

MAY 23, 2007

REGULAR MEETING

The Police Commission of the City and County of San Francisco met in Room 400, City Hall, #1 Dr. Carlton B. Goodlett Place, San Francisco, at 5:22 p.m., in a Regular Meeting.

PRESENT: Commissioners Campos, DeJesus, Lee, Marshall, Veronese
ABSENT: Commissioner Sparks

(Commissioner Marshall arrived at 5:44 p.m.)

PUBLIC COMMENT ON ALL MATTERS PERTAINING TO CLOSED SESSION

None

VOTE ON WHETHER TO HOLD CLOSED SESSION

Motion by Commissioner DeJesus, second by Commissioner Lee.
Approved 4-0.

CLOSED SESSION

- a. **PERSONNEL EXCEPTION: Request for back-pay of suspension dates in Disciplinary Case No. C06-024 JCT (Resolution 50-07)**
- b. **PERSONNEL EXCEPTION: Discussion and possible action to grant Motion to Dismiss disciplinary charges in Case No. C03-0145 CCL (Resolution No. 51-07)**
- c. **PERSONNEL EXCEPTION: Public Employee appointment: Policy Analyst**

VOTE TO ELECT WHETHER TO DISCLOSE ANY OR ALL DISCUSSION HELD IN CLOSED SESSION

Motion by Commissioner DeJesus, second by Commissioner Marshall for non disclosure. Approved 5-0.

PUBLIC COMMENT

Jazzie Collins discussed concerns regarding gender profiling.
Morena Castaneda discussed concerns regarding an incident that happened on May 11th.

CHIEF'S REPORT

- a. **Update on significant policing efforts by Department members**
- b. **Presentation re SFPD Medicinal Marijuana Policy**

Chief Fong presented a Certificate of Appreciation of Ms. Barbara Lynn, SF Safe, who will be retiring.

Chief Fong reported regarding questions asked by the Commission regarding enhanced enforcement around Buena Vista Park. Chief Fong stated that the Department looked at all the calls from January 17th to May 17, 2007 and over the course of all of those days, the highest number of contacts was in March and that was six calls on a given day. Chief Fong stated that they also looked at the Assisted Dispatch System to see if there was anything in the system. Chief Fong stated that what they found is something happened between the 14th of May and the 15th of May, late the 14th or early on the 15th. Chief Fong stated that there was a B priority call at Buena Vista Park in which

a sergeant from the Park District was flagged down by an individual on Haight Street and reported that he believed that there was a fight going on up in the Park and that there were two individuals involved. The sergeant responded into the park and broadcast it over the air so that other units could respond. The two individuals were located. They were identified and released at the scene.

Chief Fong also reported on the Limited English Proficiency issue and statements made about the delay in bringing this forth. Chief Fong stated that this is an issue that is very important to the Department and the Department is required, by city mandate, to provide services to all individuals regardless of their proficiency in English. Chief Fong stated that she will have a packet for the Commission's Friday packet in regards to this issue.

Commissioner Lee requested that the Chief send a letter to the editor of the Chronicle in response to the editorial.

Deputy Chief Tabak gave a brief presentation on the topic of Medical Marijuana. This presentation is to educate and inform everyone on the Department's Medical Marijuana Policy but in particular to clear up misconceptions about this topic and what part the SFPD plays in the process. Lieutenant Rick Parry, Narcotics, was also present and talked about enforcement.

Commissioner Campos thanked the Chief and the Lieutenant for really trying to bridge the gap between the community and the Department and engaging in dialogue to address this issue.

PUBLIC COMMENT

Francio Salazar, Local 22 member, came to support the revitalization of the city under the Mayor's program and discussed concerns regarding medical marijuana.

Shauna Goldner, member of the Marijuana Working Group, talked about roundtable discussions with Chief Fong and Deputy Chief Tabak.

Dr. Maggie Rubenstein thanked Chief Fong and Deputy Chief Tabak for meeting with the concerned members of the cannabis community.

Russell Kyle commended the Chief and her staff.

Unidentified, 4th generation San Franciscans, discussed concerns.

Chief Fong showed the Commission the Bicycle Safety PSA that was provided to the media.

