

FEBRUARY 17, 2010

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 5:35 p.m., in a Regular Meeting.

PRESENT: Commissioners Marshall Mazzucco, DeJesus, Lee, Hammer, Onek, Pan

APPROVAL OF THE MINUTES

- **Regular Meeting of December 16, 2009**

Motion by Commissioner Mazzucco, second by Commissioner Onek. Approved 7-0.

CLOSED SESSION taken out of order

PUBLIC COMMENT ON ALL MATTERS PERTAINING TO CLOSED SESSION

None

VOTE ON WHETHER TO HOLD CLOSED SESSION

Motion by Commissioner Mazzucco, second by Commissioner Pan. Approved 7-0.

CLOSED SESSION (5:40 p.m. – 6:49 p.m.)

a. PERSONNEL EXCEPTION: Discussion and possible action to take off calendar indefinitely the disciplinary charges filed in Case Nos. JCT C06-188, KMO C08-150, JWA C09-017, JWA C09-126 & JWA C09-209. Member involved submitted his resignation from the Department, effective July 1, 2010. Said disciplinary charges will be placed back on calendar should said member be within the jurisdiction of the Police Commission in the future (Resolution No. 15-10)

(PRESENT: Commissioners Marshall, Mazzucco, DeJesus, Lee, Hammer, Onek, Pan, Chief Gascón, Deputy City Attorney Blits, Lieutenant Reilly, Attorney J. Alden)

b. PERSONNEL EXCEPTION: Discussion and possible action to accept or reject Stipulated Disposition of disciplinary charges filed in case No. ALW C07-023 (Resolution No. 16-10)

(PRESENT: Commissioners Marshall, Mazzucco, DeJesus, Lee, Hammer, Onek, Pan, Chief Gascón, Deputy City Attorney Blits, Lieutenant Reilly, Attorney J. Alden, Attorney Lassart, & member involved)

c. PERSONNEL EXCEPTION: Discussion and possible action to accept or reject Stipulated Disposition of disciplinary charges filed in Case No. JCT C06-184 (Resolution No. 17-10)

(PRESENT: Commissioners Marshall, Mazzucco, DeJesus, Lee, Hammer, Onek, Pan, Chief Gascón, Deputy City Attorney Blits, Lieutenant Reilly, Attorney Alden, Attorney Jasmin, & member involved)

d. PERSONNEL EXCEPTION: Discussion and possible action to accept or reject Stipulated Disposition of disciplinary charges filed in Case No. JCT C06-185 (Resolution No. 18-10)

(PRESENT: Commissioners Marshall, Mazzucco, DeJesus, Lee, Hammer, Onek, Pan, Chief Gascón, Deputy City Attorney Blits, Lieutenant Reilly, Attorney Alden, Attorney Jasmin, & member involved)

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

Motion by Commissioner Mazzucco, second by Commissioner Onek for non disclosure. Approved 7-0.

PUBLIC COMMENT

Francisco Decosta asked that the Commission work well with the officers. Barbara Growth discussed concerns regarding marital disputes. Reginald Green commended the Chief for walking through the Tenderloin and expressed support for Tasers.

Raj discussed concerns regarding dangerous criminal activities.

Unidentified stated that in fighting must stop and everyone must come together to solve the problem.

REPORTS TO THE COMMISSION

a. Chief's Report

- **Update on significant policing efforts by Department members**
- **Presentation of the department's Five Year Study of Officer Involved Shootings**

Chief Gascón deferred his time to Assistant Chief Tabak who presented the Department's Five Year Study of Officer-Involved Shootings. Assistant Chief Tabak briefly summarized some of the major findings and recommendations: (1) Shooting at moving vehicles, policy being made that would prohibit shooting at moving vehicles. (2) Shooting Scene Management, recommendation to have commissioned officer (captain or higher) respond to the scene of an OIS to insure all measures are taken in respect to the process, witnesses, crime scene etc. (3) Investigations, standardize the investigative process to make it a more uniformed numbering system consistent between Management Control and Homicide. (4) Employee Assistance Program, make the EAP (Employee Assistance Program) more robust and expand to make it a more long term process where the officers are reached out to, debriefed, or offered counseling for up to a year. (5) Community Outreach, provide counseling services through DPH to the impacted community after an OIS much like in homicides. (6) Mental Health Training, make sure that everyone in the Department receives the Police Crisis Intervention Training and the Department is developing a program to fastrak this process.

