COUNCIL AGENDA: 06-03-08
ITEM: 8.1

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Barbara Attard

SUBJECT: **IPA 2007 Year End Report**

DATE: May 22, 2008

Council District: Citywide

Enclosed is a copy of the 2007 IPA Year End Report detailing the activities and findings of the Office of the Independent Police Auditor for presentation at the June 3, 2008 City Council Meeting. This report covers the period of January 1 to December 31, 2007.

The report focuses primarily on:

- Comprehensive analysis of data regarding oversight of SJPD Internal Affairs complaint investigations and audits
- Discussion of trends in complaints, complainant and officer demographics, and complaints by Council District
- Presentation of three new policy recommendations for Council action:
    - That the Mayor and City Council 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
    - 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
    - That the Mayor and City Council 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 IPA has discussed this report and policy recommendations with Chief Davis and members of the SJPD, City Manager Debra Figone and staff of the Department of Transportation. I look forward to discussing this report at the June 3, 2008 Council Meeting.

Respectfully submitted,

BARBARA J. ATTARD
Independent Police Auditor

BARBARA ATTARD
Independent Police Auditor

Office of the Independent Police Auditor

May 22, 2008

Honorable Mayor and Members of the City Council
200 East Santa Clara Street
San José, CA 95113

Dear Mayor Reed and Members of the City Council:

Enclosed is the Independent Police Auditor's (IPA) 2007 Year End Report submitted for your approval. This annual report details complaints received, closed, and audited during the 2007 calendar year, and provides an overview of the classification of cases, complainant and officer demographics, complaints by Council District, and the multi-faceted community outreach program involving the IPA staff.

Three new policy recommendations are presented. Two recommendations involving property issues stem from issues raised in complaints; one recommendation raises a problem this office has encountered in tracking and reporting complaints. This report also provides updated information on past recommendations.

I look forward to presenting this report at the June 3, 2008 City Council Meeting.

I would like to acknowledge the ongoing support that has been shown in the past for the Office of the Independent Police Auditor and its duty to review investigations of police misconduct complaints, to conduct public outreach and to make recommendations.

I want to acknowledge IPA staff members for their dedication and work. This year's report details increases in workload, both in complaint oversight and outreach. The IPA staff has worked efficiently and tirelessly to accommodate the additional work load. I also want to thank the IPA Advisory Committee (IPAAC) for their support and assistance throughout this year, and for several members, for many years of support. The IPAAC serves as our eyes and ears in the community and provides an important service for the IPA and the City.

On behalf of the IPA staff, I would also like to recognize the San José Police Department, in particular the Internal Affairs Unit, for providing the office with the information needed to prepare this report and their ongoing cooperation.

I welcome your comments and will be available to answer questions or provide further information as requested.

Respectfully submitted,

Barbara Attard
Independent Police Auditor

75 East Santa Clara Street, Suite P-93 • San José, California 95113 • Tel (408) 794-6226 • TTY (408) 294-9337 • Fax (408) 977-1053
www.sanjoseca.gov/ipa

Photograph courtesy of Erika Holmgren

Barbara Attard, Police Auditor – Ms. Attard was appointed as the Independent Police Auditor in January 2005. She is a licensed private investigator with civilian oversight experience spanning the last 25 years. She served as the director of the office of the Berkeley Police Review Commission for seven years before coming to San José. Her career in oversight began with the San Francisco Office of Citizen Complaints. Ms. Attard's previous professional experience includes working in employment and training with Friends Outside and with the San Francisco Sheriff's Department County Parole program. She earned her Bachelor's degree in Philosophy at Humboldt State University and a Masters in Public Administration at the University of San Francisco. She is the past president of the National Association of Civilian Oversight of Law Enforcement (NACOLE). Ms. Attard is the recent recipient of the Don Edwards Defender of Constitutional Liberties Award, presented by the ACLU of Santa Clara Valley.

Vivian D. Do, Data Analyst – Ms. Do joined the IPA from the private sector with specialized experience in information technology. Ms. Do enjoys the working environment at the IPA where she can focus her technical skills on computer and technology related needs, including data analysis, database management and desktop publishing. Her skills are an integral part of the process of producing the IPA annual reports. Ms. Do earned a Bachelor of Science degree from San José State University, California.

Diane M. Doolan, Public Relations & Education Specialist – Ms. Doolan joined the Office of the IPA in March of 2006. She has over ten years of experience advocating for individuals who have physical, mental and developmental disabilities. Ms. Doolan is a former Program Director of the Mental Health Advocacy Project, Vice-President of the California Coalition of Mental Health Patients' Rights Advocates, and instructor in the Crisis Intervention Training Academy of the San José Police Department. She earned her Juris Doctor from the University of California Hastings College of Law. Her Bachelor's degree was obtained in her state of origin, from Southern Connecticut State University.

Jessica Flores, Office Manager – Ms. Flores joined the IPA office in June of 2006. She attended Administrative Assistance classes at West Valley College and uses that training as the front lobby receptionist. She greets visitors, answers questions for complainants, and directs them to appropriate sources. She enters case information on databases, creates and maintains case files, and helps where ever needed.

IPA Staff

Left to Right: Vivian Do, Shivaun Nurre, Barbara Attard, Suzan Stauffer, Jessica Flores, and Diane Doolan.

Shivaun Nurre, Assistant Police Auditor – Ms. Nurre was appointed to the position of Assistant Police Auditor in January 2007. She has ten years of public sector experience as a Deputy County Counsel for Santa Clara County. Her legal experience spans the areas of civil litigation, employment law, criminal justice and workers compensation. She obtained an undergraduate degree in history from the University of California at Riverside and then worked for several years at the Congressional Research Service within the Library of Congress before obtaining her Juris Doctor from the University of California at Davis. Ms. Nurre is a member of NACOLE and the American Inns of Court.

Suzan L. Stauffer, Complaint Examiner – Ms. Stauffer has worked with the IPA for the past 4 years. She came to the IPA with more than 20 years of experience working in the criminal justice field. A Bay Area native, Ms. Stauffer earned a Bachelor of Arts degree from Stanford University and a Juris Doctor from the University of San Francisco. She served as a prosecuting attorney in California and Hawaii before coming to the City of San José. In 1993 Ms. Stauffer designed and implemented the award winning Safe Alternatives & Violence Education Program (SAVE) for the City of San José and remains committed to making a difference in the community.

Mission

The Mission of the Independent Police Auditor Advisory Committee (IPAAC) is to assist the Office of the Independent Police Auditor by providing information on ways to improve the police complaint process, by promoting public awareness of a person's right to file a complaint, and by increasing the accountability of the San José Police Department to the public.

Purpose and Objectives

The purpose of the IPAAC is to identify, mobilize, and coordinate resources in order to assure maximum public, private, agency, and individual commitment to effective police oversight.

The objectives are to:

1. Promote the mission of the IPA and inform the IPA of the needs, problems, and/or issues that surface in various communities.
2. Promote high standards of quality police service and civilian oversight in the City of San José.
3. Increase the visibility of the IPA through support of community events and public forums.

Participation

Participation is exclusive to those individuals selected by the Independent Police Auditor and who reside, do business, or have significant human interest in police oversight for the City of San José or neighboring communities. The IPA convenes meetings of the IPAAC on an average of three (3) times per year.

Independent Police Advisory Committee Members

Tony Alexander, Silicon Valley African American Democratic Coalition (1999-present)

Elisa Marina Alvarado, Teatro Visión (new member, 2008)

Rick Callender, NAACP of San José/Silicon Valley (2001-present)

Linda Young Colar, National Coalition of 100 Black Women (2007-present)

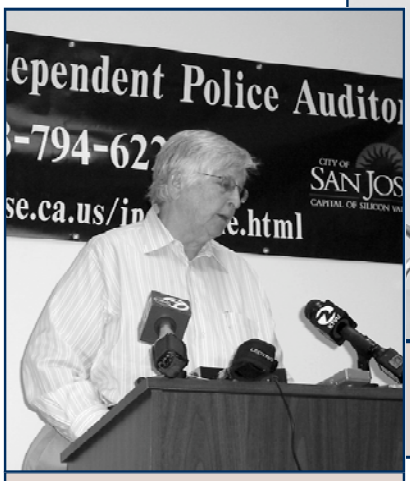
Bob Dhillon, Sikh Gurdwara - San José (1999-present)

Jeffrey Dunn, Santa Clara County Office of the Public Defender (2006-present)

Larry Estrada, Santa Clara County La Raza Lawyers (2000-present)

Nancy S. Freeman, Former Juvenile Justice Commission Member (2005-present)

IPAAC member Sofia Mendoza speaks at IPA Press conference.



IPAAC member Wiggsy Sivertsen at IPA Press Conference, June 19, 2007.

INDEPENDENT POLICE AUDITOR ADVISORY COMMITTEE

IPA Advisory Committee (IPAAC) Members and IPA Staff

Top Row: Reverend Jeff Moore, Wiggsy Sivertsen, Nancy Freeman, Aila Malik, Aejaie Sellers, Alofa Talivaa, Diane Doolan, Alfredo Villaseñor, and Sundust Martinez. Seated: Dennis Skaggs, Elisa Marina Alvarado, Barbara Attard, Socorro Reyes McCord, and Sofia Mendoza.

Josué García, Santa Clara & San Benito Counties Building and Construction Trades Council (2004-present)

Victor Garza, La Raza Roundtable (1999-present)

Helen Hayashi, San José Downtown Association (2006-2007)

Christopher Henderson, Student - San José State University (2007)

Ashu Kalra, Santa Clara County Office of the Public Defender (2007)

Aila Malik, Fresh Lifelines for Youth (2007-present)

Sundust Martinez, Indigenous Peoples Council, Native Voice TV (2004-present)

Socorro Reyes McCord, Community Peace & Justice Advocate (2007-present)

Sofía Mendoza, Community Child Care Council (1999-present)

Rev. Jethroe (Jeff) Moore II, Rehoboth Christian Center, East Side Union High School District School Community Specialist (2005-present)

Aejaie Sellers, Billy DeFrank LGBT Community Center (2006-present)

Merylee Shelton, San José City College (1999-present)

Wiggsy Sivertsen, San José State University (1999-present)

Dennis Skaggs, San José Downtown Association (2007-present)

Patrick J. Soricone, United Way of Silicon Valley (2004-2007)

Alofa Talivaa, Community Activist (2007-present)

Alfredo Villaseñor, Community Child Care Council of Santa Clara County (2001-present)

TABLE OF CONTENTS

EXECUTIVE SUMMARY 1–5

Chapter 1 THE OFFICE OF THE INDEPENDENT POLICE AUDITOR 6

I. IPA 2007: Introduction 6
II. Establishment of the Office of the Independent Police Auditor 6
III. Independence of the Police Auditor 7
IV. Reporting Requirements 7
V. Mission and Guiding Principles of the Office of the Independent Police Auditor 7
VI. Functions of the Office of the Independent Police Auditor 8

Chapter 2 POLICY RECOMMENDATIONS 9

I. New Policy Recommendations 9
1. That the Mayor and City Council 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
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 10
3. That the Mayor and City Council 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 11
II. Updates of Policy Recommendations Made in the Independent Police Auditor 2006 Year End Report 12
A. June 21, 2007 Special Council Meeting on Various Police Related Reports 12
B. September 18, 2007 Council Meeting: Follow-up on June 21, 2007 Council Action Regarding IPA 2006 Year End Report Recommendation #2 - IPA Authority to Audit Investigations of Police Critical Incidents 14

Chapter 3 THE COMPLAINT PROCESS AND YEAR END STATISTICS 16

I. Oversight of the Complaint Process 17
A. Filing Complaints/Intake Process 17
B. Monitoring Ongoing Investigations 19
C. Auditing Complaints 25
II. Findings of Internal Affairs Investigations 31
Sustained Misconduct 31
III. Discipline Imposed 33

TABLE OF CONTENTS

Chapter 4 USE OF FORCE ANALYSIS 36

I. Use of Force Complaints and Allegations 36
- A. Unnecessary Force Complaints Filed in 2007 36
- B. Unnecessary Force: Class I and Class II 37
- C. Unnecessary Force Complainants by Ethnicity 38
- D. Unnecessary Force Complaints Closed/Audited in 2007 39

II. Officer-Involved Shooting and Fatal Critical Incident 43
- A. Officer-Involved Shooting in 2007 45
- B. Fatal Critical Incident in 2007 46

III. Crisis Intervention Training and Force-Option Simulator Training 46

Chapter 5 SUBJECT OFFICER DEMOGRAPHICS 47

I. Complaints by Gender of Subject Officers 48
II. Years of Experience of Subject Officers 48
III. Subject Officers Named in One or More Complaints 49
IV. Ethnicity of Subject Officers 50

Chapter 6 COMPLAINANT DEMOGRAPHICS 51

I. Gender of Complainants 51
II. Ethnicities of Complainants 52
III. Ages of Complainants 52
IV. Education Level of Complainants 53

Chapter 7 COMMUNITY OUTREACH 54

I. Outreach Activities 54
II. Media 56
III. Outreach to Ethnic Minority Community Members, Immigrants & Youth 56
IV. Community Forums 58
V. IPA Hosts National Conference and Presents at International and Statewide Forums 59
VI. Independent Police Auditor Advisory Committee (IPAAC) 59

Chapter 8 CASES BY COUNCIL DISTRICT 60

I. Cases by Council District in 2007 60
II. Unnecessary Force Allegations by Council District 62

Conclusion 65

APPENDICES

A. San José Municipal Code Chapter 8.04 and San José City Charter §809 66
B. California Penal Code §832.5 and 832.7 69
C. NACOLE Code of Ethics 71
D. City of San José and Office of the Independent Police Auditor Structure 72
E. Independent Police Auditor Recommendations 73

Chapter One: The Office of the Independent Police Auditor

This report covers the calendar year 2007, a period of discussion, change and accomplishment for the Office of the Independent Police Auditor (IPA). In 2007 the IPA recommended changes to the authority of the office to enable the IPA to provide more effective oversight. This report contains updates of these recommendations and statistics for the 2007 calendar year, and presents three new policy recommendations.

The mission of the Office of the Independent Police Auditor is to provide independent oversight of and instill confidence in the complaint process through objective review of police misconduct investigations. By providing outreach to the San José community and making thoughtful policy recommendations to the City Council, the IPA works to promote accountability and to strengthen the relationship between the San José Police Department (SJPD) and the community it serves.

The IPA has five primary functions: (1) to provide an alternate location where people may file complaints, (2) to monitor and audit investigations conducted by the SJPD Internal Affairs Unit (IA), (3) to promote public awareness of the complaint process, (4) to make recommendations to improve SJPD policies and procedures, and (5) to respond to the scene and review officer-involved shooting investigations.

The IPA prepares reports for the City Council, providing analysis of complaints received and closed, identification of trends, and discussions of new and past recommendations.

Chapter Two: Policy Recommendations

I. New Recommendations

New Recommendation 1. That the Mayor and City Council 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

The IPA has become aware of an issue of complaints that are entered into the IA/IPA shared database several months after the SJPD has knowledge of the complaint and has initiated an investigation. Particularly at issue are complaints that are not entered into the database until the next calendar year. The cases are entered into the database with the previous year's case number, but after the reporting for the year has closed, creating data inaccuracies.

The current practice of entering a complaint into the database months after the date the Department has knowledge of the complaint affects the reliability of the data, and hinders the ability of the IPA to report with accuracy the number of complaints, the findings, and action taken during the calendar year.

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.

New 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

In 2007 the IPA became aware of an issue regarding the return of property taken by the SJPD during the arrest process for safekeeping. When an officer arrests an individual, the individual may have possession of personal property which is booked by the SJPD for safekeeping. This property must be claimed within four months of booking or it is subject to destruction or public auction by the police department. Notification of the pending disposal is mailed to the last address of record. It is not unusual that the owner may still be in custody or has moved. The notification letter may not reach the owner in time for the owner to make arrangements for another person to claim his/her property. Because of space limitations, the property cannot be stored indefinitely; within four months the property may be sold at public auction and when the owner is released there is no property to retrieve.

The IPA recommends that at the time property is booked a written notice be given which advises the arrestee of the property return/auction/disposal process.

New Recommendation 3. That the Mayor and City Council 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

Through the complaint process the IPA has been made aware of the absence of a uniform policy regarding the notice and towing of vehicles parked on a city street for more than 72 hours. Absent extenuating circumstances, fairness and protection of individual property rights requires that reasonable notice be given before property is seized. Several City Departments share responsibility for enforcing this parking regulation, but no citywide standard has been articulated to ensure equal enforcement of this parking violation.

Complaints received by the IPA have indicated that some vehicles have been towed without notice to the owner. Without an articulated, citywide notice policy for towing vehicles within the City, parking enforcement may not be implemented fairly and equitably. The IPA recommends that the City standardize the notice protocol for the posting of vehicles that will be towed for violation of San José Municipal Code Section 11.56.020 by the SJPD, the Department of Transportation or any other City department responsible for towing vehicles.

II. Updates to Prior Recommendations

In the 2006 IPA Year End Report several recommendations were made to improve the civilian oversight process in San José. The IPA believed that significant changes were necessary to address problematic trends in the complaint classification process and to address gaps in IPA authority. The City Council convened a June 21, 2007 special session to review and discuss recommendations and issues contained in the 2006 IPA Year End Report as well as other police-related reports submitted to the Council. Chapter Two details the recommendations, Council action, and current status of these recommendations.

Chapter Three: The Complaint Process and Year End Statistics

This chapter discusses the IPA's involvement in the complaint process, including complaint intake, monitoring the investigation, and auditing completed IA reports. Information about the types of cases received in 2007 by both IA and the IPA, the classification of cases, findings reached by IA, officer discipline, and the audit process is detailed and analyzed.

In 2007 a total of 547 internal and community complaints were filed; there was an increase in the number of cases classified as formal and a decrease in cases classified as inquiry. The increase in the number of fully investigated complaints is commendable because it indicates that more cases are receiving a thorough review with officer interviews conducted and fuller analysis of the issues raised. The IPA audited a larger number of complaints closed by IA in 2007 compared to years past; audits of 254 investigated cases and 109 inquiries were conducted this year. The IPA audited all unnecessary force cases and approximately 93% of the investigated complaints closed. Of the 254 investigated cases audited, the IPA agreed with 78% of the investigations and disagreed with 22%; many IPA challenges stemmed from disagreement regarding the investigative classifications of the complaints.

Chapter Three also provides a synopsis of five cases in which the IPA disagreed with the IA classification or investigation.

Chapter Four: Use of Force Analysis

This chapter provides information and data concerning complaints alleging that San José police officers used unnecessary force and contains information about officer-involved shooting and fatal critical incidents. In 2007 there were 117 unnecessary force complaints, 94 of which received formal investigations. In 2007, 80% of the unnecessary force complaints were formally investigated, as compared to 2006 in which 53% of the unnecessary force complaints were formally investigated.

