

ANNUAL REPORT 2023



**INDEPENDENT
POLICE
AUDITOR**

CITY OF SAN JOSE

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OFFICE OF THE INDEPENDENT POLICE AUDITOR



2023 IPA Annual Report

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Introduction

The Office of the Independent Police Auditor (IPA) was established by the San José City Council in 1993 with the enactment of an ordinance codified in the San José Municipal Code. Thereafter, on November 6, 1996, the voters of San José amended the City Charter to establish the Office of the Independent Police Auditor as a permanent arm of the City Government. On November 4, 2020, the voters, through the passage of Measure G, expanded the authority of the Police Auditor to allow review of all police records related to officer-involved shootings and uses of force that resulted in death or injury.

This report is written to fulfill the obligation of the IPA to present a report to the Mayor, City Council, City Manager, Chief of Police, City Attorney, and City Clerk for filing as a public record. This 2023 report will include:

- (I) A statistical analysis regarding the number of complaints by categories and the number of complaints sustained, in addition to an analysis of some trends.
- (II) Policy recommendations to the Chief of Police.
- (III) Community engagement report.

Police Accountability and Oversight in the City of San José

It is well-settled that the community and California law hold peace officers to a higher standard of conduct than most government workers or civiliansⁱ. This is true of officers on and off duty. San José officers may be held accountable for their conduct by the following:

1. The City of San José’s Office of Employee Relations may investigate and impose discipline for any City employee who violates standards set forth in the City Policy Manualⁱⁱ. Such standards include, but are not limited to, policies regarding discrimination, harassment, and a code of ethics.
2. San José Police Department (SJPD), Internal Affairs has the responsibility to conduct complete and thorough investigations involving misconduct of any officer who allegedly violates provisions of the SJPD Duty Manual.ⁱⁱⁱ
3. San José Police Department, Executive Force Review Panel^{iv} has the responsibility to analyze and evaluate force used in a particular event; to identify any misconduct; and if necessary to train or send the Chain of Command for findings and disciplinary action.
4. The Office of the Independent Police Auditor’s core mission is to review (1) SJPD IA investigations of complaints and (2) Use of Force Reports to determine if the inquiry was complete, thorough, objective, and fair. IPA may also appeal the results of IA investigations to the Chief and City Manager.
5. The California Commission on Peace Officer Standards and Training (POST)^v also conducts investigations into serious police misconduct, the result of which can lead to suspension or revocation of an officer’s certification^{vi}.

6. United States Federal Court or Superior Court of California. In addition to the above-described accountability, an officer may face a civilian-initiated lawsuit for alleged misconduct on duty.
7. Superior Court of California, Criminal Division In addition to the above-described avenues of accountability, an officer may face criminal charges (brought by the District Attorney or California Attorney General) for an alleged crime committed while on duty or off duty.
8. The Santa Clara County District Attorney investigates all incidents of an officer-involved shooting that result in the death of an armed civilian. The results of that investigation will either conclude with criminal charges or a public report on why charges were declined.
9. The State of California Department of Justice is required to investigate all incidents of an officer-involved shooting which result in the death of an unarmed civilian. The results of that investigation will either conclude with criminal charges or a public report on why charges were declined.^{vii}

2023, A Year of Changes

1. Midyear, the IPA and Assistant IPA retired. City Council appointed an interim IPA, and thereafter, in the fall of 2023, the Mayor commenced a national search for a new permanent IPA. The robust interview process included a written component, community input, as well as Mayor's interviews. As of this writing City Council approval of a new IPA is pending.
2. Measure G, passed in 2020, allowed the Office of the IPA to analyze SJPD Use of Force Reports. An analyst with data analytic skills was finally hired in December 2023. By the end of 2024, that analyst will provide the Council with analysis of the Use of Force Reports and officer-involved shootings.
3. For the first time in the history of the Office of the Independent Police Auditor, a Procedural Agreement between SJPD IA and IPA was reached. (Appendix). This defines procedural expectations and timelines for both offices, ensuring that thorough and fair investigations can be completed within 365 days.
4. In September of 2022, the City Council accepted a report, *Investigations of Police Misconduct in San José* which was prepared by Moeel, Lah, Fakhoury, LLP (MLF). The Council ultimately fully evaluated the report which analyzed three oversight models, (1) City of San José's current audit model, (2) civilian oversight investigation model wherein the investigation of alleged police misconduct is exclusively conducted by professional civilians who are independent of the Police Department and (3) a hybrid model wherein some investigations are completed by law enforcement and others by civilians. In November of 2023, the City Council voted to keep the current model of IPA and strengthen the analytical and auditing tools of the IPA, which support transparency of the SJPD's internal investigative process. With additional staff, IPA will be able to expedite the

complaint process; participate in every IA interview of subject officers, increase community outreach, and complete data analytics of police use of force.

5. In July of 2023, there was a backlog of over one hundred cases, which had been left incomplete and not entered in the IPA data collection program. By November of 2023, that backlog was cleared.
6. In the fall of 2023, the IPA reached out to the local Defense Bar to shore up our police-accountability role.

At the request of the IPA, the Santa Clara County Offices of the Public Defender, the Alternate Defender, and the Independent Defense Counsel disseminated the following message to defense attorneys who do work Santa Clara County:

“The Office of the Independent Police Auditor is dedicated to SJPD accountability. We learn of faulty SJPD search and seizure methods only if there is a citizen complaint or interested-party complaint. This year an attorney contacted us about a 4th amendment violation, and we were able to see that the offending officer received more 4th amendment training. IPA invites the defense bar to contact us at 408.794.6226 or IPA@sanjoseca.gov and let us know through the complaint process when the defense prevails at a motion to suppress.”

This year’s report will also recommend that officers self-report when they learn evidence has been suppressed by a Court in a case they worked (see Policy Recommendation # 1 below).

I. 2023 Review of Complaints

1. Complaints are categorized as following:

- *Conduct* – A civilian alleges a sworn officer did not follow the law, City policy or duty manual.
- *Department Initiated* – A member of SJPD alleges that a sworn officer did not follow the law, City policy or duty manual.
- *Policy* – A sworn officer is not named; the complaint centers around SJPD policy.
- *Non-Misconduct* – The complaint does not articulate misconduct.
- *Decline to Investigate* – The complaint is unintelligible.
- *Other* – The complaint involves another jurisdiction.

