

## RESPONSE TO GRAND JURY REPORT

Report Title: LAW ENFORCEMENT CITIZEN COMPLAINT PROCEDURES

Report Date: JUNE 16, 2016

Agenda Date: JULY 26, 2016

Response by: JOHN ROHRBACH Title: CHIEF OF POLICE, SAUSALITO

### FINDINGS

- I (we) agree with the findings numbered: \_\_\_\_\_
- I (we) disagree *partially* with the findings numbered: F1 THRU F7
- I (we) disagree *wholly* with the findings numbered: \_\_\_\_\_

(Attach a statement specifying any portions of the findings that are disputed; include an explanation of the reasons therefor.)

### RECOMMENDATIONS

- Recommendations numbered R3, R5, R6, R8, R9  
R10, R11, R12 have been implemented.  
(Attach a summary describing the implemented actions.)
- Recommendations numbered R1, R4 have not yet been implemented, but will be implemented in the future.  
(Attach a timeframe for the implementation.)
- Recommendations numbered R2 require further analysis.  
(Attach an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.)
- Recommendations numbered R7, R13 will not be implemented because they are not warranted or are not reasonable.  
(Attach an explanation.)

Date: JULY 20, 2016 Signed: John Rohrbach

Number of pages attached 17



# STAFF REPORT

## SAUSALITO CITY COUNCIL

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**MEETING DATE:** July 26, 2016

**AGENDA TITLE:** Grand Jury Report – Law Enforcement Citizen Complaint Procedures

**LEAD DEPARTMENT:** Sausalito Police Department

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**RECOMMENDED MOTION:** Approve the Staff Recommended Responses to the Grand Jury

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### SUMMARY

On June 23, 2016 the Marin County Civil Grand Jury released a report titled, Law Enforcement Citizen Complaint Procedures. The Report focused on procedure, accessibility, comprehensiveness, and clarity.

### BACKGROUND

According to the Grand Jury Report, there are times when questions arise regarding interactions between law enforcement and the public. While acknowledging that police misconduct inquiries in Marin County may be infrequent, policies and procedures are necessary that allow citizens to raise their concerns.

The Grand Jury gathered information from the California law, literature review, law enforcement websites, policies and procedures, police and sheriff department site visits, and police chief and sheriff interviews to formulate their findings and recommendations.

### DISCUSSION/ANALYSIS

It is no surprise that the Grand Jury found a variety of methods used by the law enforcement agencies in Marin County to comply with the legal requirements for dealing with Citizen Complaints. The State legislature did not specify detailed procedures on how to conduct the investigations but simply stated that each agency that employs peace officers shall establish the procedure to investigate complaints. Included is the requirement to provide a written description of those procedures that is available to the public.

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Like many other law enforcement agencies in California, the Sausalito Police Department subscribes to a law enforcement policy manual service from Lexipol. That entire policy manual is a public document. Contained in the manual is a comprehensive and specific policy that provides the guidelines for the reporting, investigation, and disposition of complaints.

The Sausalito Police Department is mentioned by name twice in the Grand Jury's report. The first mention is regarding the filing of a complaint. According to the Grand Jury, "The Sausalito Police Department explains that 'Generally, your complaint will be investigated by a command level officer, assigned by the Police Chief' or 'assigned to a special investigator.'" Unfortunately, there is no attribution for the quoted statement but that is purposeful in the Grand Jury investigation process for the sake of confidentiality. The statement is largely accurate but should include the information that line level supervisors may also be assigned to investigate a citizen complaint.

The second mention is related to the use of California Penal Code §148.6 and the Complaint Form. The current law reads as follows:

148.6

(a)(1) Every person who files any allegation of misconduct against any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, knowing the allegation to be false, is guilty of a misdemeanor.

