WHAT HAPPENDS TO COMPLAINTS FILED IN SAN JOSÉ?

A Complaint Against an Officer	Multiple Complaints Against an Officer
<p>When a community member contacts Internal Affairs (IA) or IPA with concerns about an officers’ conduct, the matter is put into a shared database and classified.</p> <p>Those matters which do not rise to the level of a complaint are classified as non-misconduct concerns.</p> <p>Concerns classified as complaints are investigated and a determination is made as to whether the individual officer acted within policy during the specific incident.</p> <p>If it is determined that an officer acted improperly, the officer will receive some level of discipline.</p>	<p>The SJPD’s Early Warning System (EWS) flags officers that receive multiple complaints within a 12-month period.</p> <p>The EWS attempts to identify officers exhibiting possible problem behavior and to take corrective action.</p> <p>The SJPD also has a Supervisor’s Intervention Counseling program to work with the supervisor when multiple complaints are filed against members of his/her team within a 6-month period.</p> <p>Matters classified as NON-MISCONDUCT CONCERNS are not tracked for purposes of identifying officers with multiple complaints.</p>

<sup>68</sup> These jurisdictions and their corresponding programs are: San Francisco’s “Early Intervention System,” Denver’s “Personnel Assessment System,” Los Angeles City Police’s “TEAMS II,” Los Angeles County Sheriff’s “Personnel Performance Index,” and Seattle’s “Early Intervention System.”

<sup>69</sup> Deputy City Manager Deanna Santana Supplemental Memorandum to the Public Safety, Finance & Strategic Support Committee dated October 14, 2009 provides a brief summary and timeframe for the plan to enhance the SJPD’s Early Intervention System.

## COMMUNITY OUTREACH

# Chapter Seven

Community outreach is an essential function of the Office of the Independent Police Auditor (IPA). As mandated by the City Charter, the IPA conducts community outreach to the public about the services of the IPA office; such outreach makes IPA services visible and accessible to the community, assists the IPA in assessing the needs of diverse communities and helps to create public confidence in both the IPA and the police misconduct complaint process. This chapter discusses various categories of IPA outreach in 2009 and describes targeted efforts to reach vulnerable populations such as youth, ethnic minorities and immigrants.

### I. Outreach Activities

The IPA is committed to providing on-going face-to-face contact with individuals, groups and organizations throughout the city of San José. Outreach efforts include activities such as:

- attending community events and resource fairs;
- making presentations to students, neighborhood groups, and community-based organizations;
- sending mailings to community members, community-based organizations, and others;
- holding community forums;
- participating in television and radio programs;
- holding press conferences and media interviews; and,
- issuing press released to the media, city officials, and community organizations.

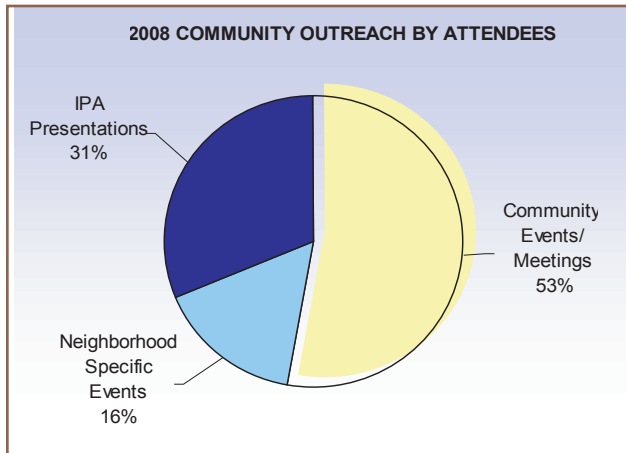


Shivaun Nurre, former Asst. Chief Dan Katz & AACI's Anne Im

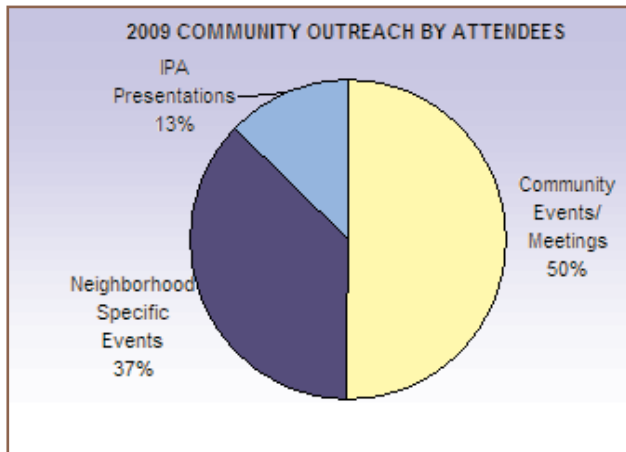
## CHAPTER SEVEN | COMMUNITY OUTREACH

Through these varied activities, the IPA staff attended 166 events involving approximately 4,925 community members in 2009.<sup>70</sup> See **Illustration 6-A**.

**Illustration 6-A: General Community Outreach in 2009**



TYPES OF COMMUNITY OUTREACH	2009			
	Events	%	Attendees	%
Community Events/Meetings	103	62%	2490	50%
Neighborhood Specific Events	22	13%	1811	37%
IPA Presentations	34	21%	624	13%
Media	7	4%	Unknown	Unknown
<b>Community Outreach Totals</b>	<b>166</b>	<b>100%</b>	<b>4925</b>	<b>100%</b>
Meetings with City Officials	86	N/A	98	N/A



<sup>70</sup> This number does not include those individuals who received IPA information through the City's One Voice program which disseminates materials on behalf of numerous City agencies at community events throughout each year. Although it includes the number of 2009 IPA media contacts, it does not reflect the number of individuals reached through those interviews.

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### A. Community Events/Meetings

The Community Events/Meetings category consists of those events and meetings that have significant community member presence. If the IPA or staff actively participate or are introduced to the audience, the number of attendees is counted. In 2009, outreach efforts in the Community Events/Meetings category reached 2,490 individuals, 50% of the audience for the year. This category included IPA individual meetings with a number of community leaders and participation in local events such as:

- Annual Domestic Violence Walk (District 3)
- Disability Awareness Day & Resource Fair (District 3)
- Youth Conference sponsored by the City's Youth Commission (District 3)
- *Bench, Bar, Media, Police Meetings* (District 6)

### B. Neighborhood Events

The Neighborhood Events category includes those events that focus on a particular district or on the concerns of residents in a specific neighborhood within the larger San José community. The IPA participated in 22 such events in 2009 and reached 1,811 individuals. These figures represent significant increases over 2008 both in terms of the number of neighborhood events attended by the IPA and the quantity of individuals reached at such events. The increase was largely due to expanded IPA participation in the City's National Night Out events, despite the limitation on staff resources in 2009.<sup>71</sup> Examples of neighborhood events include:

- National Night Out events (Districts 1, 2, 5, 8, 9 and 10)
- Community Resource Fairs (Districts 2, 4, 5, 7 and 9)
- Senior Resource Fairs (Districts 6 and 8)



Diane Doolan-Diaz discusses Student Guide with member of San Jose's Senior Citizens Commission.

### C. IPA Presentations

IPA staff conducts presentations to a wide variety of audiences in diverse settings. In 2009, the IPA offered 34 presentations to 624 attendees, such as:

- Young adults at the San José Conservation Corps (District 7)
- Santa Clara County Public Defenders (District 3)
- Members of the City Human Rights Commission (District 3)
- Spanish-speaking participants in San José Police Department's (SJPD) Citizens Police Academy (District 3)

<sup>71</sup> There were five full-time IPA employees in 2009 compared to six full-time employees in 2008.

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### IPA Presentations - SJPD

Over the last several years, the IPA has provided presentations to recruits in the SJPD Academy regarding IPA functions and the misconduct complaint process. The presentations are offered shortly before the new recruits begin their field training on the streets of San José. Such outreach is important toward creating a positive relationship between the IPA, the community it serves, and police officers. There was one such training to 49 cadets in 2009. Because police officers are city employees, this number is not included in the community outreach table.

### D. Presentation Evaluations

Attendees at IPA presentations are usually asked to complete a basic evaluation. The evaluations provide information regarding the effectiveness of IPA presentations in fulfilling the IPA's mandate to provide information to the community about IPA services. Attendees are encouraged to note the most interesting or important sections and any additional issues they wish had been addressed. In this way the IPA receives valuable insight into matters of concern to the attendees.

In 2009, evaluations were returned by 445 individuals at the close of the IPA presentations. The number is smaller than the total number of attendees at all IPA presentations because some attendees did not return the evaluations.

- Did today's presentation increase your knowledge about the Office of the Independent Police Auditor?
  - 97% replied yes
- Did today's presentation increase your knowledge about the complaint process?
  - 96% replied yes
- Was the presenter knowledgeable about the subject matter?
  - 96% replied yes
- Were the materials provided helpful?
  - 96% replied yes
- Overall, how would you rate the presentation? (Excellent, Good, Average or Poor)
  - Excellent -- 55%
  - Good -- 37%
  - Average -- 5%
  - Poor -- .4%
  - No response -- 2.6%

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Consistent with the evaluations returned in 2008, the evaluation responses received in 2009 were very positive. Ninety-two percent of the responders rated the IPA presentation good or excellent. Attendees consistently reported that their knowledge about the IPA office and the police misconduct complaint process increased from attending the presentation. They found the IPA informational materials helpful and the presenter knowledgeable. The evaluation questions and responses by percentage are provided on page 60.

### II. Outreach to Ethnic Minority Community Members, Immigrants & Youth

The IPA has a strong commitment to reaching diverse groups of individuals who may benefit from the services of the IPA office. The IPA has prioritized this outreach; members of ethnic minority groups, immigrants and youth have been the subject of focused efforts over the last several years.

#### A. Ethnic Minority Community Members & Immigrants

San José is a diverse city comprised of individuals from numerous ethnic backgrounds. In order to

ensure that local minority communities are aware of available services, the IPA participated in 72 events involving ethnic minority members or immigrants in 2009, 43% of the 166 total IPA outreach events for the year. They included events such as the Juneteenth Community Festival sponsored by the African American Community Service Agency (District 3), a Vietnamese Parent/Student Forum at Yerba Buena High School (District 7), and numerous La Raza Roundtable meetings.