2. Complaints are closed with the following findings:

- *Sustained* – The allegation was found true by a preponderance of the evidence.
- *Not sustained* – The evidence did support a finding by preponderance.

- *Exonerated* – The acts which formed the basis of the complaint were justified, and within policy.
- *Unfounded* – The acts which formed the basis of the complaint did not occur or that the department member named in the allegation was not involved in the act or acts which may have occurred.
- *No Findings* – Before completion of the investigation either the complainant wouldn't or couldn't give necessary information or the subject officer left SJPD.
- *Complaint/ Supervisor review* – The officer received swift counseling for minor offense.
- *Other* – Complaint was withdrawn.

3. Statistics

In the first half of 2023, cases were routinely closed either “with concern” or “closed as disagree” based on procedural disagreements about timelines. Going forward, procedural disagreements will not be confused with substantive disagreements. If the IPA has concerns or disagreements regarding the fairness, thoroughness, or objectiveness of an investigation, the closure of that case will reflect such concerns. Conversely, if the IPA has concerns about timeliness issues, a procedural complaint will be lodged with the appropriate division of SJPD.

In order to put the statistics in this report in perspective, IPA offers the following: In 2023, the San José Police Department was authorized to have 1,173 sworn officers. At the end of the year, there were 912 officers authorized for full duty. Of note, the department is currently at 77.75% of full staffing.^{viii}

There are four levels of service calls^{ix}:

1. Priority One calls indicate an event of immediate potential for imminent danger to life or property.
2. Priority Two calls are indicative of events that have occurred and the suspect may be near but is no longer at the scene and/or no imminent threat exists to life or property.
3. Priority Three calls are non-emergencies where there is property damage or the potential for it to occur. A police report may be requested or required.
4. Priority Four calls are non-emergencies where there is no present or potential damage to property and suspect is gone.

In Calendar Year 2023 there were 201,196 calls for service (Priority One, Two, Three and Four). In addition, officers self-initiated 87,932 contacts (such as traffic stops). Officers submitted 966 total unique use of force templates submitted; however only 414 uses of force, were verified by Police Strategies.

In 2023 IA and IPA received 367 complaints (including 47 Department-initiated complaints) which contained a total of 701 allegations. However, those weren't necessarily closed in the calendar year 2023.

Table 1: Type of Complaints Audited in 2023 – Breakdown by Council Districts*

City Council Districts	District 1	District 2	District 3	District 4	District 5	District 6	District 7	District 8	District 9	District 10	Unknown Districts	Total
Conduct Complaint	9	15	55	9	26	16	26	17	14	10	52	249
Department Issued	1		3	1	1	2	1			2	36	47
Policy Complaint			1									1
Non-Misconduct Concerns											5	5
Decline to Investigate											2	2
Other												
Total Complaints	10	15	59	10	27	18	27	17	14	12	95	304

*Including Department-Initiated Investigations

Table 2: Dispositions of Allegations Closed in 2023*

Type of Dispositions	Dispositions of Allegations										Total	%
	AD	BBP	C	CUBO	F	ND	P	SS	WH			
Sustained	3		21	21	3	15	290	10	1		364	26%
Not Sustained	6	1	7	1	12		24	3			54	4%
Exonerated	97		117		70		269	83	1		637	46%
Unfounded	6	114	5	1	31		29	5			191	14%
No Findings	1	7	12	1	3		19	2	2		47	3%
Complaint/Sup Review	5	1	12				40	5			63	5%
Other	3	6			5		6	2			22	2%
Total Allegations	121	129	174	24	124	15	677	110	4		1378	100%

* Including Department-Initiated Investigations

Legend of Conduct Allegations:

AD: Arrest or Detention; **BBP:** Bias-Based Policing; **C:** Courtesy;
CUBO: Conduct Unbecoming an Officer; **F:** Force; **ND:** Neglect of Duty; **P:** Procedure;
SS: Search or Seizure; **WH:** Workplace Harassment

Table 3: Conduct Complaints and Sustained Rate Over Six Years*

Year	Conduct Complaints Sustained	Conduct Complaints Closed	Sustained Rate
2018	22	212	10%
2019	14	197	7%
2020	25	200	13%
2021	31	262	12%
2022	36	203	18%
2023	74	306	24%

A complaint regarding the use of force will not be sustained if it is deemed objectively reasonable.^x

Table 4: Force Allegations Received in Conduct Complaints – Six-Year Overview (2018-2023) *

Year	Total Force Allegations	Total Force Complaints	Total Number of Complaints	Force Complaints As % of Total Complaints
2018	98	46	248	19%
2019	100	45	216	21%
2020	111	62	269	23%
2021	121	54	333	16%
2022	84	44	358	12%
2023	65	36	320	11%

* This illustration reflects only complaints filed by members of the public (2018-2023).

Officer-Involved Shootings in 2023

There were two officer-involved shootings in 2023:

1. On February 3, 2023, officers initiating a traffic stop at King and Story were fired upon. Officers returned fire; however, the suspect was not shot and fled. Later during a standoff, the suspect shot at four officers, hitting two. Both officers survived their injuries. The suspect eventually surrendered and has been charged with attempted murder of four San José Police officers.

2. On March 22, 2023, San José Police officer shot and killed a man who armed himself with a machete and barricaded himself with at least two hostages. The shooting was investigated by the Santa Clara County District Attorney’s Office and deemed justified.