(2) Any law enforcement agency accepting an allegation of misconduct against a peace officer shall require the complainant to read and sign the following advisory, all in boldface type:

**YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER FOR ANY IMPROPER POLICE CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CITIZENS' COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND AFTER INVESTIGATION THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CITIZEN COMPLAINTS AND ANY REPORTS OR FINDINGS RELATING TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS. IT IS AGAINST THE LAW TO MAKE A COMPLAINT THAT YOU KNOW TO BE FALSE. IF YOU MAKE A COMPLAINT AGAINST AN OFFICER KNOWING THAT IT IS FALSE, YOU CAN BE PROSECUTED ON A MISDEMEANOR CHARGE.**

I have read and understood the above statement.

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Complainant

(3) The advisory shall be available in multiple languages.

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(b) Every person who files a civil claim against a peace officer or a lien against his or her property, knowing the claim or lien to be false and with the intent to harass or dissuade the officer from carrying out his or her official duties, is guilty of a misdemeanor. This section applies only to claims pertaining to actions that arise in the course and scope of the peace officer's duties.

It is our opinion that the Grand Jury is mistaken in its understanding of this law in California. It was enacted in 1995 and was later tested in the State courts for its constitutionality. In 2002, it was declared constitutional by the State Supreme Court and the bold face wording reinstated. However, in a United States Supreme Court decision in 2006, the California section was held to be unconstitutional for the purposes of federal civil rights suits. That decision did not affect the 2002 State Supreme Court ruling. Based on these conflicting court decisions, the Sausalito Police Department made the decision to retain Section 148.6 in its Citizen Complaint form but removed the last sentence that refers to the fact that a knowingly false claim against an officer can be prosecuted as a misdemeanor.

The Grand Jury accurately reports, "To access the Citizen Complaint procedure from the Sausalito Police Department website, one is first directed to a screen containing the entire boldface information advisory from Section 148.6, including the threat of prosecution. The Citizen Complaint form itself contains an admonishment, albeit without the sentence threatening prosecution." The Grand Jury recommends that all Marin County law enforcement agencies remove any reference to California Penal Code Section 148.6 but we disagree since the current wording of that law includes the word "shall" include the warning language.

The City of Sausalito and the Sausalito Police Department are each required to respond to Findings F1-F7 and Recommendations R1-R14. The recommended responses are listed in the Staff Recommendation section of this report.

## **FISCAL IMPACT**

None.

## **STAFF RECOMMENDATIONS**

Staff recommends that the response options selected should be as follows:

### **FINDINGS**

F1. Marin County law enforcement agencies have procedures for Citizen Complaints that could act as deterrents to participation in the complaint process.

F2. Some Marin County law enforcement agencies employ procedures and admonitions that have been held to be unconstitutional.

F3. Some Marin County law enforcement agencies' complaint procedures require face-to-face contact with law enforcement officers, which may deter citizens from using the Citizen Complaint process.

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F4. Not all Marin County law enforcement agencies provide written policies, procedures and Citizen Complaint forms in English and Spanish.

F5. Not all Marin County law enforcement agencies accept and investigate anonymous Citizen Complaints.

F6. Information about and access to the Citizen Complaint procedure is difficult to find on Marin County law enforcement agency websites.

F7. Marin County law enforcement agencies do not publish the number, the nature or the disposition of Citizen Complaints.

We are limited to a set of three responses to these findings; agree, partially disagree, or wholly disagree. Unfortunately, we are not able to select "neither agree nor disagree" as that would be our recommendation. Instead we find ourselves limited to recommending that our response be that we disagree partially with findings F1 – F7. The reason for this is that we find ourselves unable to comment on the procedures and practices of any other law enforcement agency in Marin County other than our own. However, the next response section allows for the Sausalito Police Department to comment on the Grand Jury's recommendations as they apply to us.

## RECOMMENDATIONS

R1. Every Marin County law enforcement agency should have a clear and full description of the law enforcement agency's policy and procedures for handling Citizen Complaints on its website that is accessible by a direct link from the law enforcement agency's home page to a clearly identified "Citizen Complaints" folder. WE AGREE WITH THIS RECOMMENDATION AS IT APPLIES TO THE SAUSALITO POLICE DEPARTMENT AND ARE CURRENTLY MAKING THE MODIFICATIONS TO OUR WEBSITE.