In 2007 there was one officer-involved shooting and one fatal critical incident involving SJPD officers. The IPA is unable to report at this time whether the conduct of the involved officers in the shooting case was within policy. Despite an established protocol for officer-involved shootings, the

SJPD maintains that this incident falls outside the protocol because the shooting victim was an officer and the Department deemed the shooting to be accidental.

The fatal critical incident involved the use of Tasers as well as other force; an internal investigation of the incident is pending. A citizen complaint was filed in connection with this incident which provides the IPA jurisdiction to audit the investigation following the completion of the IA process.

Chapter Five: Subject Officer Demographics

Information about officers receiving complaints is presented in this chapter. In 2007, 339 of 1,384 SJPD officers were named in complaints. Of the 339 total officers named, 257 were named in one complaint, 59 were named in two complaints, 18 were named in three complaints, three officers were named in four complaints, and two officers received five and eight complaints, respectively. Five officers received counseling as part of the Department's Early Intervention Program.

Chapter Six: Complainant Demographics

Chapter Six provides a summary of demographic information collected about complainants in 2007 during complaint intake, as well as through voluntary surveys. Males filed 62% of all complaints in 2007 while females filed 38%. Ethnicity data available indicates that Hispanic complainants filed the greatest number of complaints at 39%, followed by white complainants at 26%, and African American complainants at 22%. African American and Hispanic complainants filed complaints at higher rates than their representation in the San José community. This information does not reflect the full population of complainants; not all complainants reside in San José, and the analysis does not include the many factors that contribute to overall arrest and detention statistics.

Chapter Seven: Community Outreach

Outreach to the community is a mandated function of the Office of the Independent Police Auditor. The IPA conducts extensive outreach in order to educate the community about the mission and functions of the IPA office, assess the needs and concerns of diverse communities, and make services visible and accessible to the public. In 2007 the IPA and staff participated in 222 events, meetings, and presentations, reaching more than 7,000 people. Additional persons were reached via media and press conferences. The IPA has prioritized outreach to vulnerable populations such as ethnic minority members, immigrant communities, and youth. Of the 222 outreach events the IPA participated in during 2007, 148 or 67% involved one or both of these targeted populations.

The San José IPA continues to receive national and international recognition. The IPA hosted the Thirteenth Annual NACOLE Conference in San José in September 2007. The national conference was the most successful in NACOLE history, drawing 300 attendees from 26 states and 13 countries.

Chapter Eight: Cases By Council District

Chapter Eight provides a discussion of complaints and allegations by the council district in which they occurred. District 3, which includes the downtown area, continues to generate the largest number of complaints. Complaints across the remainder of the City are fairly equally divided. This chapter provides comparative data about cases received and breaks down information on unnecessary force complaints by council district.

Conclusion

In 2007 the IPA furthered its mission to ensure that SJPD complaint investigations are thorough, objective and fair. The IPA audited 254 investigations in 2007, nearly double the number of investigations audited in 2006. Many of the 55 cases that resulted in disagreements were due to challenges to the classification of complaints.

With increases in complaints received, closed, and audited, as well as increased outreach, the IPA staff worked diligently to meet the expectations of the community and the City.

The IPA is proud to perform civilian oversight in San José. It is through a cooperative relationship with the San José Police Department and collaboration with members of the community that the benefits of civilian oversight are fully achieved.

Chapter One

I. IPA 2007: Introduction

2007 was a year of significant meetings and discussions bringing to the forefront issues regarding policing and oversight of police misconduct in San José. The year began with a large public forum in which many community members spoke about their concerns regarding policing. The City Council convened a special meeting to hear reports on several police-related issues, including the IPA 2006 Year End Report. This office brought forth policy recommendations to enable the IPA to provide more effective oversight.

This report presents three policy recommendations discussed in full in **Chapter Two**. One recommendation regards internal procedures for timely tracking of complaints. Two recommendations stem from complaints received: one requests changes to ensure uniform towing procedures and the second requests notice to arrestees regarding reclaiming property booked for safekeeping.

This year-end report covers the period from January 1 to December 31, 2007. The report details increases in complaints received, closed, and audited during the year, and discusses trends in the classification of cases, complainant and officer demographics, and complaints by council district. An overview of the multi-faceted community outreach events involving the IPA is also presented.

II. Establishment of the Office of the Independent Police Auditor

The San José City Council passed an ordinance to establish the Office of the Independent Police Auditor in 1993. The IPA was created to provide civilian oversight of the citizen complaint process and to make recommendations to improve San José Police Department (SJPD) policies. In response to a grassroots effort to establish oversight in San José, and increased awareness following the Rodney King incident, the City Council reviewed information and heard testimony from community members, professionals in oversight, activists, and members of law enforcement before establishing the auditor model of oversight to reach out to the diverse San José community and to help enhance police/community relations.

In 1996 San José residents voted to amend the City Charter to make the IPA a permanent branch of city government. The

change to the City Charter also directed the City Council to appoint the police auditor to serve four-year terms and established that the midterm removal of the police auditor requires a vote of approval of at least ten of the eleven City Council members. See **Appendix A** for the complete San José Charter Section 809.

III. Independence of the Police Auditor

The IPA is established as an independent body as set forth in Title 8 of the San José Municipal Code, Section 8.04.020, A and B:

- The police auditor shall, at all times, be totally independent, and requests for further investigations, recommendations, and reports shall reflect the views of the police auditor alone.
- No person shall attempt to undermine the independence of the police auditor in the performance of the duties and responsibilities set forth in Section 8.04.010.

See **Appendix A** for the complete San José Municipal Code, Section 8.04.

IV. Reporting Requirements

IPA reports are prepared pursuant to the requirements of the San José Municipal Code Section 8.04.010 (D). This section states that the report of the IPA shall:

- Include a statistical analysis documenting the number of complaints by category, the number of complaints sustained, and the actions taken;
- Analyze trends and patterns;
- Make policy recommendations.

V. Mission and Guiding Principles of the Office of the Independent Police Auditor

The mission of the Office of the Independent Police Auditor is to provide independent oversight of and instill confidence in the complaint process through objective review of police misconduct investigations. By providing outreach to the San José community and making thoughtful policy recommendations to the City Council, the IPA works to promote accountability and to strengthen the relationship between the San José Police Department and the community it serves.

IPA guiding principles:

- The IPA strives to ensure that all concerns reported by members of the public are classified and investigated at the appropriate level based upon the premise that any case brought forward containing misconduct issues will be classified as a complaint with associated allegations, findings and officer names tracked.
- The IPA reaches out to inform the community about the complaint process and to listen and respond to broader community concerns.
- The IPA carefully considers aggregate data from complaints, community concerns and public policy in crafting recommendations aimed toward improving the quality services of the San José Police Department.

VI. Functions of the Office of the Independent Police Auditor

The primary functions of the IPA are:

- To serve as an alternative location for citizens to file a complaint against a San José police officer;
- To monitor and audit SJPD complaint investigations to ensure they are thorough, objective, and fair;
- To conduct community outreach and provide information about the services the office provides to the community;
- To make recommendations to enhance and improve policies and procedures of the SJPD;
- To respond to the scene of and review officer-involved shooting investigations.

CIVILIAN OVERSIGHT OF LAW ENFORCEMENT

Civilian oversight is a term of art used to describe practitioners and professionals who have authority to oversee, on a defined level, police conduct in their communities. There are a variety of models of oversight, the main categories fall within three basic types: Auditor/Monitor, Civilian Review Boards, and Investigative models. There are also hybrids that combine characteristics of the basic models. The terms oversight and civilian oversight as used in this report refer to the field of civilian oversight.

The National Association for Civilian Oversight of Law Enforcement (NACOLE) is the professional organization for oversight of law enforcement in the United States. For more information about this growing field visit the NACOLE website: www.nacole.org.

NACOLE has developed a Code of Ethics (Code) for oversight practitioners. The IPA and many oversight agencies have adopted this Code. See **Appendix C**.

Chapter Two

I. New Policy Recommendations

New Recommendation 1. That the Mayor and City Council 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

The IPA has become aware of an issue of "late-entered" cases. These are cases in which the SJPD has knowledge of the complaint and has initiated an investigation, often at the Bureau level, but does not enter the complaint into the database until a later date. Particularly at issue are complaints that are not entered into the database until the next calendar year. The cases are entered into the database with the previous year's case number, but after the reporting for the year has closed, creating data inaccuracies.[1] The chart below documents 33 late-entered cases for the last five years. In 2007, 2006 cases were entered as late as October 2007.

Internal Department-Initiated Complaints with Late-Entered Cases

INTERNAL COMPLAINTS	2003	2004	2005	2006	2007
Department-Initiated	28	31	46	34	54
Late Entry Department-Initiated	6	7	4	14	2*
Total	**34**	**38**	**50**	**48**	**56**

*As of this printing eight additional late 2007 cases have been entered. Data from all additional late entered cases will be discussed in future reports.

The IA and IPA work in a shared database.[2] The IPA extracts data from the database to prepare annual and mid-year reports, as well as on a daily basis to monitor complaint issues and prevent duplicate entries. IPA annual reports reflect the data for a particular calendar year, from January through December, based

[1] For example, the SJPD may have knowledge of a complaint against an officer regarding use of force and improper procedure in November 2006 but information about that complaint is not entered into the shared database until February 2007. When the complaint is entered in 2007, it is assigned a 2006 case number. The November 2006 complaint and its allegations are not captured in the annual data run used as the basis for IPA reports to Council because the incident was not entered until after the early January data run has occurred.

[2] The shared IAPro database allows both the IA and IPA to enter and track complaints. Both agencies have the ability to review complaints entered, the investigation status, and closed complaints.

on complaints received, closed, and audited during that one year period. It has been the pattern and practice of the two offices to run reports on the prior year's data within the first week in January of the next year; this data run provides an annual "snapshot" of the data. The offices then meet and, using the "snapshot" as the reference, reach a consensus on the various categories, e.g., complaints and allegations received and closed, discipline, etc. Achieving a consensus on the data is extremely beneficial because it allows both offices to analyze and comment on agreed and verified data. The same process is used for mid-year reports.

The IPA is mandated to provide reports to the Council that include documentation of the number of complaints by category, the number of complaints sustained and the actions taken, to analyze trends and patterns, and make policy recommendations. The current practice of entering complaints months after the date on which the Department has knowledge of the complaint affects the reliability of the data, and hinders the ability of the IPA to report with accuracy the number of complaints, the findings, and action taken.

SJPD policies indicate that IA will be notified of complaints upon receipt when initiated at the Bureau level.[3] SJPD Duty Manual Section C1710 expressly states that, regardless of where the complaint is initiated, the IA staff will log the complaint into the database prior to the complaint being investigated. Information about complaints should be entered contemporaneous with the date of SJPD knowledge of the event to comply with SJPD policy and to ensure accurate recording and reporting of complaint information, thereby maintaining public confidence in the complaint process.

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.

New 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

Through the complaint process, the IPA has been made aware of an issue regarding the return of property taken by the SJPD during the arrest process for safekeeping. When an officer arrests an individual, the individual has possession of personal property which is recorded and held for safekeeping. Generally such items include wallets, watches, keys and jewelry that are retained at the detention facility and returned at the time of release. Larger items may be taken as well, such as backpacks or bicycles. Property which is not considered to be an instrument of a crime, contraband or evidence is called "non-criminal property"; it is marked and stored in the Department's Property Room for safekeeping.

The SJPD Duty Manual expressly states that "every reasonable effort will be made to return property to its rightful owner" and that the Property Control Unit "is responsible for returning non-criminal property to its rightful owner as soon as practical." (L5700, L5701). A letter detailing the process to claim the property is sent to the owner. Non-criminal property, for which no owner can be located within four months of the date of booking, can be sold at public auction (L5809).

[3] SJPD Duty Manual Section C1706 states that complaints received initially at the Bureau level may be handled by an on-duty command officer/ manager. "The command officer/manager will then notify IA of receipt of the complaint, the allegation and a brief synopsis of the event."
SJPD Duty Manual Section C1710 states "regardless of whether the complaint is initially received by IA or at the Bureau level, IA will record the complaint as soon as practical after the complaint is received by IA staff. If the investigation of the complaint is to be conducted at the Bureau level, the complaint will be logged into the IA database prior to the complaint being assigned for investigation."

The IPA has been made aware of a gap which results in property not being returned to the rightful owner. The gap occurs when notification letters are sent to the owner's last known address and the owner is incarcerated; mail sent to his or her last address is not automatically forwarded to the local jail or state prison. That notification letter may not reach the owner in time for the owner to make arrangements for another person to claim his/her property. Because of space limitations, the property cannot be stored indefinitely; within four months the property may be sold at public auction and when the owner is released there is no property to retrieve.

The IPA recommends that at the time property is booked a written notice be given to each arrestee that advises the arrestee of the property return/auction/disposal process.

Such action will ensure that every reasonable effort is made to return property to the rightful owner. Without an adequate notification to the arrestee, there is a probability that the property may not be returned even though it has no evidentiary value but may have monetary or sentimental value to its owner. Because the police department assumes an affirmative duty to take reasonable steps to keep safe and return the property, the recommended change to the process requiring written notice to the arrestee at the time his/her property is booked is reasonable to ensure due diligence.

New Recommendation 3. That the Mayor and City Council 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

Through the complaint process the IPA has been made aware of the absence of a uniform policy regarding the notice and towing of vehicles parked on a city street for more than 72 hours. The City Department of Transportation (DOT) and the police department share responsibility for enforcing this parking regulation. The policy of DOT is to post the vehicle to be towed with an orange notice Form 200-27 in most cases. SJPD Duty Manual Section R1525[4] directs officers to notify the owner of an abandoned vehicle that the vehicle must be moved within 72 hours, and Section L2415[5] requires that parking regulations will be enforced impartially throughout the City.

The IPA has received complaints alleging lack of notice and unfair towing procedures or practices by the SJPD. One complaint summarized on **Page 29** of this report alleged that dozens of vehicles were towed within a three day period without prior notification to the owners. Absent extenuating circumstances, fairness and protection of individual property rights requires that reasonable notice be given before property is seized. Without a standard and citywide policy requiring posted notice on a vehicle to be towed, current practices create the opportunity for selective enforcement of the City ordinance and the California Vehicle Code (CVC), and unwarranted tows.[6]

[4] SJPD Duty Manual Section R1525 Abandoned Vehicle Warning (Form 200-27A) states: This form is used to report the existence of an abandoned vehicle and to notify the owner or person in possession of such vehicle that removal must occur within 72 hours or the vehicle will be towed. Code enforcement officers are responsible for towing abandoned vehicles. San José officers can tow "obviously" abandoned vehicles.

[5] SJPD Duty Manual Section L2415 requires that "parking regulations will be enforced impartially throughout the City by any Department member having authority to enforce parking laws."

California Vehicle Code Section 22651(k)[7] authorizes removal of a vehicle that has been parked or left standing on a highway for more than 72 hours in violation of a local ordinance authorizing its removal. San José Municipal Code Section §11.56.020[8] directs officers to remove such vehicles "in the manner and subject to the requirements of the Vehicle Code." The absence of an articulated notice policy for towing vehicles within the City has resulted in a process that fails at times to provide sufficient notice to property owners of the City's intention to seize a vehicle for a municipal or vehicle code violation and a process that has the appearance of not being implemented fairly and equitably.

The IPA recommends that the City standardize a notice protocol for the posting of vehicles that will be towed for violation of SJMC Section 11.56.020 by both the SJPD and DOT and any City Department responsible for towing vehicles.[9] Absent an immediate safety hazard and/or articulable facts to indicate that the vehicle is abandoned, has been repeatedly cited or towed for the 72 hour violation, or is intentionally being moved several feet for the purpose of circumventing the parking ordinance, each vehicle to be towed by the SJPD, DOT, or any other City department responsible for towing vehicles, should be posted with standardized and easily visible notice before the vehicle is removed.[10]

II. Updates of Policy Recommendations Made in the Independent Police Auditor 2006 Year End Report

A. June 21, 2007 Special Council Meeting on Various Police Related Reports

The City Council convened a June 21, 2007 special session to review and discuss recommendations and issues contained in the 2006 IPA Year End Report as well as other reports submitted to the Council. A synopsis of the policy recommendations and the resulting Council action follows.

Update of IPA Recommendation 1.

That the Mayor and City Council:

a. Direct the City Manager to direct the SJPD to implement a complaint process which utilizes objective criteria for complaint classification in collaboration with the IPA;

[6] On July 27, 2007 the SJPD issued memorandum 2007-022 to address concerns previously raised by the IPA on the enforcement of SJMC 11.36.220. While disseminated within the SJPD, it has not been added to the Duty Manual and does not meet the need for a uniform Citywide notice protocol.

[7] California Vehicle Code Section 22651(k) provides: When a vehicle is parked or left standing upon a highway for 72 or more consecutive hours in violation of a local ordinance authorizing removal a peace officer or a regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations, of a city, county, or jurisdiction of a state agency in which a vehicle is located, may remove a vehicle located within the territorial limits in which the officer or employee may act, under the following circumstances: k) When a vehicle is parked or left standing upon a highway for 72 or more consecutive hours in violation of a local ordinance authorizing removal.

[8] San José Municipal Code Section 11.56.020 states: In the event a vehicle is illegally parked or left standing upon a street or highway in the city for seventy-two or more consecutive hours in violation of Section 11.36.020 of this Code, any regularly employed and salaried peace officer of the city may remove such vehicle from the street or highway in the manner and subject to the requirements of the Vehicle Code.

[9] Code Enforcement has responsibility for removal of abandoned vehicles located on private property. California Vehicle Code §22650 requires that a 10 day written notice be mailed to the vehicle/property owner prior to removal of the subject vehicle.

[10] SJPD Duty Manual Section L5210 provides guidance for removal of a vehicle that is in violation of a traffic or parking regulation, ordinance, or law when it is causing a hazard or substantial interference with the safe flow of traffic. The section also addresses removal of a vehicle when an officer has reasonable cause to believe that a vehicle has been abandoned on a public street or property. When the vehicle is located on private property and constitutes a hazard to the public the officer will first attempt to locate the owner of the vehicle and secure voluntary removal. When unable to obtain voluntary removal of the vehicle which is a hazard, an officer may impound the vehicle as if it were abandoned.

b. Grant the IPA concurrent authority over the classification of complaints.

Council Action on IPA Recommendation 1: With regard to Recommendation 1b the Council took no action; the Council made several directives regarding Recommendation 1a, including:

- Confirm the Independent Police Auditor's right to challenge the Police Department's classification of complaints and inquiries, with ultimate resolution by the City Manager.
- Direct the City Manager, Police Chief and the Independent Police Auditor to work together to develop information packets to include complaint definitions, an explanation of the process and necessary forms in multiple languages for individuals contacting the IPA or Internal Affairs.
- Direct the City Manager to work with the Police Chief and the IPA to develop a revised complaint process that determines classification based upon objective criteria and definitions for complaint categories. Continue to use and increase publicity of the mediation process.