OIS No. 1	Race of suspect --	Hispanic
	Gender --	Male
	Deceased or injured --	No
	Armed --	Firearm
	Prior convictions --	Yes
	On probation or parole --	No
	Known mental health history --	No
	CIT on scene --	Yes
	Number of officers who fired weapon	2
	Involved officer(s) experience --	3 months; 6.5 years
OIS No. 2	Race of suspect --	Hispanic
	Gender --	Male
	Deceased or injured --	Deceased
	Armed --	Machete/replica revolver/metal pipe
	Prior convictions --	No
	On probation or parole --	No
	Known mental health history --	No
	CIT on scene --	Yes
	Number of officers who fired weapon	1
	Involved officer(s) experience --	5

Table 5: Sworn Officers Received Complaints in 2022 and 2023

Year	Subject Officers	SJPD Sworn Officers	% Sworn Officers Received Complaints
2022	361	1087	33%
2023	285	1059	27%

SJPD provides on-going training of officers. IA regularly trains patrol officers at briefings; SJPD Training Division works continuously to see that each officer has the skills and professionalism to meet the needs of the community and the SJPD Chief sets high standards for each officer. These efforts have paid off, in last few years, the incidents of misconduct by SJPD officers have declined.

II. Policy Recommendations

1. Policy Recommendation Regarding Violations of the Fourth Amendment to the Constitution

In 2023, a defense attorney reported a case that was dismissed because SJPD officers violated an individual's Fourth Amendment right. One officer stopped a driver, claiming the driver's vehicle license tags were expired; upon seeing that they weren't, the officer pivoted and claimed

that the car window tint was extreme. After a routine records check, officers knew the driver was not under search or seizure conditions but continued to ask the driver his status. Among themselves and captured on body-worn camera audio, the officers were trying to find a way to search the car. When the driver reported his last conviction in 1990 involved a gun, he was pulled from the car, and the car was searched. The stop was not based on reasonable suspicion or probable cause. All three officers received supervisory training.

When aware, officers should self-report if a Court suppresses evidence or if a District Attorney dismisses a case because of unlawful search or seizure. The fact that a Court suppresses evidence based on an officer's conduct likely demonstrates that further Fourth Amendment training is warranted.

2 Policy Recommendation Regarding Perception of Wasted Resources

There were multiple citizen complaints in 2023 about the public's perception of excessive resources at high-profile incidents as well as more commonplace car stops. One example of such a complaint came from medical personnel at an officer-involved traffic stop: "There were around 25+ cops at the scene for hours. Most were standing around doing nothing. I understand it was a police-involved accident, but there was no need for this massive response and for that many cops to be there for that long." The case was closed by IA as "Non-Misconduct Concern."

In another case, two officers stopped a vehicle for tinted windows, and five additional officers attached themselves to the call and arrived after the driver and his pregnant passenger were sitting on the curb. The background check of the license plate and the identifiers for both the driver and passenger were clear. Yet seven officers stayed at the scene for approximately 30 minutes. A citation was issued, and the driver was released.

The Duty Manual states clearly, "Officers have a responsibility to return to service as soon as possible after completion of an assignment. Completion of an assignment includes the disposition of an incident and respective reports unless directed by a supervisor to return to service or the volume and gravity of activity requires delay of completion to some other time during the shift. It is the duty of the on-scene supervisor to ensure that those members who are not required are immediately returned to their assigned beats." (DM L 1210)

Resource scene management is crucial to building public trust in the police. On-scene supervisors should assign responsibilities as soon as practicable and should be held accountable for not releasing officers, in a timely manner, who have not been assigned a duty.

3 Policy Recommendation Regarding Officers' Obligation to Report Excessive Use of Force

During Internal Affairs interviews, IPA heard new officers report confusion about when their obligation to report force was necessary.

The Duty Manual states, "Sworn Personnel shall:

- Immediately report potential excessive force^{xi} to a superior officer when present and observing another officer using force that the officer believes to be beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances based upon the totality of information actually known to the officer.
- Intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject.
(DM C1402)
Government Code section 7286 provides the definition of excessive force^{xi}

Academy training as well as ongoing training should emphasize officers' obligations to self-report force as detailed in the SJPD Duty Manual.

4 Policy Recommendation Regarding IA, Bureau of Field Operations & Command Staff timelines for Internal Investigations, Findings & Recommendations, and Appeals

For many years there has been contention between IPA and SJPD regarding the timelines (within the 365-day limit set by Government Code section 3304 [POBAR]) for IA investigation, IPA auditing, Command Staff “findings and recommendations,” and IPA appeals. In 2023, after careful considerations, *San José Police Department Internal Affairs-San José Independent Police Auditor Procedural Guidelines* have been agreed upon (Appendix A). It is the experience of IPA that IA has been timely in their investigation; however, once the case goes to the subject officers’ command staff for findings and recommendations, undue delays by command staff prevent IPA from being able to appeal a finding to either the Chief or City Manager.

The following chronology (of a case in which IPA was denied an opportunity to appeal) is an example of why the Guidelines should be part of the duty manual.

- a. In early 2023, an African-American complained that the previous year, he was arrested and assaulted by San José Police officers. The complainant’s husband alleged that the complainant had made criminal threats and committed domestic violence with a weapon.
- b. *Internal Affairs Investigation, according to the POBAR, had to be completed within 365 days, by January 25, 2024.*
- c. Undisputed facts are that Officer X was investigating the criminal threats and ordered the complainant out of a car in which the complainant had sought refuge. Officers described in an interview, a fleeing suspect who was possibly armed. The body-worn camera footage does not support that assertion. A struggle ensued before the complainant was arrested. When the complainant was finally subdued, he asked Officer H why he was being arrested. Officer H said, “We just decided to stop a black man for no reason, okay?”
- d. IPA requested that a “bias-based policing” allegation be added for Officer X; that allegation was added to the force and courtesy complaint.
- e. In June of 2023, the Use of Force Review Committee found the force used during the arrest was within policy, but additional training was also recommended.

- f. In early October of 2023, an interview of Officer X took place. During that interview, Officer X said (1) he made the shock comment not out of sarcasm, but to stop the complainant from asking questions; and (2) Officer X described a fleeing suspect who was possibly armed. The body-worn camera footage does not support that assertion. The Internal Affairs investigation concluded the allegations should go “to the chain of command” for findings and recommendations regarding discipline.
- g. On October 12, 2023, an Internal Affairs Sergeant sent a memo up the chain of command noting the date the “findings and recommendations” should be returned to IA by November 9.
- h. On January 23, the chain of command (after having the case for more than -three months) returned the “findings and recommendation” of discipline on the courtesy allegation only. IPA closed as disagree. If the case had been processed in a timely manner (30 days) by the command staff, IPA would have appealed the bias-based policing allegation to the Chief and if necessary to the City Manager.