R2. All Marin County law enforcement agencies should accept the filing of Citizen Complaints online. WE AGREE WITH THIS RECOMMENDATION AS IT APPLIES TO THE SAUSALITO POLICE DEPARTMENT BUT ARE NOT ABLE TO DO SO AT THIS TIME. WE ARE WORKING WITH OUR INFORMATION TECHNOLOGY DEPARTMENT TO ASSIST US WITH THE CHANGES AND MODIFICATIONS TO OUR EXISTING WEBSITE SECTION RELATED TO CITIZEN COMPLAINTS.

R3. A clear and full description of the law enforcement agency's policy and procedures along with forms for filing Citizen Complaints should be available to the public in the lobby of each law enforcement agency. WE AGREE WITH THIS RECOMMENDATION AS IT APPLIES TO THE SAUSALITO POLICE DEPARTMENT AND ALREADY PROVIDE THOSE MATERIALS IN OUR LOBBY.

R4. Written policies and procedures, as well as Citizen Complaint forms, should be available to the public in English, Spanish and other languages appropriate to the

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community. WE AGREE WITH THIS RECOMMENDATION AS IT APPLIES TO THE SAUSALITO POLICE DEPARTMENT AND ARE CURRENTLY WORKING ON OFFERING THE CITIZEN COMPLAINT FORMS IN SPANISH ON OUR WEBSITE AND IN OUR LOBBY.

R5. Marin County law enforcement agency personnel should be trained in the agency's Citizen Complaint policy and procedures in order to fully describe them to members of the public. WE AGREE WITH THIS RECOMMENDATION AS IT APPLIES TO THE SAUSALITO POLICE DEPARTMENT AND ARE ALREADY PROVIDE THIS TRAINING TO OUR EMPLOYEES.

R6. All public-facing law enforcement personnel should present an open and welcoming attitude to any inquiry about the Citizen Complaint process. WE AGREE WITH THIS RECOMMENDATION AS IT APPLIES TO THE SAUSALITO POLICE DEPARTMENT AND ALREADY DO SO.

R7. No policy, procedure or form for handling Citizen Complaints should have any language based in whole or in part on California Penal Code Section 148.6 and/or California Civil Code of Civil Procedure Section 47.5, nor should a complainant be required to acknowledge that they have read and understood such language. WE WHOLLY DISAGREE WITH THIS RECOMMENDATION AS IT APPLIES TO THE SAUSALITO POLICE DEPARTMENT FOR THE REASONS STATED IN THE DISCUSSION AND ANALYSIS SECTION OF THIS STAFF REPORT.

R8. A person who initiates a Citizen Complaint should not be required to verify or certify the contents of the complaint form. WE AGREE WITH THIS RECOMMENDATION AS IT APPLIES TO THE SAUSALITO POLICE DEPARTMENT AND PREFER, BUT DO NOT REQUIRE, VERIFICATION OR CERTIFICATION.

R9. The identification of the complainant on the Citizen Complaint form should be optional. WE AGREE WITH THIS RECOMMENDATION AS IT APPLIES TO THE SAUSALITO POLICE DEPARTMENT AND ACCEPT ANONYMOUS CITIZEN COMPLAINTS.

R10. The signature of the complainant should not be required on the form. WE AGREE WITH THIS RECOMMENDATION AS IT APPLIES TO THE SAUSALITO POLICE DEPARTMENT AND ACCEPT A CITIZEN COMPLAINT THAT IS NOT SIGNED.

R11. Anonymous Citizen Complaints, and complaints initiated by minors, should be accepted and investigated in accordance with the agency's procedures. WE AGREE WITH THIS RECOMMENDATION AS IT APPLIES TO THE SAUSALITO POLICE DEPARTMENT AND ACCEPT ANONYMOUS CITIZEN COMPLAINTS AND COMPLAINTS INITIATED BY MINORS.

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R12. Members of the public who desire information regarding a law enforcement agency's policy, procedures and Citizen Complaint forms should not be required to discuss their involvement, identity or situation before the materials are provided. WE AGREE WITH THIS RECOMMENDATION AS IT APPLIES TO THE SAUSALITO POLICE DEPARTMENT AND FREELY PROVIDE ALL INFORMATION WITHOUT QUESTION.