#### B. Youth

The IPA recognizes the importance of educating young people about police practices and informing them about the services of the IPA. Youth-focused outreach occurred in almost all outreach categories: community events/meetings, neighborhood specific events, and IPA presentations. In 2009 IPA staff participated in 43 events involving youth or those that work with them, 26% of the total 166 outreach events for the year. Examples are:

- Yerba Buena High School Resource Fair (District 7)
- Youth Conference sponsored by the City's Youth Commission (District 3)

**Illustration 6-B: Outreach to Ethnic Minority Community Members & Immigrants in 2009**

TYPES OF ACTIVITY/EVENT	Ethnic Minority Members & Immigrants 2009	
	Events	Attendees
Community Events/Meetings	43	1376
Neighborhood Specific Events	4	317
IPA Presentations	23	444
Ethnic Media	2	Unknown
<b>Ethnic Minority &amp; Immigrants Totals</b>	<b>72</b>	<b>2137</b>
<b>Community Outreach Totals</b>	<b>166</b>	<b>4925</b>



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- Mayor’s Gang Prevention Task Force --  
Technical Team Meetings (Districts 2, 3 and 8)

**Illustration 6-C: Outreach to Youth in 2009**

TYPES OF ACTIVITY/EVENT	Youth 2009	
	Events	Attendees
Community Events/Meetings	17	372
Neighborhood Specific Events	1	58
IPA Presentations	25	428
Youth Media	0	0
<b>Youth Totals</b>	<b>43</b>	<b>858</b>
<b>Community Outreach Totals</b>	<b>166</b>	<b>4925</b>

IPA staff continued using an interactive youth presentation that gives participants an opportunity to express their concerns about police issues and receive valuable information about what to do (and what not to do) when interacting with police officers. Presentations normally involve groups of 25 or fewer in order to promote meaningful dialogue with young audience members. Of the 34 total presentations offered by IPA staff, 25 involved this specialized youth presentation. Locations included:

- Asian Americans for Community Involvement (District 6)
- Andrew Hill High School (District 7)
- Bill Wilson Center (Santa Clara)
- Independence High School (District 4)
- Mid-Peninsula High School (District 1)
- Mt. Pleasant High School (District 5)
- Muriel Wright Youth Ranch (District 2)
- Piedmont High School (District 4)
- San José Community School (District 3)
- Sheppard Middle School (District 5)
- Silver Creek High School (District 8)
- Stonegate Elementary School (District 7)

The success of the IPA’s targeted youth outreach program is the result of cooperation from a number of local agencies and organizations that help the IPA access at-risk youth in a variety of settings. Examples include:

- Asian Americans for Community Involvement (AACI)
- Catholic Charities
- Friends Outside
- Fresh Lifelines for Youth (FLY)
- Girls Scouts of Santa Clara County’s “Got Choices” Program
- Silicon Valley - National Association for the Advancement of Colored People (NAACP)



Vivian Do and Diane Doolan-Diaz at a community event

### III. Outreach by Council District

In 2007 the City Council expressed an interest in viewing IPA outreach by council district.

**Illustration 6-D** presents IPA outreach in 2009 by council district.

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**Illustration 6-D: IPA Outreach by Council District in 2009**

COUNCIL DISTRICTS	%
District 1	2%
District 2	3%
District 3	53%
District 4	6%
District 5	6%
District 6	4%
District 7	15%
District 8	4%
District 9	2%
District 10	1%
N/A *	17%
<b>Total</b>	<b>100%</b>

\* N/A or unknown: Includes events, meetings, and presentations that occurred outside of San José.

The data reveals that the majority of IPA outreach events occurred in District 3; however, most of the events in that district involved individuals from all council districts. For instance, the 2009 Disability Awareness Day & Resource Fair event was held at City Hall but drew residents from throughout the city. All of the presentations at Juvenile Hall were counted as District 3, the district within which Juvenile Hall is located.



Vivian Do speaks to community member at Disability Awareness Days.

Although the council district of each attendee at public events is unknown, an overview by council district is still a useful tool in reviewing IPA outreach and setting future targets. IPA staff met with council staff in districts 1, 2, 3, 5, 7 and 8 in 2009 to discuss outreach priorities and goals for the calendar year. During the prior year, IPA staff met with council staff in districts 4, 9 and 10.

### IV. IPA Publications

Each year the IPA distributes informational publications at resource fairs, presentations, and community events. IPA publications include the following:

- Brochure describing IPA functions and the complaint process;
- *A Student's Guide to Police Practices* (Student Guide) in print & CD form; and,
- IPA report to council.

Both the IPA brochure and Student Guide are available in English, Spanish and Vietnamese. IPA publications are also available on the IPA website: [www.sanjoseca.gov/ipa/](http://www.sanjoseca.gov/ipa/).

Over 4,000 such materials were distributed by the IPA in 2009 to over 30 schools, agencies and groups and at a wide variety of community outreach events and meetings. Much of the 2009 distribution consisted of *A Student's Guide to Police Practices* (Student Guide). Originally released in 2003 and updated in 2008, the Student Guide is a valuable tool to educate youth about their rights and responsibilities when interacting with police officers. Popular among youth, parents and teachers, the booklet contains basic information about police practices as well as

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### Sample Pages from Student Guide Booklet

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#### Suggestions

If you are contacted by the police:

- 1) Remain calm. Don’t assume the worst. Fear and adrenaline can create problems for both you and the officer.
- 2) Be respectful. This includes your attitude and the way you act. Don’t raise your voice or “cop an attitude.” Treat the officer the way you would like to be treated.
- 3) Follow directions. Don’t resist arrest or run away. Failure to follow an officer’s directions can lead to arrest, serious injuries or death. This is not the time to challenge the officer. If necessary, you can file a complaint later or argue your case in court.
- 4) Tell the truth. It’s better not to say anything to a police officer than to lie. Lying to an officer is risky and is a crime in some cases. If the officer finds out you lied, s/he probably won’t believe anything else that you say and s/he may become angry.
- 5) Keep your hands open and where the officer can see them. Don’t put your hands in your pockets or reach for something out of view. The officer may think you have a weapon. Don’t reach for something in your backpack, on the floor of your car, or in your belt or waistband unless the officer gives you permission.
- 6) Avoid making sudden movements. Again, the officer may think you’re trying to take out a weapon or trying to hide something.
- 7) Never hit a police officer. Hitting or pushing a police officer is a crime.

## CHAPTER SEVEN | COMMUNITY OUTREACH

information on drugs, trespassing, curfew, profile stops, conduct on school grounds, gangs, cyber-bullying, hate crimes, internet safety, probation searches, dating abuse, and steps to avoid being victimized by crime. It also contains a list of community resources, information on filing a complaint and suggestions on how to interact with police officers.

Over sixteen school districts serve thousands of middle and high school students in San José. Due to limited funding availability, only a fraction of the booklets needed for distribution to these students have been printed and distributed.

### V. Media

One of the most effective mechanisms for public outreach is the media. The IPA has made an effort to reach the San José community through newspaper, radio and television interviews. It is not possible to measure the number of individuals reached via media interviews and press conferences that the IPA participated in during 2009. IPA issues, quotes, events and presentations received widespread coverage and were mentioned in several local newspapers including the *San José Mercury News*, the *Metro Silicon Valley*, and *El Observador*. Interviews with the IPA were captured on a number of local radio and television programs. In addition to the media interviews and press conferences discussed above, the IPA was mentioned in at least 14 print, radio, television and internet articles in 2009.<sup>72</sup>



Shivaun Nurre speaks to media at community event.

### Local Radio Program Examined San José Police Issues

On November 3, 2009, KQED Public Radio featured a segment on resisting arrest rates in San José. Forum program host Michael Krasny spoke with Acting Independent Police Auditor Shivaun Nurre along with Sgt. Bobby Lopez (former president of the San José Police Officers' Association), Sean Webby (journalist with the *San José Mercury News*), Van Le (vice president of external affairs for The Vietnamese American Community of Northern California), Joseph McNamara (retired police chief of San José and research fellow at the Hoover Institution), Skyler Porras (director of the ACLU of Northern California, San José), and Victor Garza (chair of La Raza Roundtable).

The segment can be heard in the KQED programs archives at:

<http://www.kqed.org/radio/programs/audio-archives.jsp>.

<sup>72</sup> The exact number of times the IPA was referred to by the media is unknown since such references are not always communicated to IPA staff for tracking.

## CHAPTER SEVEN | COMMUNITY OUTREACH

### VI. Meetings with City Officials

In order to ensure communication and collaboration with key city officials, the IPA meets regularly with the Mayor, and City Manager, and with staff from the City Attorney's Office and SJPD. Eighty-six (86) such meetings occurred in 2009 involving approximately 129 city officials and/or their staff. While these meetings are not counted as community outreach, the information is presented in this chapter as it accounts for a considerable amount of IPA activity each year. In addition to the 86 meetings with city officials, the IPA and IPA staff attended 98 other city meetings. Examples include regular meetings of the following groups:

- City Council Rules Committee;
- City Council Public Safety, Strategic Support, and Finance Committee;
- Agenda Review;
- Public Safety and Neighborhood Services City Service Areas;
- Human Relations Liaisons; and,
- Recognize Program.

### VII. IPA Website

The IPA website [www.sanjoseca.gov/ipa/](http://www.sanjoseca.gov/ipa/) is a valuable outreach mechanism. It offers IPA outreach materials such as the Student Guide, year end and mid-year reports, information about the complaint process, and general information about civilian oversight of law enforcement.

There were 34,480 visitors to the IPA website during 2009 and a total of 441,268 hits or files requested by visitors.<sup>73</sup>

### VIII. Independent Police Auditor Advisory Committee (IPAAC)

To meet the needs of San Jose's large and diverse population, the IPA seeks connections within the community that help to identify police-related issues and disseminate information regarding IPA services. The Independent Police Auditor Advisory Committee (IPAAC) was established in 1999 with the purpose of identifying, mobilizing and coordinating resources to assure maximum public, private, agency and individual commitment to effective police oversight. Members of the advisory committee are invited to participate by the IPA and currently include community leaders, grassroots organizers, and individuals representing business, nonprofit and legal communities in San José, including representatives of ethnic minorities and youth. The support, advice, and insights offered by the IPAAC have been integral to the success of the IPA. For more information regarding the IPAAC and its members see page iii.