The SJPD should codify the San José Police Department Internal Affairs-San José Independent Police Auditor Procedural Guidelines. (Appendix)

5. Policy Recommendation Regarding “Shock Talk.”

In two cases that IPA audited in 2023, citizens complained that officers, upon initiating a traffic stop, asked the driver, “Are there any dead babies in the car?” Both complaints were verified by video footage. One such officer explained that his field training officer suggested that “shock talk” will catch a listener off guard and thereby cause a greater likelihood of the listener speaking the truth. IPA has been unable to find any reliable police training to support this idea.

Academy, Field Training, ongoing-training, and a Chief’s memo should all strongly discourage “shock talk.”

III. Community Engagement

Community outreach is vital to the effectiveness of the Office of the Independent Police Auditor. With the hiring of a dedicated staff person in January 2024, the IPA resumed a wide range of outreach efforts. Outreach included attending community meetings and events, making presentations, and tabling as a resource. Although outreach was conducted throughout the City of San José, IPA focused on communities of color, youth, and over-policed communities.

The goal of outreach was to empower the community with information about their rights, listen to concerns, and collaborate with community partners.

1. Outreach in 2023

The IPA was understaffed in 2023 and had been without dedicated outreach staff from 2022 through mid-2023. In late 2023, outreach was restarted with new connections made and old connections renewed. Reconnecting with organizations such as *La Raza Roundtable*, *PACT*, and the *Black Leadership Kitchen Cabinet* and creating new associations with organizations such as

Showing Up for Racial Justice and the *Santa Clara County Department of Family and Children's Services*, the IPA is poised to redouble outreach efforts.

While speaking to the community is important, listening to the community is of even more import. In this vein, outreach efforts focused on conversations with the community and community partners to gauge current concerns and issues are already on track to greatly increase in 2024.

2. Community Connections

Despite the lack of staffing, the IPA was able to connect with over 1,300 San José residents through presentations, resource tables, and networking. Outreach was done virtually as well as in-person in six council districts.

The efficacy of the IPA's outreach efforts was heavily impacted by the strength of new and renewed community partnerships. In addition to those mentioned above, community partners included *Sacred Heart Community Services*, *NAACP*, *City of San José Parks and Recreation*, *ConXion to Community*, *East Side Union High School District*, district council offices, various neighborhood associations, and many more. Community connections are of paramount importance as these partners are well established, trusted community resources. By working with them and gaining the confidence of their staff and volunteers, the IPA can more confidently and effectively approach the thousands of residents they are serving.

Building such relationships requires repeated contacts, regular communication, and reliable attendance at meetings and events. Having dedicated staff and sufficient materials to create and foster these relationships is invaluable.

IV. Conclusion

The Office of the Independent Police Auditor looks forward to a continued open and transparent relationship with the San José Police Department. IPA appreciates that the Commander of IA and Police Chief meet regularly with the IPA to hear our concerns. IPA's auditing and community outreach efforts continue to promote police accountability as well as an enhanced community knowledge regarding police work.

End Notes

ⁱ "There are certain professions which impose upon persons attracted to them, responsibilities and limitations on freedom of action which do not exist in other callings. Public officials such as judges, policemen, and schoolteachers fall into such a category." (Board of Trustees v. Stubblefield (1971) 16 Cal. App. 3d 820, 824 [94 Cal. Rptr. 318]; see also, Titus v. Civil Service Com. (1982) 130 Cal. App. 3d 357, 364-365 [181 Cal. Rptr. 699].)

ⁱⁱ <https://www.sanjoseca.gov/your-government/departments-offices/office-of-the-city-manager/employee-relations/city-policy-manual>

ⁱⁱⁱ <https://www.sjpd.org/records/documents-policies>

^{iv} **SJPD Duty Manual L2605.5 (in pertinent part)**

The Executive Force Review Committee (EFRC) is comprised of Department command officers at the rank of lieutenant, designated by the Office of the Chief, specially trained in force analysis and decision-making under stress, and responsible for evaluation of all use of force "Command Reviews" as outlined in Duty Manual section L 2605.5 – COMMAND OFFICER'S RESPONSIBILITY BY USE OF FORCE CATEGORY.

The EFRC convenes to review the use of force and provide analysis as outlined below.

Responsibilities:

The EFRC will have the following responsibilities:

- Analyze and evaluate the force applied during the event.
- Identify any observed misconduct.
- Identify any training opportunities for the personnel involved.
- Document the analysis for review by the Chain of Command.

All Command Reviews, whether from a Category-II or a Category-III use of force, will be referred to the EFRC. The Office of the Chief may also refer any use of force case to the EFRC (during any phase of the investigation), including cases that are initiated by Internal Affairs.

^v The Peace Officer Standards Accountability Division's role is to review investigations conducted by law enforcement agencies and to conduct additional investigations into serious misconduct that may provide grounds for suspension or revocation of a peace officer's certification. The division reviews grounds for decertification and makes findings as to whether grounds for action against an officer's certification exist. The division reports its findings to the Peace Officer Standards Accountability Advisory Board who hold public meetings to review the findings and makes a recommendation to the commission. The POST commission then reviews those recommendations made by the board based on whether there is evidence that reasonably supports the board's conclusion that misconduct has been established and, if action is to be taken against an officer's certification, return the determination to the division to commence formal proceedings consistent with the Administrative Procedure Act.

This is the definition of Serious Misconduct as defined by the Commission.

-
1. **Dishonesty** relating to the reporting, investigation, or prosecution of a crime, or relating to the reporting of, or investigation of misconduct by, a peace officer.
 2. **Abuse of power**, including, but not limited to, intimidating witnesses, knowingly obtaining a false confession, and knowingly making a false arrest.
 3. **Physical abuse**, including, but not limited to, the excessive or unreasonable use of force.
 4. **Sexual assault** as described in subdivision (b) of Penal Code §832.7, and shall extend to acts committed amongst members of any law enforcement agency.
 5. **Demonstrating bias** on the basis of actual or perceived race, national origin, religion, gender identity or expression, housing status, sexual orientation, mental or physical disability, or other protected status in violation of law or department policy or inconsistent with a peace officer's obligation to carry out their duties in a fair and unbiased manner.
 6. **Acts that violate the law** and are sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public.
 7. **Participation in a law enforcement gang.**
 8. **Failure to cooperate** with an investigation into potential police misconduct.
 9. **Failure to intercede** when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances.