Commissioner Onek thanked Chief Tabak for a very thorough report and highlighted some of the findings that he found very important.

Commissioner Hammer asked about Mental Health Training and the 18-month period to get the full Department fully trained. Chief Tabak stated that the Department is proposing to expedite training by including more classes. The Department is also looking at ways to condense the training without losing any critical and maybe include a 20-hour class to get more people through.

Commissioner Mazzucco thanked Chief Tabak for his report.

Commissioner Pan thanked Chief Tabak and Chief Gascón for the OIS Report. Commissioner Pan also asked about Department General Orders 3.11, 5.02, 5.05, and 8.11. Chief Tabak stated that the general orders are going through the concurrence process and will go to the Commission for approval.

Commissioner DeJesus thanked Chief Tabak for his report. Commissioner DeJesus asked about the 40-hour mental health training and when it will be implemented for the officers that have not had the training. Assistant Chief Tabak stated that the Department is in the process of identifying those members and in particular the supervisors who have not had the training and get them trained within 18 months.

Commissioner DeJesus also asked about the Language Access Program and its implementation. Chief Tabak stated that the Department is in discussions now on implementing recommendations under DGO 5.20. Commissioner DeJesus

asked about the extended weapon discharge be included under the use of force. Chief Tabak stated that yes, it will be added.

Commissioner DeJesus also asked about the 911 issue where officers receive correct information in regards to mentally ill issues. Chief Tabak stated that the Department have reached out to the Department of Emergency Services and try to develop a mask where certain addresses will be tagged so that as officers respond, they will have the previous history, not just the closure history but the actual call out history.

Commissioner Marshall commended Chief Tabak and everyone involved for an excellent report.

PUBLIC COMMENT

Barbara Growth discussed concerns.

DISCUSSION AND POSSIBLE ACTION TO AUTHORIZE THE CHIEF OF POLICE TO DEVELOP MODIFICATIONS OF DEPARTMENT GENERAL ORDERS 5.01, "USE OF FORCE" AND DEPARTMENT GENERAL ORDER 10.02, "EQUIPMENT," TO INCLUDE THE USE OF CONDUCTED ENERGY DEVICES (CED), AND TO DEVELOP POLICIES, PRACTICES, TRAINING AND IMPLEMENTATION PROGRAMS CONSISTENT WITH PROFESSIONAL BEST PRACTICES AND CONTEMPORARY TECHNOLOGY, RELYING UPON RECOMMENDATIONS FROM THE DEPARTMENT OF JUSTICE'S OFFICE OF COMMUNITY ORIENTED POLICING SERVICES AND THE POLICE EXECUTIVE RESEARCH FORUM, SUBJECT TO THE FINAL APPROVAL OF THE POLICE COMMISSION

Mr. Chuck Wexler, Mr. Bruce Taylor, and Mr. Craig Fraser, PERF, (via telephone) talked about recommendations made by PERF in regards to the use of conducted energy devices.

Questions by Commissioners Hammers, DeJesus, and Lee followed.

Chief Gascón thanked Mr. Wexler, Mr. Taylor and Mr. Fraser for their presentation.

Sheriff Mike Hennessey, San Francisco Sheriff's Department, discussed the use of Tasers by the Sheriff's Department. Sheriff Hennessey stated that they have used Tasers eight times in the past eight years.

Questions and comments by Commissioners Hammer, Mazzucco, DeJesus and Onek followed.

Mr. Scott Greenwood, ACLU, addressed the Commission in regards to use of force and the officer involved shooting study.

Commissioner Pan asked what is the position of the ACLU on Tasers. Mr. Greenwood stated that the ACLU's position on Tasers is policy 208 and that, like any less lethal tools, the ALCU favors the use of less lethal tools and weapons provided that appropriate policies are put into place.