<sup>73</sup> The number of times a specific visitor views the IPA website during the year equals the number of visitors (34,480). Each file requested by a visitor on the website registers as a hit. There can be several hits on each page.



## CASES BY COUNCIL DISTRICT

# Chapter Eight

**C**hapter Eight provides a discussion of complaints and allegations by the council district in which they occurred. Historically there has been interest in the breakdown, by council district, of complaint incident locations. This chapter provides comparative data about cases received and presents information on the distribution of Force Cases by council district.

### I. Matters Reported by Council District

**Illustration 7-A** reflects the number of complaints/concerns reported to the Independent Police Auditor (IPA) and the Internal Affairs Unit (IA) over the past four years by council district. When the location of the incident is available, it is recorded during the intake process. If the incident occurred outside San José City limits or if a specific location cannot be accurately identified during the investigation, the location is listed as Unknown. There were 317 matters received in 2009;<sup>74</sup> 77% of those cases were identified by an address and the corresponding City Council District. In 23% of the cases, the location of the event could not be identified.

As in years past, most cases were described as occurring in District Three which includes the downtown area. In 2009 there were 84 matters, 26% of the total external matters, reported to have occurred in District Three. Twenty-nine cases, 9% of the total, were reported to have occurred in District Seven. Complaints across the remaining City districts were fairly equally distributed.

<sup>74</sup> In this chapter, the data reflects cases received during calendar year 2009. This data includes CONDUCT COMPLAINTS, POLICY COMPLAINTS, and NON-MISCONDUCT CONCERNS (NMC). By definition, NMC matters are not considered to be complaints.



## CHAPTER EIGHT | CASES BY COUNCIL DISTRICT

**Illustration 7-A: 2006 - 2009 Matters Reported by Council District \***

COUNCIL DISTRICTS	2006	%	2007	%	2008	%	2009	%
District 1	9	2%	15	2%	19	3%	16	5%
District 2	21	4%	30	5%	28	4%	17	5%
District 3	143	26%	204	34%	156	25%	84	26%
District 4	21	4%	24	4%	29	5%	15	5%
District 5	38	7%	48	8%	39	6%	20	6%
District 6	49	9%	60	10%	58	9%	23	7%
District 7	41	7%	47	8%	53	8%	29	9%
District 8	24	4%	18	3%	22	4%	13	4%
District 9	26	5%	25	4%	31	5%	18	6%
District 10	22	4%	34	6%	29	5%	10	3%
Unknown/Outside of City Limits	165	30%	103	17%	161	26%	72	23%
<b>Total Cases Received *</b>	<b>559</b>	<b>100%</b>	<b>608</b>	<b>100%</b>	<b>625</b>	<b>100%</b>	<b>317</b>	<b>100%</b>

\* This data includes CITIZEN CONTACTS and NON-MISCONDUCT CONCERNS which are not reported as complaints.

### II. Changes to Classification

In July 2008 the Revised Complaint Process (RCP) redefined and reorganized the classification process for reported concerns; the number of classifications was reduced from seven to four.<sup>75</sup> Some of the former classifications were maintained, some were eliminated and others were expanded to include a wider variety of conduct. In the past, the IPA Year End reports provided comparison of the classification of cases by council district. All cases received in 2009 were classified used the revised process; this change has prevented meaningful comparisons to earlier years. Future reports will use 2009 as the baseline for comparing complaint data.

Comparative data is not provided in this report. A more detailed explanation of the changes that occurred under the Revised Complaint Process can be found in the IPA 2008 Annual Report online at <http://www.sanjoseca.gov/ipa/reports>.

### III. Force Cases by Council District

Calendar year 2009 was the first year since 1996 to report *Force* allegations as a single category. A Force Case is a complaint that contains one or more allegations of force; under the RCP the level of force used, or injuries if any, are not distinguished for reporting purposes.<sup>76</sup> **Illustration 7-B** provides a two-year comparison of the numbers of investigated Force Cases reported by council

<sup>75</sup> Prior to July 2008 matters were classified into one of seven categories: CITIZEN INITIATED, DEPARTMENT INITIATED, COMMAND REVIEW, PROCEDURAL, INQUIRY, POLICY, and CITIZEN CONTACTS.

<sup>76</sup> Prior to July 2008, force cases distinguished *Force I* and *Force II* allegations depending on the alleged injury sustained as a result of the force used. This distinction was eliminated by the RCP.

## CHAPTER EIGHT | CASES BY COUNCIL DISTRICT

district. A total of 59 complaints containing a *Force* allegation were filed in 2009; this is a significant change from 117 *Force* Cases reported in 2007 and 2008.<sup>77</sup> In terms of district distribution, the most notable changes appeared in District Three; the data reflects a 10% reduction in the percentage of *Force* Cases reported in that district. (For a detailed discussion of *Force* cases see **Chapter Four**.)

**Illustration 7-B: Two-Year Comparison of Force Cases Reported By Council District**

COUNCIL DISTRICTS	2008		2009	
	Total Cases	%	Total Cases	%
District 1	2	2%	2	3%
District 2	4	3%	3	5%
District 3	40	34%	14	24%
District 4	4	3%	3	5%
District 5	11	9%	4	7%
District 6	11	9%	6	10%
District 7	9	8%	7	12%
District 8	4	3%	1	2%
District 9	7	6%	1	2%
District 10	4	3%	1	2%
Unknown/Outside of City Limits	21	18%	17	29%
<b>Total UF Complaints Received</b>	<b>117</b>	<b>100%</b>	<b>59</b>	<b>100%</b>

<sup>77</sup> There were 117 *Force* Cases filed in 2007 and 117 *Force* Cases filed in 2008.

## CONCLUSION

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Sixteen years after the establishment of the Independent Police Auditor (IPA), the office continues to provide civilian oversight of the complaint process by receiving complaints, auditing investigations, conducting community outreach, making recommendations to City Council, and responding to the scene of officer-involved shootings.

In 2009, a total of 317 concerns were raised by members of the public regarding the conduct of San José Police Department (SJPD) officers. As compared to the trend seen in the last several calendar years, the 2009 number represents a significant decrease. The most common allegations identified in complaints during the 2009 calendar year were: *Procedure, Force, Arrest/Detention, and Courtesy*. The IPA audited 238 of the closed investigations forward by Internal Affairs (IA) in 2009 and determined that 69% were complete, thorough, objective and fair.

The use of force by police officers received a great deal of attention in 2009 due to several high-profile incidents. A number of actions were taken by the City to address community concerns, including the formation of the City Manager's Use of Force Advisory Group. The IPA is a member of this group, which continues to review police reports from 2009 where force was used on individuals arrested solely for resisting arrest.

The IPA participated in the City's Public Intoxication Task Force (PITF) in 2009. The Task Force was created in 2008 to address concerns about San José's high rate of public intoxication arrests. Data shows a decrease in the rate of public intoxication arrests in San José since the administration of Preliminary Alcohol Screening tests began in 2009.

Community outreach remained a priority for the IPA office in 2009. Despite a year-long vacancy in one of six full-time staff positions, the IPA employees attended 166 events involving approximately 4,925 community members.

In April of 2010, the City appointed Judge LaDoris Cordell (Ret.) to the position of IPA. She began her term in May. The 2010 IPA Year End Report will reflect the work of the IPA office under her direction.

# Conclusion



## APPENDIX A

### SAN JOSÉ MUNICIPAL CODE CHAPTER 8.04 AND SAN JOSÉ CITY CHARTER §809

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#### SAN JOSÉ MUNICIPAL CODE CHAPTER 8.04

#### OFFICE OF THE INDEPENDENT POLICE AUDITOR

##### 8.04.010 Duties and responsibilities.

In addition to the functions, powers and duties set forth elsewhere in this code, the independent police auditor shall have the duties and responsibilities set forth in this section.

- A. Review of internal investigation complaints. The police auditor shall review police professional standards and conduct unit investigations of complaints against police officers to determine if the investigation was complete, thorough, objective and fair.
  - 1. The minimal number of complaints to be reviewed annually are:
    - a. All complaints against police officers which allege excessive or unnecessary force; and
    - b. No less than twenty percent of all other complaints.
  - 2. The police auditor may interview any civilian witnesses in the course of the review of police professional standards and conduct unit investigations.
  - 3. The police auditor may attend the police professional standards and conduct unit interview of any witness including, but not limited to, police officers. The police auditor shall not directly participate in the questioning of any such witness but may suggest questions to the police professional standards and conduct unit interviewer.
  - 4. The police auditor shall make a request, in writing, to the police chief for further investigation whenever the police auditor concludes that further investigation is warranted. Unless the police auditor receives a satisfactory written response from the police chief, the police auditor shall make a request, in writing, for further investigation to the city manager.
- B. Review of officer-involved shootings. The police auditor shall participate in the police department's review of Officer-Involved shootings.
- C. Community function.
  - 1. Any person may, at his or her election, file a complaint against any member of the police department with the independent auditor for investigation by the police professional standards and conduct unit.
  - 2. The independent police auditor shall provide timely updates on the progress of police professional standards and conduct unit investigations to any complainant who so requests.
- D. Reporting function. The police auditor shall file annual public reports with the city clerk for transmittal to the city council which shall:



## APPENDIX A

### SAN JOSÉ MUNICIPAL CODE CHAPTER 8.04 AND SAN JOSÉ CITY CHARTER §809

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1. Include a statistical analysis, documenting the number of complaints by category, the number of complaints sustained and the actions taken.
  2. Analyze trends and patterns.
  3. Make recommendations.
- E. Confidentiality. The police auditor shall comply with all state laws requiring the confidentiality of police department records and information as well as the privacy rights of all individuals involved in the process. No report to the city council shall contain the name of any individual police officer.

(Ords. 25213, 25274, 25922.)

#### **8.04.020 Independence of the Police Auditor.**

- A. The police auditor shall, at all times, be totally independent and requests for further investigations, recommendations and reports shall reflect the views of the police auditor alone.
- B. No person shall attempt to undermine the independence of the police auditor in the performance of the duties and responsibilities set forth in Section 8.04.010, above.