Current Status:

- The City Attorney confirmed that the IPA has authority to challenge the classification of complaints based on "past practice."[11]
- Information packets about the complaint process are being developed by IPA and SJPD staff.
- On January 28, 2008, the Council approved a revised complaint process for implementation later in the year. A description of the revised complaint process can be found in the textbox on **Page 15**.

Update of IPA Recommendation 2.

That the Mayor and City Council:

a. Direct the City Manager to direct the SJPD to conduct administrative investigations in all critical incidents in which an officer's use of force or any other department action results in death or serious bodily injury;

b. Mandate that the IPA review the administrative investigation in all such cases.

Council Action on IPA Recommendation 2: In connection with Recommendation 2a and 2b, the Council did not take immediate action. Instead the Council requested the following:

- Confirm the existing authority of the IPA to review officer-involved shootings and in-custody death cases.
- Direct the City Attorney to return to the City Council at the first meeting in August with a report on the litigation impacts of moving all in-custody death cases that are a result of a use of force to the same level of auditing by the IPA as officer-involved shootings. The City Attorney was further directed to analyze the countywide protocol for in-custody deaths and clarify the distinction between in-custody deaths and critical incidents.

Current Status:

At the Council meetings on September 18, 2007 and January 29, 2008 further action was taken regarding these items. At the January 29, 2008 Council meeting action was taken to approve formation of an SJPD in-custody death review panel which is similar to the existing shooting review panel. See **Section B** below for a discussion of September 2007 Council action implementing changes to IPA authority in officer-involved shooting and other critical incidents resulting in death.

[11] Supplemental Memorandum from Richard Doyle, January 28, 2008, "Complaint Classification and IPA Authority."

Update of IPA Recommendation 3.

That the Mayor and City Council consider granting the IPA specific limited authority to investigate. Exercise of such authority would be limited to:

a. Investigation of community-initiated complaints which IA did not investigate;

b. Investigation of critical incidents in which any SJPD action resulted in death or serious bodily injury and the SJPD did not conduct an administrative investigation;

c. Investigations of complaints or critical incidents that are deemed by the IPA to be incomplete.

Council Action on IPA Recommendation 3: The City Council took no action on this recommendation.

B. September 18, 2007 Council Meeting: Follow-up on June 21, 2007 Council Action Regarding 2006 IPA Year End Report Recommendation #2 - IPA Authority to Audit Investigations of Police Critical Incidents

At the June 21, 2007 Special Council Meeting, Council requested action on several items. The Council confirmed the IPA's existing authority to review officer-involved shooting and in-custody death cases. The Council directed the City Attorney to return to the Council (1) with a report on the litigation impacts of moving all in-custody death cases that are a result of a use of force to the same level of auditing by the IPA as officer-involved shootings; and (2) analyze the countywide protocol for in-custody deaths and clarify the distinction between in-custody deaths and critical incidents.

Three years prior, on April 27, 2004 the City Council approved the following item, "The IPA will be provided with a copy of the Internal Affairs administrative investigation document of the officer-involved shooting for auditing purposes as soon as practical after the criminal case has been concluded, but prior to the closing of the administrative investigation." Based upon a September 4, 2007 City Attorney opinion, the Council voted to change the Council action passed in 2004. The IPA is now precluded from auditing administrative investigations of officer-involved shooting incidents to determine whether the officer's actions were within policy. Also based upon the September 2007 City Attorney's opinion the Council took no action to grant the IPA authority to audit administrative investigations of other fatal critical incidents.

The September 4, 2007 City Attorney (Attorney) council memorandum set forth a legislative history of the creation of the IPA and an opinion regarding the authority of the Council to increase IPA authority. The analysis in the Attorney's council memorandum differed from past practice, past Attorney opinions, and past direction given by the City Attorney as to the steps required to change the authority of the Independent Police Auditor. The Attorney's opinion held that authority granted to the IPA by the City Council on April 27, 2004, to audit Internal Affairs administrative investigations of officer-involved shooting cases was beyond the authority of the Council to grant because the Charter language regarding the IPA in the Municipal Code did not have, "other duties as assigned," as is stated in other council appointee sections, and contradicted IPA authority to audit police misconduct complaints.

The IPA disagreed with the City Attorney's opinion, stating that the opinion used an unduly narrow interpretation, created inconsistencies and did not adequately review IPA authority derived from Municipal Code sections and past pattern/practice.

The inability to audit administrative investigations of SJPD fatal incidents in which a complaint was not filed leaves a wide gap in IPA authority, authority that is consistent with other IPA duties

and authority that most auditor/monitor oversight agencies have. These cases can involve the most serious police actions and can raise significant community concern. The authority of the Council to increase IPA authority should be revisited with full analysis of points raised by the IPA, case law, and past practice.[12]

In-Custody Death Review Panel

At the September 18, 2007 meeting the Council passed the following directive: "The City Manager is directed to review all death cases that follow the use of force, with the strong recommendation that the Independent Police Auditor (IPA) participate in the review, to the same level of review by the IPA in officer involved shootings, within the limits of the Charter. The IPA's involvement is limited to participation in the officer involved shooting review panel, or a similar panel if created for in-custody deaths, except when a complaint is filed therefore triggering an audit or a full review. This direction is subject to the meet and confer process."

Current Status:

The In-Custody Death Review Panel was approved at the January 29, 2008 Council Meeting.

The Revised Complaint Process

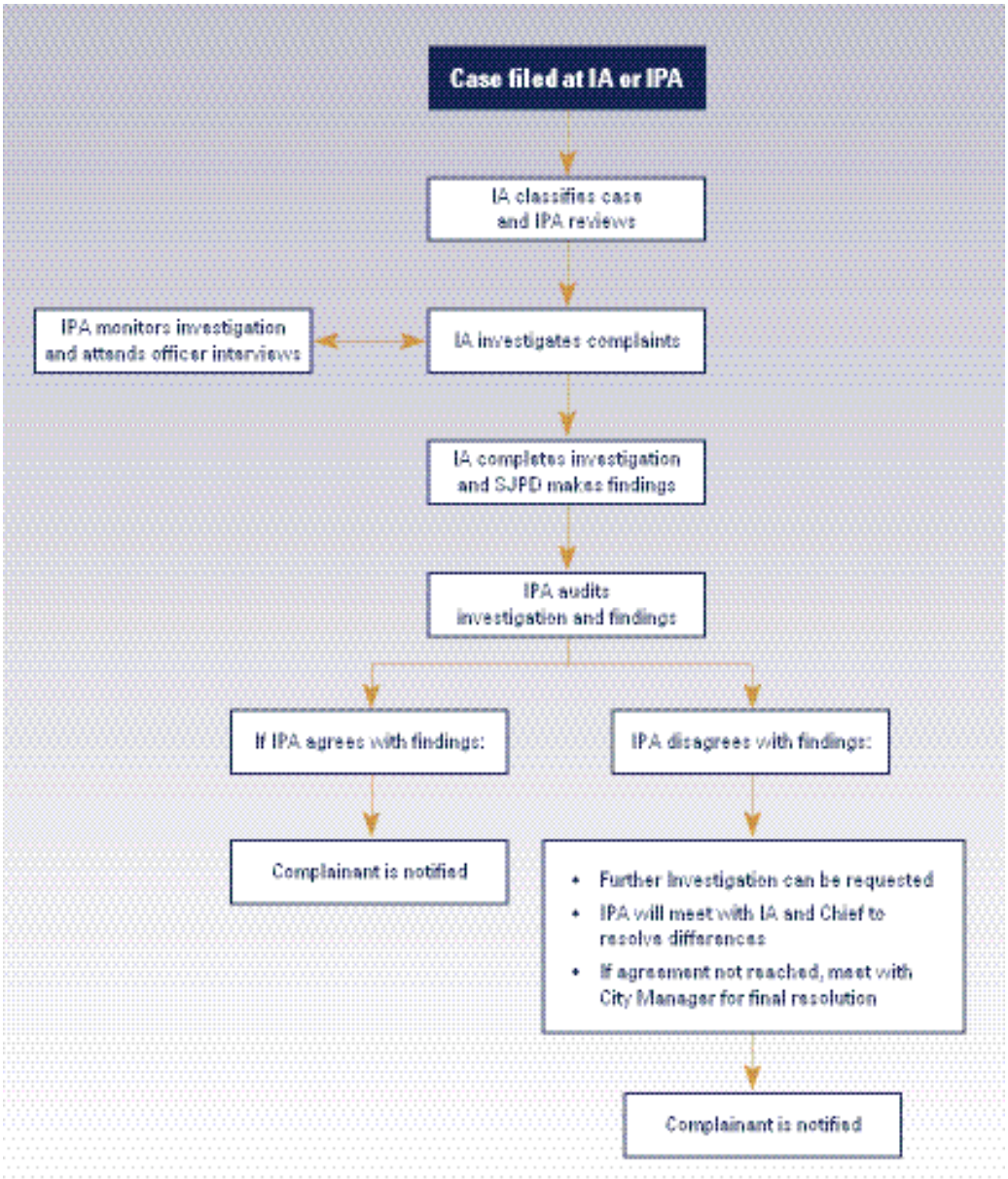
The June 21, 2007 Council Referral #18 directed the City Manager (CMO) to work with the Police Chief and the IPA to develop a revised complaint process that determines classifications based upon objective criteria and definitions for complaint categories. The following is a brief synopsis of the new process that was approved by the Council on January 29, 2008. A full discussion will be presented in the IPA 2008 Mid-Year Report.

The IPA worked with representatives from the CMO and SJPD to revise the complaint process; decisions on the final revised process were made by the SJPD and the CMO. The new process changes the language regarding receipt of complaints, complaint classifications, and allegation types. The revised SJPD complaint process classifies incoming complaints as "allegations," with Internal Affairs (IA) determining which allegations rise to the level of misconduct to be investigated and classified as a complaint. IA will classify allegations into three categories: conduct complaints, policy complaints, or non-misconduct concerns. The IPA has the authority to review complaint classifications to ensure that complaints are properly categorized and investigated. Under the new process, non-misconduct concerns are not complaints and will not result in the tracking of officer information. Policy complaints are not related to misconduct issues. "Conduct" complaints, which contain misconduct allegations, will be investigated by IA and audited by the IPA.

The Council directed staff to report on the new process in one year. The review should consider whether the new classifications and allegation definitions are effective in capturing misconduct issues and whether the new process meets the stated objective of establishing objective criteria for complaint classifications.

[12] Although the September 2007 City Attorney opinion did not include an analysis inclusive of past pattern and practice, in January 2008 the City Attorney issued an opinion that acknowledged that past practice could form a basis for recognizing IPA authority that was not specified in the Charter.

The Complaint Process Flow Chart



Chapter Three

CHAPTER THREE | THE COMPLAINT PROCESS AND YEAR END STATISTICS

This section discusses the involvement of the Office of the Independent Police Auditor (IPA) in the complaint process including receiving complaints, monitoring Internal Affairs (IA) investigations, and auditing completed investigation reports. Information about the types of cases received and/or closed in 2007 is detailed in this chapter. The data includes information about the classification of cases, the audit process, findings reached by IA, and officer discipline.

I. Oversight of the Complaint Process

Prior to the establishment of the IPA, complaints against San José police officers were reported exclusively to officers assigned to IA. Since 1993 the IPA has offered an alternative non-police venue for filing complaints and has provided independent review of misconduct complaint investigations to ensure timely, objective, and thorough analysis by IA investigators.

The IPA follows the mandates of the San José Municipal Code and California Penal Code §832.5 and §832.7[13] that provide procedures for investigation of citizen complaints.

Complaints go through three phases in the IPA office: the intake process, monitoring the investigation, and audit of the completed investigation. Investigations are conducted solely by SJPD. The flowchart presented on **Page 16** provides a graphic representation of the main steps involved in the complaint process after a person contacts either the IPA or IA to file a complaint.

A. Filing Complaints/Intake Process

Members of the public may initiate their complaints of suspected police misconduct with the IPA or IA via mail, telephone, facsimile, e-mail, or in person. With the complainant's consent, interviews are recorded to ensure the information provided by the complainant is captured accurately. Cases received by the IPA are forwarded to IA for classification and investigation.

Complaints Received—Internal and External

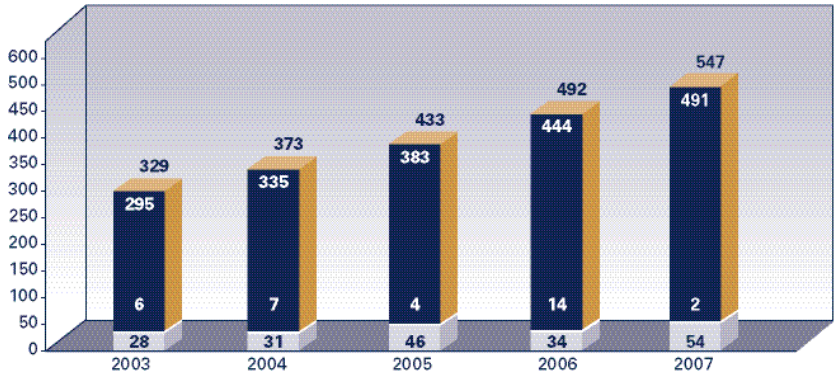
Complaints from members of the public that involve a San José police officer are registered and documented in a shared IA/IPA database. Complaints from members of the public are called "external" complaints; IA also investigates police department-initiated "internal" complaints. As indicated in **Illustration 3-A**, in 2007, 547 total complaints were filed, the combination of internal and external complaints. The number of complaints received has risen steadily over the past five years.

Complaint Confidentiality

California Penal Code §832.7 **(Appendix B)** deems complaints of police misconduct and complaint investigations confidential as they may be considered part of an officer's personnel file. Governed by this law, the IPA is limited in the information that it can reveal to a complainant or the public about investigated cases. The information and analysis provided in this report must be in a form that will not disclose the identities of the parties involved.

[13] Text of San José Municipal Code §8.04.010 is included in **Appendix A** and California Penal Code §832.5 and §832.7 are included in **Appendix B**.

Illustration 3-A: Five-Year Overview of Total Complaints Received



	2003	2004	2005	2006	2007
External Citizen-Initiated	295	335	383	444	491
Late Entry Department-Initiated	6	7	4	14	2
Internal Department-Initiated	28	31	46	34	54
Total Complaints	**329**	**373**	**433**	**492**	**547**

There are many factors that can influence the complaint level, which may include outreach efforts by the IPA and the SJPD, the numbers of police contacts and arrests, increasing population levels, types of police calls, and police tactics. The charts in **Illustration 3-B** below present comparative data on increases in population, calls for service, and numbers of complaints over the last four years. The complaint rate has risen steadily in relation to population and calls for service.

Illustration 3-B: Complaints in Relation to City of San José Population and SJPD Calls for Service

Complaints in Relation to Population*

Year	San Jose City Population	% Population Change	External Complaints Received	% Complaint Change	Complaints per 10,000 Residents
2004	931,232	N/A	335	N/A	3.6
2005	941,116	1%	383	14%	4.1
2006	957,915	1.8%	444	16%	4.6
2007	973,672	1.6%	491	11%	5

* Population data: CA Department of Finance. This report uses the 2000 Census for other population statistics; however the 2000 Census was not used for this chart because it does not provide a break-out of the population by each calendar year.

Complaints Per 10,000 Residents

Complaints in Relation to SJPD Calls for Service*

Year	Calls for Service	% Change	External Complaints Received	% Complaint Change	Complaints per 10,000 Calls for Service
2004	403,963	N/A	335	N/A	8.3
2005	393,196	-2.7%	383	14%	9.7
2006	413,760	5.2%	444	16%	10.7
2007	436,624	5.5%	491	11%	11.2

* Source: SJPD

Complaints Per 10,000 Calls for Service

Intake: IA and IPA

Illustration 3-C shows the intake levels at the IPA and IA. The comparative intake levels at both agencies have remained within a variance of 6% over the last few years.

B. Monitoring Ongoing Investigations

The IPA monitors the classification and progress of the investigation in all complaints filed by members of the public. Providing a quality control measure, this process enables the IPA to assess the objectivity and thoroughness of the investigation, the fairness of the interview process, the collection of supporting documentation, and the analysis presented by the IA investigator.

When monitoring a case the IPA may: review documents, attend officer interviews, request further interviews, visit the location where the complaint incident originated, and maintain contact with complainants. This process is designed to ensure that all information is examined and documented promptly, completely and accurately.

Illustration 3-C: External Complaints and Citizen Contacts Filed at IPA and IA from 2003 to 2007

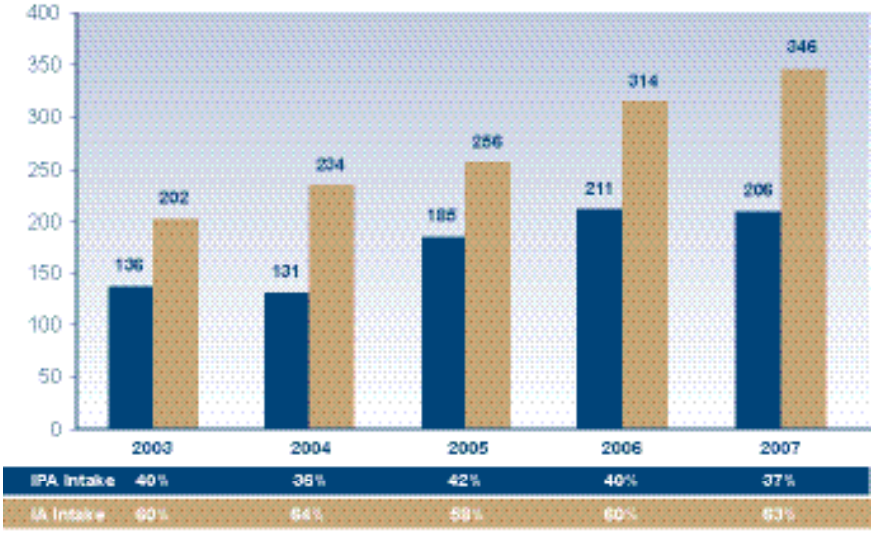


Illustration 3-D: Classifications of External Complaints Received

EXTERNAL COMPLAINTS	2003				2004				2005				2006				2007			
	IPA	IA	Total	%	IPA	IA	Total	%	IPA	IA	Total	%	IPA	IA	Total	%	IPA	IA	Total	%
Formal: Citizen Initiated Complaints	26	60	**86**	29%	33	78	**111**	33%	44	62	**106**	28%	40	67	**107**	24%	68	132	**200**	41%
Informal: Command Review Complaints	13	26	**39**	13%	9	20	**29**	9%	3	4	**7**	2%	0	1	**1**	0.2%	1	0	**1**	0.2%
Procedural Complaints	12	15	**27**	9%	9	23	**32**	10%	21	21	**42**	11%	45	31	**76**	17%	29*	55	**84**	17%
Policy Complaints	1	0	**1**	0%	2	5	**7**	2%	1	1	**2**	1%	4	6	**10**	2%	5	0	**5**	1%
Inquiry Complaints	35	78	**113**	38%	37	81	**118**	35%	65	138	**203**	53%	71	162	**233**	52%	48*	139	**187**	38%
No Boland	14	1	**15**	5%	11	7	**18**	5%	5	7	**12**	3%	1	9	**10**	2%	N/A	N/A	**N/A**	N/A
Withdrawn	11	3	**14**	5%	9	11	**20**	6%	7	4	**11**	3%	6	1	**7**	1.8%	7	7	**14**	2.8%
Total Complaints Filed	**112**	**183**	**295**	**100%**	**110**	**225**	**335**	**100%**	**146**	**237**	**383**	**100%**	**167**	**277**	**444**	**100%**	**158**	**333**	**491**	**100%**
Citizen Contacts (Not complaints vs. SJPD)	19	10	**29**		21	9	**30**		39	19	**58**		44	37	**81**		48	13	**61**	

* IPA has the authority to classify cases only as "pre-classification", "inquiry", or "citizen contact" at intake; other classifications to determine the level of investigation are assigned by IA. Of the 158 cases received by the IPA, IA classified 68 as formal investigations, 29 as procedural and 30 as inquiry.