OCC DIRECTOR'S REPORT

a. Review of Recent Activities

Acting Director Jean Field updated the Commission regarding an event attended by some investigators sponsored by the SF Safe. Ms. Field stated that the latest date for the move will be mid-August.

PUBLIC COMMENT

None

DISCUSSION AND POSSIBLE ACTION TO ADOPT PROCEDURES IMPLEMENTING THE USE OF HEARING OFFICERS FOR COMMISSION DISCIPLINARY CASES

Commissioner DeJesus thanked Deputy City Attorney Molly Stump for working with all the groups to get the rules done and urged the Commission's approval.

PUBLIC COMMENT

John Tennant, POA Attorney, stated there was a lot of work that was done with these procedures and the POA is in agreement and will streamline the disciplinary process and urged the swift passage of these procedures because they will resolve an issue during contract negotiations as part of the proposed MOU with the city.

Motion by Commissioner Lee, second by Commissioner Marshall to adopt the procedures for hearing officers. Approved 5-0.

RESOLUTION NO. 52-07

ADOPTION OF PROCEDURES IMPLEMENTING THE USE OF HEARING OFFICERS FOR COMMISSION DISCIPLINARY CASES

RESOLVED, that the Police Commission hereby adopts the following procedures implementing the use of Hearing Officers for Commission disciplinary cases:

**POLICE COMMISSION
SUPPLEMENTAL RULES GOVERNING
ASSIGNMENT OF POLICE DISCIPLINE CASES
TO A HEARING OFFICER**

I. INTRODUCTION

Under Charter Section A8.343, a uniformed member of the Police Department (“Department”) shall not be subject to dismissal or punishment for any breach of duty or misconduct, including any violation of the Department’s Rules and Regulation, General Orders, Bulletins, Policies or Procedures, except for cause.

The Chief of Department can impose disciplinary suspensions not to exceed 10 days, subject to a suspended member’s right to appeal the suspension to the Police Commission (“Commission”), and have a trial and hearing on that suspension.

If the Chief determines that a member’s breach of duty or misconduct warrants discipline in excess of a 10-day suspension, the Chief must file verified charges with the Commission, setting forth the acts that the Chief has determined constitutes a breach of duty or misconduct. In addition, if the Office of Citizen Complaints (“OCC”) sustains a complaint against a member and recommends discipline in excess of a 10-day suspension, the OCC Director may file charges against that member with the Commission, as provided by the Charter.

After reasonable notice, the Commission must afford the accused a fair and impartial trial and hearing on the charges. The accused member is entitled to appear personally and by representative, to have a public trial, and to secure and enforce, free of expense, the attendance of all witnesses necessary for his or her defense. The Department or OCC has the burden of proving a breach of duty or misconduct by the accused member by a preponderance of the evidence.

The Commission may adopt rules establishing the procedures that will govern the trial of disciplinary cases.

II. PROCEDURE FOR ASSIGNING DISCIPLINARY CASES TO A HEARING OFFICER

A. Initial Action on Appeal or Charges; “Request for Public Hearing” form.

When the Commission receives a member’s notice of appeal or a charge filed by either the Chief of Department or the OCC Director, the

Commission Secretary shall notify the Commission President and shall include the case on the agenda for the next available Commission meeting. The Commission Secretary shall promptly notify the member, and his or her representative, if known, that the case has been set on the Commission's agenda. That notice shall be both oral and in writing. In addition, the Commission Secretary shall promptly send the accused member, and his or her representative, if known, a "Request for Public Hearing" form. A copy of that form is attached to these Supplemental Rules as Exhibit A. The member must complete and return the form to the Commission Secretary within 10 calendar days of the date of the Secretary's correspondence enclosing the form.