^{vi} <https://post.ca.gov/Certification>

^{vii} <https://oag.ca.gov/ois-incidents>

^{viii} Statistics provided by San Jose Police Department, Internal Affairs, January 2024.

^{ix} **S 3609 CALL FOR SERVICE PRIORITY CODE DEFINITIONS:**

Revised 04-16-18

The following priority code definitions and examples are used in managing calls for service and providing the appropriate response:

PRIORITY 1

- There is a present or imminent danger to life, or
- There is major damage to / loss of property, i.e., large-scale incident or cases where there is an in-progress or just occurred major felony.
- District, channel and/or City-wide response. A notification of all channels is automatic. May include the need for notification of all radio channels and/or adjacent agencies.
- District-wide response is the use of only those units within the district of the call for service.
- Channel-wide response is the use of units from the two districts normally sharing a radio channel. During simulcast periods, “channel-wide” refers only to the two districts sharing the radio channel during non-simulcast hours.
- City-wide response is the response of the closest available unit within the City.
- The incident may have an immediate impact on and need for City-wide police resources.

Examples: Code 3 FILL, Code 20, Code 30, Code 1000 or similar multiple casualty

incidents, 211A occurred within ten minutes, a 10-33 silent-hold-up alarm, a 459 in progress, and a 415W (weapon seen).

PRIORITY 2

- District-wide and/or channel-wide response when a crime is in progress or has just occurred, and
- There are injuries or there is the potential for injury, or
- The suspect is still present or in the area.
- All missing person reports where the children are under the age of 12 or at risk missing persons, to include mentally handicapped or disoriented adults.
- Situations where the suspect is in custody for any violent crime, or for a non-violent crime and is uncooperative.

Examples: 415A, 1033S alarm, 1053, 1179, and Outside Agency Aid Calls.

PRIORITY 3

- District-wide response when a crime has just occurred, and
- There is property damage or the potential for it to occur, or
- The suspect has most likely left the area.
- Situations where the suspect is in custody for a non-violent crime and is
- cooperative
- Situations when a prior crime against the person occurred, and
- There are no injuries to the victim necessitating immediate medical care, and
- The suspect is not present

Examples: 1033A, 1125, 1182 when 1125, Civil Standby, 459R, 20002

PRIORITY 4

- A District-wide response to a non-violent crime when there is no present or potential danger to life/property and one or more of the below:
 - A. The suspect is no longer in the area
 - B. Beat or district information
 - C. Details in the event are for broadcast purposes only
 - D. The response may be handled sometime during the shift
 - E. The nature of the call does not require Police response

Examples: 415M, PATCK, INFO, 1021, CODE5, 484BOL, FNDPRP, 1182 without 1125

PRIORITY 5

- All “on-view” events

Examples: Flag downs, CPF, CPM, etc.

PRIORITY 6

- All car and person stops

It is important when a call for service is closed that it has the correct priority code. The priority

codes assist Department members in understanding the number and severity of calls for service in each beat of the City. This provides information to help determine Department member's needs and allocation. There are instances where a low priority call may be changed to a higher priority due to new information regarding greater danger or severity of the call. Conversely, a call may be designated with a high priority that a field supervisor or Communications supervisor wishes to change.

When a field supervisor determines a call's priority code needs to be changed, they should contact the channel dispatcher on which the call is listed and direct the change be made. If a dispatcher has a call that the dispatcher believes should have its priority designation changed, they will obtain approval for the change from either a Communications supervisor or a Police field supervisor.

Field supervisors will continue to have authority to direct resources where they will be best utilized.

^x SJPD Duty Manual L 2602 Objectively reasonable force (definition):

Objectively reasonable force is that level of force which is appropriate when analyzed from the perspective of a reasonable officer possessing the same information and faced with the same circumstances as the officer who has actually used force. Objectively reasonable force is not judged with hindsight, and will take into account, where appropriate, the fact that officers must make rapid decisions regarding the amount of force to use in tense, uncertain and rapidly evolving situations. Important factors to be considered when deciding how much force can be used to apprehend or subdue a subject include, but are not limited to, the severity of the crime at issue, whether the subject poses an immediate threat to the safety of the officers or others and whether the subject is actively resisting arrest or attempting to evade arrest by flight. This policy guideline applies to all uses of force, including deadly force.

^{xi} Government Code section 7286 provides the following definitions:

“Excessive force” means a level of force that is found to have violated Section 835a of the Penal Code, the requirements on the use of force required by this section, or any other law or statute.”

Penal Code section 835a is codified in DM section L 2602 above in endnote vii.

Appendix

San Jose Police Department Internal Affairs - San Jose Independent Police Auditor Procedural Guidelines

Purpose

The Internal Affairs/Independent Police Auditor Procedural Guidelines establish a mutually agreed upon process for:

- Receiving and auditing allegations from members of the public regarding sworn members of the San Jose Police Department (SJPD) regarding Conduct and Policy violations as articulated by law, City Policy or in the SJPD Duty Manual (SJPD DM) which are conducted by Internal Affairs
- Receiving and auditing Department Initiated Investigations (DII).
- Receiving, investigating, and auditing SJPD use of force (UoF) cases involving great bodily injury or death¹.
- Establishing investigative and auditing schedules for SJPD and Office of the Independent Police Auditor (IPA).

Complaint(s)

The Complaint and Exceptions

The investigative process commences with a complaint about a SJPD sworn officer, made to either SJPD IA, San Jose Office of Employees Relations (OER), POST or IPA. No matter the origin of the complaint, it shall be routed to SJPD IA and placed in a shared database to which IPA has full access.

If the allegation encompasses fact patterns that are clearly implausible or incredible, even after further inquiry (DM C1706.5²), IA will “decline to investigate concern” (DTI) after consultation with IPA.

If the complaint fails to protest misconduct, IA will close as “non misconduct concern” (NMC) (DM C1706³) after consultation with IPA.