(Ord. 25213.)

### **SAN JOSÉ CITY CHARTER § 809**

#### **OFFICE OF THE INDEPENDENT POLICE AUDITOR**

The Office of the Independent Police Auditor is hereby established. The Independent Police Auditor shall be appointed by the Council. Each such appointment shall be made as soon as such can reasonably be done after the expiration of the latest incumbent's term of office. Each such appointment shall be for a term ending four (4) years from and after the date of expiration of the immediately preceding term; provided, that if a vacancy should occur in such office before the expiration of the former incumbent's terms, the Council shall appoint a successor to serve only for the remainder of said former incumbent's term.

The office of Independent Police Auditor shall become vacant upon the happening before the expiration of his or her term of any of the events set forth in subsections (a), (b), (c), (d), (e), (h), (i), (j), (k) and (l) of Section 409 of this Charter. The Council, by resolution adopted by not less than ten (10) of its members may remove an incumbent from the office of the Independent Police Auditor, before the expiration of his or her term, for misconduct, inefficiency, incompetence, inability or failure to perform the duties of such office or negligence in the performance of such duties, provided it first states in writing the reasons for such removal and gives the incumbent an opportunity to be heard before the Council in his or her own defense; otherwise, the Council may not remove an incumbent from such office before the expiration of his or her term.

## APPENDIX A

### SAN JOSÉ MUNICIPAL CODE CHAPTER 8.04 AND SAN JOSÉ CITY CHARTER §809

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The Independent Police Auditor shall have the following powers and duties:

- (a) Review Police Department investigations of complaints against police officers to determine if the investigation was complete, thorough, objective and fair.
- (b) Make recommendations with regard to Police Department policies and procedures based on the Independent Police Auditor's review of investigations of complaints against police officers.
- (c) Conduct public outreach to educate the community on the role of the Independent Police Auditor and to assist the community with the process and procedures for investigation of complaints against police officers.

*Added at election November 5, 1996.*

#### § 809.1. Independent Police Auditor; Power Of Appointment

- (a) The Independent Police Auditor may appoint and prescribe the duties of the professional and technical employees employed in the Office of the Independent Police Auditor. Such appointed professional and technical employees shall serve in unclassified positions at the pleasure of the Independent Police Auditor. The Council shall determine whether a particular employee is a "professional" or "technical" employee who may be appointed by the Independent Police Auditor pursuant to these Subsections.
- (b) In addition, subject to the Civil Service provisions of this Charter and of any Civil Service Rules adopted pursuant thereto, the Independent Police Auditor shall appoint all clerical employees employed in the Office of the Independent Police Auditor, and when the Independent Police Auditor deems it necessary for the good of the service he or she may, subject to the above-mentioned limitations, suspend without pay, demote, discharge, remove or discipline any such employee whom he or she is empowered to appoint.
- (c) Neither the Council nor any of its members nor the Mayor shall in any manner dictate the appointment or removal of any such officer or employee whom the Independent Police Auditor is empowered to appoint, but the Council may express its views and fully and freely discuss with the Independent Police Auditor anything pertaining to the appointment and removal of such officers and employees.

*Added at election November 5, 1996.*





**APPENDIX B****CALIFORNIA PENAL CODE § 832.5 AND § 832.7****§ 832.5. Citizen's complaints against personnel; investigation; retention and maintenance of records; removal of complaints; access to records**

- (a) (1) Each department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public.
- (2) Each department or agency that employs custodial officers, as defined in Section 831.5, may establish a procedure to investigate complaints by members of the public against those custodial officers employed by these departments or agencies, provided however, that any procedure so established shall comply with the provisions of this section and with the provisions of Section 832.
- (b) Complaints and any reports or findings relating to these complaints shall be retained for a period of at least five years. All complaints retained pursuant to this subdivision may be maintained either in the peace or custodial officer's general personnel file or in a separate file designated by the department or agency as provided by department or agency policy, in accordance with all applicable requirements of law. However, prior to any official determination regarding promotion, transfer, or disciplinary action by an officer's employing department or agency, the complaints described by subdivision (c) shall be removed from the officer's general personnel file and placed in separate file designated by the department or agency, in accordance with all applicable requirements of law.
- (c) Complaints by members of the public that are determined by the peace or custodial officer's employing agency to be frivolous, as defined in Section 128.5 of the Code of Civil Procedure, or unfounded or exonerated, or any portion of a complaint that is determined to be frivolous, unfounded, or exonerated, shall not be maintained in that officer's general personnel file. However, these complaints shall be retained in other, separate files that shall be deemed personnel records for purposes of the California Public Records Act (Chapter 3.5 commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and Section 1043 of the Evidence Code.
  - (1) Management of the peace or custodial officer's employing agency shall have access to the files described in this subdivision.
  - (2) Management of the peace or custodial officer's employing agency shall not use the complaints contained in these separate files for punitive or promotional purposes except as permitted by subdivision (f) of Section 3304 of the Government Code.
  - (3) Management of the peace or custodial officer's employing agency may identify any officer who is subject to the complaints maintained in these files which require counseling or additional training. However, if a complaint is removed from the officer's personnel file, any reference in the personnel file to the complaint or to a separate file shall be deleted.
- (d) As used in this section, the following definitions apply:
  - (1) "General personnel file" means the file maintained by the agency containing the primary records specific to each peace or custodial officer's employment, including evaluations, assignments, status changes, and imposed discipline.
  - (2) "Unfounded" means that the investigation clearly established that the allegation is not true.

## APPENDIX B

### CALIFORNIA PENAL CODE §832.5 AND §832.7

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- (3) “Exonerated” means that the investigation clearly established that the actions of the peace or custodial officer that formed the basis for the complaint are not violations of law or department policy.

### CALIFORNIA PENAL CODE §832.7

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#### § 832.7. Confidentiality of peace officer records: Exceptions

- (a) Peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code. This section shall not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a district attorney’s office, or the Attorney General’s office.
- (b) Notwithstanding subdivision (a), a department or agency shall release to the complaining party a copy of his or her own statements at the time the complaint is filed.
- (c) Notwithstanding subdivision (a), a department or agency that employs peace or custodial officers may disseminate data regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against its officers if that information is in a form which does not identify the individuals involved.
- (d) Notwithstanding subdivision (a), a department or agency that employs peace or custodial officers may release factual information concerning a disciplinary investigation if the officer who is the subject of the disciplinary investigation, or the officer’s agent or representative, publicly makes a statement he or she knows to be false concerning the investigation or the imposition of disciplinary action. Information may not be disclosed by the peace or custodial officer’s employer unless the false statement was published by an established medium of communication, such as television, radio, or a newspaper. Disclosure of factual information by the employing agency pursuant to this subdivision is limited to facts contained in the officer’s personnel file concerning the disciplinary investigation or imposition of disciplinary action that specifically refute the false statements made public by the peace or custodial officer or his or her agent or representative.
- (e) (1) The department or agency shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition.
- (2) The notification described in this subdivision shall not be conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court, or judge of this state or the United States.
- (f) Nothing in this section shall affect the discovery or disclosure of information contained in a peace or custodial officer’s personnel file pursuant to Section 1043 of the Evidence Code.

## APPENDIX C

### ADDITIONAL STATISTICAL INFORMATION

**Table 1: Classifications of External Matters Received**

EXTERNAL COMPLAINTS	2009		Total	%
	IPA	IA		
Conduct Complaints	87	126	213	99%
Policy Complaints	0	1	1	0.5%
<b>Total</b>	<b>87</b>	<b>127</b>	<b>214</b>	<b>100%</b>
Non-Misconduct Concern	36	67	103	

**Table 2: Four-Year Overview of Total Matters Received**

COMPLAINTS RECEIVED	2006	2007	2008	2009
External Citizen-Initiated	444	491	467	213
Internal Department-Initiated	48	56	56	49
<b>Total</b>	<b>492</b>	<b>547</b>	<b>523</b>	<b>262</b>
Non-Misconduct Concern	N/A	N/A	102	103

**Table 3: Dispositions of Allegations in External/Citizen-Initiated Cases in 2009**

DISPOSITION	ALLEGATIONS																			Total	%
	AD	BBP	C	CUBO	D	F	F1	F2	IP	MDP	ND	P	RC	RP	SS	UA	UC	US			
Sustained			1	4				1	5			13	10			1		4	39	4%	
Not Sustained	5		54	5	2	11		24	14	3	5	20	25		21		6	10	205	20%	
Exonerated	82	5	14	6		90	10	41	51	8	10	109	2		47	25		20	520	50%	
Unfounded	1	27	7	10	3	24	1	6	6	3	1	22	7	11	2				131	13%	
No Finding	12	3	15	1		13		2	1	4	1	33	3		5		4	2	99	10%	
Within Procedure								14	3							5		1	23	2%	
No Misconduct Determined								1					2			2			5	0%	
Command Review																			0	0%	
Within Policy																			0	0%	
Complaint Withdrawn			2	1		3						3							9	1%	
<b>Total Allegations</b>	<b>100</b>	<b>35</b>	<b>93</b>	<b>27</b>	<b>5</b>	<b>141</b>	<b>11</b>	<b>89</b>	<b>80</b>	<b>18</b>	<b>17</b>	<b>200</b>	<b>49</b>	<b>11</b>	<b>75</b>	<b>33</b>	<b>14</b>	<b>33</b>	<b>1031</b>	<b>100%</b>	

#### Legend of Allegations

AD= Arrest or Detention	D= Discrimination	H= Harassment	RP= Racial Profiling
BBP= Bias-Based Policing	DR= Delayed/Slow in Response	IP= Improper Procedure	SS= Search or Seizure
C= Courtesy	F1= Unnecessary Force (w/medical)	MDP= Missing/Damaged Property	UA= Unlawful Arrest
CUBO=Conduct Unbecoming an Officer	F1= Unnecessary Force (w/o medical)	P= Procedure	UC= Unofficer like Conduct
ES= Excessive Police Service	FA= Failure to Take Action	RC= Rude Conduct	US= Unlawful Search