- B. **Initial Commission Meeting on Appeal or Charges.** The Commission President shall determine whether the case is appropriate for assignment to a Hearing Officer under these procedures. Notwithstanding the requirement in Department General Order 2.07, that "the subject officer, or his/her designated representative, shall attend each session of the Police Commission at which the pending charges appear on the agenda," the accused member is not required to attend the Police Commission meeting described in this paragraph, either personally or through a representative. The member or his or her representative may appear and indicate whether the member wishes the case assigned to a Hearing Officer. The President will consider a member's request to assign the matter to a Hearing Officer, but retains full discretion to make the assignment he or she deems most appropriate under all the facts and circumstances. If the President decides to assign the case to a Hearing Officer, the President shall announce the assignment at the Commission meeting.
- C. **Notice of Assignment to Hearing Officer; "Consent to Assignment to Hearing Officer" form.** If the President assigns the case to a Hearing Officer, the Commission Secretary shall promptly send a written notice to the member and any representative, if known; to the Chief of Police; and, where applicable, to the OCC Director. The notice shall advise the parties that the Commission had assigned the matter to a Hearing Officer. With the notice, the Commission Secretary shall also send the accused member and any representative, if known, a "Consent to Assignment to Hearing Officer" form and copies of these procedures. A copy of that form is attached to these Supplemental Rules as Exhibit B.

If the member consents to have the hearing conducted by a Hearing Officer, the member must complete the "Consent to Assignment to Hearing Officer" form and return it to the Secretary within 14 calendar days of the date of the Secretary's notice. If the member timely returns the form, the parties will select a Hearing Officer under the procedures described in Section III, below. If the member does not consent to assignment to a Hearing Officer, the member or his or her representative should inform the Commission Secretary as soon as possible. If the member does not timely return the form, the Commission Secretary shall include the discipline case on the agenda for the next available Commission meeting, and the Commission President shall set the matter to be heard either by a single Commissioner or the Commission as a whole. In cases involving more than one member ("multiple-officer cases"), where some but not all of the charged members consent to the use of a Hearing Officer, the Commission President shall determine the appropriate actions and assignments under all the facts and circumstances.

- D. **No Reassignment of Case.** Once a case is assigned either (1) to a Hearing Officer and a signed "Consent to Assignment to Hearing Officer" form is received, or (2) to a single Commissioner or the

Commission, that assignment generally will not be changed. In rare cases, where good cause exists, the Commission, through the President, may reassign a case before the start of the taking of evidence. Once the taking of evidence has begun, the matter will be reassigned only where absolutely necessary, for example, the death or disability of the Hearing Officer.

III. SELECTION OF HEARING OFFICER

- A. **Notice to Select Hearing Officer.** Upon receipt of a completed “Consent to Assignment to Hearing Officer” form, the Commission Secretary shall send a written notice to the member and, where known, his or her representative; to the Chief of Police; and, where applicable, to the OCC Director. The notice shall state that the matter will proceed before a Hearing Officer, and shall direct the parties to begin the process of selecting a Hearing Officer.
- B. **Selection of Hearing Officer by Mutual Agreement.** The parties shall attempt to select a Hearing Officer by mutual consent from a list of approved Hearing Officers attached as Exhibit C. In multiple-officer cases, each officer must separately agree to the contemplated Hearing Officer. Any Hearing Officer selected by the parties must be available to begin the proceedings within 90 calendar days and complete the proceedings within 120 calendar days of the Commission Secretary’s inquiry regarding the prospective Hearing Officer’s availability. Either party may petition the Commission President to allow additional time to complete the proceedings, where good cause is shown, for example, in a case with substantial discovery or pretrial legal issues.
- C. **Inability to Mutually Agree to Hearing Officer.** If the parties cannot agree on a Hearing Officer within 7 calendar days of the Commission Secretary’s notice that the matter will proceed before a Hearing Officer, the parties shall notify the Commission Secretary that they cannot mutually agree on a Hearing Officer. The Secretary shall then request a list of 7 names from the California State Mediation and Conciliation Service.
- D. **Selection of Hearing Officer by Striking Process.** Upon receipt of the list, the parties shall alternate in striking names from the list. In multiple-officer cases, the accused members shall designate one representative to exercise strikes on behalf of all of the accused members. The parties shall determine by lot who will strike the first name. The parties shall continue alternating strikes until one name remains. The parties shall mark the list to indicate the order in which names were struck from the list. The parties shall complete the striking process within 7 days of receipt of the list.
- E. **Action by Commission Secretary.** The Commission Secretary shall promptly contact the individual remaining after the striking process. That individual shall be selected only if he or she is available to begin the proceedings within 90 calendar days and complete the proceedings within 120 calendar days of the Secretary’s inquiry regarding the prospective Hearing Officer’s availability. Either party may petition the Commission President to allow additional time to complete the proceedings, where good cause is shown, for example, in a case with substantial discovery or pretrial legal issues. If that Hearing Officer is not available within the required timeframe, the Secretary shall contact the individual struck sixth from the list, and shall repeat this process until the Secretary has identified a Hearing Officer available within the required time period or has exhausted the list of names. If the list is exhausted, the Commission Secretary shall request a new list of names

from the California State Mediation and Conciliation Service, and the parties shall repeat the process until a Hearing Officer is selected.