Classification of Complaints Received from the Community

After cases are received, IA classifies them into complaint categories that determine whether or not an investigation will be conducted and the level of investigation. Cases are to be classified according to the seriousness of the complaint allegations to ensure the most appropriate degree of investigation. The IPA reviews the classification of "external" community-generated cases to ensure proper classification.

Illustration 3-D compares the number of complaints received and the classifications assigned by IA over the last five years. In 2007 there was an increase in the number of cases classified as formal, those receiving the highest level of investigation, from 107, 24% of complaints received in 2006, to 200, 41% of all complaints received in 2007. The increase in the number of fully investigated complaints indicates a more thorough review with officer interviews conducted and a full analysis of issues raised.

There was a decrease in cases classified as inquiries during this same period, from 233, 52% of complaints filed in 2006, to 187, 38% of complaints filed in 2007. Even with this year's reduction, the large number of inquiries is a matter of concern because there is minimal investigation regardless of the allegations, and officer names are not retained, making them inaccessible for risk management analysis, early intervention, and discovery in criminal cases.

A related change in 2006 and 2007 was the reduction in the use of the command review classification. In the last two years only one case per year was classified as command review, a large decrease from 29 in 2004, and even higher numbers in previous years. Command review cases generally involve less serious complaints, such as rude conduct cases, which are brought to the attention of the officer's chain of command, and require the officer to participate in a meeting with a supervisor and the IA commander to discuss the complaint. Approximately 50% of the rude conduct allegations in 2006 and approximately 40% in 2007 were in complaints classified as inquiries. Although an informal process, command review is preferable to the inquiry classification for rude conduct complaints as the process requires tracking of officers and involves reviewing the officer's record before classification to ensure that the officer does not have a record of similar complaints. The command review classification will be discontinued with the revisions to the SJPD complaint process. For more information on the new complaint process see the text box on **Page 15.**

Another trend that has raised concern is the increase over four years in the use of the procedural classification, from 32 cases in 2004, 10% of cases received; to 42, 11% of cases received in 2005; to 17% of cases received in 2006 and 2007, 76 and 84 cases respectively. The increased use of this classification is of concern because it is determined by IA, after the initial intake and prior to any significant investigation, that there is no misconduct; consequently no officer interviews are conducted. The classification of many of these cases was challenged by the IPA in 2006 and 2007, but few were upgraded to full investigations.

Internal Department-Initiated Complaints

The IPA has reported that SJPD department-initiated cases have ranged between 28 and 56 cases over the last five years. However, in 2007 the IPA became aware that the entry of many department-initiated cases into the shared database has not been timely, resulting in inaccurate IPA reporting of this data. It was determined that 14 cases initiated by the Department in 2006, and given 2006 case numbers, were not entered into the database until 2007. A review of past years revealed that four 2005 cases were entered in 2006, seven 2004 cases were entered in 2005, and six 2003 cases were entered in 2004. **Illustration 3-E** shows that 33 internal department-initiated cases have been under reported in the last five years. Several 2007 complaints have been entered into the database late and are not reflected in this report.

Illustration 3-E: Internal Complaints Filed

INTERNAL COMPLAINTS	2003	2004	2005	2006	2007
Department-Initiated	28	31	46	34	54
Late Entry Department-Initiated	6	7	4	14	2*
Total	**34**	**38**	**50**	**48**	**56**

*As of this printing eight additional late 2007 cases have been entered. Data from all additional late entered cases will be discussed in future reports.

Late-entry of complaints impedes the ability of the IPA to meet its mandate to report to the Council the complaint data for a given year. It also undermines the ability of the IPA to review the department-initiated cases to determine if there is a citizen nexus which then authorizes the IPA to audit the completed investigations. Failure to include information about late-entered complaints affects not only the reporting of the total number of complaints, but also associated information about allegations received, subject officers, and complaints by council district. A policy recommendation to request timely entry of these cases into the shared database is detailed on **Page 9**.

Types of Allegations Received

A single complaint may include multiple allegations. In 2007, 547 complaints containing 1,124 allegations were received. The shared complaint database has enabled the IPA to track all types of allegations received in the last four years; previously only allegations of unnecessary/excessive force were specifically examined. In 2005 IA and the IPA began recording allegations in complaints classified as inquiries as well, ensuring a more complete analysis of inquiries and the total complaint picture. Comparative data regarding all types of allegations and complaint categories, received and closed, are now included and analyzed. See **Illustration 3-F** for the delineation of all allegations received. The three types of allegations most frequently reported in the 547 total internal and external complaints received in 2007 were:

- Improper procedure has been the allegation most often cited in all cases since 2004. A complaint can contain several improper procedure allegations depending on the complexity of the incident. The percentage of improper procedure allegations in formal/informal investigated cases has remained steady over the last four years at approximately 30%.

- There were 101 improper procedure allegations in complaints classified as inquiries, 27% of the total number of improper procedure allegations in 2007.

- Unnecessary force allegations, 174 in 2007, have risen in numbers over the last four years in formal/informal complaints, but have remained an average of 20% of allegations in investigated cases.
  - There were fewer unnecessary force allegations in cases classified as inquiries in 2007 - seven allegations.
- Rude conduct allegations in investigated complaints decreased significantly between 2004 and 2007 from 135 allegations, 25% of allegations received in investigated cases in 2004 to 114, 13% of allegations received in investigated cases in 2007.
  - Rude conduct allegations classified as inquiries rose from 24% in 2005 to 35% in 2007.

As delineated in **Illustration 3-F,** racial profiling and discrimination allegations decreased slightly from 2006 to 2007. In 2007 there were 20 racial profiling allegations and 30 discrimination allegations in investigated complaints and inquiries. For dispositions of allegations received in all complaints see **Illustration 3-M**.

Illustration 3-F: Types of Allegations Received in all Complaints

ALLEGATIONS RECEIVED FORMAL/INFORMAL CASES	2004 #	2004 %	2005 #	2005 %	2006 #	2006 %	2007 #	2007 %
Improper Procedure	163	30%	154	31%	170	30%	280	31%
Unnecessary Force	98	18%	112	23%	109	19%	174	19%
Rude Conduct	135	25%	64	13%	83	15%	114	13%
Unlawful Arrest	31	6%	37	8%	47	8%	85	10%
Unlawful Search	13	2%	33	7%	28	5%	66	7%
Unofficer-like Conduct	14	3%	27	6%	26	5%	40	4%
Missing/Damaged Property	15	3%	18	4%	21	4%	33	4%
Failure to Take Action	10	2%	17	3%	20	4%	23	3%
Racial Profiling	9	2%	10	2%	20	4%	17	2%
Discrimination	7	1%	7	1%	28	5%	28	3%
Excessive Police Service	3	1%	6	1%	1	0%	8	1%
Harassment	2	0%	4	1%	3	1%	13	1%
Policy/Procedural	5	1%	0	0%	5	1%	7	1%
Delayed/Slow in Response	0	0%	0	0%	1	0%	0	0%
Inquiry (Unclassified)	36	7%	0	0%	1	0%	6	1%
Total Allegations	**541**	**100%**	**489**	**100%**	**563**	**100%**	**894**	**100%**

ALLEGATIONS RECEIVED INQUIRIES	2005 #	2005 %	2006 #	2006 %	2007 #	2007 %
Improper Procedure	102	41%	129	41%	101	44%
Unnecessary Force	13	5%	27	8%	7	3%
Rude Conduct	58	24%	86	27%	80	35%
Unlawful Arrest	13	5%	16	5%	3	1%
Unlawful Search	7	3%	9	3%	13	6%
Unofficer-like Conduct	3	1%	2	1%	2	1%
Missing/Damaged Property	5	2%	5	2%	8	3%
Failure to Take Action	10	4%	13	4%	4	2%
Racial Profiling	2	1%	7	2%	3	1%
Discrimination	2	1%	7	2%	2	1%
Excessive Police Service	4	2%	3	1%	1	0%
Harassment	5	2%	6	2%	2	1%
Policy/Procedural	0	0%	0	0%	1	0%
Delayed/Slow in Response	2	1%	1	0%	1	0%
Inquiry (Unclassified)	20	8%	7	2%	2	1%
Total Allegations	**246**	**100%**	**318**	**100%**	**230**	**100%**

* Allegation information was not available in years prior to 2004. Prior to 2005 allegations were not delineated in complaints classified as inquires.

Misconduct Allegations

Delayed/Slow Response (DR) allegation indicates an unreasonably slow or delayed response to a call for service.

Discrimination (D) allegation indicates differential or unfair treatment of a person or group on the basis of their race, religion (religious creed), color, age, marital status, national origin, ancestry, sex, sexual orientation, actual or perceived gender identity, medical condition, or disability.

Excessive Police Service (ES) allegation indicates excessive, recurring contacts by a police officer or by multiple police officers.

Failure to Take Action (FA) allegation involves no police service given to the citizen.

Harassment (H) is alleged when a complainant was harassed either physically, verbally or by gesture on the basis of race, religion (religious creed), color, age, marital status, national origin, ancestry, sex, sexual orientation, medical condition, or disability.

Improper Procedure (IP) allegation involves a violation of a City policy or of a regulation in the San José Police Department Duty Manual.

Missing/Damaged Property (MDP) allegation is used to report incidents of missing or damaged property.

Racial Profiling (RP) allegation indicates that an officer initiated a contact solely based on the race of the person contacted.

Rude Conduct (RC) allegation is regarding abusive behavior or language, threats, profanity, and poor attitude while on duty.

Unlawful Arrest (UA) allegation is regarding an arrest that is not legally conducted.

Unofficer-like Conduct (UC) refers to conduct either on or off duty which adversely reflects upon the police department, i.e. violations of the law, drug or alcohol use, misuse of City property, gratuities, bribes or abuse of authority.

Unnecessary Force (UF) allegation is when the level of force used on the citizen is excessive or improper. SJPD classifies unnecessary force allegations regarding an injury that resulted in the complainant receiving medical attention as Unnecessary Force I; less serious unnecessary force incidents are classified as Unnecessary Force II.

Unlawful Search (US) allegation is regarding an improper or illegal search.

Police Contacts

Allegations of police misconduct should be considered with the understanding that most San José police officers successfully resolve situations with no issues of complaint. In 2007, members of the SJPD handled 436,624 calls for service from the public. These contacts can cover a wide range of calls from responding to life threatening situations, to issuing traffic citations and responding to false alarms. Citizen-to-police contacts which resulted in making an arrest or issuing a criminal citation numbered 35,998, 8% of all citizen-to-police contacts in 2007. These numbers are consistent with the overall low crime rate in San José.

Comparative Table Of SJPD Calls For Service And Arrests

Year	Calls for Service	Arrests
2004	403,963	26,500
2005	393,196	31,062
2006	413,760	33,995
2007	436,624	35,998

Classification of Complaints/Contacts

COMPLAINT DEFINED: A complaint is an expressed dissatisfaction with SJPD which relates to Department operations, personnel conduct, or unlawful acts. A complaint involves an internal SJPD administrative investigative process which can result in discipline. The complaint process is separate and distinct from criminal charges which are filed by the District Attorney's office, and the claim process which is handled by the City Attorney. There are seven classifications of complaints used by the SJPD:

Formal Complaint: After the initial investigation by the intake officer, IA determines that the facts of the allegations, if proven, would amount to a violation of the law or Department policies, procedures, rules or regulations. Formal complaints receive the highest level of investigation and include interviews of subject officers.

- **External Civilian-Initiated (CI):** Complaint initiated by a member of the public alleging misconduct by an SJPD officer.
- **Internal Department-Initiated (DI):** Complaint initiated by the Chief of Police alleging a serious violation of Department policy or a violation of law by an officer.

Command Review (CR) Complaint involves allegations of minor transgressions on the part of the subject officer. The complaint is reviewed in a meeting with the subject officer by his/her supervisor and the IA commander (or designee). The process does not imply that the officer has committed the transgression described in the complaint. Officers are screened for prior similar complaints and the officer's name is retained.

Procedural (PR) Complaint is defined in two ways:

- After the initial investigation by the intake officer, the Department determines the subject officer acted reasonably and within policy and procedure given the specific circumstances and facts of the incident, and there is no factual basis to support the misconduct allegation.
- The allegation is a dispute of fact wherein there is no independent information, evidence or witnesses available to support the complaint and another judicial entity is available to process the concerns of the complainant.

Procedural investigations do not include interviews of subject officers.

Policy (PO) Complaint pertains to an established policy, properly employed by a Department member, which the complainant understands but believes is inappropriate or not valid. These complaints do not focus on the conduct of the officer but on the policy with which the complainant disagrees.

Inquiry (IQ) complaints are resolved to the satisfaction of the complainant without requiring a more extensive investigation. Complainants may be referred to a sergeant to discuss the incident. An inquiry that is not immediately resolved to the citizen's satisfaction can be reclassified and be fully investigated. Officer's names are not tracked in cases classified as inquiries.

No Boland (NB) Following a U.S. Supreme Court decision in May 2006, this disposition is no longer used. Previously, a complaint was closed within 30 days from the date the case was received when a complainant failed to sign the Boland Admonishment. California Penal Code §148.6 required that complainants sign a Boland Admonishment form informing them that they could be prosecuted for a misdemeanor violation if they knowingly filed a false complaint.

Citizen Contacts (CC) are communications involving issues that are not misconduct against a San José police officer. Complainants are referred to the appropriate agency to handle their concerns or are offered help to deal with bureaucratic procedural issues.

The Audit Process: A Multi-Faceted Examination for Quality Control

The IPA monitors the classification of complaints both at the intake stage and during the audit process. Classification is an important management tool that allows IA to distribute the workload and devote staff time to more serious cases. The IPA reviews the classification of complaints to monitor that the classification and the investigation level is commensurate with the seriousness of the issues raised in the complaint. Improper classification of a case can undermine the effectiveness of the complaint process.

Upon completion of an investigation of a complaint by IA, a copy of the investigative report is sent to the IPA for audit. IPA audit of an IA investigation is the final step in the complaint process; it is conducted prior to notifying the complainant and the subject officer of the findings. Audits involve a critical examination and analysis of the circumstances that led to the misconduct complaint, and evaluation of the quality of the investigation. The audit review includes a thorough examination of all documents and may involve listening to recorded interviews and contacting witnesses to verify information or ask further questions. The audit determines whether the case should be closed as indicated by IA or whether additional investigation or analysis should be requested. The audit process provides a level of independent scrutiny to assure the community that complaints are taken seriously and investigated thoroughly, impartially, and without bias.

Over the last three years the IPA has raised issues regarding the classification of complaints. In 2006 the IPA became increasingly concerned about the growing number of complaints classified as "procedural" and the related decline in the number of cases receiving formal investigations. Similarly, the IPA noted an increase in the number of cases being classified as inquires and a decline in the utilization of the "command review" classification. In 2007 there was an increase in formal investigations and a decline in complaints classified as inquiries, both positive changes. In June of 2007 the City Council directed the City Manger, the SJPD, and the IPA to work together to revise the complaint process to establish objective criteria for complaint classification. A revised complaint process was approved by the City Council in January 2008. A description of the revised complaint process is on **Page 15** of this report. A more complete report on the revised process and the transition to the new process will be included in the 2008 Mid-Year Report.

C. Auditing Complaints

The IPA is mandated to audit all excessive/unnecessary force complaints and 20% of all other complaints. The IPA has historically expanded the number of audits conducted, routinely auditing over 90% of the external civilian complaint investigations completed by IA. In 2007 the IPA conducted audits of approximately 93% of the investigated external complaints closed. IA closed 513 complaints in 2007, 476 external complaints and 37 internal department-initiated complaints. There was an 88% rise in investigated complaints closed in 2007, from 144 in 2006 to 273 in 2007; this resulted in an increase in audits of investigated complaints. The IPA conducted audits of 254 investigated cases and 109 inquiries in 2007.

The IPA has raised concerns about the large number of complaints classified as inquiries in the past two years. The increase in investigated cases in 2007 is viewed as a positive change. **Illustrations 3-G and 3-H** detail the types of cases closed and audited. Because audits are completed after complaints are closed, and may involve ongoing discussions with SJPD, audited cases may not reflect the cases closed in the current calendar year.

Illustration 3-G: Types of External Complaints Audited and Closed

EXTERNAL COMPLAINTS AUDITED	2003		2004		2005		2006		2007	
	Closed	Audited	Closed	Audited	Closed	Audited	Closed	Audited	Closed	Audited
Formal: Citizen-Initiated Complaints	92	85	124	116	72	66	76	71	143	141
Citizen Nexus to Internal Complaints	2	2	2	2	0	0	1	1	4	4
Informal: Command Review Complaints	53	48	34	34	8	10	5	4	2	3
Procedural Complaints	39	44	32	27	30	26	34	29	90	77
Policy Complaints	1	0	7	7	2	2	6	4	7	5
Inquiry Complaints	111	N/A	115	N/A	187	187	214	214	203	109*
No Boland/Withdrawn	38	40	40	34	23	12	22	23	27	24
Total Complaints Closed & Audited	**336**	**219**	**354**	**220**	**322**	**303**	**358**	**346**	**476**	**363**

* Due to the large rise in complaints classified by IA as inquiries in 2005 and 2006, the IPA audited 100% of the closed inquiries during this period; in 2007 the IPA audited approximately 50% of the closed inquiry complaints. In prior years the IPA reviewed inquiries, but did not conduct a full review of cases in this classification.