## APPENDIX C

### ADDITIONAL STATISTICAL INFORMATION

**Table 4: Types of Complaints Audited and Closed in 2009**

EXTERNAL COMPLAINTS	2009	
	Closed	Audited
Citizen-Initiated Complaints	53	68
Conduct Complaints	231	146
Citizen Nexus to Internal Complaints	2	2
Command Review Complaints	0	0
Procedural Complaints	8	18
Policy Complaints	2	2
Withdrawn	0	2
<b>Total</b>	<b>296</b>	<b>238</b>

**Table 5: IPA Audit Determination in Investigated Cases**

AUDIT DETERMINATION IN INVESTIGATED CASES	2007		2008		2009	
	Audits	%	Audits	%	Audits	%
Agreed at First Review	170	67%	260	77%	165	69%
Agreed after Further Action	29	11%	19	6%	25	11%
Disagreed after Further Action	55	22%	59	17%	48	20%
<b>Total Complaints Audited</b>	<b>254</b>	<b>100%</b>	<b>338</b>	<b>100%</b>	<b>238</b>	<b>100%</b>

**Table 6: Four-Year Overview of Complainant's Level of Injury**

DEGREE OF INJURY	2006		2007		2008		2009	
	Number	%	Number	%	Number	%	Number	%
Major	2	3%	8	9%	7	7%	6	6%
Moderate	7	11%	10	11%	12	12%	18	19%
Minor	37	61%	49	55%	50	51%	40	41%
None	13	21%	12	13%	23	23%	29	30%
Unknown	2	3%	10	11%	7	7%	4	4%
<b>Total</b>	<b>61</b>	<b>100%</b>	<b>89</b>	<b>100%</b>	<b>99</b>	<b>100%</b>	<b>97</b>	<b>100%</b>

**Table 7: Disposition of Unnecessary Force Allegations in External Cases from 2006 to 2009**

DISPOSITION	2006		2007		2008		2009	
	Total	%	Total	%	Total	%	Total	%
Sustained	1	1%	2	1%	0	0%	1	0.4%
Not Sustained	8	10%	27	16%	28	10%	35	15%
Exonerated	33	39%	57	35%	145	53%	141	59%
Unfounded	8	10%	35	21%	42	15%	31	13.5%
No Finding	20	24%	18	11%	40	15%	15	6%
Within Procedure	12	14%	26	16%	17	6%	14	6%
No Misconduct Determined	2	2%	0	0%	0	0%	1	0.4%
<b>Total</b>	<b>84</b>	<b>100%</b>	<b>165</b>	<b>100%</b>	<b>272</b>	<b>100%</b>	<b>238</b>	<b>100%</b>



## **APPENDIX D**

# **NATIONAL ASSOCIATION FOR CIVILIAN OVERSIGHT OF LAW ENFORCEMENT CODE OF ETHICS (CODE)**

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### **Preamble**

Civilian oversight practitioners have a unique role as public servants overseeing law enforcement agencies. The community, government, and law enforcement have entrusted them to conduct their work in a professional, fair and impartial manner. They earn this trust through a firm commitment to the public good, the mission of their agency, and to the ethical and professional standards described herein.

The standards in the Code are intended to be of general application. It is recognized, however, that the practice of civilian oversight varies among jurisdictions and agencies, and additional standards may be necessary. The spirit of these ethical and professional standards should guide the civilian oversight practitioner in adapting to individual circumstances, and in promoting public trust, integrity and transparency.

### **Personal Integrity**

Demonstrate the highest standards of personal integrity, commitment, truthfulness, and fortitude in order to inspire trust among your stakeholders, and to set an example for others. Avoid conflicts of interest. Conduct yourself in a fair and impartial manner and recuse yourself or personnel within your agency when significant conflict of interest arises. Do not accept gifts, gratuities or favors that could compromise your impartiality and independence.

### **Independent and Thorough Oversight**

Conduct investigations, audits, evaluations and reviews with diligence, an open and questioning mind, integrity, objectivity and fairness, in a timely manner. Rigorously test the accuracy and reliability of information from all sources. Present the facts and findings without regard to personal beliefs or concern for personal, professional or political consequences.

### **Transparency and Confidentiality**

Conduct oversight activities openly and transparently providing regular reports and analysis of your activities, and explanations of your procedures and practices to as wide an audience as possible. Maintain the confidentiality of information that cannot be disclosed and protect the security of confidential records.

### **Respectful and Unbiased Treatment**

Treat all individuals with dignity and respect, and without preference or discrimination including but not limited to the following protected classes: age, ethnicity, culture, race, disability, gender, religion, sexual orientation, socioeconomic status or political beliefs.

### **Outreach and Relationships with Stakeholders**

Disseminate information and conduct outreach activity in the communities that you serve. Pursue open, candid, and non-defensive dialog with your stakeholders. Educate and learn from the community.

### **Agency Self-examination and Commitment to Policy Review**

Seek continuous improvement in the effectiveness of your oversight agency, the law enforcement agency it works with, and their relations with the communities they serve. Gauge your effectiveness through evaluation and analysis of your work product. Emphasize policy review aimed at substantive organizational reforms that advance law enforcement accountability and performance.

### **Professional Excellence**

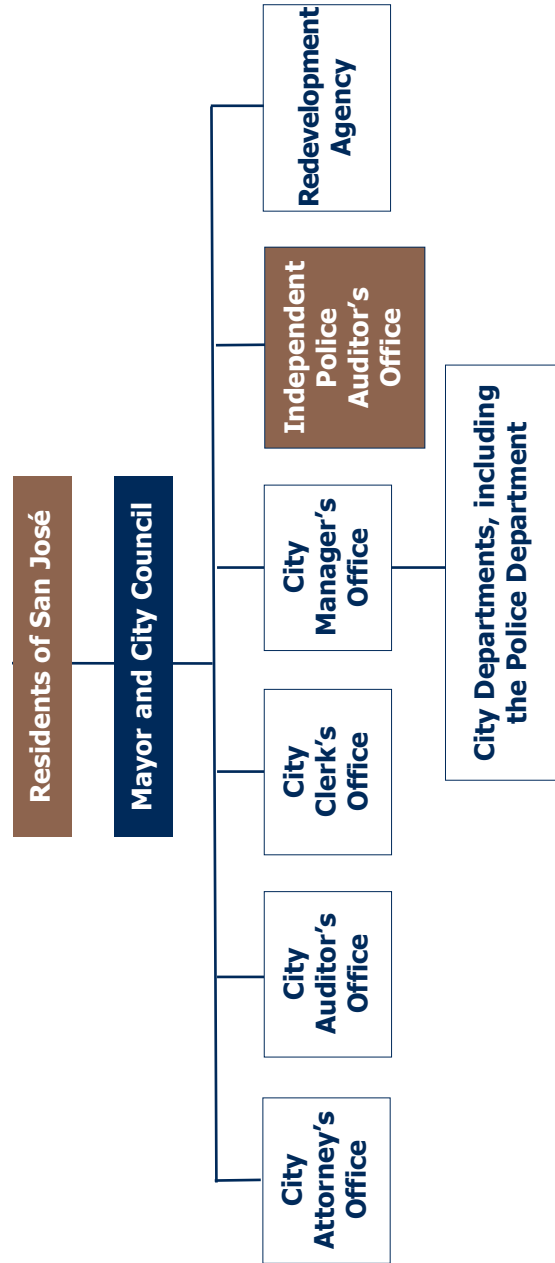
Seek professional development to ensure competence. Acquire the necessary knowledge and understanding of the policies, procedures, and practices of the law enforcement agency you oversee. Keep informed of current legal, professional and social issues that affect the community, the law enforcement agency, and your oversight agency.

### **Primary Obligation to the Community**

At all times, place your obligation to the community, duty to uphold the law and to the goals and objectives of your agency above your personal self-interest.

