



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Robert L. Davis

**SUBJECT: RESPONSE TO IPA 2007  
YEAR-END REPORT**

**DATE:** May 30, 2008

Approved

Date

5/30/08

**COUNCIL DISTRICT:** City-Wide  
**SNI AREA:** N/A

## RECOMMENDATION

It is recommended that the City Council accept the San Jose Police Department's (SJPD) response to the Independent Police Auditor's (IPA) 2007 Annual Report.

## OUTCOME

Acceptance of this report will provide the Council with a response from the San Jose Police Department to the IPA Report's recommendations, as well as outline some concerns over a few of the details of the report.

## BACKGROUND

The IPA's 2007 Annual Report makes three recommendations to the SJPD:

- (a) Direct the City Manager to direct the SJPD to enter misconduct complaints into the shared database contemporaneous with the date of SJPD knowledge of the complaint to ensure accurate recording, reporting and tracking of all complaints.
- (b) Direct the City Manager to direct the SJPD to revise its policies to ensure that written notice is given of the property return/auction/disposal process to the owner at the time that property is booked.
- (c) Direct the City Manager and the City Attorney to standardize the processes used by San José City Departments to provide notice to owners of the intention to tow a vehicle for violation of San José Municipal Code §11.56.020.

The analysis section of this report will address the Department's position on the above-referenced issues.

## **ANALYSIS**

This report provides the SJPD's responses to each of the three recommendations made by the Office of the IPA in the 2007 Annual Year-End Report. This response to the IPA Report also addresses some concerns about the information being provided.

### **RECOMMENDATION 1 - Direct the SJPD to Enter Misconduct Complaints into the Shared Database Contemporaneous with the Date of SJPD Knowledge of the Complaint to Ensure Accurate Recording, Reporting and Tracking of All Complaints.**

*IPA REPORT - Page 10: "The IPA recommends that all department-initiated complaints be entered into the shared database upon receipt/initiation to ensure accurate reporting and tracking of all complaints."*

## **SJPD RESPONSE**

The Department agrees that Conduct Complaints initiated by citizens should be entered into the Internal Affairs database tracking system as soon as reported. Indeed, this is the current policy of the Internal Affairs Unit that has been in practice for several years.

However, the Department would like to clarify the terminology used in the IPA Report. The formal recommendation refers to entries of "Misconduct Complaints" (p. 9) which are generated by citizens and subject to review by the IPA, whereas additional comments are later made in the report that states that "Department-Initiated Complaints" (p. 10) also should be entered into the database. As discussed during both the June 21 and the September 18, 2007 Council meetings, it is important to understand the distinction between a "Misconduct Complaint" which is generated by a citizen, and a "Department-Initiated Investigation" (DI). DI's are not complaints, rather, they are internal investigations initiated by the Office of the Chief of Police. Many of these cases relate to personnel matters and/or criminal investigations, and disclosure of information regarding such cases is prohibited by a variety of different laws and policies, both within the Police Department and the City in general.

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**RECOMMENDATION 2 - That the Mayor and City Council Direct the City Manager to Direct the SJPD to Revise Its Policies to Ensure that Written Notice Is Given of the Property Return/Auction/Disposal Process to the Owner at the Time that Property is Booked**

**SJPD RESPONSE**

The Department will explore the possibility of improving the Report Receipt (200-45A Rev. 03/01), which is provided to individuals at the time of the arrest to include written instruction on how to recover property held for safekeeping. Members of the Department are trained to provide arrestees with a case number and verbal instructions on how to recover their property prior to that property being held for safekeeping. (See Attachment #1 for more information on the SJPD's due diligence for handling an arrestee's property.) It should be noted that this recommendation relates to an arrest of an individual in 2005, who subsequently filed a Procedure Allegation in 2007. The individual was an arrestee who discovered that property booked when the complainant was arrested was subsequently auctioned. It should be noted that there were 34,087 arrests made by the SJPD in CY 2007, and IA staff are unaware of any similar allegations raised by any other citizen.

**RECOMMENDATION 3 - That the Mayor and City Council Direct the City Manager and the City Attorney to Standardize the Processes Used by San Jose City Departments to Provide Notice to Owners of the Intention to Tow a Vehicle for Violation of San Jose Municipal Code §11.56.020**

**SJPD RESPONSE**

The Office of the IPA brought this issue to the Department's attention in the spring of 2007. As a result, in July, 2007, the Department issued General Order 2007-22, which pertains to SJMC Section §11.36.220 - Storing Vehicles on Streets- Time Limit and Movement, which addressed the IPA's concern. (See attachment #2: SJPD Order 2007-22).

The San Jose Police Department agrees with the idea that a city-wide uniform policy on procedures to notify vehicle owners that their vehicles are subject to being towed is beneficial, and the Department is willing to continue to work with the Department of Transportation (DOT) to determine how the current procedures could possibly be improved. It should be noted, however, that both the Police Department and DOT have adequate uniform written procedures currently in place to enforce the prohibition against parking in one place for more than 72 hours, which is the cause of numerous complaints to the Department and DOT from residents throughout the City because of the various problems that arise when vehicles are abandoned in the streets. Both Departments use standard forms and uniform guidelines related to vehicle tows for violations of the 72-hour parking prohibition.

In March 2008, DOT documented in a manual its procedures and guidelines for the Parking Compliance Unit. Under these procedures, Police officers and DOT parking and traffic control

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personnel are required to follow all provisions of the San Jose Municipal Code (SJMC) and the California Vehicle Code, which includes tagging vehicles with a written warning sticker (Form 220-27). The warning sticker is printed in English, Spanish, and Vietnamese. Parking Control personnel and Police officers also maintain records of when the vehicle was first logged in, when it was tagged and how, observations on return visits and if towed, and information supporting the tow. In addition to the warning sticker, responding personnel notes the position of tire valve stems, odometer reading if visible, and/or chalk the tire.