Illustration 3-H: Internal Complaints Closed

INTERNAL COMPLAINTS	2003	2004	2005	2006	2007
Department-Initiated	40	24	37	38	37
Total Closed	**40**	**24**	**37**	**38**	**37**

Internal department-initiated complaints are reviewed and audited if there is a "citizen nexus" that links the case to a possible citizen complainant.[14] Complaints closed as No Boland or withdrawn are also reviewed.[15] In these cases the IPA has the authority to contact complainants to confirm their intent to terminate the investigation. Cases categorized and closed as citizen contacts are not audited, but they are reviewed to verify that there are no allegations against a San José officer.

Audit Results - Agreement/Disagreement with IA Investigations and/or Classifications in Formal/Informal Cases

Through audits, perceived deficiencies and/or concerns about the objectivity of the analysis in an IA investigation are identified. An audit results in a determination that the investigation was thorough, complete and fair with agreement to close the case, a request for additional investigation, or a disagreement with the thoroughness or objectivity of the investigation. If there is a disagreement a formal memorandum is presented to the Chief of Police detailing IPA concerns and supporting analysis. If no consensus can be reached with the Chief of Police, the IPA may write a formal memorandum to the City Manager for final resolution.

[14] Four audits were completed on department-initiated cases with a citizen nexus in 2007.

[15] See **Page 24** for more information about No Boland.

Illustration 3-I: IPA Audit Determination in Investigated Cases

AUDIT DETERMINATION IN INVESTIGATED CASES	2003		2004		2005		2006		2007	
	Audits	%	Audits	%	Audits	%	Audits	%	Audits	%
Agreed at First Review	249	82%	171	78%	92	79%	84	64%	170	67%
Agreed after Further Action	41	13%	45	20%	19	16%	29	22%	29	11%
Disagreed after Further Action	14	5%	4	2%	5	4%	19	14%	55	22%
Total Complaints Audited	**304**	**100%**	**220**	**100%**	**116**	**100%**	**132**	**100%**	**254**	**100%**
Audits in Progress	N/A	N/A	N/A	N/A	20	N/A	27	N/A	39	N/A

As shown in **Illustration 3-I**, of the 254 investigated cases audited in 2007, 170 cases, 67% were closed as "agreed at first review." Further action was requested in 84 cases, 33%. Further action can entail requesting additional documentation, research, investigation, or analysis. Many of the 39 audits pending at year-end were cases that required additional information or were the subject of ongoing discussions between the IPA and SJPD.

Each year there are cases that result in disagreement. In 2007, of the 254 audits of investigated cases completed, 55 cases, 22%, resulted in disagreement. The increase in the number of disagreed cases in 2006 and 2007 is due, in large part, to IPA challenges to complaint classifications in formal/informal cases.

Profiles of five of the cases that resulted in disagreement in 2007 are featured in the text box **Investigations With Which the IPA Disagreed with IA** on the following page.

Audit Results - Agreement / Disagreement with IA Classification of Inquiry Complaints

In 2005 and 2006 the IPA documented concerns with the increase in complaints classified by IA as inquiries. To document the extent that misconduct complaint issues were classified as inquiries in 2005 and 2006 the IPA conducted an audit of all of the closed inquiries. In 2007 audits were conducted on approximately 50% of the complaints closed as inquiries. IPA audit of inquiry complaints was reduced because the SJPD has developed a new complaint process and the inquiry category *per se* will no longer be used. For more information on the revised complaint process see the textbox on **Page 15**.

Illustration 3-J below details the findings of the inquiry audits from 2005 through 2007.

Illustration 3-J: IPA Audit Determination in Inquiry Cases

IPA DETERMINATION	2005	%	2006	%	2007	%
Disagreed with Inquiry Classification	84	45%	118	55%	54	50%
Agreed with Inquiry Classification	71	38%	56	26%	31	28%
Insufficient Information	32	17%	40	19%	24	22%
Total	**187**	**100%**	**214**	**100%**	**109**	**100%**

Investigations With Which the IPA Disagreed With IA

1 Case One

The complainant alleged that officers acted improperly when they entered his home. The officers were canvassing the area investigating a reported residential burglary of a handgun.

The complainant responded to knocking on the door of his residence. He opened the door slightly to find two police officers standing outside. The complainant agreed to answer the officers' questions. The officers asked for consent to enter the residence and the complaint denied the request. The officers then said they smelled marijuana, entered the residence and handcuffed the complainant. One officer acknowledged that the complainant did not want the officers to enter the home; however when he began to shut the door, an officer prevented him from closing it. The other officer stated that when the complainant started to close the door, he decided to step inside the home until things were sorted out; the complainant seemed evasive and fidgety and there was a smell of marijuana coming from inside the home.

The IA investigation found the improper procedure allegation, whether the officers properly entered the home, to be not sustained. This finding was based on a determination that the encounter was merely a temporary detention of a person for the purpose of investigating unusual actions which reasonably infer criminal activity, also known as a "field interview." Additionally, the finding was based on a parallel theory that, due to the smell of marijuana, the officers could enter the residence for the purpose of investigating a "narcotics" violation.

The IPA disagreed with the objectivity of the IA rationale supporting the home entry. The conclusion that the interaction was a temporary detention was not supported by the facts; there was no factual dispute that the complainant remained within his residence during the entire encounter. The IPA pointed out that the legal authority of law enforcement to detain a person outside of his residence is distinct from that which governs an officer's entry into a residence. The IPA also noted that the conclusion that the officers made proper entry to investigate a "narcotics" violation was not supported by the facts; both officers stated that the house was searched to determine whether anyone else was inside the residence, the initial sweep was not conducted to find narcotics. Due to mandated time constraints this case could not be appealed further. After sending a disagree memorandum to the Chief of Police, the IPA closed the case as disagreed.

2 Case Two

The complainant, riding his bicycle at 10 a.m., was stopped for failing to signal as he changed lanes on a residential street. He asserted there was no other traffic on the street and he was stopped because of his appearance. The booking photo shows the complainant to be a young African American male wearing dreadlocks. In the police report the subject officers described him as wearing a hooded jacket, blue jeans and tennis shoes; his appearance was characterized as "unkempt." The complainant alleged there was no probable cause for the stop or his subsequent arrest. Internal Affairs classified the complaint as Procedure, a classification in which the subject officers are not interviewed. The IA investigation was based entirely on the statement of the complainant and the written police reports.

The IPA disagreed with the classification of the complaint as Procedure. Review of the complainant's statement and the police reports revealed contradictions and discrepancies that could only be explained through interviews of the officers. The IPA recommended that the case be reclassified and interviews of the officers conducted.

The recommendations that that complaint be reclassified and the subject officers interviewed were rejected by the Chief of Police. The case was appealed to the City Manager who agreed with the classification and the finding of Internal Affairs. This complaint was closed by the IPA as disagreed.

3 Case Three

The complainant alleged her neighborhood was being targeted for discriminatory enforcement action. She stated that 20 vehicles were towed from her street at 9 p.m. one evening, and further alleged that 100 or more vehicles were towed within a two or three day span of this incident. The complainant asserted that none of the towed vehicles were posted with visible warnings or notices of violations before the vehicles were towed. An officer at the scene told her that her truck was being towed because it had been parked in one place for more than 72 hours. She told him that was not correct - the car had been driven that day. When she later spoke to a lieutenant it was suggested the actions were taken in response to reports of abandoned cars in the area.

The complainant reported that she was told that tow warning notices were a courtesy and not mandatory. When she requested a tow hearing, she was told she would have to provide proof that the vehicle had been moved.

The IA investigation was based on second-hand reports received from the Department's Tow Hearing Unit; the complaint was classified as Procedure, a classification in which subject officers are not interviewed. The IA investigation contained conflicting statements about the movement of the complainant's vehicle and the actions of the officers. Despite the complainant's statements that contradicted the information in the police reports, IA accepted the statements in the police reports without interviewing the officers.

The IPA disagreed with the classification of the case and the thoroughness of the investigation conducted. The IPA also disagreed with the decision of IA to replace the allegation of discrimination with improper procedure, and recommended the case be reclassified and the officers interviewed. The Department rejected the IPA recommendation and closed the case as within procedure. Due to mandated time constraints this case could not be appealed further.

4 Case Four

The complainant alleged that he had been racially profiled during a traffic stop. The complainant stated he was stopped for a vehicle code violation at 10:30 p.m. in the Willow Glen area. He stated the officer's first question was, "Are you on probation or parole?" He believed the question was inappropriate and it was posed because of his clothing and the low profile tires on

his vehicle. He stated that one of the officers told his partner that the complainant was a Norteño, noting a Sharks sticker, a 49er watch cap on the dashboard, and the letters "NF" that appeared in his standard state-issued license plate.

Internal Affairs classified the complaint as Procedure and the officers were not interviewed. IA determined that because the car was stopped for a valid vehicle code violation, and the officer's remarks were not related to race, color, nationality, age, sexual orientation, gender, disability or religion, there was insufficient evidence to find that the complainant was profiled.

The IPA disagreed with the classification of the complaint as Procedure and the sufficiency of the investigation. Racial profiling and stereotyping are insidious in nature and can take a variety of forms. By making a finding of "no misconduct determined" without interviewing the officers, the IA investigation discounted and excused the offending statement of the officers reported by the complainant and determined the allegation that he had been profiled and stereotyped was without merit.

The recommendation of the IPA that the complaint be reclassified and the officers interviewed was rejected by the Chief of Police. The IPA closed the case as disagreed.

5 Case Five

The complainant alleged that an officer used excessive force during a stop for a vehicle code violation. He stated that although the officer directed him not to use his cell phone, he called his family. He stated the officer reached through the car window, grabbed the phone and threw it to the ground. The officer then opened the door, grabbed the complainant by the wrist and pulled him from the car. Although the complainant said he did not resist, the officer put his knee on his back and threatened to hit him with his baton. The complainant stated he was detained in the patrol car for an extended time before being released with a citation.

Internal Affairs classified the complaint as Procedure, which does not include an interview of the officer, and completed the investigation based on the statement from the complainant, a review of the officer's police report and a computer generated document related to the stop. The statement of the complainant and the information in the police report differed significantly, particularly regarding the need to use force and the degree of force that was used. In addition to identifying other issues that could only be resolved with an interview of the officer, the IPA argued that an interview was needed to clarify the degree of force used and the officer's justification for using force.

The IPA recommended the matter be reclassified and the officer interviewed. The Chief of Police disagreed; the memorandum stated that the issues raised by the IPA did not rise to the level of a violation of policy or procedure and refused to conduct an officer interview. Due to mandated time constraints this case could not be appealed further.

II. Findings of Internal Affairs Investigations

Illustrations 3-K, 3-L, and 3-M detail the findings of IA complaint investigations. The standard of evidence used by IA is "preponderance of evidence." This means that for a sustained finding the evidence must indicate that it is more likely than not that a violation occurred. In 2007, IA closed 513 complaints: 37 internal department-initiated complaints containing 42 allegations, and 476 external complaints containing 1,060 allegations.

As detailed in **Illustration 3-L**, investigation results are dramatically different in internally generated cases as compared to external complaints. In internal department-initiated cases, 86%, 36 of the 42 allegations investigated and closed, were sustained. In contrast, in external community-initiated cases 3%, 25 of the 806 allegations investigated, were sustained. Other findings in external cases include: 123 allegations, 15%, were not sustained; 181 allegations, 22%, were exonerated; 84 allegations, 10%, were unfounded; 158 allegations, 20%, were closed as no finding; 147 allegations, 18%, were found to be within procedure; and 77 allegations, 10%, were closed as no misconduct determined.

Findings were not determined in 254 allegations in complaints closed as inquiries.

Sustained Misconduct

In 2007, 14 of 239 completed external citizen-initiated complaints were sustained (closed with at least one sustained allegation) resulting in a 6% sustained rate.[16] See **Illustration 3-K**.

The sustained allegations in complaints from the public include two unnecessary force allegations, 18 improper procedure allegations, two rude conduct allegations, one failure to take action allegation, and two allegations of unofficer-like conduct. See **Illustration 3-L**.

In contrast, 32 of the 37 internal department-initiated investigations were closed with at least one sustained allegation, an 86% sustained rate.

Illustration 3-K: Five-Year Overview of Formal Sustained Complaints

YEAR/TYPE OF COMPLAINTS	Closed Complaints	Sustained Complaints	Sustained Rate
2003/ External Complaints	189	11	6%
2003/ Internal Complaints	40	34	85%
2004/ External Complaints	192	18	9%
2004/ Internal Complaints	24	22	92%
2005/ External Complaints	110	6	5%
2005/ Internal Complaints	37	31	84%
2006/ External Complaints	116	11	9%
2006/ Internal Complaints	38	37	97%
2007/ External Complaints	239	14	6%
2007/ Internal Complaints	37	32	86%

[16] The sustained rate in external cases is calculated based upon the number of sustained complaints from those classified as formal, command review, or procedural.

Department-initiated complaints are initiated by the Chief of Police and may include both internal and external matters.[17]

Illustration 3-M details findings in internal cases. The allegation type which received the highest number of sustained findings in internally generated complaints was improper procedure, 24 allegations. Six unofficer-like conduct allegations were sustained; these allegations often address complaints related to off-duty behavior. One failure to take action and five property-related allegations were sustained.

Illustration 3-L: Dispositions of Allegations: External/Citizen-Initiated Cases

DISPOSITION	ALLEGATIONS															
	ES	D	DR	F1	F2	FA	H	IP	MDP	RC	RP	UA	UC	US	Total	%
Sustained					2	1		18		2			2		25	3%
Not Sustained		7		2	25	1	1	19	10	48			4	6	123	15%
Exonerated				10	47		4	54	2	2	4	41		17	181	22%
Unfounded		1		6	29		1	11	5	15	9	1	5	1	84	10%
No Finding		6			18	9	2	60	9	20	8	14	3	9	158	20%
Within Procedure			1	4	22	4		74			1	27		14	147	18%
No Misconduct Determined	1	3				2	2	25	3	27	10	2	1	1	77	10%
Command Review								1		6					7	1%
Within Policy			2			1	1								4	0%
Formal/Informal Allegations Closed	**1**	**17**	**3**	**22**	**143**	**18**	**11**	**262**	**29**	**120**	**32**	**85**	**15**	**48**	**806**	**100%**
Allegations in Closed Inquiries	2	1	1	1	9	6	2	113	8	83	3	8	2	15	254	
Total Allegations Closed	**3**	**18**	**4**	**23**	**152**	**24**	**13**	**375**	**37**	**203**	**35**	**93**	**17**	**63**	**1060**	

Illustration 3-M: Dispositions of Allegations: Internal/Department-Initiated Cases

DISPOSITION	ALLEGATIONS															
	ES	D	DR	F1	F2	FA	H	IP	MDP	RC	RP	UA	UC	US	Total	%
Sustained						1		24	5				6		36	86%
Not Sustained								1					2		3	7%
Exonerated																0%
Unfounded		1											1		2	5%
No Finding									1						1	2%
Within Procedure																0%
No Misconduct Determined																0%
Command Review																0%
Within Policy																0%
Total Allegations		**1**				**1**		**25**	**6**				**9**		**42**	**100%**

Legend of Allegations

ES=	Excessive Police Service	FA=	Failure to Take Action	RP=	Racial Profiling
D=	Discrimination	H=	Harassment	UA=	Unlawful Arrest
DR=	Delay in Response/Slow Response	IP=	Improper Procedure	UC=	Unofficer like Conduct
F1=	Unnecessary Force (w/medical)	MDP=	Missing/Damaged Property	US=	Unlawful Search
F2=	Unnecessary Force (w/o medical)	RC=	Rude Conduct		

[17] An external matter in a department-initiated complaint is one that involves a citizen (having a citizen-nexus) and IPA review. Department initiated investigations involve a wide variety of misconduct issues ranging from policy and procedure violations to criminal conduct.

III. Discipline Imposed

As delineated in **Illustration 3-N**, in 2007 discipline was imposed on 17 officers in external citizen-initiated cases and on 36 officers in internal department-initiated cases. A total of 25 allegations were sustained in 14 external complaints and a total of 36 allegations were sustained in 32 sustained internal complaints.

The primary type of discipline imposed was training and/or counseling. Documented Oral Counseling (DOC) and/or training were imposed on 63% of the officers who received discipline in both internal and external cases. Officers received DOC in 20 internal and nine external cases. Letters of reprimand were issued in one department-initiated case and in one citizen-initiated case. Serious discipline was issued in two external sustained citizen complaints and two department-initiated complaints with a citizen nexus: one officer was terminated, one officer resigned before discipline, one officer received a 120 hour suspension and another officer received a 30-day suspension. Suspensions were imposed on seven officers in five internal complaints; in two additional internal cases one officer was terminated and one officer retired before discipline.

The number of officers disciplined in external community-initiated complaints has decreased significantly since 2004; there were 37 officers disciplined in 18 sustained complaints in 2004 compared to 14 officers disciplined in 11 sustained complaints in 2006 and 17 officers disciplined in 14 complaints in 2007.

Illustration 3-N: Discipline Imposed on Subject Officers

DISCIPLINE IMPOSED	2004				2005				2006				2007			
	Officers Ext. Comps.	Officers Int. Comps.	Total	%	Officers Ext. Comps.	Officers Int. Comps.	Total	%	Officers Ext.. Comps.	Officers Int. Comps.	Total	%	Officers Ext. Comps.	Officers Int. Comps.	Total	%
Training	3	0	3	5%	6		6	13%	1		1	2%				0%
Training & Counseling	21	3	24	39%	1	1	2	4%	5	6	11	22%	3	1	4	8%
Counseling	3	0	3	5%				0%				0%				0%
Documented Oral Counseling (DOC)	7	7	14	23%	4	20	24	50%	5	16	21	41%	9	20	29	55%
DOC & Training				0%	1	1	2	4%				0%				0%
Letter of Reprimand		2	2	3%		3	3	6%		2	2	4%	1	6	7	13%
10-Hour Suspension		2	2	3%		3	3	6%		9	9	18%		1	1	2%
20-Hour Suspension		1	1	2%		1	1	2%				0%		2	2	4%
30-Hour Suspension				0%		1	1	2%				0%		2	2	4%
40-Hour Suspension		4	4	6%				0%	1	2	3	6%		1	1	2%
60-Hour Suspension		1	1	2%				0%				0%				0%
80-Hour Suspension	1		1	2%				0%		1	1	2%				0%
100-Hour Suspension				0%		1	1	2%				0%		1	1	2%
120-Hr Suspension				0%				0%				0%	1		1	2%
30-Day Suspension				0%				0%				0%	1		1	2%
Settlement Agreement		1	1	2%		1	1	2%		1	1	2%				0%
Letter of Reprimand & Settlement Agreement				0%				0%	1		1	2%				0%
Disciplinary Transfer	1		1	2%				0%				0%				0%
Demotion				0%	1		1	2%				0%				0%
Termination		3	3	5%				0%	1		1	2%	1	1	2	4%
Retirement before Discipline				0%		1	1	2%				0%		1	1	2%
Resigned before Discipline	1	1	2	3%		2	2	4%				0%	1		1	2%
Total Discipline Imposed	**37**	**25**	**62**	**100%**	**13**	**35**	**48**	**100%**	**14**	**37**	**51**	**100%**	**17**	**36**	**53**	**100%**

Complaint Dispositions/Standard of Evidence

Standard of Evidence: "Preponderance of Evidence," the evidence indicates that it is more likely than not that a violation occurred or did not occur.