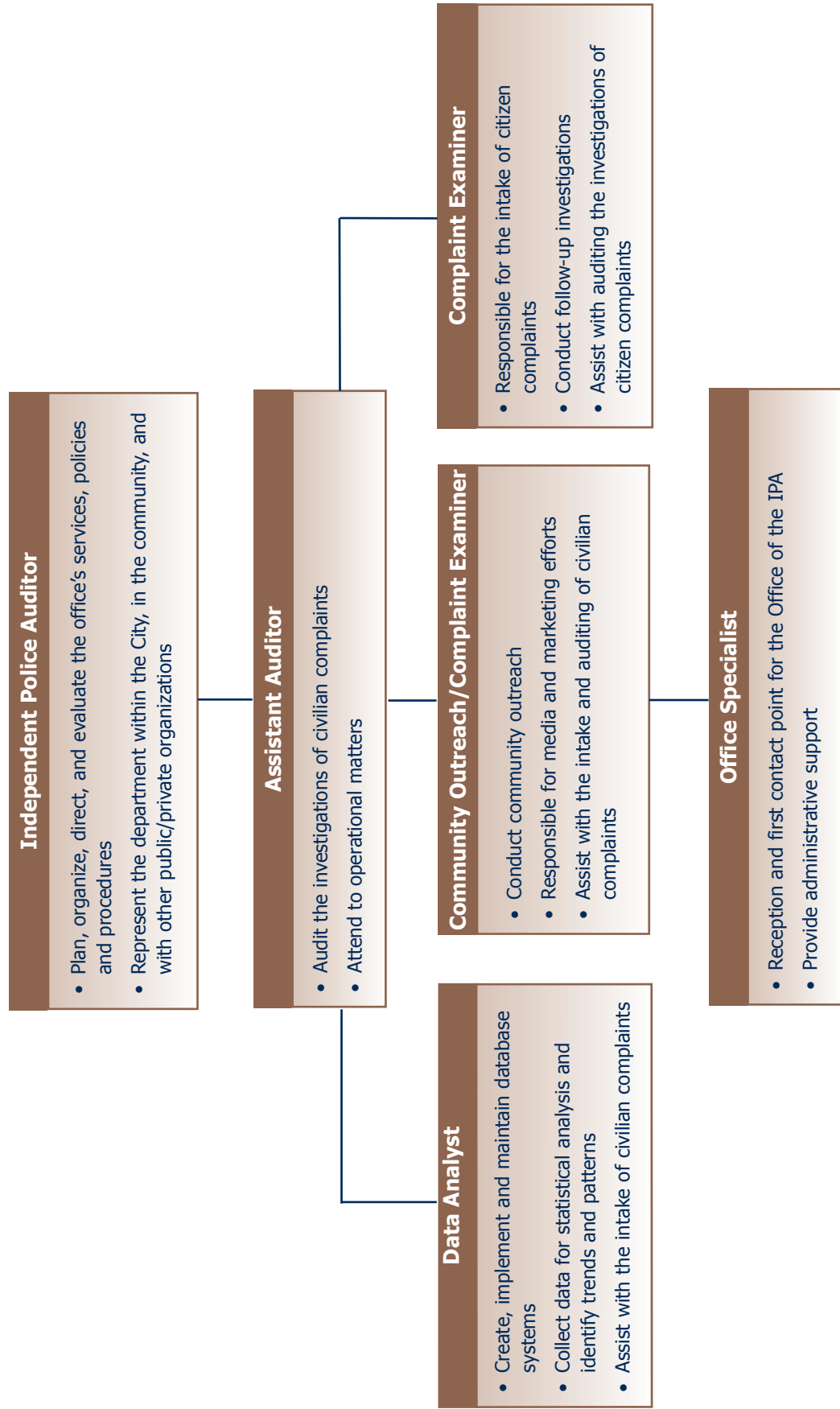


**APPENDIX E**  
**CITY OF SAN JOSÉ STRUCTURE**





# APPENDIX F OFFICE OF THE INDEPENDENT POLICE AUDITOR STRUCTURE



## APPENDIX G

### ALLEGATION FINDINGS

Findings	Corresponding IA investigation showed that:
Sustained	The investigation disclosed sufficient evidence to clearly prove the allegation made by the complainant.
Not Sustained	The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation made by the complainant.
Exonerated	The act(s) which provided the basis for the allegation occurred, however the investigation revealed they were justified, lawful and proper.
Unfounded	The investigation conclusively proved that either the act(s) complained of <u>did not occur</u> , or that the Department member named in the allegation <u>was not involved</u> in the act(s) which may have occurred.
No Finding	The complainant failed to disclose promised information needed to further the investigation, or the complainant is no longer available for clarification of material issues, or the subject officer was no longer employed by the Department at the time the investigation was completed.
Withdrawn	The complainant affirmatively indicates the desire to withdraw the complaint.
Other	This finding is used at the direction of the Chief of Police. A complaint that is reported more than one year after the date of occurrence is routed to the Chief for review. A determination not to conduct an investigation due to the passage of time will result in the allegation(s) being closed as Other.
Within Procedure *	The initial intake investigation determined that the Department member acted reasonably and within Department procedure and policy given the specific circumstances of the incident, and that despite the allegation of misconduct there is no factual basis to support the allegation.
No Misconduct Determined *	The initial intake investigation determined that the allegation is a dispute of fact wherein there is no independent information, evidence or witness available to support the complaint and there exists another judicial entity to process the concerns of the complainant.
Command Review *	It is determined that the allegation involves minor transgressions that may be handled by bringing the matter to the attention of the subject member's supervisor and chain of command.

\* Findings of Within Procedure and No Misconduct Determined applied only to complaints classified as PROCEDURAL under the former process. Command Review was eliminated as a finding under the RCP.



## APPENDIX H

# MEMORANDUM: ONE YEAR REPORT ON RCP - COURTESY DEFINITION

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## Memorandum

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**TO:** HONORABLE MAYOR AND CITY COUNCIL

**FROM:** Shivaun Nurre, Acting Independent Police Auditor

**SUBJECT:** ONE YEAR REPORT ON SJPD REVISED COMPLAINT PROCESS- COURTESY DEFINITION

**DATE:** October 21, 2009

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During the past year, much effort has been focused on implementing the revised complaint process. The IPA commends the City Manager's Office and the Police Department for their efforts in working with IPA staff to ensure uniformity in approach and application of the new process.

The IPA also commends the City Manager's Office for its memorandum outlining measures implemented and identifying possible refinements to the process; composing such a document is not easy given the complexity and nuances of the system. Preparing this memorandum created an opportunity for staff from the IPA office, the City Manager's office, and the Police Department to engage in some frank and fruitful discussions about problems and solutions.

Staff is already working to implement some of the solutions identified. As stated in the memorandum, staff will continue to refine the Process in the future to address remaining issues. One of the most important items for such future refinement is the definition of Courtesy in the SJPD Duty Manual and the resulting definition of a Courtesy allegation. Courtesy has been a dominant issue regarding police conduct consistently raised by members of the public. Annually, Courtesy is one of the three most frequently articulated allegations. In calendar year 2008, there were 196 rude conduct/courtesy allegations, 17% of all allegations received.

The memorandum contains a draft definition of a Courtesy allegation and specifies that it will be further evaluated. The IPA suggests the following points for consideration during the future evaluation.

Prior to the implementation of the revised complaint process in July of 2008, the Courtesy allegation included clear direction that Department members would be "courteous to the public and tactful in the performance of duties." Both the definition adopted in the revised process and the definition proposed in the City Manager's One Year Report on the revised process do not include such an affirmative duty. Instead, the proposed definition appears to focus on the appropriate use of profanity. The public's expectation of courteous treatment, however, encompasses more than the absence of profanity; complaints of discourtesy more often include behavior such as name-calling, disrespect, and ridicule.





## APPENDIX H MEMORANDUM: ONE YEAR REPORT ON RCP - COURTESY DEFINITION

<u>Former SJPD Duty Manual §C1308 Courtesy</u> (pre 7/1/08)	<u>Revised SJPD Duty Manual §C1308 Courtesy</u> (post 7/1/08)	<u>Proposed SJPD Duty Manual Courtesy</u> (under consideration)
<p>Department members will be courteous to the public and tactful in the performance of duties. Members will not use coarse, violent, profane or insolent language and will not express any prejudice concerning race, religion, politics, national origin, or similar personal characteristics.</p>	<p>Department members will not inappropriately use profane or derogatory language or use obscene gestures during a contact with a member of the public.</p>	<p>Department members will be professional and will not use profane or derogatory language or obscene gestures during a contact with a member of the public. The Department recognizes that there are limited field situations where profane or derogatory language or obscene gestures may be a reasonable tactic or tool (e.g., undercover work, imminent risk, volatile physical and deadly force encounters, control tactic, etc.)</p>

The IPA suggests consideration of a two-fold modification of the proposed SJPD Duty Manual definition of Courtesy: (1) inclusion of a clear affirmative duty to treat the public with courtesy and respect (2) a stronger limitation of profanity to exceptional circumstances. Such an approach would be consistent with the existing vision statement of the SJPD described below. The IPA also suggests that training and tracking mechanisms be put in place to determine whether allowing limited use of profanity turns out to be a prudent decision.

Clear affirmative direction:

Many departments have a clear direction that officers must be professional and courteous; other departments may instead prohibit an officer from engaging in disrespectful conduct. While the proposed definition includes a requirement that members of the Department be professional, it does not require courtesy per se. The SJPD's vision statement, contained in Duty Manual section A1100, clearly defines the expected conduct of a San Jose officer. It states, "The Department is committed to treating all people with dignity, fairness and respect, protecting their rights and providing equal protection under the law." In order to provide a clear directive to members of the Department regarding the expectation of courtesy and to ensure that a proven violation of section A1100 could be disciplined, this directive should be placed into Duty Manual section C1308 Courtesy. Under the existing complaint process and definition, officers are not being held to the standard found in the vision statement, only to the standard expressed in the Duty Manual section on Courtesy.

Use of profanity limited to exceptional circumstances:

Many departments ban outright any use of profanity. Before July 1, 2008, the SJPD Duty Manual barred officers from using profane language. A change from that absolute ban must be done in a measured thoughtful way to ensure that use of profanity is limited to rare circumstances.



## APPENDIX H

# MEMORANDUM: ONE YEAR REPORT ON RCP -COURTESY DEFINITION

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If an exception allowing profanity is included in the proposed definition of Courtesy the directive should also define the **limited** circumstances under which profanity would **not** result in discipline.

The definition proposed in the City Manager's report states that, "The Department recognizes that there are limited field situations where profane or derogatory language or obscene gestures may be a reasonable tactic or tool (e.g., undercover work, imminent risk, volatile physical and deadly force encounters, control tactic, etc.)" This exception for the use of profane or derogatory language is over-broad. Additional language is required to clarify that such situations are the exception, not the rule. Officers routinely face imminent risk of physical violence; granting an exception for profanity wherever and whenever such a risk arises is ill-advised. It is neither in the best interest of the public that wishes to be treated with respect nor that of officers who expect/deserve realistic and clear directives regarding permissible conduct.

### Training and Tracking:

One assumption about the use of profanity is that its use may help avoid the deployment of physical or deadly force. However, it is equally plausible that the use of profanity may escalate police-citizen encounters.<sup>61</sup> If the Department is contemplating allowing profanity under limited circumstances, then the department should also consider training guidelines and tracking mechanisms to ensure that the use of profanity is indeed limited to its intended purpose. The Department may want to consider requiring that officers document their use of profanity in their reports – if profanity is to be considered a control tactic, tracking is warranted to ensure uniformity and to record frequency. The Department may want to consider standardized training so that the limits on profanity are clearly and uniformly communicated by training staff and Field Training Officers.

### Conclusion

The City Manager's Office, Police Department, and IPA Office worked together during the reporting period to ensure the uniform implementation of the revised complaint process. Fruitful discussions occurred regarding improvements to the process; additional refinement will be undertaken in the future to further strengthen the process. The IPA supports the City Manager's commitment to include the definition of Courtesy allegations in the future evaluations. In order to address long-standing community concerns and provide clear and realistic direction to officers, an affirmative duty to treat the public with respect into the definition of Courtesy should be considered. The use of profanity should be limited to highly unusual and exceptional circumstances. Training guidelines should be created to reflect any changes to the Courtesy definition and the Department may wish to implement tracking mechanisms to capture the effects of the revised definition. The IPA remains committed to the future work of further refining the revised complaint process in collaboration with the City Manager and SJPD.

Shivaun Nurre  
Acting Independent Police Auditor

*For additional information on this memorandum, contact Shivaun Nurre, Acting IPA at 794-6226*

<sup>1</sup> In November 2003, the Citizen Review Committee in Portland Oregon prepared a report entitled *Officer Use of Profanity* which included a survey of 39 police departments. The report provides a general overview and identifies key issues. A copy is attached as Attachment A.