If the complaint protests the actions of a sworn officer from a city other than San Jose, the complaint will be closed as “other” and referred to the appropriate city.

If the complaint solely protests a policy of SJPD, without alleging misconduct of a particular officer, the matter will be referred to SJPD Research and Development whose mission is to study, develop and plan improvements that will positively impact the department, its personnel, and its mission. (DM C1709⁴) IPA will close the case as “Policy.”

If a complaint is received, by IA or IPA, after one year from the date of the incident, it will be reviewed by the Chief of Police who has the discretion to decide not to accept the allegations as a complaint for investigation. The Chief may take into consideration any policy or factual matters relevant to the particular allegation, including, but not limited to whether an investigation can still be conducted in a thorough, fair, complete, and efficient manner or whether there are to any investigation and reporting requirements under California law.⁵

All complaints wherein 4 elements are met: (1) a dispute of fact; (2) a non-conduct complaint; (3) no independent evidence or witnesses available to support the complaint; and (4) judicial entity exists to process the complaint; IA will refer the complainant to the judicial entity for resolution.. An example of this situation is a parking ticket dispute which would be referred to the Office of Parking Violations.

In all other circumstances, when a timely complaint provides enough information to identify an SJPD officer regarding Conduct and Policy violations as articulated by law, City Policy or in the SJPD Duty Manual, the matter will be thoroughly investigated by the appropriate division within Internal Affairs.

The Law – 365 days.

365 days

Pursuant to the Public Safety Officers Procedural Bill of Rights Act (Government Code section 3300, et seq.⁶) SJPD must conduct its administrative investigation of misconduct and notify the employee of the proposed discipline within one year of discovery. Specifically, “no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency’s discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct.” The exemptions listed in Government Code sections 3304 can toll that one-year period.

Mindful of the one-year, i.e., 365-day, limit, SJPD IA and IPA agree to adhere to incremental deadlines throughout the investigative and audit process. Those deadlines are indicated below in shaded boxes for cases that are not being tolled.

Investigation/Audit process and Attendant Timelines

Days 1-3 of the 365 total days

Intake

SJPD Internal Affairs Unit or IPA accept complaints.⁷

1. IPA Intake

- a. IPA may directly receive complaints that are in writing, by telephone, or in person.
- b. Written complaints should be followed up by recorded interviews if necessary. If a complainant prefers not to be recorded, notes of an oral complaint shall still be taken.
- c. IPA shall enter into the shared database the recorded oral complaint, notes of the interview, any written complaint, a summary and suggested allegation; all noted as “pre-class.”
- d. IPA shall review the shared database summary and all attached materials to ensure the shared database is complete at this point.
- e. IPA shall enter the received complaint into the shared database within 3 days and thereafter immediately notify the Internal Affairs Administrative (via telephone or email) that an entry has been made.

2. IA Intake

- a. IA may directly receive complaints that are in writing, by telephone, or in person.
- b. IA shall determine the proper classification of the complaint as a Sworn Conduct Complaint or a Non-Sworn Conduct complaint.
- c. IA shall complete their intake form.
- d. IA should interview and record complainant’s statement, if necessary, then link recording to the shared database. If a complainant prefers not to be recorded, notes of an oral complaint shall still be taken.
- e. IA shall complete a summary of the statement.
- f. IA shall enter all evidence pertaining to the complaint into the shared database within 3 days as “pre-class.”
- g. IA shall identify the assigned investigating IA officer.
- h. IA shall link all known subject officers and allegations as soon as determined.

Days 1-30 of the 365 total days

The Allegation(s)

The allegations against an officer generally define the scope of the investigation.

If a complaint fails to allege misconduct, IA will close the case as “non misconduct concern” (NMC) after review from IPA.

If an allegation is so fantastical as to be impossible to discern, even after further inquiry, IA will “decline to investigate concern” after review from IPA.

IA investigators will determine the classification of the complaint by using the criteria found in SJPDM C1712⁸. Using the SJPDM Duty Manual criteria, the IA investigators will then properly classify the complaint. IA changes the status from pre-class to conduct complaint, policy complaint, non-misconduct concern (NMC), or decline to investigate (DTI). The classification of all allegations will be approved by the IA Commander and shall be accomplished within 30 days of receipt of the case.

**Days 31-90 of the 365 total days
Cases which require neither subject officer nor witness interviews.**

A. Cases which require neither subject officer nor witness interviews.

Some complaints are straightforward and may not require subject officer or witness interviews (For example, by reviewing body worn camera footage, GPS coordinates or CAD printouts so that an indisputable conclusion can be reached.)

IA shall provide a summary of the complaint to the complainant within 60 days of receipt of the complaint.

An IA investigating officer has 90 days from the date a complaint is received to complete an investigation by collecting and reviewing materials necessary to fully investigate the allegation(s).

A completed investigation that does not require a subject officer or witness interview shall be closed with a finding (Exonerated, Unfounded, No Finding, or Complaint Withdrawn) or supervisory referral as to each allegation; then reviewed by the Administrative IA Sergeant; and then forwarded to IPA for audit. If the IA Administrative Sergeant determines that additional investigation and interviews are necessary, the complaint is assigned to an IA investigating Sergeant.

**Days 91-120 of the 365 total days (IPA Audit Period)
Cases not requiring findings and recommendations.**

IPA has 30 days to audit IA closed cases that do not require findings and recommendations. The audit includes reviewing the complaint, relevant documents, police reports, recordings and all evidence which formed the basis of the IA investigation.