I. Dispositions for Formal Complaints:

- **Sustained:** The investigation disclosed sufficient evidence to clearly prove the allegation made in the complaint.
- **Not Sustained:** The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation.
- **Exonerated:** The incident occurred as alleged; however, the investigation revealed that the officer's actions were justified, lawful and proper.
- **Unfounded:** The investigation conclusively proved that the act or acts complained of did not occur. This finding also applies when the individual member(s) or employee(s) named were not involved in the act or acts that may have occurred.
- **No Finding:** The complainant withdrew the complaint, failed to disclose promised information to further the investigation, is no longer available, or the investigation revealed that another agency was involved and the complainant has been referred to that agency. Additional reasons may include: lack of signature on the Boland Admonishment; officer resigned from the SJPD before the investigation was closed; the officer's identity could not be determined.

II. Dispositions for Procedural Complaints:

- **Within Procedure:** The initial investigation determined that the subject officer acted reasonably and within Department policy and procedure given the specific circumstances and facts of the incident and that, despite the allegation of misconduct, there is no factual basis to support the allegation.
- **No Misconduct Determined:** The initial investigation determined that the allegation is a dispute of fact case wherein there is no independent information, evidence or witnesses available to support the complaint and there exists another judicial entity available to process the concerns of the complainant.

III. Command Review Complaints: Involves allegations of minor transgressions by an officer, which may be handled informally through the officer's chain of command. This process does not imply that the subject officer has or has not committed the transgression as described by the complainant.

IV. Inquiry: A complaint that is immediately resolved to the satisfaction of the citizen, without requiring a more extensive investigation. An inquiry that is not immediately resolved to the citizen's satisfaction can be reclassified and be fully investigated. Officer's names are not tracked in cases classified as inquiries.

V. No Boland: Following a U.S. Supreme Court decision in May 2006, this disposition is no longer used. Previously, a complaint was closed within 30 days from the date the case was received when a complainant failed to sign the Boland Admonishment. California Penal Code §148.6 required that complainants sign a Boland Admonishment form informing them that they could be prosecuted for a misdemeanor violation if they knowingly filed a false complaint.

VI. Withdrawn: A complaint is withdrawn at the complainant's request or by failure of the complainant to return a signed Boland Admonishment.

Chapter Four

This chapter provides information and data about complaints alleging that San José police officers used unnecessary or excessive force. It also provides information about an officer-involved shooting and a critical incident resulting in death in 2007. Because use of force complaints present some of the most serious issues of potential police misconduct, the IPA is required to audit all use of force complaint investigations conducted by Internal Affairs (IA).

An investigation of a use of force complaint must examine whether the officer used objectively reasonable force as defined in the San José Police Department (SJPD) Duty Manual. Police officers are allowed to use force in the performance of their duties in situations in which they are compelled to overcome resistant or combative individuals and/or defend themselves or others. An investigation must examine all the facts and circumstances associated with the incident in order to determine whether or not the officer acted reasonably.

I. Use of Force Complaints and Allegations

A. Unnecessary Force Complaints Filed in 2007

In 2007, 117 of the 547 complaints filed, 21%, contained unnecessary force allegations. These figures reflect 116 external cases initiated by a member of the community and one internal case initiated by the Department.

Illustration 4-A shows a five-year overview of the classifications of unnecessary force complaints. Of the 117 unnecessary force complaints filed in 2007, 94 were formally investigated, seven were classified as inquiry, 14 were classified as procedural complaints, and two complaints were withdrawn. These figures reflect an increase in the number and percentage of force cases which were formally investigated over the last two years. In 2007, 80% of the unnecessary force complaints were formally investigated, as compared to 53% in 2006 and 73% in 2005. The impact of this change in classifications is that more officer names are tracked and officers are interviewed; the IPA attends the officer interviews and audits the completed investigations - resulting in increased information regarding these investigated unnecessary force complaints.

Illustration 4-A: Unnecessary Force (UF) Complaints

COMPLAINTS CLASSIFICATION	2003	%	2004	%	2005	%	2006	%	2007	%
Formal: Citizen-Initiated Complaints	46	94%	55	89%	59	72%	51	53%	93	79%
Department-Initiated Complaints	0	0%	0	0%	1	1%	0	0%	1	1%
Informal: Command Review Complaints	0	0%	0	0%	0	0%	0	0%	0	0%
Procedural Complaints	1	2%	3	5%	4	5%	14	14%	14	12%
Policy Complaints	0	0%	0	0%	0	0%	0	0%	0	0%
Inquiry Complaints	N/A*	N/A*	N/A*	N/A*	12	15%	25	26%	7	6%
No Boland	1	2%	4	6%	4	5%	3	3%	0	0%
Withdrawn	1	2%	0	0%	2	2%	4	4%	2	2%
Total UF Complaints	**49**	**100%**	**62**	**100%**	**82**	**100%**	**97**	**100%**	**117**	**100%**

* Not applicable. Prior to 2005, allegations were not tracked in inquiries.

Illustration 4-B: Complaints Filed - Five-Year Overview of Unnecessary Force

YEAR	FORMAL/INFORMAL COMPLAINTS				INQUIRY COMPLAINTS			
	UF Class I Complaints	UF Class II Complaints	Total UF Complaints	% Total Complaints	UF Class I in Inquiry Complaints	UF Class II in Inquiry Complaints	Total UF in Inquiry Complaints	Total Number Complaints
2003	7	42	**49**	**15%**	N/A*	N/A*	**N/A***	**323**
2004	7	55	**62**	**17%**	N/A*	N/A*	**N/A***	**366**
2005	4	66	**70**	**16%**	1	11	**12****	**429**
2006	9	63	**72**	**15%**	4	21	**25**	**478**
2007	13	97***	**110**	**20%**	1	6	**7**	**547**

* Not applicable. Prior to 2005, allegations were not tracked in inquiries.
** 10 inquiries recorded in 2005 had no allegations delineated.
*** Two cases which contained both Class I & Class II force allegations are counted as Class I complaints.

The number of unnecessary force allegations can be higher than unnecessary force complaints because a complaint may contain more than one force allegation. Of the 1,124 allegations contained in all complaints, 180, 16% were unnecessary force. Five of the 180 unnecessary force allegations were contained in two department-initiated cases, one of which had a citizen nexus.

Illustrations 4-B and 4-C, respectively, show that in 2007 there were 110 unnecessary force complaints in formal/informal classifications containing a total of 174 unnecessary force allegations. Seven force complaints, containing seven unnecessary force allegations, were classified as inquiries.

B. Unnecessary Force: Class I and Class II

The SJPD Internal Affairs Unit divides allegations of unnecessary force into two categories: Class I unnecessary force and Class II unnecessary force. Class I unnecessary force complaints are the most serious force cases that entail allegations of force

Illustration 4-C: Allegations Filed – Five-Year Overview of Unnecessary Force

YEAR	UF Class I Allegations in Complaints	UF Class II Allegations in Complaints	Total UF Allegations in Complaints	UF Class I Allegations in Inquiry Complaints	UF Class II Allegations in Inquiry Complaints
2003	23	60	**83**	N/A*	N/A*
2004	12	86	**98**	N/A*	N/A*
2005	5	107	**112**	1**	12**
2006	12	97	**109**	4	23
2007	23	151	**174**	1	6

* Not available. Prior to 2005, allegations were not tracked in inquiries.
**10 inquiries recorded in 2005 had no allegations delineated.

which caused serious bodily injury requiring medical care.[18] In 2007 there were thirteen formal/informal complaints that contained one or more Class I force allegations; 97 complaints contained one or more allegations of Class II force. Two formal/informal complaints contained both Class I and Class II force allegations; for reporting purposes, these complaints are counted as Class I complaints to accurately account for the severity of the force used and to avoid double-counting. See **Illustration 4-B**.

There were 174 unnecessary force allegations contained within formal/informal complaints filed in 2007; 23 allegations were Class I force and 151 allegations were Class II force. In addition, there were seven unnecessary force allegations contained within complaints classified as inquiries; one allegation was Class I force and six allegations were Class II force. See **Illustration 4-C.**

C. Unnecessary Force Complainants by Ethnicity

The IPA attempts to capture the ethnicity of complainants during the initial complaint intake as well as through voluntary surveys. Information on ethnicity was obtained from 385 complainants; this is not reflective of the total number of 491 complaints filed in 2007 because the ethnicity of some persons filing complaints is not known. The information in this section and in **Illustration 4-D** shows the number of unnecessary force complaints classified as formal/informal and as inquiry by the ethnicity of the complainant based upon those complaints filed in 2007 on which ethnicity data is available.

Hispanic/Latino complainants filed 152 cases in 2007, 39% of 385 external complaints in which ethnicity data was available; 53 of the 110 unnecessary force external complaints, 48%, were filed by persons identified as Hispanic/Latino. Ethnicity data available indicate that African-American complainants filed 25, 23%, of the unnecessary force cases, and 85 complaints, 22% of the total complaints filed in 2007. White complainants filed 18, 16% of the unnecessary force cases on which ethnicity data is available, and 26% of the total complaints filed in 2007.

This information does not reflect the full population of complainants; not all complainants reside in San José, and the analysis does not include the many factors that contribute to overall arrest, detention, and complaint statistics.

[18] Serious bodily injury as defined by Penal Code Section 243(f)(4).

Illustration 4-D: 2007 Unnecessary Force Complainants by Ethnicity *

ETHNICITY FROM COMPLAINANT'S SURVEYS & INTAKE	UF Class I	UF Class II	UF Class I in Inquiries	UF Class II in Inquiries	Total Ethnicity of UF Complainants		Total External Complainants**		% of San Jose Population***
					Number	%	Number	%	
African American	3	22	0	0	25	23%	85	22%	4%
Asian/Pacific Islander	2	3	0	0	5	5%	16	4%	13%
White	3	13	1	1	18	16%	101	26%	36%
Filipino	0	2	0	0	2	2%	6	2%	5%
Hispanic/Latino	4	47	0	2	53	48%	152	39%	30%
Native American	0	0	0	0	0	0%	1	0%	1%
Vietnamese	0	0	0	0	0	0%	12	3%	9%
Other	0	3	0	1	4	4%	9	2%	2%
Decline/Unknown Ethnicity	1	2	0	0	3	3%	3	1%	0%
Complainant's Response to Survey/Intake	**13**	**92**	**1**	**4**	**110**	**100%**	**385**	**100%**	**100%**
Total Complaints in Each Category	**13**	**97**	**1**	**6**	**117**		**491**		

* Information on ethnicity of complainants is obtained during intake and from voluntary surveys. Not all complainants reside within the City of San José.
** Ethnicity data was obtained on 385 complainants; this is not reflective of the total number of 491 complaints filed in 2007 because the ethnicity of some complainants is not known.
*** Source: U.S. Census Bureau, Census 2000.

D. Unnecessary Force Complaints Closed/Audited in 2007

As indicated in **Illustration 4-E**, the IPA audited 89 closed unnecessary force complaint investigations in 2007. Of these closed investigations, 57 were closed as "agreed at first review," 13 were closed as "agreed after further action" and 19 were closed as "disagreed." There were 11 audits of unnecessary force cases pending at the end of 2007.

In addition to tracking force data from complaints filed, the IPA also tracks specific force-related information obtained from the audits of closed unnecessary force complaint investigations. In order to determine whether any trends or patterns can be detected from use of force complaints the IPA tracks: 1) the level of injury caused by the force used; 2) the part of the complainant's body impacted by the force; and 3) the type of force used by the officer.

Illustration 4-E: Formal/Informal Unnecessary Force Complaints Audited

YEAR	UF Class I Complaints Audited	UF Class II Complaints Audited	Total UF Complaints Audited
2003	10	63	73
2004	6	67	73
2005	3	42	45
2006	3	58	61
2007	11	78	89

Illustration 4-F provides data about the level of injury resulting from the alleged use of force. There are five categories ranging from "major" to "none." Major injuries require significant medical attention, whereas minor injuries require little or no medical attention. For example, minor injuries can involve minor abrasions, bruising or the use of chemical agents.

In 2007, the number and percentage of major and moderate injuries together increased, numbering 18, 20% of the injuries reported. Minor and no injuries continue to account for the highest percentage of injury levels with 61 allegations, 68%, reported in 2007.

Illustration 4-F: Five-Year Overview of Complainant's Level of Injury

DEGREE OF INJURY	2003		2004		2005		2006		2007	
	Number	%	Number	%	Number	%	Number	%	Number	%
Major	0	0%	4	5%	2	4%	2	3%	8	9%
Moderate	11	15%	9	12%	5	11%	7	11%	10	11%
Minor	39	53%	45	62%	33	73%	37	61%	49	55%
None	13	18%	9	12%	5	11%	13	21%	12	13%
Unknown	10	14%	6	8%	0	0%	2	3%	10	11%
Total	**73**	**100%**	**73**	**100%**	**45**	**100%**	**61**	**100%**	**89**	**100%**

Illustration 4-G provides data reflecting the part of the complainant's body that was impacted by the alleged force. The IPA tracks this data to determine if any trends exist in force cases. The areas of the body are divided into five categories: head, torso, limbs, multiple body parts and unknown. In each complaint the alleged unnecessary force can impact more than one body area. The IPA closely monitors the number of allegations citing head injuries, as force to the head has the greatest potential to cause serious injuries. The data does not indicate any significant change in 2007 regarding the number of allegations citing head injuries.

Data about the types of force used is collected to track the frequency as shown in **Illustration 4-H**. The number of types of force alleged is greater than the total number of unnecessary force complaints because there can be more than one type of force alleged in the same complaint, and there can be more than one officer alleged to have used unnecessary force. For example, a complainant may allege that one officer struck him with a baton, and another officer hit him with fists and placed handcuffs on too tightly. This example would account for three different types of unnecessary force allegations against multiple officers in one complaint. Depending on the circumstances, an assertion that the officers placed handcuffs on too tightly, or in some other manner which caused injury, may be captured as an unnecessary force allegation or as an improper procedure allegation.

Illustration 4-H shows that the aggregate total of the different types of force allegations has increased 40% from 113 in 2006 to 158 in 2007. This increase in types of force recorded correlates to the increase in unnecessary force cases being investigated and audited; the detail describing the type of force used is obtained only through audits of investigated complaints.

The use of hands was the type of force reported most frequently over the last five years ranging from 35 to 41% of force applications. In 2007, the next two types of unnecessary force alleged were

Illustration 4-G: Location of Force Applications - Five-Year Comparison

LOCATION OF FORCE APPLICATIONS	2003		2004		2005		2006		2007	
	Number	%	Number	%	Number	%	Number	%	Number	%
Head	33	30%	26	25%	11	16%	16	18%	23	19%
Torso	33	30%	34	33%	30	43%	31	34%	18	15%
Limbs	31	28%	33	32%	24	34%	35	38%	36	31%
Multiple Body Parts	9	8%	7	7%	3	4%	6	7%	36	31%
Unknown	4	4%	2	2%	2	3%	3	3%	5	4%
Total	**110**	**100%**	**102**	**100%**	**70**	**100%**	**91**	**100%**	**118**	**100%**

Illustration 4-H: Type of Forced Alleged - Five-Year Comparison

TYPE OF UNNECESSARY FORCE	2003 Number	2003 %	2004 Number	2004 %	2005 Number	2005 %	2006 Number	2006 %	2007 Number	2007 %
Baton	14	10%	18	13%	9	11%	11	10%	19	12%
Canines	1	1%	0	0%	1	1%	0	0%	0	0%
Car	3	2%	2	1%	1	1%	6	5%	0	0%
Chemical Agent	2	1%	4	3%	6	7%	3	3%	6	4%
Gun	1	1%	1	1%	2	2%	1	1%	2	1%
Feet	9	6%	13	9%	4	5%	3	3%	6	4%
Ground	26	19%	16	12%	14	17%	17	15%	13	8%
Hands	56	40%	51	37%	29	35%	43	38%	64	41%
Handcuffs	13	9%	10	7%	5	6%	5	4%	14	9%
Knee	9	6%	13	9%	5	6%	9	8%	8	5%
Taser	N/A*	N/A*	4	3%	7	8%	10	9%	13	8%
Object	3	2%	3	2%	0	0%	0	0%	2	1%
Other	2	1%	2	1%	0	0%	4	4%	10	6%
Unknown	1	1%	1	1%	0	0%	1	1%	1	1%
Total	**140**	**100%**	**138**	**100%**	**83**	**100%**	**113**	**100%**	**158**	**100%**

* Not applicable. Tasers were not used in San José before 2004.

use of baton and use of handcuffs. With 13 allegations each, 8% of the force allegations filed in 2007, the use of a Taser and the use of the ground were the fourth most frequently alleged types of unnecessary force.

There was one fatal critical incident in 2007 in which Tasers, as well as other types of force, were used. See **Page 46** for more information regarding this incident. The SJPD developed written guidelines for Taser use in December 2005 following an IPA policy recommendation.

Illustration 4-I provides specific information concerning the disposition of each unnecessary force allegation in closed complaints. Two cases alleging Class II unnecessary force were sustained in 2007; there were no sustained Class I unnecessary force cases in 2007. Fifty-seven of 165, 35%, of Class I and Class II unnecessary force allegations were found to be exonerated, which means that the investigations determined that the level and type of force used by the officers were reasonable and justified.