## APPENDIX I

# INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

DATE OF REPORT	RECOMMENDATIONS	SJPD RESPONSES	RESOLUTION PERIOD
<b>1993 1st Quarter Report</b>	Create a new system for the classification of complaints.	Adopted	1st Quarter, 2nd Quarter, and 1994 Year End Report
	Standardize the definition of Procedural and Informal Complaints.	Adopted	2nd Quarter and 1994 Year End Report
	Apply Intervention Counseling to all types of complaints.	Adopted	2nd Quarter and 1994 Year End Report
	Establish procedures to address potential bias between Internal Affairs Investigators and complainants and subject officers.	Adopted	2nd Quarter and 1994 Year End Report
	Enact policy to ensure objectivity in the Intake of citizen complaints.	Adopted	2nd Quarter and 1994 Year End Report
<b>1994 3rd Quarter Report</b>	Establish a timetable with goals in which to classify and investigate complaints.	Adopted	1994 Year End Report
	Implement a citizen "Onlooker Policy" that addresses a person's right to witness a police incident.	Adopted	1995 Mid-Year Report
	Standardize the way all investigations are written by IA personnel.	Adopted	1994 Year End Report
	Provide report writing training in "Drunk in Public" cases to include the basis for the arrest. Reports are to be retained on file.	Adopted	1994 Year End Report
	Provide chemical testing for "Drunk in Public" cases to verify if the person was in fact intoxicated.	Not Adopted	
	Send minor complaints to the Bureau of Field Operations to expedite investigations.	Adopted	1994 Year End Report
<b>1994 Year End Report</b>	Establish procedures to insure neutrality in the classification of complaints.	Adopted	1994 Year End Report
	Interview complainants and witnesses within three months of the initiation of a complaint.	Adopted	1994 Year End Report
	Contact complainants at regular intervals through updates and closing letters.	Adopted	1994 Year End Report
	Provide a copy of all SJPD reports relevant to complaint to the Police Auditor.	Adopted	1994 Year End Report
	Require written authorization before conducting a search of a home based on consent.	Not Adopted	
	Enact policy to require that, in cases where an officer's use of force caused great bodily injury, supervisors collect evidence and conduct an investigation into the need for the officer to use such force.	Adopted	1995 Year End Report
	Ensure that handcuffs are double locked to prevent wrist injuries.	Adopted	1994 Year End Report
	Write the complainant's statement in addition to tape recording and provide a copy to the complainant.	Adopted	1994 Year End Report
	Improve IA investigator's interpersonal skills in interacting with complainants.	Adopted	1994 Year End Report
	Handle complaints classified as Command Review through counseling by the Field Supervisor and contact the complainant (where requested).	Adopted	1994 Year End Report
	Revise letters sent to complainants to include information about the IPA's role.	Adopted	1994 Year End Report
<b>1995 Mid-Year Report</b>	Maintain a central log of all public contacts for tracking purposes and to reduce the number of complaints that are lost or misplaced.	Adopted	1995 Year End Report
	Obtain additional office space for IA so that complainants are interviewed in private.	Adopted	1997 Year End Report
	Require the Police Department to offer complainants a choice to file complaints at either IA or IPA.	Adopted	1995 Year End Report
	Implement policy to standardize the format used in subject and witness officer interviews.	Adopted	1995 Year End Report
<b>1995 Year End Report</b>	Create policy to require closer scrutiny when conducting strip searches for misdemeanor arrests.	Adopted	1995 Year End Report
	Revise Off-Duty Employment Practices to provide accountability of the type and number of hours worked by officers off duty.	Adopted	1997 Year End Report
<b>1996 Mid-Year Report</b>	Connect IPA to City of San José's internet network.	Adopted	1997 Year End Report
	Conduct preliminary investigation of complaints closed because they lack a signed Boland Admonishment to determine the seriousness of the allegations.	Adopted	1996 Mid-Year Report
	Retain the name of the subject officer where a Boland Admonishment is not signed (but need not place in personnel file).	Not Adopted	
	Require complaint classification to appropriately reflect the nature of the complaint.	Adopted	1996 Mid-Year Report



## APPENDIX I

## INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

DATE OF REPORT	RECOMMENDATIONS	SJPD RESPONSES	RESOLUTION PERIOD
	Design and implement a new computer database system that links the IA and IPA on real time.	Adopted	1996 Mid-Year Report
<b>1996 Year End Report</b>	Implement a process to respond to citizen's requesting an officer's identification.	Adopted	1997 Year End Report
	Establish Class I and Class II Use of Force type of complaints.	Adopted	1996 Year End Report
	Complete Class I Use of Force investigations within 180 days	Adopted	1996 Year End Report
	Complete all investigations of citizen complaints within 365 days	Adopted	1996 Year End Report
	Request that the City Attorney issue an opinion clarifying the IPA's authority to audit DI cases with a nexus to a citizen.	Adopted	1997 Year End Report
<b>1997 Year End Report</b>	Require that officers identify themselves in writing when requested.	Adopted	1998 Year End Report
	When forcibly taking a blood specimen from an uncooperative suspect, do so in an accepted medical environment, according to accepted medical practices and without the use of excessive force.	Adopted	1998 Year End Report
	All complaints not covered under a Cardoza exception should be investigated by the IA and reviewed by the Chain of Command within 10 months, allowing the IPA enough time to request additional investigation, if needed.	Adopted	1998 Year End Report
	Time limits and a reliable tracking system should be implemented in every bureau and City department involved with reviewing a citizen complaint.	Adopted	1998 Year End Report
<b>1998 Year End Report</b>	Expand the IPA jurisdiction to review all officer-involved shootings even if a complaint is not filed.	Adopted	1999 Year End Report
<b>1999 Year End Report</b>	Request the City Council to authorize added staff for the IPA, to increase communication and personal contact with individual complaints and increase community outreach.	Adopted	2000 Year End Report
	Recommended that the City Council grant to the Internal Affairs Investigators subpoena power to compel the attendance of civilian witnesses and to compel the production of documentary or physical evidence.	Adopted	2000 Year End Report
	Amend the Municipal Code to define a citizen complaint audit and clarify that an audit includes examining physical evidence and follow up contact with complainants and witnesses.	Not Adopted	
	It is recommended that the SJPD explore the feasibility of implementing a voluntary mediation program within the next six months.	Adopted	2000 Year End Report
	It is recommended that the SJPD design a training course focused specifically on improving day-to-day verbal communications for officers to use in interacting with the public.	Adopted	2000 Year End Report
	It is recommended that in cases where the police erred, i.e. the wrong house was searched, an explanation and/or apology be given as soon as possible, preferably at the onset.	Adopted	2000 Year End Report
	It is recommended that motorists be told the reason for the enforcement action such as why s/he was stopped, searched, and/or detained as soon as possible and preferable at the onset.	Adopted	2000 Year End Report
	It is recommended that the SJPD formalize a process whereby an officer is assigned to be the contact person or liaison to family members of people that were killed or died in police custody. This will assist the family in obtaining necessary but non-confidential information.	Adopted in practice only	2000 Year End Report
<b>2000 Year End Report</b>	To assure the public that it is safe to file complaints, the Chief of Police should create a policy to prohibit actual or attempts to threaten, intimidate, mislead, or harass potential or actual complainants and/or witnesses.	Adopted	2001 Year End Report
	The Chief of Police should include in all citizen complaint printed materials wording that clearly states, " <i>Retaliation against complainants is prohibited. The Chief of Police will not tolerate retaliation, and immediate action will be taken if an officer retaliates against a complainant or witness directly or indirectly,</i> " or similar words that emphasize the Chief's position.	Adopted	2001 Year End Report
	The San José Police Department Duty Manual does not include a comprehensive Whistleblower policy. By incorporating federal Whistleblower guidelines, the Chief of Police should create a comprehensive Whistle Blower policy for the San José Police Department.	Not Adopted but adopted in practice	2001 Year End Report

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# INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

DATE OF REPORT	RECOMMENDATIONS	SJPD RESPONSES	RESOLUTION PERIOD	
<b>2000 Year End Report</b>	The Chief of Police should continue to develop Ethics and Integrity Training to reflect and align police practices with ethical standards expected by the citizens of San José.	Adopted	2001 Year End Report	
	The Chief of Police should expand the fields in the racial profiling data collection to determine how an individual who has been stopped by the police was treated during the contact, i.e. was a search conducted. The data should include search information, the factual basis for the stop and action taken by the police officer as a result of the stop.	Not Adopted		
	Develop a uniform definition of and process for tracking all "Racial Profiling" allegations in all instances where the complainant alleges that his/her vehicle stop or police contact was racially motivated.	Adopted	2001 Year End Report	
	The San José Police Department should expand the platform of the database used by the Internal Affairs Unit to facilitate the recording, tracking, and analysis of "Racial Profiling" and all other types of citizen complaints.	In progress	2001 Year End Report	
	The San José Police Department's Internal Affairs Unit should formally investigate allegations of officers refusing to identify themselves under an Improper Procedure allegation.	Adopted	2001 Year End Report	
	Continue to identify alternate, less lethal weapons, and make them more readily accessible.	Adopted	2001 Year End Report	
	Provide specialized training in handling suspects armed with non-automatic projectile weapons.	Adopted	2001 Year End Report	
	The Crisis Incident Response Team's presence at the scene is very important. Continue to provide special training in identifying and handling suspects with history of mental illness.	Adopted	2001 Year End Report	
	Increase recruiting efforts to hire more officers with bilingual skills. Examine the current strategies and marketing material used for recruiting.	Adopted	2001 Year End Report	
	The Disciplinary Review Panel, which determines if a complaint should be sustained and the type of discipline to impose, should document the basis for their findings to enable the IPA to conduct an audit of this phase of a citizen complaint investigation.	Not Adopted		
	<b>2001 Year End Report</b>	A study should be conducted to assess the feasibility of expanding the front lobby to alleviate the crowded conditions that exist.	Adopted	2002 Year End Report
		A separate waiting area should be developed for designated services such as sex offenders waiting to register, criminals waiting to self-surrender, and other people that would pose a threat to the safety of others waiting in the lobby area of the main police station.	Not Adopted	
		An interview room should be made available for desk officers to obtain statements from walk-in victims and/or witnesses of crimes that affords privacy.	Adopted	2002 Year End Report
Additional courtesy telephones should be installed in the Information Center.		Adopted	2002 Year End Report	
Monitors should be installed in the lobby of the San José Police Station displaying information such as activities, services, and meetings taking place in the Police Administration Building.		Pending		
Access to public restrooms should be made available to the public from within the San José Police Station lobby. This would eliminate the requirement to sign-in with desk officers, go through the security gate, and provide access to restricted areas of the police department.		Not Adopted		
A receptionist should be placed in the San José Police Station lobby to provide assistance and information to the general public.		Pending		
Customer service training should be developed and provided to officers assigned as desk officers working at the Information Center located in the lobby of the SJPD.		Adopted	2002 Year End Report	
Information Center Sergeants should have the front desk as their primary responsibility and they should be provided office space where they can monitor the activities of the Information Center.		Adopted	2002 Year End Report	
The Chief of Police should implement incentives to attract officers to work at the Information Center.		Pending		