It should be noted that in CY 2007, the SJPD Auto Desk recorded 38,395 vehicle impounds. This number includes impounds conducted by various City departments and private agencies, and includes vehicle impounds due to but not limited to: licensing violations, abandoned vehicles, private property tows, recovered stolen vehicles, vehicles involved in collisions, and parking compliance tows. In calendar year 2007, Internal Affairs received less than ten complaints regarding towed abandoned vehicles.

**Additional SJPD Clarification:**

As discussed during the September 18, 2007 Council meeting, the Council approved changes to the categories used by IA to simplify the complaint process for citizens; one change included the elimination of the "Inquiry" category. With the changes made as a result of Council's action, this issue should not be a problem in future reports. However, the SJPD has concerns with the current IPA Report and the methodology utilized in constructing the statistical analysis.

The IPA Report indicates the total number of complaints received in 2007 was 547; however, this number is incorrect. The number of "External Citizen-Initiated" complaints (491) includes 187 Inquiries and 14 Complaints Withdrawn. By definition, these two categories are not "Citizen Complaints." When Inquiries, Complaints Withdrawn and Department-Initiated Investigations are removed from the total number of complaints received, there were 290 external citizen-initiated complaints filed in 2007, not 547.

Hence, the ways the statistics have been calculated incorrectly include cases formally known as Inquiries, as well as complaints that were subsequently withdrawn by complainants and Department-Initiated investigations. The Department will continue to work with the IPA Office to eliminate confusion in future reports, and the improved Internal Affairs process that was accepted in January 2008 should also help clarify statistics.

The Department is also concerned that in four of the cases cited as examples of problems identified in IPA audits (pp. 28-30), there are various factual items that have been left out of the narratives, which the Department believes leads to an incomplete picture being drawn of what occurred during an entire investigation. The Department will continue to work with the IPA's Office to try and develop a mutual understanding of why certain investigative steps are taken and to determine the IPA's actual concerns.

### PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This memorandum will be posted on the City's Website for the June 3, 2008 Council Agenda.

### COORDINATION

This report has been coordinated with the City Managers Office, Department of Transportation, Planning, Building and Code Enforcement, and the City Attorney's Office.

### CEQA

Exempt



ROBERT L. DAVIS  
Chief of Police

For any questions, please contact Lt. Larry Esquivel, the Commander of the SJPD Internal Affairs Unit, at (408) 277-4094.

## ATTACHMENT #1

### **Police Department Due Diligence for Handling an Arrestee's Property:**

- At the time of booking, arrestees are provided with a copy of their booking sheet, which contains information about their charges; personal property; case number for retrieval of property, and instructions on how to recover their property.
- A letter is mailed to the property owner prior to the disposal of his/her property.
- In the event the letter is returned, staff searches the DMV and other law enforcement databases for alternative address information. If a new address is discovered, a letter is mailed and a 90-day extension is automatically granted.
- In the event that there is no address or the property belongs to a transient, the Department automatically holds the property for 6 months for safekeeping.
- If the Department is notified of an arrestee's incarceration, the property will not be auctioned and the arrestee will be contacted.

# Memorandum

**TO:** All Personnel

**FROM:** Robert L. Davis  
Chief of Police

**SUBJECT:** 11.36.220 SJMC

**DATE:** July 27, 2007

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Approved:

Date: 2007-022

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## **BACKGROUND**

In March of 2006, section 11.36.220 of Chapter 11.36 of Title 11 of the San José Municipal Code was amended to read as follows:

**11.36.220 Storing Vehicles on Streets – Time Limit and Movement:** No person who owns or has possession, custody or control of any vehicle shall park such vehicle upon any street or alley and fail to move the vehicle more than one-tenth (1/10) of a mile from the original parking space for more than a consecutive period of seventy-two (72) hours.

## **ANALYSIS**

Officers must be able to prove that the vehicle has not moved more than one-tenth (1/10) of a mile prior to towing the vehicle under this section. The following examples are provided to help illustrate different scenarios.

1. An officer can place an object on top of one of the vehicle's tires. It would be considered proof that the vehicle has not moved if the object is still in place after 72 hours.
2. An officer may draw a line on the tire and onto the ground with a yellow marking crayon. It would be considered proof that the vehicle has not moved if the line on the tire still exactly matches the line on the ground after 72 hours.
3. In either of the above scenarios, if the object placed on the tire has fallen or if the mark on the tire no longer matched the mark on the ground, the officer will need to prove the lack of movement with a visible odometer reading. It would be considered proof if the odometer reading indicated less than one-tenth of a mile during the 72-hour period. In cases when the odometer is not visible or the vehicle has a digital odometer, the officer will need to re-mark the vehicle for another 72 hour period.

When marking the vehicle, officers are reminded to place an orange warning sticker (form 200-27A) on the vehicle in order to give the owner an opportunity to comply with the Municipal Code. The warning sticker should have the one-tenth of a mile requirement in the language and should have an issue date of 11/06.

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**ORDER**

Officers shall place an orange warning sticker (form 200-27A) on a vehicle that is believed to be parked in violation of 11.36.220 of the San José Municipal Code. Officers will then ensure that the vehicle has not moved more than one-tenth of a mile in a seventy-two (72) hours period prior to towing that vehicle.



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ROBERT L. DAVIS  
Chief of Police

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