Illustration 4-I: Disposition of Unnecessary Force Allegations in Formal/Informal External Cases

DISPOSITION	2003				2004				2005				2006				2007			
	UF I	UF II	Total	%	UF I	UF II	Total	%	UF I	UF II	Total	%	UF I	UF II	Total	%	UF I	UF II	Total	%
Sustained	0	0	**0**	0%	0	2	**2**	2%	0	0	**0**	0%	0	1	**1**	1%	0	2	**2**	1%
Not Sustained	0	11	**11**	12%	0	8	**8**	7%	0	11	**11**	9%	0	8	**8**	10%	2	25	**27**	16%
Exonerated	16	58	**74**	78%	9	81	**90**	74%	11	63	**74**	61%	1	32	**33**	39%	10	47	**57**	35%
Unfounded	1	2	**3**	3%	1	7	**8**	7%	0	14	**14**	12%	0	8	**8**	10%	6	29	**35**	21%
No Finding	2	5	**7**	7%	2	8	**10**	8%	0	14	**14**	12%	2	18	**20**	24%	0	18	**18**	11%
Within Procedure	0	0	**0**	0%	0	4	**4**	3%	1	7	**8**	7%	1	11	**12**	14%	4	22	**26**	16%
No Misconduct Determined	0	0	**0**	0%	0	0	**0**	0%	0	0	**0**	0%	0	2	**2**	2%	0	0	**0**	0%
Total Allegations	**19**	**76**	**95**	**100%**	**12**	**110**	**122**	**100%**	**12**	**109**	**121**	**100%**	**4**	**80**	**84**	**100%**	**22**	**143**	**165**	**100%**

SJPD 2006 Annual Force Response Report

In March 2007 the SJPD released its 2006 Annual Force Response Report (Report) covering the 2006 calendar year. The Report provided data obtained from a compilation of completed "Force Response Reports," a form which attempts to track all reportable uses of force by SJPD officers (i.e. use of Taser, batons, handguns, pain compliance holds, etc.). This form also allows for the officer to report suspect information (age, injuries, race, etc.). The Report showed that reportable force was used 1,517 times; the Report also stated that 33,995 contacts resulted in arrests and citations. Reportable force was used on persons identified as Hispanic 830 times, 55% of the total amount of force responses; there were 17,780 arrests made on Hispanic persons, 52% of total arrests.[19] Reportable force was used on persons identified as African-American 257 times, 17% of the total force responses; there were 3,372 arrests made on African-American persons, 10% of total arrests. Reportable force was used on persons identified as white 268 times, 18% of the total force responses; there were 6,389 arrests made on white persons, 19% of the total arrests.

The percentages compiled by the SJPD regarding ethnicity and use of force were similar to the percentages regarding ethnicity and unnecessary force complaints reflected in the IPA 2006 Year End Report:[20]

- In 2006, 52 of the 97 unnecessary force complaints filed, 54%, were filed by Hispanic/Latino persons.
- In 2006, 15 of the 97 unnecessary force complaints, 15%, were filed by African-Americans.

Review of the Use of Force Report in tandem with the IPA 2006 Year End Report indicates: Hispanic/Latino persons reflected 52% of the arrests made in 2006 and 55% of all reported force. Hispanic/Latino persons filed 54% of the unnecessary force complaints in 2006 in which ethnicity data was available. The percentage of reportable force used on African-Americans was 17%; this group comprised 10% of arrests made in 2006. African-American complainants filed 15% of the unnecessary force complaints in 2006 in which ethnicity data was available.

The SJPD has committed to collect and analyze reportable force used by members of the SJPD and to report such information to the public on an annual basis. This action is commendable and the IPA anticipates that further analysis on force will prove beneficial to the Department and the community. The 2007 Annual Force Response Report has not yet been released.

[19] SJPD data on race/ethnicity is based on the perception of the officer completing the force response form.

[20] Information on the ethnicity of complainants was obtained on 390 complainants; this is not reflective of the total number of 444 complaints filed in 2006 because the ethnicity of some persons filing complaints is not known. IPA data on race/ethnicity of complainant is based on voluntary surveys/intake forms.

II. Officer-Involved Shooting and Fatal Critical Incident

The use of deadly force is the most serious type of force that can be used by a police officer. The SJPD Duty Manual Section L2638 states, *"An officer may discharge a firearm under any of the following circumstances: . . . When deadly force is objectively reasonable in self-defense or in defense of another person's life."* When a person is injured or killed as a result of an officer-involved shooting there is community concern and questions arise as to the necessity for the use of lethal force. In recognition of the serious nature of these issues, the IPA has been given specific responsibilities regarding such incidents including responding to the scene when these incidents occur and participating on the shooting review panel after review of the SJPD investigation.

Every officer-involved shooting that results in death is subject to an intensive investigation and review process that is outlined in the flow chart in **Illustration 4-J**. As the chart indicates, the SJPD Homicide Unit conducts a criminal investigation that is monitored by the Internal Affairs Unit. The criminal investigation is presented to the county Grand Jury by the Santa Clara County District Attorney to determine whether there is sufficient evidence for a crime to be charged. After completion of the criminal investigation and the Grand Jury review, if there is no "True Bill" for criminal prosecution, IA conducts an administrative review to determine whether the officer's actions were within department policy.

IPA Review of Officer-Involved Shootings

The 1998 IPA Year End Report included a recommendation that the IPA be authorized to review investigations of all officer-involved shootings and discussed the benefits of oversight of these incidents. In the Department response to the 1998 IPA Year End Report, the Chief of Police indicated that the Department would establish an internal officer-involved shooting review panel and would work to include the IPA in the process. The panel, consisting of the Chief of Police and several SJPD command staff, the IPA, and representatives of the City Attorney's Office, was established in 1999. The purpose of the shooting review panel was to review the incident to consider possible training issues and policy or procedural changes.

In April 2004, the City Council approved expanding IPA jurisdiction in officer-involved shooting cases as a result of recommendations made in the 2003 IPA Mid-Year report.[21] The expansion included:

- the IPA will be notified immediately after an officer-involved shooting occurs so the IPA can respond to the scene and receive a briefing about the case details,
- the IPA will be provided a copy of the IA investigative report for audit purposes prior to the close of the administrative investigation, and,
- the IPA will coordinate outreach efforts immediately after an officer-involved shooting incident and the SJPD will ensure its participation in these forums.

[21] IPA recommendations made in the 2003 Mid-Year Report and the 2005 Mid-Year Report, as well as other years, are detailed in Appendix E.

After Council approval of the April 2004 recommendation stating that the IPA would be provided copies of the IA investigation on such incidents for auditing purposes, the IPA began auditing these matters.[22] The IPA audit of such incidents generally mirrored the audits performed on other administrative investigations received from Internal Affairs, namely to ensure that the determination of whether the officer acted properly was based on a thorough and objective investigation.

In February 2006, the Council approved a recommendation that the IPA receive copies of the homicide report for SJPD officer-involved shooting and in-custody death incidents.

The ability of the IPA to audit officer-involved shootings was revisited in 2007. At the special council meeting on June 21, 2007, the Council requested that the authority of the IPA to review officer-involved shooting and in-custody death cases be confirmed and directed the City Attorney to report on the litigation impact of moving all in-custody death cases that are a result of the use of force to the same level of auditing by the IPA as officer-involved shootings.

In his September 4, 2007 memorandum to Council, the City Attorney stated that the ability of the IPA to audit such incidents absent a complaint contradicted the authority granted to the IPA in the City Charter and that the Council lacked the ability to grant such authority.

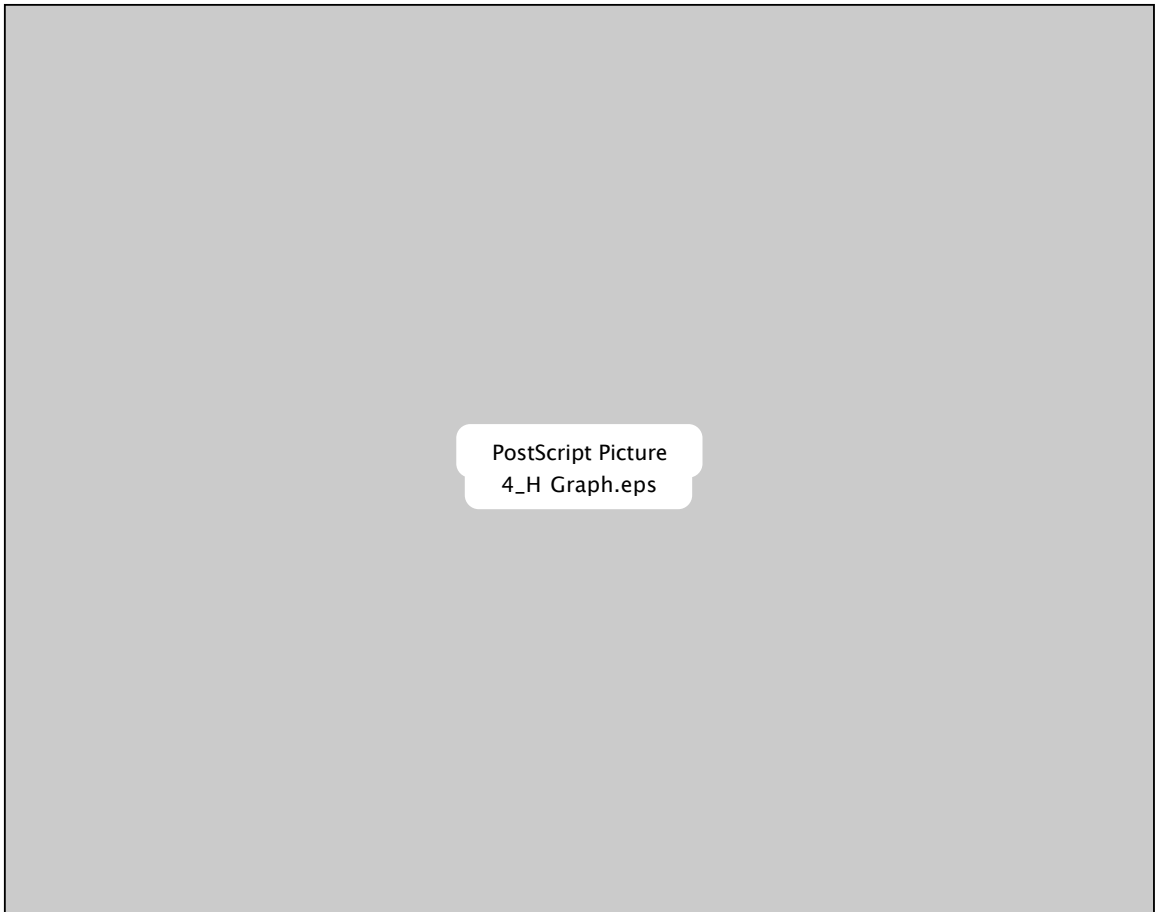
The IPA disagreed with the City Attorney's opinion, stating that the opinion used an unduly narrow interpretation, created inconsistencies and did not adequately review IPA authority derived from Municipal Code sections and past pattern/practice.

At the September 18, 2007 meeting, the Council took action which eliminated the IPA's authority to audit officer-involved shootings and limited the IPA role to participation on the shooting review panel.

Due to such action, there is no current independent audit of officer-involved shooting incidents because the shooting review panel makes no determination as to whether the officer acted properly or within procedure, the panel decides only whether to recommend the acquisition of equipment/training or changes to policy/procedures. See **Chapter Two** for more discussion on this topic.

[22] Council action on April 27, 2004 approved several IPA recommendations including "the IPA will be provided a copy of the Internal Affairs administrative investigation document of the officer-involved shooting for auditing purposes as soon as practical after the criminal case has been concluded, but prior to the closing of the administrative investigation."

Illustration 4-J: Officer-Involved Shooting Review Process



A. Officer-Involved Shooting in 2007

One non-fatal officer-involved shooting incident occurred in 2007. In May 2007, in an incident in which officers were investigating a series of robberies, an officer was shot by a fellow officer whose gun discharged accidentally during an enforcement action to stop an attempted robbery of a pizza delivery man. Because this case did not result in a fatality, there was no Grand Jury hearing; administrative reviews/investigations of the use of the firearm related to this incident are pending.

The IPA was not notified of this incident by the IA commander and therefore did not respond to the scene for a briefing. According to procedures developed in 2004, the IPA is to be notified by the IA commander immediately after an officer-involved shooting and may respond to the incident scene for a briefing regarding the circumstances of the shooting. The SJPD maintains that this incident was not within the established protocol for officer-involved shootings because the shooting victim was an officer and the shooting was accidental. The IPA will initiate further discussion with the City Manager and the SJPD to gain consensus regarding the existing protocol and the scope of its application.

Illustration 4-K: Fatal Critical Incident in 2007

Case	Ethnicity	Mental Illness History?	Person Armed?	Police Weapons Used?	Cause of Death?*	Within Policy?
1	Hispanic	Unknown	No	Taser	Cardiopulmonary arrest during a violent struggle in an individual under the influence of Phencyclidine (PCP). **Other significant conditions:** Hypertensive heart disease, coronary artery disease, obesity and Taser use. **Manner of Death:** Undetermined.	Pending

* *Santa Clara County Medical Examiner's Report*, August 30, 2007.

B. Fatal Critical Incident in 2007

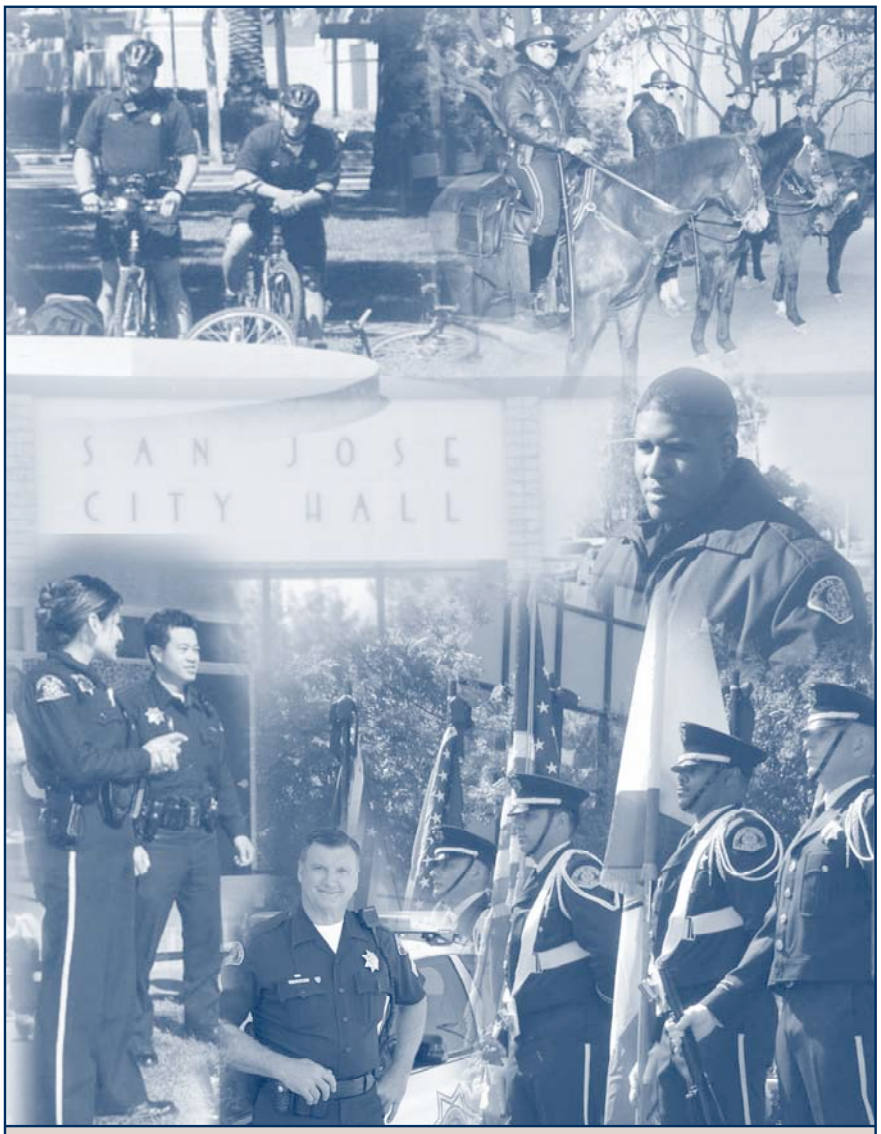
One fatal critical incident that involved SJPD officers occurred in 2007. See **Illustration 4-K**. A citizen complaint has been filed regarding this incident and the IA investigation is pending. Because a citizen complaint has been filed, the IPA has jurisdiction to review the IA investigation to determine whether it was complete, thorough, objective and fair. This IPA audit will be conducted after receipt of all applicable reports.

III. Crisis Intervention Training and Force-Option Simulator Training

Crisis intervention training teaches officers how to better address situations involving persons who are experiencing some type of mental or emotional crisis, thus reducing the possibility of the officers having to use force to gain control of a situation. In 2007, 55 San José officers received the 40-hour Crisis Intervention Training (CIT) and there are now 298 CIT-trained officers in San José. The IPA continues to encourage and support this type of training for SJPD officers in an attempt to help reduce the need for officers to use force, including deadly force.

Similarly, SJPD continues to require officers to take a four-hour firearms skill training as part of the "Continuous Professional Training" (CPT) Program. Each officer must take this training every 24 months. The SJPD uses the Force-Option Simulator training which utilizes state-of-the-art interactive video simulations of real-life scenarios that require officers to react to life-threatening situations. In 2007, 290 officers received this training.

Chapter Five



The SJPD officers portrayed in this collage assisted the IPA in designing informational materials. They are not subject officers.

The IPA tracks information about officers named in complaints, "subject officers," in five categories of cases, citizen-initiated, department-initiated, command review, procedural, and policy to determine if there are trends or particular problem areas. Specific areas of interest include the subject officer's gender and years of experience with the SJPD at the time the incident occurred, as well as officers receiving multiple complaints. It is not possible to track this data in inquiry cases because officer information is not identified. The total number of officers receiving one or more complaints increased in 2007, from 217 to 339. The increase in subject officers in 2007 is commensurate with the increase in complaints classified and investigated in the formal and informal complaint classifications. Officer names are tracked in these cases, and they are also audited, which provides more information on subject officers available for reporting. The total number of sworn SJPD officers in 2007 was 1,384. The statistics in this chapter reflect information on 339 officers named in one or more complaints filed in 2007.

I. Complaints by Gender of Subject Officers

The gender of San José officers named as subject officers in complaints in 2007 is reflected in **Illustration 5-A**. The percentage of male to female officers receiving complaints remained the same. Twenty-two female officers were named in complaints, 6%, which is lower than their percentage in the Department, 10%.

Illustration 5-A: Gender of Subject Officers

GENDER	Subject Officers	%	SJPD Sworn Officers	%
Male	317	94%	1252	90%
Female	22	6%	132	10%
Total	**339**	**100%**	**1384**	**100%**

II. Years of Experience of Subject Officers

The years of experience for San José police officers receiving complaints in 2007 is displayed in **Illustration 5-B**. SJPD hired 49 officers in 2007; 11 new positions and 38 to fill vacancies. Officers with 2-4 and 5-6 years of experience were named in the highest number of complaints when compared to their representation in the Department. The number of subject officers named in each group was 5% higher than their representation in the department. The percentage of complaints for officers in the 7-10 year range decreased in 2007 to 19%, bringing it within 2% of their representation in the department. The numbers of subject officers with 0-1 and 2-4 years of experience both increased slightly; the ratio of subject officers to their number in the Department increased in the group of newer officers.

It is important to note that the severity of complaints filed against officers can vary as reported in **Chapter Three**, with the largest numbers of allegations in complaints being improper procedure, unnecessary force and rude conduct. During the audit process the types of misconduct alleged and the demographics of the involved officers are studied to identify possible problems, patterns in behavior and other potential areas of concern.