## APPENDIX I

### INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

DATE OF REPORT	RECOMMENDATIONS	SJPD RESPONSES	RESOLUTION PERIOD
	Include in police job descriptions and recruiting material those skills necessary to effectively implement community policing such as communication, conflict resolutions, and interpersonal skills.	Adopted	2002 Year End Report
	Design and implement recruiting strategies that depict and address family related issues.	Adopted	2002 Year End Report
	Revise the policies governing transfer opportunities for SJPD sergeants to require that openings be posted, and that the application and selection process, provide all candidates an equal opportunity for the assignment.	Adopted	2002 Year End Report
	Continue to develop and provide training in communication and interpersonal skills as ongoing CPT.	Adopted	2002 Year End Report
	Train all SJPD staff members, especially those who are in positions of providing information to the public, about the citizen complaint process, the functions of the IPA and IA Unit, and where a complaint can be filed.	Adopted	2002 Year End Report
	The SJPD should compile vehicle stop data on an annual basis so that a comparative analysis can be made from year to year.	Adopted	2002 Year End Report
	The Chief of Police should expand the fields for data collection to determine how an individual who has been stopped by the police was treated during the contact, i.e. was a search conducted. The data should include search information, the factual basis for the stop and action taken by the police officer as a result of the stop.	Renewed and Adopted	2002 Year End Report
<b>2002 Mid-Year Report</b>	Complete the investigation of all citizen complaints within six months.	Not Adopted	
<b>2002 Year End Report</b>	It is recommended that the Chief of Police continue to provide Intervention Counseling for subject officers meeting a set criterion.	Adopted	2003 Year End Report
	It is recommended that the Chief of Police implement procedures to ensure that officers attending Intervention Counseling are well informed about the early warning system and Intervention Counseling prior to participating.	Adopted	2003 Year End Report
	It is recommended that the Chief of Police direct the Command staff to factor an officer's work assignment and level of proactive policing as part of the discussion held during the intervention counseling session.	Adopted	2003 Year End Report
	It is recommended that the Chief of Police direct the Command staff to incorporate discussion about the allegations and findings of the officer's complaint history to determine if a pattern exists.	Adopted	2003 Year End Report
	It is recommended that the Chief of Police upgrade the SJPD's early warning system to include other indicators such as civil claims and lawsuits.	Not Adopted	
	It is recommended that the Chief of Police in conjunction with the City Manager develop a written policy that addresses the procedure to follow when serious misconduct allegations are filed against top ranking SJPD officers.	Adopted	2003 Year End Report
<b>2003 Mid-Year Report</b>	A written policy should be drafted and implemented that designates personnel whose primary focus would be to serve as the liaison to the family of the person injured or killed as the result of an officer-involved shooting.	Adopted	2003 Year End Report
	The San José Police Department (SJPD) should improve dissemination of information to the public by developing and providing written materials that describe the process, agencies and general information that address frequently asked questions about officer-involved shootings or fatal incidents involving public safety officers.	Adopted	2003 Year End Report
	The SJPD should prepare an annual report detailing the work of the Officer-Involved Shooting Review Panel and any new recommendations/ policies/ or findings.	Adopted	2003 Year End Report
	The SJPD should refrain from making any statements that appear to predetermine the outcome of the investigation or unnecessarily place the injured or deceased person in a negative light.	Adopted	2003 Year End Report
	The IPA should be part of the roll-out team to the scene of an officer-involved shooting.	Amended and Adopted	2004 Year End Report
	<b>Amended To:</b> The IPA will be notified immediately after an officer-involved shooting by the Internal Affairs Commander. The IPA may respond to the scene of the officer-involved shooting and contact the Internal Affairs Commander at the outer perimeter of the crime scene. On-scene personnel will then brief the IPA and Internal Affairs Commander as to the details of the incident.		

## APPENDIX I

# INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

DATE OF REPORT	RECOMMENDATIONS	SJPD RESPONSES	RESOLUTION PERIOD
	<p>The IPA's review of officer-involved shootings, where no citizen complaint is filed, should be as thorough as its review of officer-involved shootings where a citizen complaint is filed and should mirror the oversight of citizen complaints.</p> <p><b>Amended To:</b> The IPA will be provided with a copy of the Internal Affairs administrative investigation document of the officer-involved shooting for auditing purposes as soon as practical after the criminal case has been concluded, but prior to the closing of the administrative investigation. The IPA will coordinate outreach efforts immediately after an officer-involved shooting incident and the SJPD will ensure that it participates in these forums.</p>	Amended and Adopted	2004 Year End Report
	<p>The San José Municipal Code should be amended to include the IPA on the list of council appointees authorized to enter into contractual agreements.</p> <p><b>Amended To:</b> The City Manager or the City Attorney as the case may be, will cooperate with the IPA to utilize their respective contracting authority to assist the IPA in obtaining expert consultants for purposes of training, and not for the purpose of reviewing any specific complaint. In the event of a disagreement, or the need for services that cost in excess of \$100,000, the request may be referred to the City Council for decision. This agreement will be evaluated after one year to determine if the IPA's needs are being adequately addressed.</p>	Amended and Adopted	2004 Year End Report
<b>2004 Year End Report</b>	<p>The IPA supports continued tracking of TASER use by the SJPD, ongoing analysis of updated information about the use of TASERs, and recommends continued reporting of TASER use by SJPD officers.</p>	Adopted	2005 Year End Report
	<p>The IPA and Internal Affairs (IA) should revise intake procedures to comply with California Penal Code §832.7, which requires agencies receiving citizen complaints to provide complainants with a copy of their statements at the time the complaint is filed.</p>	Adopted	2005 Year End Report
<b>2005 Mid-Year Report</b>	<p>The IPA should be issued a copy of all Homicide reports and other documents provided to Internal Affairs (IA) in officer-involved shooting cases. The IPA will secure the reports in a locked file and return them to the SJPD after all analysis is completed.</p>	Adopted	2005 Year End Report
	<p>That the SJPD establish written guidelines for TASER use in the Use of Force chapter of the Duty Manual.</p> <p><b>Amended To:</b> The TASER Usage Guidelines presented to the City Council on November 29, 2005 by the SJPD will be issued to all officers as a Training Bulletin that will become part of the training curriculum. The TASER guidelines will be binding on officers and they will be held accountable to them as they are to policies in the SJPD Duty Manual.</p>	Amended and Adopted	2005 Year End Report
<b>2005 Year End Report</b>	<p>That the SJPD establish an expanded shooting at vehicles policy.</p> <p><b>Amended To:</b> The SJPD staff is directed to consider establishing an expanded Shooting at Vehicles Policy and report back to the City Council.</p>	Amended and Adopted	2005 Year End Report Policy change implemented April 2007
	<p>That the SJPD continue to train officers to wait for backup, when practical, in situations where there are reasonable objective indicators that the situation could escalate to violence.</p>	Adopted	2005 Year End Report
<b>2006 Year End Report</b>	<p>That the Mayor and City Council:</p> <p>a) 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;</p> <p>b) Grant the IPA concurrent authority over the classification of complaints.</p>	Several directives adopted in response to (a). Item (b) not adopted	Changes to complaint process accepted January 2008
	<p>That the Mayor and City Council:</p> <p>a) Direct the City Manager to direct the SJPD to conduct administrative investigations in all critical incidents in which an officer's use of force or any other department action results in death or serious bodily injury;</p> <p>b) Mandate that the IPA review the administrative investigation in all such cases.</p>	Further action requested	Council approved the formation of an SJPD in-custody death review panel in January 2008.
	<p>That the Mayor and City Council consider granting the IPA specific limited authority to investigate. Exercise of such authority would be limited to:</p> <p>a) Investigation of community-initiated complaints which IA did not investigate;</p> <p>b) 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;</p> <p>c) Investigations of complaints or critical incidents that are deemed by the IPA to be incomplete.</p>	No Council action on this item	

## APPENDIX I

# INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

DATE OF REPORT	RECOMMENDATIONS	SJPD RESPONSES	RESOLUTION PERIOD
<b>2007 Year End Report</b>	That the Mayor and City Council direct the City Manager to direct the SJPD to enter misconduct complaints into the shared database contemporaneous with the date of SJPD knowledge of the complaint to ensure accurate recording, reporting and tracking of all complaints.	No Council action on this item	
	That the Mayor and City Council direct the City Manager to direct the SJPD to to revise its policies to ensure that written notice is given of the property return/auction/disposal process to the owner at the time that property is booked.	In progress	Council directed the City Mannager to direct the SJPD to review and potentially revise its policies
	That the Mayor and City Council direct the City Manager and the City Attorney to standardize the processes used by San José City departments to provide notice to owners of the intention to tow a vehicle for violation of San José Municipal Code §11.56.020.	Adopted	2007 Year End Report
<b>2008 IPA 647(f) Report</b>	That the Council take action to direct the City Manager to direct the SJPD to institute a policy that an officer making an arrest for 647(f) must complete a chemical test on that person.	In progress	Council directed the City Manager to initiate a task force charged with addressing the issue of public intoxication arrests.