IV. TAKING OF EVIDENCE BY HEARING OFFICER

- A. **Initial Conference.** Promptly after his or her selection, the Hearing Officer shall schedule an initial conference or hearing on the case, to schedule dates to take evidence; to identify and set deadlines for any required submissions; to set deadlines for any motions; and to address any other matters determined appropriate by the Hearing Officer.
- B. **Ex Parte Communications Prohibited.** No party, nor any party's attorney, representative or other agent, shall contact or have any communication regarding any aspect of the case with the Hearing Officer, any individual Commissioner or the Commission as a whole, including but not limited to contact or communication by telephone, email, in person, or written correspondence ("ex parte communications"), except where all parties are included in the communication. A party, or a party's attorney, representative or other agent, may have ex parte communications about the case with the Commission Secretary, provided that the communication is limited solely to procedural matters.
- C. **Open/Closed Proceedings.** The hearings for taking evidence shall be held in open session if requested by the accused member on the "Request for Public Hearing" form. Otherwise, the hearings will be closed to the public, and all pleadings, records and other documents used in or created as a part of the case shall be confidential to the extent required by law. In multiple-officer cases, where some but not all of the accused members request a public hearing, the Commission President shall determine the appropriate actions and proceedings under all the facts and circumstances and consistent with all legal requirements regarding confidentiality of peace officer personnel records.
- D. **Applicable Rules.** The Hearing Officer shall comply with these Supplemental Rules, and all other rules, procedures and standards that apply to Commission hearings.
- E. **Authorized Actions of Hearing Officer.** The Hearing Officer is authorized to take the following actions:
1. Set a schedule for hearings, pre-trial submissions and motions;
 2. Direct discovery and resolve discovery disputes, including discovery motions;
 3. Hold hearings to take evidence in the case;
 4. Rule upon all objections presented by the parties. During the taking of evidence, the parties shall make their objections orally unless the Hearing Officer orders or authorizes a written objection or response. During the proceeding, the Hearing Officer is not required to apply the rules of evidence prevailing in the courts. The Hearing Officer shall apply the evidentiary standards and procedures applicable to administrative proceedings, which include reference to the rules of evidence for guidance to the extent provided by law.
 5. Hear and make an initial determination on an accused member's motion to dismiss some or all of the charges for insufficiency of the evidence, subject to the parties' ability to bring the matter to the full Commission as described in Section V.B., below. The member may bring a motion to dismiss for insufficiency of the evidence at either the close of the Department's or OCC's case or at the close of the taking of evidence proceedings. If the

Hearing Officer dismisses all charges, the Hearing Officer shall prepare a report as required in Section V.D., below. If the Hearing Officer denies the motion or dismisses only some of the charges, the Hearing Officer shall provide a detailed explanation of the ruling on the record. Either party may object to the Hearing Officer's decision on a motion to dismiss for insufficiency of the evidence. If a party makes such an objection, that party may include the Hearing Officer's decision on the motion in the objections it raises with the Commission, as provided in Section V.B., below.

6. Mediate or provide other assistance to the parties in developing a proposed stipulated disposition of the case. If the parties mutually agree to have the Hearing Officer mediate or provide other assistance in developing a proposed disposition of the case, the parties must complete the "Agreement to Use Hearing Officer as Mediator" form. A copy of that form is attached to these Supplemental Rules as Exhibit C. As described on the form, the rule prohibiting ex parte communications with the Hearing Officer does not apply during a mediation or proceeding by the Hearing Officer working to develop a proposed stipulated disposition of the case. If the Hearing Officer assists the parties in developing a proposed stipulated disposition of the case, the Hearing Officer may inform the Commission that the parties have developed a proposed disposition and may, with the Commission's approval, present the proposed disposition to the Commission.