Following the audit, IPA shall notify IA of their conclusion and do any of the following regarding the substance of the investigation⁹:

-
1. “Close as Agree” and notify the complainant that the case has been audited and closed.
 2. “Close as Agree After Further Review” after IPA initiates dialogue with IA Lieutenant which results in additional follow up, change in finding, or further explanation. Once IPA and IA Lieutenant are satisfied the complainant shall be notified that the case has been audited and closed.
 3. “Close with Concerns” and send an explanation to IA Lieutenant regarding IPA concerns with the investigation but nonetheless close the case. IPA shall notify the complainant that the case has been audited and closed.
 4. “Closed as Disagree” when IPA disagrees that the IA investigation was complete, thorough, objective and fair. IPA shall send an explanation to IA Lieutenant regarding IPA’s disagreement. IPA will notify the complainant that the case has been audited and closed
 5. Open a dialogue with the IA Commander as the beginning of an appeal process.
 - a. If after dialogue, IPA still disagrees with that IA investigation was complete, thorough, objective and fair, the IPA can send a disagreement memorandum to the Chief of Police (8.04.010 SJMC¹⁰)
 - b. If after the review by the Chief of Police, IPA still does not agree that the IA investigations was complete, thorough, objective, and fair, IPA will appeal the findings to the San Jose City Manager.
 - c. If the Chief of Police disagrees with IA, the Chief will direct IA to provide additional investigation or analysis.
 - d. San Jose City Manager will be the final decision maker as to whether the investigation was complete, thorough, objective, and fair. If the City Manager agrees with IA, the Manager will direct the Department to conduct additional investigation or analysis.
 - e. If the City Manager agrees with the Department, IPA will notify the complainant that the case has been audited and closed.

*If it is determined that a case requires a subject or witness officer interview, whether determined by IA or the IPA, proceed to the below guidelines.

**Days 91-270 of the 365 total days
Cases which require subject officer or witness interviews.**

B. Cases which require subject officer or witness interviews.

IA investigating sergeants (as opposed to the IA Administrative Sergeant) assigned to investigator conduct complaints or DII cases may collect additional evidentiary material, ensure subject officers are notified of IA cases, and conduct follow-up interviews with witnesses and the subject officers when appropriate.

1. The investigating sergeant will analyze all gathered facts and apply the law and regulations. applicable to the complaints. Prior to an interview, IA shall provide the IPA with 14 days to review material necessary to fully audit the facts and allegations

including access to pertinent BWC footage.

The Independent Police Auditor or his/her designee has the right to attend the interviews and ask direct questions of all subject officers and witness officers in Conduct Complaint Cases and DIIs (December 6, 2022, Side Letter Agreement between the POA and The City of San Jose¹¹).

The SJPD member conducting a subject and/or witness interview shall be responsible for providing the IPA with a minimum of 48-hour notice prior to conducting the interview.

2. Completion of investigation.

Upon completion, the entire case file is given to the IA Unit Commander for review and approval. If a closed case requires findings and recommendations, it is sent to the Assistant Chief through the subject officer's chain of command. On all allegations of force, the completed case may be forwarded to the Assistant Chief of Police for review and approval before closing the case. Once a Conduct Complaint investigation is completed, a notification of completion will be sent to the IPA.

**Days 270-300 of the 365 total days (IPA Audit Period)
Cases not requiring findings and recommendations.**

The IPA shall have 30 days to audit cases that do not require findings and recommendations.

Following the audit, IPA may do any of the following regarding the substance of the investigation¹²:

1. "Close as Agree" and notify the complainant that the case has been audited and closed.
2. "Close as Agree After Further Review" after IPA initiates dialogue with IA Lieutenant which results in additional follow up, change in finding, or further explanation. Once IPA and IA Lieutenant are satisfied the complainant shall be notified that the case has been audited and closed.
3. "Close with Concerns" and send an explanation to the IA Lieutenant regarding IPA concerns with the investigation but nonetheless closing the case. IPA will notify the complainant that the case has been audited and closed.
4. "Closed as Disagree" when IPA disagrees that the IA investigation was complete, thorough, objective, and fair. Send an explanation to the IA Lieutenant regarding IPA's disagreement. IPA will notify the complainant that the case has been audited and closed.
5. Open a dialogue with the IA Commander as the beginning of an appeal process.
 - a. If after dialogue, IPA still disagrees with that IA investigation was complete, thorough, objective and fair, the IPA can send a disagreement memorandum to the Chief of Police (8.04.010 SJMC¹³)
 - b. If after the review by the Chief of Police, IPA still does not agree that the IA

investigations was complete, thorough, objective, and fair, IPA will appeal the findings to the San Jose City Manager.

- c. If the Chief of Police disagrees with IA, the Chief will direct IA to provide additional investigation or analysis.
- d. San Jose City Manager will be the final decision maker as to whether the investigation was complete, thorough, objective, and fair. If the City Manager agrees with IA, the Manager will direct the Department to conduct additional investigation or analysis.
- e. If the City Manager agrees with the Department, IPA will notify the complainant that the case has been audited and closed.

**Days 91-300 of the 365 total days
Cases sent for findings and recommendations.**

If IA determines that the case should ultimately go to the Chief of Police for findings and recommendations for training, counseling or discipline, the IA investigation will be reviewed by the subject officer's chain of command. The findings and recommendations shall be returned to IA within 30 days of the send date.

Days 300-314 of the 365 total days (IPA Audit Period)

IPA has 14 days to review cases that went to findings and recommendations.

Following the audit, IPA shall notify IA of their conclusion and do any of the following regarding the substance of the investigation¹⁴:

1. "Close as Agree" and notify the complainant that the case has been audited and closed.
2. "Close as Agree After Further Review" after IPA initiates dialogue with IA Lieutenant which results in additional follow up, change in finding, or further explanation. Once IPA and IA Lieutenant are satisfied the complainant shall be notified that the case has been audited and closed.
3. "Close with Concerns" and send an explanation to the IA Lieutenant regarding IPA concerns with the investigation but nonetheless close the case. IPA shall notify the complainant that the case has been audited and closed.
4. "Closed as Disagree" when IPA disagrees that the IA investigation was complete, thorough, objective and fair. IPA shall send an explanation to IA Lieutenant regarding IPA's disagreement. IPA will notify the complainant that the case has been audited and closed
5. Open a dialogue with the IA Commander as the beginning of an appeal process.
 - a. If after dialogue, IPA still disagrees with that IA investigation was complete, thorough, objective and fair, the IPA can send a disagreement memorandum to the Chief of Police (8.04.010 SJMC¹⁵)
 - b. If after the review by the Chief of Police, IPA still does not agree that the IA

investigations was complete, thorough, objective, and fair, IPA will appeal the findings to the San Jose City Manager.