R13. All Marin County law enforcement agencies should incorporate within their policies and procedures an appeal process that allows the complainant to appeal the disposition to an entity outside of the law enforcement agency. WE WHOLLY DISAGREE WITH THIS RECOMMENDATION AS IT APPLIES TO THE SAUSALITO POLICE DEPARTMENT. OUR CLOSURE LETTER TO THE COMPLAINANT INCLUDES AN OFFER TO CALL THE CHIEF OF POLICE WITH ANY QUESTIONS RELATED TO THE DISPOSITION OF A CITIZENS COMPLAINT.

R14. Marin County law enforcement agencies should publish on their websites and annually update the number, nature and disposition of Citizen Complaints. WE AGREE WITH THIS RECOMMENDATION AS IT APPLIES TO THE SAUSALITO POLICE DEPARTMENT BUT HAVE ONLY BEEN ABLE TO DO ON AN INCONSISTENT BASIS. WE WILL REMEDY THIS AT THE SAME TIME WE IMPLEMENT R1 AND R4.

## **ATTACHMENTS**

- Attachment 1 - Grand Jury Report on Law Enforcement Citizen Complaint Procedures
  - Attachment 2 - Response to Grand Jury Report
  - Attachment 3 - Sausalito Police Department Policy 1019 - Personnel Complaints
  - Attachment 4 - Sausalito Police Department Citizen's Complaint Form
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PREPARED BY:



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John Rohrbacher  
Chief of Police

SUBMITTED BY:



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Adam W. Politzer  
City Manager

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## Personnel Complaints

### 1019.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of the Sausalito Police Department. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

### 1019.2 POLICY

The Sausalito Police Department takes seriously all complaints regarding the service provided by the Department and the conduct of its members.

The Department will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state and local law, municipal and county rules and the requirements of any collective bargaining agreements.

It is also the policy of this department to ensure that the community can report misconduct without concern for reprisal or retaliation.

### 1019.3 PERSONNEL COMPLAINTS

Personnel complaints include any allegation of misconduct or improper job performance that, if true, would constitute a violation of department policy or of federal, state or local law, policy or rule. Personnel complaints may be generated internally or by the public.

Inquiries about conduct or performance that, if true, would not violate department policy or federal, state or local law, policy or rule may be handled informally by a supervisor and shall not be considered a personnel complaint. Such inquiries generally include clarification regarding policy, procedures or the response to specific incidents by the Department.

#### 1019.3.1 COMPLAINT CLASSIFICATIONS

Personnel complaints shall be classified in one of the following categories:

**Informal** - A matter in which the Watch Commander is satisfied that appropriate action has been taken by a supervisor of rank greater than the accused member.

**Formal** - A matter in which a supervisor determines that further action is warranted. Such complaints may be investigated by a supervisor of rank greater than the accused member or referred to the Internal Affairs Unit, depending on the seriousness and complexity of the investigation.

**Incomplete** - A matter in which the complaining party either refuses to cooperate or becomes unavailable after diligent follow-up investigation. At the discretion of the assigned supervisor or the Internal Affairs Unit, such matters may be further investigated depending on the seriousness of the complaint and the availability of sufficient information.

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#### 1019.3.2 SOURCES OF COMPLAINTS

The following applies to the source of complaints:

- (a) Individuals from the public may make complaints in any form, including in writing, by email, in person or by telephone.
- (b) Any department member becoming aware of alleged misconduct shall immediately notify a supervisor.
- (c) Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct that, if true, could result in disciplinary action.
- (d) Anonymous and third-party complaints should be accepted and investigated to the extent that sufficient information is provided.
- (e) Tort claims and lawsuits may generate a personnel complaint.

#### 1019.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

##### 1019.4.1 COMPLAINT FORMS

Personnel complaint forms will be maintained in a clearly visible location in the public area of the police facility and be accessible through the department website. Forms may also be available at other City facilities.

Personnel complaint forms in languages other than English may also be provided, as determined necessary or practicable.