- F. **Dispositive Motions.** Except as provided in section IV.E.5., above, the Hearing Officer is not authorized to hear any motions to dismiss some or all of the charges ("dispositive motions"). Dispositive motions include, but are not limited to, motions raising jurisdictional, statute of limitations, constitutional and Peace Officers Procedural Bill of Rights Act arguments. Rather, an accused member shall file any dispositive motions with the Commission pursuant to the schedule set by the Hearing Officer. The Commission shall set a hearing on any dispositive motions, and shall deliberate and decide such motions as a body.

- G. **Official Record.** The Hearing Officer shall ensure that all proceedings before the Hearing Officer are transcribed by a court reporter. The Hearing Officer shall maintain and preserve all documentary or other evidence as part of the record.

V. PROCEEDINGS BEFORE THE COMMISSION

- A. **Conditional Close of Evidentiary Proceedings.** At the conclusion of the taking of evidence before the Hearing Officer, the Hearing Officer shall conditionally close the proceeding, and shall send written notice to the Commission President and the parties of the date on which the proceedings were conditionally closed.
- B. **Objections to Hearing Officer Rulings.** Within 14 days after the conditional close of proceedings before the Hearing Officer, the parties shall submit to the Commission written objections, if any, to the Hearing Officer's rulings, including but not limited to rulings excluding or admitting evidence and ruling on discovery and other non-dispositive motions. To raise an objection with the Commission, the party must have objected on the record to a decision or ruling by the Hearing Officer at the time the Hearing Officer made the decision or ruling during the taking of evidence proceeding.
- C. **Argument on Objections; Additional Proceedings Before Hearing**

Officer. The Commission shall set a hearing for argument by the parties on an objections filed with the Commission. After argument, the Commission shall deliberate and rule on any objections. The Commission may direct that the Hearing Officer exclude certain evidence from the official record of the proceedings, may direct the Hearing Officer to reopen the proceeding and take additional evidence, or may make any other directive as determined by the Commission. If the Commission directs the Hearing Officer to take additional evidence, the Hearing Officer shall hold additional proceedings consistent with the Commission's ruling, and may also admit rebuttal evidence or take other actions deemed appropriate by the Hearing Officer.

- D. **Content of Hearing Officer Report.** After the Commission's ruling on any objections, and after any additional proceedings before the Hearing Officer, the Hearing Officer shall close the hearing for taking evidence, and shall prepare a report on the proceedings for the Commission's consideration. The report shall include the following:
1. a list of the charges against the accused member or members;
 2. a summary of the proceedings;
 3. a summary of the witnesses, the substance of their testimony, and any demeanor or credibility issues identified by the Hearing Officer;
 4. a list of any other evidence admitted;
 5. a summary of the facts of the case; and
 6. a recommendation about whether there is sufficient evidence in the record to meet the Department's or OCC Director's burden of proof necessary to sustain one or more of the charges. If the Hearing Officer recommends that one or more charge be sustained, the Hearing Officer shall summarize the evidence supporting that recommendation.
- E. **Deadline for Hearing Officer Report.** The Hearing Officer shall complete the report as soon as practical, and in no event more than 45 calendar days after the proceeding for taking of evidence is closed and the transcript of the proceeding is complete. If necessary, the Hearing Officer may submit a written request to the Commission President seeking additional time to complete the report, which the President may grant in his or her discretion. When the report is complete, the Hearing Officer shall serve the report simultaneously on the Commission and all parties, and shall transmit the entire record in the case to the Commission Secretary.
- F. **Responses to Hearing Officer Report.** The parties may submit written responses to the Hearing Officer's report. The parties shall file any such responses with the Commission Secretary within 14 calendar days of service of the report or completion of the transcript, whichever is later, and shall simultaneously serve a copy on all parties. No additional written submissions are permitted, unless expressly ordered by the Commission.
- G. **Commission Review of Record.** After the time for written responses has passed, the Commissioners shall review the entire record in the case, including the Hearing Officer's report, any responses to the report from the parties, the transcript of the proceeding, and any documentary or other evidence admitted during the proceedings.
- H. **Additional Proceedings Before Commission.** After reviewing the record, if the Commission concludes that it cannot decide the matter without hearing live testimony or obtaining additional evidence, the Commission may take live testimony or other evidence on its own initiative. The Commission may examine witnesses and direct the

production of papers and other evidence.