Questions and comments by Commissioners Pan, Marshall, DeJesus, Hammer, and Lee followed.

Dr. Dawes, Emergency Physician Southern California & reserve police officer, talked about his research in less lethal weapons and medical studies done in regards to conducted energy devices.

Questions and comments by Commissioners Mazzucco and DeJesus followed.

Captain Dominic Celaya, Tenderloin Station, introduced Sergeant Joe McCloskey who was involved in a 40-second incident involving a violent suspect where he came to almost using deadly force.

Chief Gascón explained that he asked Sgt. McCloskey to attend the meeting because it is important to recognize that a Taser is not a replacement for a gun and that there are incidents, like the one Sgt. McCloskey described, where a CED could have been used to avoid injury to the officers and other individuals.

Chief Gascón continued to make the following statement:

“My point is that I think it is important to recognize that as we re-embark down this process that I hope you would approve today for us to move forward and develop policy that will involve community discussion, it will involve other stakeholders, eventually adoption of a Taser policy to also recognize that this is a tool that has a much broader application than just simply when you are on a daily force scenario. Clearly it makes a difference in many cases where deadly force would be appropriate, but there is also other cases where you are dealing with very aggressive, combative individuals where a CED could be a very appropriate use of force and that is where you see, quite frankly, tremendous reductions on injuries to officers and suspect.

When we did the analysis on use of force here, we concentrated on shootings that were classified as an officer-involved shooting in our city because we knew that we had a lot of data to be able to analyze. We knew that the further that we move away from those investigations, the more questions with the quality of the data was. In fact, Chief Tabak and I talked about it several times and I want to say what about every time we used a firearm and we came to the recognition that we may not have the level of quality on the investigation that would give us good solid data to analyze.

I mis-spoke earlier about the comparison. I apologize because I know for a fact that the definition of an OIS in this city is very different from many other cities but I mis-spoke when I said that we were not comparing apples with apples, and I appreciate that I was corrected on that, but I don't want to leave this Commission with the impression today that we're only looking at this tool as a replacement or only a tool that would only be used when a firearm can be used because it is further from the truth and, in fact, I think what you would see as we look at the studies that Mr. Greenwood will provide and certainly PERF is that we're going to see there's a reduction in injuries in events that would not have necessarily been incidents where the firearm was an appropriate tool.

I wanted to bring this Tenderloin case here because this is a San Francisco case and it's a recent case. I know that we have hundreds cases that we can go back to but this was a very recent case, one that I became aware of. I personally talked to Joe the night of the incident because I wanted to see how he was doing. In fact, I called all four officers, and when he started to describe the incident to me and he talked to me about how close he was to using the firearm, I said this could be a good case to illustrate to the Commission what we're talking about.

I think we have an opportunity today to make a difference in this community, to make a difference with the men and women that have to go out there and put on the uniform and deal with extremely extremely difficult conditions, and as the study that we've presented to you indicates, the men and women of the San Francisco Police Department have been very disciplined in the way that they use force, certainly in the way that they use deadly force. They deserve the support of this Commission. They deserve the support of this community. And frankly, the community that we serve also deserves to have a police department that has more tools in the bag so that some of the incidents that we're engaging, we can reduce the likelihood of injury.

We're not talking about a roll out that is going to happen over a week or two. The reality is that once you approve a policy, which by the way, you know, even before you even look at it, we're going to bring you something that is going to be very restrictive. We're looking at the 9th Circuit decision in this case. We're looking at other departments that use this force, with a great deal of thought in training. The reality is it's going to take this department easily a year to roll this force out. We have to train people. The training will be extensive. We want to make sure that we do it thoughtfully. We have to create reporting mechanisms, not only to account for this force but frankly for other levels of force that we use down the ladder, not necessarily only shootings.

So the goal here would be that you give us enough time, and I'm asking for 90 days, to go out and prepare a draft of the use of force policy, a draft that would be provided as a result of discussions throughout the community. I have been talking to Northern California ACLU. As a matter of fact I invited them to come here today because it is important that they will be a partner at the table. I think we also have to go just to our communities. We have to discuss what we are embarking here. I would hope that within 90 days we come to you, we present you with a thoughtful policy then you can take a look at it and you can provide further input. I will welcome the participation of some Board appointees, police commissioners that would work with us in this process. We want to be extremely transparent. We're not looking to do anything behind the scene. To the contrary, we want to be very open.