##### 1019.4.2 ACCEPTANCE

All complaints will be courteously accepted by any department member and promptly given to the appropriate supervisor. Although written complaints are preferred, a complaint may also be filed orally, either in person or by telephone. Such complaints will be directed to a supervisor. If a supervisor is not immediately available to take an oral complaint, the receiving member shall obtain contact information sufficient for the supervisor to contact the complainant. The supervisor, upon contact with the complainant, shall complete and submit a complaint form as appropriate.

Although not required, complainants should be encouraged to file complaints in person so that proper identification, signatures, photographs or physical evidence may be obtained as necessary.

If requested, a complainant shall be provided with a copy of his/her statement at the time it is filed with the Department (Penal Code § 832.7).

##### 1019.5 DOCUMENTATION

Supervisors shall ensure that all formal and informal complaints are documented on a complaint form. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

All complaints and inquiries should also be documented in a log that records and tracks complaints. The log shall include the nature of the complaint and the actions taken to address the complaint. On an annual basis, the Department should audit the log and send an audit report to the Chief of Police or the authorized designee.

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#### **1019.6 ADMINISTRATIVE INVESTIGATIONS**

Allegations of misconduct will be administratively investigated as follows

##### **1019.6.1 SUPERVISOR RESPONSIBILITIES**

In general, the primary responsibility for the investigation of a personnel complaint shall rest with the member's immediate supervisor, unless the supervisor is the complainant, or the supervisor is the ultimate decision-maker regarding disciplinary action or has any personal involvement regarding the alleged misconduct. The Chief of Police or the authorized designee may direct that another supervisor investigate any complaint.

A supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation.

The responsibilities of supervisors include, but are not limited to:

- (a) Ensuring that upon receiving or initiating any formal complaint, a complaint form is completed.
  - 1. The original complaint form will be directed to the Watch Commander of the accused member, via the chain of command, who will take appropriate action and/or determine who will have responsibility for the investigation.
  - 2. In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant is at issue, a supervisor shall orally report the matter to the member's Division Commander or the Chief of Police, who will initiate appropriate action.
- (b) Responding to all complaints in a courteous and professional manner.
- (c) Resolving those personnel complaints that can be resolved immediately.
  - 1. Follow-up contact with the complainant should be made within 24 hours of the Department receiving the complaint.
  - 2. If the matter is resolved and no further action is required, the supervisor will note the resolution on a complaint form and forward the form to the Watch Commander.
- (d) Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Watch Commander and Chief of Police are notified via the chain of command as soon as practicable.
- (e) Promptly contacting the Department of Human Resources and the Watch Commander for direction regarding their roles in addressing a complaint that relates to sexual, racial, ethnic or other forms of prohibited harassment or discrimination.
- (f) Forwarding unresolved personnel complaints to the Watch Commander, who will determine whether to contact the complainant or assign the complaint for investigation.
- (g) Informing the complainant of the investigator's name and the complaint number within three days after assignment.
- (h) Investigating a complaint as follows:

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1. Making reasonable efforts to obtain names, addresses and telephone numbers of witnesses.
  2. When appropriate, ensuring immediate medical attention is provided and photographs of alleged injuries and accessible uninjured areas are taken.
- (i) Ensuring that the procedural rights of the accused member are followed (Government Code § 3303 et seq.).
- (j) Ensuring interviews of the complainant are generally conducted during reasonable hours.

#### 1019.6.2 ADMINISTRATIVE INVESTIGATION PROCEDURES

Whether conducted by a supervisor or a member of the Internal Affairs Unit, the following applies to members covered by the Public Safety Officers Procedural Bill of Rights Act (POBR) (Government Code § 3303):