- c. If the Chief of Police disagrees with IA, the Chief will direct IA to provide additional investigation or analysis.
- d. San Jose City Manager will be the final decision maker as to whether the investigation was complete, thorough, objective, and fair. If the City Manager agrees with IA, the Manager will direct the Department to conduct additional investigation or analysis.
- e. If the City Manager agrees with the Department, IPA will notify the complainant that the case has been audited and closed.

References

¹ SJPD Duty Manual L2605.6

The Executive Force Review Committee (EFRC) is comprised of Department command officers at the rank of lieutenant, designated by the Office of the Chief, specially trained in force analysis and decision-making under stress, and responsible for evaluation of all use of force “Command Reviews” as outlined in Duty Manual section L2605.5 – Command Officer’s Responsibility by use of force category.

The EFRC convenes to review use of force and provide analysis as outlined below: The EFRC will have the following responsibilities:

- Analyze and evaluate the force applied during the event.
- Identify any observed misconduct.
- Identify any training opportunities for the personnel involved.
- Document the analysis for review by the Chain of Command.

All Command Reviews, whether from a Category-II or a Category-III use of force, will be referred to the EFRC. The Office of the Chief may also refer any use of force case to the

EFRC (during any phase of the investigation), including cases that are initiated by Internal Affairs....

² SJPD Duty Manual C1706.5.

When a member of the public makes an allegation against a Department member and the allegation encompasses fact patterns that are clearly implausible or incredible, the Department will classify the allegation as a Decline to Investigate Concern.

Objective Criteria contains the following:

- The concern is patently hallucinatory and fantastical, and the investigator cannot ascertain an alternate set of facts that might explain the complainant’s experience in a way that grounds it in reality.
- The complainant’s description is grossly illogical and not capable of separation into discrete facts capable of objective verification or observation.
- The concern hinges on the existence of a broad conspiracy without articulating specific facts capable of investigation.
- The concern is identical to a previous complaint brought by the individual, against the same officer(s), and the previous complaint resulted in a finding of “Unfounded”.

Note: Care and compassion must be exercised with a complainant who may have a mental illness. The presence of a mental illness does not necessarily make a person less able to perceive, to recall, or to report an incident. A complaint may be valid even if a complainant has difficulty communicating the essential facts. Moreover, staff should assume that a person with a developmental disability, a neurological disorder, or a physical impairment that makes it difficult to communicate is as credible and reliable as any other person

³ **SJPD Duty Manual C1706.**

During the pre-classification status, if a person alleges or raises an issue that does not rise to the level of a violation of Department/City policy, procedure, rules, regulations, or the law, the Department will classify the concern as a Non-Misconduct Concern.

Objective Criteria contains the following:

- Perception or question of Department member's conduct that is not an allegation regarding a violation of Department/City policy, procedure, rules, regulations or the law;
- Not a misconduct allegation; or an allegation of conduct that does not rise to the level of misconduct; and
- Not a complaint.

⁴ **SJPD Duty Manual C1708.**

When there is an allegation regarding a current Department/City policy that was properly implemented by a Department member, but the complainant believes the policy is inappropriate or not valid, the Department will use the classification of Policy Complaint.

Objective Criteria contains the following:

- Non-Personnel related.
- Allegation regarding a City/Department policy that the citizen believes to be inappropriate or not valid.

⁵ **SJPD Duty Manual C1738.**

Department members will receive all allegations made by citizens; however, cases which are received after a considerable amount of time has elapsed from the date of the incident are difficult to investigate in a thorough, fair and complete manner. Allegations which are received after one year from the date of the incident are reviewed by the Chief of Police who has the discretion to decide not to accept the allegations as a complaint for investigation. The Chief of Police may take into consideration in making this determination any policy or factual matters relevant to the particular case including, but not limited to, whether an investigation can still be conducted in a thorough, fair, complete and efficient manner.

⁶ **Government Code section 3304 (d)**

Except as provided in this subdivision and subdivision (g), no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct. ..

⁷ Office of Employee Relations (OER) conducts their own investigations into violations of City Policy, OER is not part of this procedural agreement between SJPD IA and IPA.)

⁸ **SJPD Duty Manual C1712**

The classification of all allegations will be approved by the IA Commander. If during the pre-classification process, it is determined that an allegation does not rise to the level of a violation of Department/City policy, procedure, rules, regulations, or the law and the allegation is not a Policy Complaint, then the allegation will then be classified as a Non-Misconduct Concern. This classification will be based on the objective criteria identified in Duty Manual section C 1706 - NON-MISCONDUCT CONCERN DEFINED, Duty Manual section C 1706.5 - DECLINE TO INVESTIGATE CONCERN (DTI) DEFINED, Duty Manual section C 1707 - CONDUCT COMPLAINT - DEFINED, or Duty Manual section C 1708 - POLICY COMPLAINT - DEFINED.

⁹ When IPA closes a case as “agree,” “disagree,” or “with concern,” these terms only refer to the substance of the investigation. These terms shall not be used to designate any other concern including procedural failings such as not making timeline goals.

¹⁰ **San José Municipal Code 8.01.010 A. 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.

¹¹ **December 6, 2022 Side Letter Agreement Between The City of San José and the San José Police Officers’ Association**, Signed by Director of Employee Relations & Director of Human Resources, Chief of Police and President of SJPOA (in pertinent part).

The parties agree that this Side Letter shall allow the IPA and/or IPA staff to be permitted to ask direct questions of a subject or witness officer during an administrative interview. In full compliance with POBR, the parties further agree that an officer is required to answer the Independent Police Auditor’s questions just as they are required to answer questions posed by Internal Affairs. The parties acknowledge that the POBR limits the number of interrogators in an administrative interview to no more than two at a time. Nothing herein changes that.

¹² When IPA closes a case as “agree,” “disagree,” or “with concern,” these terms only refer to the substance of the investigation. These terms shall not be used to designate any other concern including procedural failings such as not making timeline goals.

¹³ **San José Municipal Code 8.01.010 A. 4.**

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¹⁴ When IPA closes a case as “agree,” “disagree,” or “with concern,” these terms only refer to the substance of the investigation. These terms shall not be used to designate any other concern including procedural failings such as not making timeline goals.

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