But, I think at the end of the day, this Commission, and certainly myself as the Chief of Police, all the men and women of this organization better than what they have today. The incident that occurred at the Tenderloin four weeks ago should not have occurred at this day and age. There are other tools out there and we should not be subjecting our men and women to this level of violence without the right tools. On the other hand, we know that there are probably people that we have increased the level of injuries to them during the altercations where if we had the Taser or another CED, those injuries would probably have been reduced significantly.

So I urge you ... we have provided you with a legal review by someone that is certainly not an advocate of Taser per se, he is someone that have been involved in the civil rights community, and we have a doctor that certainly has done work for Taser but nevertheless the studies that he's mentioning are open for your review. We have provided you with the experience of the men and women in this organization. We brought in PERF. I think there's ample evidence for you to make a decision today to move forward so that we can continue the exploration process with the ultimate goal of developing a policy that would allow the men and women of this organization to avail themselves of a very useful tool.

I do not advocate use by special units. I think, as it was stated earlier by Mr. Greenwood, that frankly my own personal opinion having come from a department that initially having only with a very limited use of sergeants and then we tried to expand it but due to budgetary restraints we did not have enough to give around. That generally did not work well. In fact, the usual problem was that the Taser was always too late to make a difference. When we roll this out I recommend a universal roll out. I do say this with a caution, and when I'm talking universal, I'm talking about , maybe pool might be a better term, meaning that we would have to pool the weapons because we probably won't have enough funding to issue each and every individual officer a Taser. It is not optimal, but I would certainly recommend that every patrol officer that goes out on the field and other uniformed personnel, vice and other people that are in field enforcements will have a CED available to them on their belt when they go out on duty. Ultimately, we want to issue them to everyone.

I have come from both. I have come from a scenario of full issue and then when I was in Mesa, when I got there and we actually issued them to everybody but we also raised the threshold of the use and we saw, not only a reduction in the

use of force but we saw a significant reduction in injuries to officers and others. So it is a very useful that if used appropriately belongs in the tool bag of the San Francisco Police Officers today.”

Questions and comments by Commissioners DeJesus, Lee, Onek, Mazzucco, Hammer, Pan, and Marshall.

Chief Gascón explained that the Department is not asking for approval of the policy or for an approval for the use of the taser. The Department is asking for approval to go out, put together a proposal, discuss it with the community, with participation from the Commission, and then come back before the Commission.

Commissioner Onek stated that all the vote is for is to start the process, with heavy community involvement, heavy OCC involvement, involvement from three commissioners and for the Chief to come back in 90 days for the Commission to make a final decision.

Commissioner DeJesus discussed concerns that she sees it as the Commission voting to change the policy to include Tasers in the arsenal and have the Chief go out and meet with the community and then decide the policy for Tasers and that the Commission will be approving the final policy. Commissioner DeJesus stated that the Commission has not had the opportunity to read and study all that was presented in tonight’s meeting and stated that she would like to make an informed decision and that she agrees with Commissioner Lee in giving the public the opportunity to give feedback.

PUBLIC COMMENT

Dr. Melenach, Medical Examiner’s Office, stated the CEDs are a useful tool but stated that she still has concerns when used with persons that are intoxicated or under the influence of drugs.

Tony Montoya, SFPOA Secretary & Chair of Uniform Safety Committee, stated that the Chief is simply asking to proceed forward with the 90-day study.

Dr. Nicholas Lemus, Chief Toxicologist, asked that toxicology be included in this study of CEDs.

Steve Johnson, SFPOA, discussed concerns regarding delaying the approval to move forward.

Motion by Commissioner Mazzucco to authorize the Chief of Police to develop modifications of Department General Orders 5.01, “Use of Force,” and Department General Order 10.02, “Equipment,” to include the use of Conduct Energy Devices (CED), and to develop policies, practices, training and implementation programs consistent with professional best practices and contemporary technology, relying upon recommendations from the Department of Justice’s Office of Community Oriented Policing Services and the Police Executive Research Forum, subject to the final approval of the Police Commission. Second by Commissioner Onek.