- (a) Interviews of an accused member shall be conducted during reasonable hours and preferably when the member is on-duty. If the member is off-duty, he/she shall be compensated.
- (b) Unless waived by the member, interviews of an accused member shall be at the Sausalito Police Department or other reasonable and appropriate place.
- (c) No more than two interviewers should ask questions of an accused member.
- (d) Prior to any interview, a member shall be informed of the nature of the investigation, the name, rank and command of the officer in charge of the investigation, the interviewing officers and all other persons to be present during the interview.
- (e) All interviews shall be for a reasonable period and the member's personal needs should be accommodated.
- (f) No member should be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers. Any member refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to do so.
- (g) The interviewer shall record all interviews of members and witnesses. The member may also record the interview. If the member has been previously interviewed, a copy of that recorded interview shall be provided to the member prior to any subsequent interview.
- (h) All members subjected to interviews that could result in discipline have the right to have an uninvolved representative present during the interview. However, in order to maintain the integrity of each individual's statement, involved members shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.
- (i) All members shall provide complete and truthful responses to questions posed during interviews.
- (j) No member may be requested or compelled to submit to a polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation (Government Code § 3307).

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No investigation shall be undertaken against any officer solely because the officer has been placed on a prosecutor's Brady list or the name of the officer may otherwise be subject to disclosure pursuant to Brady v. Maryland. However, an investigation may be based on the underlying acts or omissions for which the officer has been placed on a Brady list or may otherwise be subject to disclosure pursuant to Brady v. Maryland (Government Code § 3305.5).

#### 1019.6.3 ADMINISTRATIVE INVESTIGATION FORMAT

Formal investigations of personnel complaints shall be thorough, complete and essentially follow this format:

**Introduction** - Include the identity of the members, the identity of the assigned investigators, the initial date and source of the complaint.

**Synopsis** - Provide a brief summary of the facts giving rise to the investigation.

**Summary** - List the allegations separately, including applicable policy sections, with a brief summary of the evidence relevant to each allegation. A separate recommended finding should be provided for each allegation.

**Evidence** - Each allegation should be set forth with the details of the evidence applicable to each allegation provided, including comprehensive summaries of member and witness statements. Other evidence related to each allegation should also be detailed in this section.

**Conclusion** - A recommendation regarding further action or disposition should be provided.

**Exhibits** - A separate list of exhibits (e.g., recordings, photos, documents) should be attached to the report.

#### 1019.6.4 DISPOSITIONS

Each personnel complaint shall be classified with one of the following dispositions:

**Unfounded** - When the investigation discloses that the alleged acts did not occur or did not involve department members. Complaints that are determined to be frivolous will fall within the classification of unfounded.

**Exonerated** - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.

**Not sustained** - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.

**Sustained** - When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

If an investigation discloses misconduct or improper job performance that was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations.

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#### **1019.6.5 COMPLETION OF INVESTIGATIONS**

Every investigator or supervisor assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence in an effort to complete the investigation within one year from the date of discovery by an individual authorized to initiate an investigation (Government Code § 3304).

In the event that an investigation cannot be completed within one year of discovery, the assigned investigator or supervisor shall ensure that an extension or delay is warranted within the exceptions set forth in Government Code § 3304(d) or Government Code § 3508.1.

The assigned investigator or supervisor shall ensure that within 30 days of the final disposition of the complaint, the complainant is provided written notification of the disposition (Penal Code § 832.7(e)).

#### **1019.7 ADMINISTRATIVE SEARCHES**

Assigned lockers, storage spaces and other areas, including desks, offices and vehicles, may be searched as part of an administrative investigation upon a reasonable suspicion of misconduct.

Such areas may also be searched any time by a supervisor for non-investigative purposes, such as obtaining a needed report, radio or other document or equipment.

Lockers and storage spaces may only be administratively searched in the member's presence, with the member's consent, with a valid search warrant or where the member has been given reasonable notice that the search will take place (Government Code § 3309).

##### **1019.7.1 DISCLOSURE OF FINANCIAL INFORMATION**

An employee may be compelled to disclose personal financial information under the following circumstances (Government Code § 3308):

- (a) Pursuant to a state law or proper legal process
- (b) Information exists that tends to indicate a conflict of interest with official duties
- (c) If the employee is assigned to or being considered for a special assignment with a potential for bribes or other improper inducements

#### **1019.8 ADMINISTRATIVE LEAVE**

When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Department, the Chief of Police or the authorized designee may temporarily assign an accused employee to administrative leave. Any employee placed on administrative leave:

- (a) May be required to relinquish any department badge, identification, assigned weapons and any other department equipment.
- (b) Shall be required to continue to comply with all policies and lawful orders of a supervisor.
- (c) May be temporarily reassigned to a different shift, generally a normal business-hours shift, during the investigation. The employee may be required to remain available for contact at all times during such shift, and will report as ordered.