The Commission may also take additional testimony or evidence at the request of a party, but only where the party demonstrates that the evidence is (1) newly discovered and could not with reasonable diligence have been located prior to the proceeding before the Hearing Officer, and (2) material and relevant in the matter under consideration.

- I. **Deliberations and Decision.** At the conclusion of the above proceedings, the Commission shall hear argument from the parties and then will deliberate and decide the case. The Commission may not begin deliberations to decide a case until all Commissioners participating in the deliberative process state for the record that they have reviewed the entire record in the case. If the Commission determines that a member is guilty of any breach of duty or misconduct, the Commission shall set the matter for additional proceedings before the Commission to determine the appropriate penalty.

AYES: Commissioners Campos, DeJesus, Lee, Marshall, Veronese

ABSENT: Commissioner Sparks

COMMISSION ANNOUNCEMENTS

- a. **Reassignment of the following disciplinary cases to an individual Commissioner for the taking of evidence on a date to be determined by the Commissioner:**

C03-123 JWF (Resolution 53-07, assigned to Commissioner Campos)
C06-030 SL, C06-031 SL, C06-032 SL, C06-033 SL, C06-034 SL, & C06-035 SL (Resolution 54-07, assigned to Commissioner Veronese)
C07-014 SM (Resolution 55-07, assigned to Commissioner Lee)
C07-039 ALW (Resolution 56-07, assigned to Commissioner Lee)

Commissioner Veronese stated that he has submitted a letter to Commissioner Sparks in regards to some of the things he would like the Commission to work on next year. Commissioner Veronese stated that following:

1. He would like to see the Chief put together a committee to look at the possibility of bringing the Police Olympics to San Francisco.
2. Ecco-friendly vehicle mandate prior to a date certain. He's reached out to a group called the Global Green to see if they could help with suggestions for that type of model going forward with the Department's vehicle purchases.
3. P.A.L. Program - for the future of the PAL Program -- speak with the School District to see if the Department can replace the ROTC Program with a community-friendly PAL Program.
4. Police Accountability – He would like to revive three or four general orders that he has suggested in February 2006. Commissioner Veronese stated he met with POA and the City Attorney on them and he believes that they have resolved the issues that are related to those DGOs and would like to revive them.
5. Transparency - The Veronese Report, the actions of the Police Commission in Closed Session relating to police disciplinary matters. He stated that Sgt. Reilly has sent him a version of the report and he believes that he has approved that version and would like to see that for approval so that it can be put out for the public.
6. Community Outreach - He'd like the Commission to do a weekly newsletter similar to the Police Station's newsletter. He'd also like the Commission to give Police Commission Commendations to citizens who have assists police officers and that Steve Johnson has suggested that the Commission go out to the Police Stations and give Police Commission

- Commendations to the police officers as opposed to just signing them.
7. Webpage – needs serious work.
 8. Government Efficiency - He stated that then Supervisor Newsom did an efficiency audit piece of legislation and suggested that the Police Department should take a look at and do an audit to see if it reflects the standards that are put out in that legislation.
 9. He would like the Commission to reach out to the Mayor's Office of Housing to provide for affordable housing for police officers perhaps under the Mayor's Office Housing Program to see if officers can qualify for that as well as the Presidio Trust to get police officers to move back to San Francisco.
 10. He would like the Commission to work closer with the Board of Supervisors and the Mayor's Office so that the Commission can leave the law enforcing to the Chief of Police and streamline some of the process and ideas and be on the same page and break down some of the perceived lines that have been drawn.

SCHEDULING OF ITEMS IDENTIFIED FOR CONSIDERATION AT FUTURE COMMISSION MEETINGS

Commissioner DeJesus would like to revisit the issue of speeding up the background process.

Commissioner Campos would like to have a community meeting in July in the Mission District.

ADJOURNMENT

Motion by Commissioner Marshall, second by Commissioner DeJesus.
Approved 5-0.

Thereafter, the meeting was adjourned at 7:30 p.m.

Sergeant Joseph Reilly
Secretary
San Francisco Police Commission