Motion by Commissioner Lee to continue this item in two weeks, second by Commissioner Pan.

Commissioner Mazzucco stated that this is a vote to start the process, move forward and hear from the public.

Commissioner Hammer stated that if one of the Commissioners needs more time to reflect on this study, he will grant it.

Commissioner Pan stated that he agrees with Commissioner Lee.

Commissioner Onek reiterated that this is a vote to start the process and that this is not the final vote.

Motion by Commissioner Mazzucco to authorize the Chief of Police to develop modifications of Department General Orders 5.01, "Use of Force," and Department General Order 10.02, "Equipment," to include the use of Conduct Energy Devices (CED), and to develop policies, practices, training and implementation programs consistent with professional best practices and contemporary technology, relying upon recommendations from the Department of Justice's Office of Community Oriented Policing Services and the Police Executive Research Forum, subject to the final approval of the Police Commission. Second by Commissioner Onek.

AYES: Commissioners Marshall, Mazzucco, Onek
NAYS: Commissioners DeJesus, Lee, Pan, Hammer

Motion fails 4-3.

Motion by Commissioner Lee to authorize the Chief of Police to report to the community within two weeks the pertinent information presented today and the meeting will be with community stakeholders via the advisory committees and then report back to the Commission on March 3rd so that the Commission can vote on starting the process.

Motion as clarified by Commissioner Hammer to move item on March 3rd, without asking the Chief to do anything, invite everybody who wants to speak on this item and then vote to start or not start the process. Second by Commissioner Mazzucco. Approved 7-0.

AYES: Commissioners Mazzucco, DeJesus, Lee, Onek, Pan, Hammer, Marshall

DISCUSSION AND POSSIBLE ACTION TO APPROVE THE SAN FRANCISCO POLICE DEPARTMENT'S BUDGET FOR FISCAL YEAR 2010/2011

Director Bukowski, Fiscal, presented the Department's budget for fiscal year 2010/2011.

Commissioner Pan expressed concerns regarding 20 percent reduction.

Commissioner DeJesus requested a closed session to discuss the amount spent for dignitary protection.

Motion by Commissioner Lee, second by Commissioner Onek. Approved 4-2.

RESOLUTION NO. 13-10

APPROVAL OF THE SFPD BUDGET FOR FISCAL YEAR 2010/2011

RESOLVED that the Police Commission hereby approves the SFPD budget for fiscal year 2010/2011.

AYES: Commissioners Marshall, Lee, Hammer, Onek
NAYS: Commissioners DeJesus, Pan
EXCUSED: Commissioner Mazzucco

DISCUSSION AND POSSIBLE ACTION TO APPROVE THE OCC'S BUDGET FOR FISCAL YEAR 2010/2011

Director Hicks presented the OCC's budget for fiscal year 2010/2011.

Motion by Commissioner Onek, second by Commissioner Lee. Approved 6-0.

RESOLUTION NO. 14-10

APPROVAL OF THE OCC BUDGET FOR FISCAL YEAR 2010-2011

RESOLVED that the Police Commission hereby approves the OCC budget for fiscal year 2010/2011.

AYES: Commissioners Marshall, DeJesus, Lee, Hammer, Onek, Pan
EXCUSED: Commissioner Mazzucco

ROUTINE ADMINISTRATIVE BUSINESS

- a. Commission Announcement**
- b. Scheduling of items identified for consideration at future Commission Meetings**

Lt. Reilly announced that the Commission will meet in the Mission District on Wednesday, February 24, 2010, at 6:00 p.m., in the Eureka Valley Recreation Center, 100 Collingwood, San Francisco.

ADJOURNMENT

Motion by Commissioner Mazzucco, second by Commissioner Onek.
Approved 7-0.

Thereafter, the meeting was adjourned at 11:37 p.m.

Lieutenant Joseph Reilly
Secretary
San Francisco Police Commission

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