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#### **1019.9 CRIMINAL INVESTIGATION**

Where a member is accused of potential criminal conduct, a separate supervisor or investigator shall be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

The Chief of Police shall be notified as soon as practicable when a member is accused of criminal conduct. The Chief of Police may request a criminal investigation by an outside law enforcement agency.

A member accused of criminal conduct shall be advised of his/her constitutional rights (Government Code § 3303(h)). The member should not be administratively ordered to provide any information in the criminal investigation.

No information or evidence administratively coerced from a member may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.

The Sausalito Police Department may release information concerning the arrest or detention of any member, including an officer, that has not led to a conviction. No disciplinary action should be taken until an independent administrative investigation is conducted.

#### **1019.10 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES**

Upon completion of a formal investigation, an investigation report should be forwarded to the Chief of Police through the chain of command. Each level of command should review and include their comments in writing before forwarding the report. The Chief of Police may accept or modify any classification or recommendation for disciplinary action.

##### **1019.10.1 DIVISION COMMANDER RESPONSIBILITIES**

Upon receipt of any completed personnel investigation, the Division Commander of the involved member shall review the entire investigative file, the member's personnel file and any other relevant materials.

The Division Commander may make recommendations regarding the disposition of any allegations and the amount of discipline, if any, to be imposed.

Prior to forwarding recommendations to the Chief of Police, the Division Commander may return the entire investigation to the assigned investigator or supervisor for further investigation or action.

When forwarding any written recommendation to the Chief of Police, the Division Commander shall include all relevant materials supporting the recommendation. Actual copies of a member's existing personnel file need not be provided and may be incorporated by reference.

##### **1019.10.2 CHIEF OF POLICE RESPONSIBILITIES**

Upon receipt of any written recommendation for disciplinary action, the Chief of Police shall review the recommendation and all accompanying materials. The Chief of Police may modify any recommendation and/or may return the file to the Division Commander for further investigation or action.

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Once the Chief of Police is satisfied that no further investigation or action is required by staff, the Chief of Police shall determine the amount of discipline, if any, that should be imposed. In the event disciplinary action is proposed, the Chief of Police shall provide the member with a pre-disciplinary procedural due process hearing (Skelly) by providing written notice of the charges, proposed action and reasons for the proposed action. Written notice shall be provided within one year from the date of discovery of the misconduct (Government Code § 3304(d)). The Chief of Police shall also provide the member with:

- (a) Access to all of the materials considered by the Chief of Police in recommending the proposed discipline.
- (b) An opportunity to respond orally or in writing to the Chief of Police within five days of receiving the notice.
  - 1. Upon a showing of good cause by the member, the Chief of Police may grant a reasonable extension of time for the member to respond.
  - 2. If the member elects to respond orally, the presentation may be recorded by the Department. Upon request, the member shall be provided with a copy of the recording.

Once the member has completed his/her response or if the member has elected to waive any such response, the Chief of Police shall consider all information received in regard to the recommended discipline. The Chief of Police shall render a timely written decision to the member and specify the grounds and reasons for discipline and the effective date of the discipline. Once the Chief of Police has issued a written decision, the discipline shall become effective.

#### **1019.11 PRE-DISCIPLINE EMPLOYEE RESPONSE**

The pre-discipline process is intended to provide the accused employee with an opportunity to present a written or oral response to the Chief of Police after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline. The employee shall consider the following:

- (a) The response is not intended to be an adversarial or formal hearing.
- (b) Although the employee may be represented by an uninvolved representative or legal counsel, the response is not designed to accommodate the presentation of testimony or witnesses.
- (c) The employee may suggest that further investigation could be conducted or the employee may offer any additional information or mitigating factors for the Chief of Police to consider.
- (d) In the event that the Chief of Police elects to cause further investigation to be conducted, the employee shall be provided with the results prior to the imposition of any discipline.
- (e) The employee may thereafter have the opportunity to further respond orally or in writing to the Chief of Police on the limited issues of information raised in any subsequent materials.

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#### **1019.12 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE**

In the event that a member tenders a written resignation or notice of retirement prior to the imposition of discipline, it shall be noted in the file. The tender of a resignation or retirement by itself shall not serve as grounds for the termination of any pending investigation or discipline.

#### **1019.13 POST-DISCIPLINE APPEAL RIGHTS**

Non-probationary employees have the right to appeal a suspension without pay, punitive transfer, demotion, reduction in pay or step, or termination from employment. The employee has the right to appeal using the procedures established by any collective bargaining agreement, Memorandum of Understanding and/or personnel rules.

In the event of punitive action against an employee covered by the POBR, the appeal process shall be in compliance with Government Code § 3304 and Government Code § 3304.5.

During any administrative appeal, evidence that an officer has been placed on a Brady list or is otherwise subject to Brady restrictions may not be introduced unless the underlying allegations of misconduct have been independently established. Thereafter, such Brady evidence shall be limited to determining the appropriateness of the penalty (Government Code § 3305.5).

#### **1019.14 PROBATIONARY EMPLOYEES AND OTHER MEMBERS**

At-will and probationary employees and those members other than non-probationary employees may be released from employment for non-disciplinary reasons (e.g., failure to meet standards) without adherence to the procedures set forth in this policy or any right to appeal. However, any probationary officer subjected to an investigation into allegations of misconduct shall be entitled to those procedural rights, as applicable, set forth in the Peace Officer Bill of Rights (Government Code § 3303; Government Code § 3304). At-will, probationary employees and those other than non-probationary employees subjected to discipline or termination as a result of allegations of misconduct shall not be deemed to have acquired a property interest in their position, but shall be given the opportunity to appear before the Chief of Police or authorized designee for a non-evidentiary hearing for the sole purpose of attempting to clear their name or liberty interest. There shall be no further opportunity for appeal beyond the liberty interest hearing and the decision of the Chief of Police shall be final.

#### **1019.15 RETENTION OF PERSONNEL INVESTIGATION FILES**

All personnel complaints shall be maintained in accordance with the established records retention schedule and as described in the Personnel Files Policy.



# SAUSALITO POLICE DEPARTMENT

John Rohrbacher  
Chief of Police

## CITIZEN'S COMPLAINT

NAME \_\_\_\_\_ AGE \_\_\_\_\_

Street & Number \_\_\_\_\_ City \_\_\_\_\_

Resident Phone \_\_\_\_\_ Business Phone \_\_\_\_\_

Best Time to Contact \_\_\_\_\_

Nature of Complaint \_\_\_\_\_

Date of Occurrence \_\_\_\_\_ Day of Week \_\_\_\_\_ Time \_\_\_\_\_

Location of Incident(s) \_\_\_\_\_

Police Employee(s) Subject to Complaint \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I affirm that the statements contained herein are, to the best of my knowledge, factual and accurate. I affirm that I have read the following statement: (con't on back)

**You have the right to make a complaint against a police officer for any improper police misconduct. California law requires this agency to have a procedure to investigate citizen's complaints. You have a right to a written description of this procedure. This agency may find that after investigation, there is not enough evidence to warrant action on your complaint. Even if that is the case, you have the right to make a complaint and have it investigated if you believe an officer behaved improperly. Citizen's complaints and any reports or findings relating to complaints must be retained by this agency for at least five years. It is against the law to make a complaint that you know to be false.**

Signature of Complainant \_\_\_\_\_ Date \_\_\_\_\_  
Signature of Parent/Guardian (if you are under 18 years of age)

Person Receiving Complaint \_\_\_\_\_ Date \_\_\_\_\_

Review by Chief of Police \_\_\_\_\_ Date \_\_\_\_\_

Assigned to: \_\_\_\_\_ Complaint No \_\_\_\_\_ Date \_\_\_\_\_