Illustrations 5-B: Two-Year Comparison – Years of Experience of Subject Officers

Illustration 5-B1: 2007 Years of Experience of Subject Officers

YEARS OF EXPERIENCE	Gender of Subject Officers Male	Female	Total Subject Officers	%	SJPD Sworn Officers Male	Female	Total SJPD Sworn Officers	%
0- 1+	26	0	26	8%	87	2	89	6%
2- 4+	37	2	39	12%	83	15	98	7%
5- 6+	39	5	44	13%	103	14	117	8%
7-10+	60	4	64	19%	207	24	231	17%
11- 15+	79	3	82	24%	315	33	348	25%
16+	76	8	84	25%	457	44	501	36%
	317	22	339	100%	1252	132	1384	100%

Illustration 5-B2: 2006 Years of Experience of Subject Officers

YEARS OF EXPERIENCE	Gender of Subject Officers Male	Female	Total Subject Officers	%	SJPD Sworn Officers Male	Female	Total SJPD Sworn Officers	%
0- 1+	18	0	18	8%	101	9	110	8%
2- 4+	22	3	25	12%	73	16	89	7%
5- 6+	20	3	23	11%	90	12	102	8%
7-10+	54	1	55	25%	236	24	260	19%
11- 15+	40	4	44	20%	269	26	295	22%
16+	49	3	52	24%	436	43	479	36%
	203	14	217	100%	1205	130	1335	100%

III. Subject Officers Named in One or More Complaints

The records maintained by the IPA report the total number of officers receiving a complaint during the year. In some cases an officer may be named in more than one complaint. In 2007, 82 officers received more than one complaint, more than double the number of officers receiving multiple complaints in 2006. The increase in the number of officers with multiple complaints is the result of the increase in investigated cases in which officer names were tracked.

Illustration 5-C depicts the number of times an individual officer has been named in a complaint. During the 2007 calendar year, 257 San José police officers were named one time in a complaint; 59 officers were named in two complaints and 18 were named in three complaints. In 2007 there were three officers named in four complaints, one officer named in five complaints, and one officer named in eight separate complaints. Five officers were counseled in 2007 as part of the complaint intervention program; see the textbox on following page.

Illustration 5-C: Officers Named in Multiple Complaints

OFFICERS RECEIVING	NUMBER OF OFFICERS 2004	2005	2006	2007
1 Complaint	171	188	177	257
2 Complaints	33	30	35	59
3 Complaints	4	3	5	18
4 Complaints	1	2	0	3
5 Complaints	0	0	0	1
6 Complaints	0	1	0	0
7 Complaints	0	0	0	0
8 Complaints	0	0	0	1
Total Number of Officers Receiving Complaints	209	224	217	339

In 2006 all officers named in more than one complaint were male. In 2007, five female officers were named in multiple complaints; four female officers received two complaints, one female was named in three separate complaints.

IV. Ethnicity of Subject Officers

Illustration 5-D details the ethnicity of subject officers. The ethnicity of the subject officers continues to closely track the ethnic breakdown of officers in the Department.

Illustration 5-D: Ethnicity of Subject Officers

ETHNICITY	Subject Officers	%	SJPD Sworn Officers	%
Native American	2	1%	6	0%
Asian American/Pacific Islander	33	10%	120	9%
African American	20	6%	66	5%
Filipino American	5	1%	32	2%
Hispanic/Latino	77	23%	346	25%
White	198	58%	800	58%
Not Available	4	1%	14	1%
Total	**339**	**100%**	**1384**	**100%**

Complaint Intervention Programs

SJPD has an Early Warning System (EWS) to identify officers exhibiting possible problem behavior and to take corrective action. The EWS flags officers that receive three formal complaints or a combination of five complaints of any type within a 12-month period. Officers meeting these criteria are scheduled to participate in Intervention Counseling. The counseling sessions involve a review of the complaints filed against the subject officer without regard to the finding. The subject officer is asked to meet with his/her supervisor, the Internal Affairs Commander, and the Deputy Chief in his/her chain of command. During these sessions the command staff has an opportunity to informally talk to the officer about personal or work related topics, provide counseling, and recommend training for the subject officer. Intervention Counseling is not discipline and only the fact that a session took place is recorded. This program is negatively impacted by the inquiry classification which removes officer names for tracking purposes.

SJPD has established a Supervisor's Intervention Counseling Program to work with the supervisor when three or more complaints are filed against members of his/her team within a six-month period. The program is designed to ensure that a supervisor is aware of the patterns of officer behavior that led to the citizen complaints and to suggest strategies that can be implemented by the supervisor to reduce future complaints.

Chapter Six

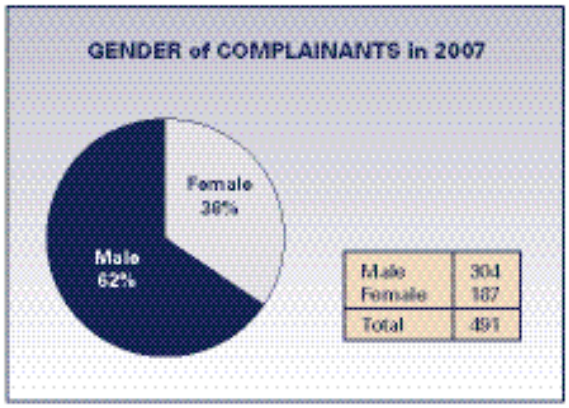
The diversity of San José is one of the City's greatest assets. In an effort to understand how to best serve the community and gain insight into the complainant population, the IPA and IA request basic demographic information regarding each complainant during the intake process. Further information is solicited shortly thereafter with a survey sent by mail. All demographic information provided is voluntary and self-reported.

In 2007 over 75% of complainants responded to questions regarding gender, age and ethnicity. Responses to questions regarding complainant demographics are highest in these categories because such information is solicited both at the time of intake and through mailed surveys. Education and occupation information is only requested through the mailed survey, not at the time of intake, and is frequently not provided. Information about education and occupation was received from less than 10% of complainants in 2007. Information provided by complainants regarding occupation was very limited; the results are not presented in this year's report.

I. Gender of Complainants

Illustration 6-A reflects the gender of complainants in 2007. Of the 491 complaints filed, 304, 62% of complainants, were male and 187, 38%, were female. The gender breakdown for San José in the 2000 census was 51% male to 49% female.[23]

Illustration 6-A: Gender of Complainants



[23]San José population figures in this report are based upon the U.S. Census Bureau, Census 2000 unless otherwise specified.

Illustration 6-B: Ethnicity of Complainants from Voluntary Surveys and Intake

ETHNICITY	2003 Surveys	%	2004 Surveys	%	2005 Surveys/ Intake	%	2006 Surveys/ Intake	%	2007 Surveys/ Intake	%	% of San Jose Population *
African American	20	12%	23	15%	45	15%	71	18%	85	22%	4%
Asian/Pacific Islander	7	4%	2	1%	11	4%	14	4%	16	4%	13%
White	52	31%	42	28%	76	26%	106	27%	101	26%	36%
Filipino	3	2%	2	1%	6	2%	4	1%	6	2%	5%
Hispanic/Latino	72	43%	58	38%	129	44%	164	42%	152	39%	30%
Native American	2	1%	2	1%	2	1%	3	1%	1	0%	1%
Vietnamese	2	1%	0	0%	6	2%	6	2%	12	3%	9%
Other	5	3%	10	7%	16	5%	17	4%	9	2%	2%
Decline/Unknown	6	4%	12	8%	3	1%	5	1%	3	1%	0%
Total Surveys and %	**169**	**100%**	**151**	**100%**	**294**	**100%**	**390**	**100%**	**385**	**100%**	**100%**
Number of Total Complaints	**295**		**335**		**383**		**444**		**491**		

* Source: U.S. Census Bureau, Census 2000.
Not all complainants reside in San José.

II. Ethnicities of Complainants

The ethnicities of individuals filing complaints are identified in **Illustration 6-B**. The ethnicity of complainants is collected at the time of intake as well as through surveys. As a result, the ethnicities of complainants were obtained in 385 cases, 79% of the 491 external complaints filed in 2007. Survey and intake responses showed that Hispanic/Latino complainants filed the highest number of complaints, 152, 39%, a higher percentage of complaints than their overall ratio in the San José community, 30%. African American complainants filed 85 complaints, 22%, a much higher percentage than their representation in the San José community, 4%. Asian/Pacific Islander, white, Vietnamese, and Native American complainants filed complaints at lower percentages than their representation in the population of San José.

This information does not reflect the full population of complainants; not all complainants reside in San José, and the analysis does not include the many factors that contribute to overall arrest, detention, and complaint statistics.

The ethnicities of individuals filing complaints are included in the five-year comparison above.

III. Ages of Complainants

The age of each complainant was also requested at the time of intake and on voluntary surveys. **Illustration 6-C** reflects the ages of complainants who responded. The table uses four groupings: under 18; 18-30, a spread of 19 years; 31-50, a spread of 28 years; and 60+. The age of complainants this year was available in 392 cases, 80%. There is no reliable source of age data with similar groupings for San José residents, therefore it is not possible to determine whether the ratio of complainants in a particular age group is in proportion with their representation in the San José community. In 2007 there was a slight increase in the number of complainants in the 18-30 category and a decrease in the number of complainants in the 31-59 category.

Illustration 6-C: Ages of Complainants from Voluntary Surveys and Intake

AGES OF COMPLAINANTS	2006 Surveys/Intake	%	2007 Surveys/Intake	%
Under 18	7	2%	10	3%
18-30	112	30%	132	34%
31-59	230	63%	216	55%
60+	19	5%	25	6%
Decline	0	0%	9	2%
Total	**368**	**100%**	**392**	**100%**

IV. Education Level of Complainants

Illustration 6-D provides a five-year comparison of the levels of education reported by individuals filing complaints. This demographic information was collected from voluntary survey responses. The majority of complainants declined to reveal their education level.

Illustration 6-D: Five-Year Overview of Complainant Education Level

EDUCATION LEVEL	2003		2004		2005		2006		2007	
	Surveys	%	Surveys	%	Surveys	%	Surveys	%	Surveys	%
Graduate Degree	24	14%	17	11%	16	14%	10	14%	17	41%
College	73	43%	61	40%	34	30%	30	41%	13	32%
High School or Below	72	43%	63	42%	58	51%	18	25%	9	22%
Decline	0	0%	10	7%	5	4%	15	21%	2	5%
Total	**169**	**100%**	**151**	**100%**	**113**	**100%**	**73**	**100%**	**41**	**100%**

Chapter Seven

Outreach to the community is a mandated and essential function of the Office of the Independent Police Auditor (IPA). From its inception, the IPA recognized that outreach would be crucial to raising awareness of the services provided by the IPA and to establishing public confidence in the agency, as well as in the complaint process. Over the ensuing 14 years the IPA has made significant inroads in gaining trust, respect, and support from the public, elected officials, and members of the San José Police Department. The IPA conducts extensive outreach to educate the community about the mission and functions of the IPA office, assess the needs and concerns of diverse communities, and make services visible and accessible to the public.

The IPA website www.sanjoseca.gov/ipa/ has become a vital outreach mechanism. It offers IPA outreach materials and reports, information about the complaint process, and general information about civilian oversight of law enforcement. The website proved extremely useful during 2007, providing information to 46,460 visitors.

I. Outreach Activities

Because awareness of the citizen complaint process is critical in raising public confidence in the IPA and the SJPD, staying connected to the community has been an ongoing priority. Outreach activities have also kept the IPA informed of issues important to the residents of San José. The IPA is committed to

Community forum regarding the police in San José held at the East Side Union High School District Office, January 18, 2007.

providing on-going face-to-face contact with individuals, groups and organizations throughout the City of San José. Outreach efforts include:

- Participating in a variety of community events and resource fairs
- Making presentations to youth in schools, community centers, colleges, and detention facilities
- Participating in television and radio programs
- Holding press conferences and media interviews
- Reaching out to neighborhood associations and organizations
- Organizing community forums
- Preparing and providing resource information

Through these varied activities, the IPA staff attended community events involving approximately 7,307 individuals in 2007, a 9% increase over 2006, and participated in 222 events, an increase of 30% over 2006. See Illustration 7-A. This number does not include those individuals who received IPA information through the City's One Voice program which disseminates materials on behalf of numerous City agencies at community events throughout each year.

Assistant Chief of Police Tuck Younis, Assistant IPA Shivaun Nurre, and ACLU-NC San José Director Sanjeev Bery speak on police issues at a Latina Coalition of Silicon Valley luncheon, May 11, 2007.

In 2007, outreach efforts in the Community Events/Meetings category reached the greatest number of community members, 4,447, 61% of the total audience of 7,307. This category included IPA participation in the City's Domestic Violence Walk, Project Homeless Connect, and CommUnity Resource Fair, as well as non-City events such as the 17th Annual YWCA Luncheon, County Human Relations Commission Awards Event, and Bill Wilson Center Open House.

Illustration 7-A: General Community Outreach Comparisons 2006 to 2007

TYPES OF COMMUNITY OUTREACH	2006				2007			
	Events	%	Attendees	%	Events	%	Attendees	%
Community Events/Meetings	93	53%	4015	60%	101	45%	4447	61%
Neighborhood Specific Events	14	8%	1192	18%	26	12%	1508	21%
IPA Presentations	40	23%	1468	22%	60	27%	1352	19%
Media/Press Conferences	27	16%	Unknown	Unknown	35	16%	Unknown	Unknown
Community Outreach Totals	**174**	**100%**	**6675**	**100%**	**222**	**100%**	**7307**	**100%**
Meetings with City Officials	46	N/A	358	N/A	146	N/A	1200	N/A

The IPA staff conducted presentations for approximately 1,352 community members in 2007. The IPA has a strong commitment to reaching individuals in diverse settings who may benefit from the services of the IPA office. Presentations were offered to individuals who were homeless, incarcerated, transgender, and/or elderly. Members of ethnic minority groups, immigrants and youth were also the subject of focused efforts.

The IPA participates in a number of annual events that focus on neighborhoods within the larger San José community. The IPA participated in 26 such events in 2007 and reached 1,508 individuals, an increase of 27% contacts over 2006.

II. Media

One of the most effective mechanisms for public outreach is the media. The IPA has made an effort to reach the San José community through newspaper, radio and television interviews. It is not possible to quantify the number of individuals reached via the 35 media related interviews and press conferences that occurred in 2007; however, IPA issues, quotes, events and presentations received national print coverage and were mentioned in several local newspapers including the *San José Mercury News*, the *Metro Silicon Valley*, *El Observador*, and the *Silicon Valley/San José Business Journal*. In addition, interviews with the IPA were captured on a number of local radio and television station programs.

III. Outreach to Ethnic Minority Community Members, Immigrants & Youth

Over the last several years the IPA has prioritized outreach to vulnerable populations such as ethnic minority members, immigrant communities, and youth. Of the 222 outreach events the IPA participated in during 2007, 148 or 67% involved one or both of these targeted populations. See **Illustrations 7-B and 7-C.**

San José is a diverse city comprised of individuals from numerous ethnic backgrounds. In order to ensure that local minority communities are aware of IPA services, the IPA participated in 88 community events involving ethnic minority members or immigrants in 2007, 40% of the 222 total IPA outreach events for the year. The IPA participated in large events such as the Refugee and Immigrant Forum of Santa Clara County and La Raza Roundtable Meetings, as well as smaller meetings with PACT (People Acting in Community Together) and the Latina Coalition of Silicon Valley. Presentations were offered to staff or participants of local community organizations such as the Mexican American Community Services Agency (MACSA) and neighborhood centers such as the Eastside Neighborhood Community Center.

The IPA recognizes the importance of educating youth about police practices and informing them about the services of the IPA. In 2007 IPA staff

Illustration 7-B: Outreach to Ethnic Minority Community Members & Immigrants

TYPES OF ACTIVITY/EVENT	Ethnic Minority Members & Immigrants 2006		Ethnic Minority Members & Immigrants 2007	
	Events	Attendees	Events	Attendees
Community Events/Meetings	23	1462	29	1585
Neighborhood Specific Events	4	713	6	342
IPA Presentations	10	187	47	717
Ethnic Media	4	Unknown	6	Unknown
Ethnic Minority & Immigrants Totals	**41**	**2362**	**88**	**2644**
Community Outreach Totals	**174**	**6675**	**222**	**7307**

Illustration 7-C: Outreach to Youth

TYPES OF ACTIVITY/EVENT	Youth 2006 Events	Youth 2006 Attendees	Youth 2007 Events	Youth 2007 Attendees
Community Events/Meetings	17	533	10	422
Neighborhood Specific Events	2	44	4	97
IPA Presentations	19	499	44	721
Youth Media	0	N/A	2	N/A
Youth Totals	**38**	**1076**	**60**	**1240**
Community Outreach Totals	**174**	**6675**	**222**	**7307**

participated in 60 outreach events involving youth or those that work with them, 27% of the total 222 outreach events in 2007. This category included the Girls for A Change – Change the World Breakfast, Project Youth Connect, and numerous meetings of the Mayor's Gang Prevention Task Force.

IPA staff has developed an interactive youth presentation that gives young people an opportunity to express their concerns about police issues and receive valuable information about what to do (and what not to do) when interacting with police officers. Presentations are offered to groups of 25 or less in order to promote meaningful dialogue with young audience members. Of the 60 total presentations offered by the IPA staff in 2007, 44 involved this specialized youth presentation.

IPA staff Vivian Do and Diane Doolan with community member at resource fair.

Barbara Attard is interviewed by Bill Chew for NeighborNet TV show.

The success of the IPA's targeted youth outreach program is the result of partnerships with local agencies such as San José's Clean Slate Program, the Striving Toward Achievement and New Direction Program (STAND), the Santa Clara County Girls Scouts "Got Choices" Program, and Fresh Lifelines for Youth (FLY). As a result of these collaborations, IPA staff offered multiple presentations to youth at the Santa Clara County Juvenile Hall, Muriel Wright Youth Ranch, Camden Community High School, San José Community High School, San José High School, Yerba Buena High School, Foundry School, and Stonegate Middle School. In addition, presentations were given at the Bill Wilson Center, Billy DeFrank GLBT Community Center, and Tully Community Branch Library.

In 2007 the IPA continued to distribute *"A Student's Guide to Police Practices"* (Student Guide). Thousands of copies were disseminated to youth,

parents, and teachers throughout the year. City Team Ministries, East Side Union High School District, Gardner Family Center, San José Job Corp, and Somos Mayfair are just some of the agencies that received copies. The Student Guide, written by IPA staff, is an essential tool to educate youth about their rights and responsibilities when interacting with police officers. Popular among youth, parents and teachers, the booklet contains fundamental information about police practices, as well as information on drugs, trespassing, curfew, profile stops, conduct on school grounds, community resources, and information on filing a complaint. The Student Guide was printed as a cooperative effort with funding from the City Manager's Office, the SJPD, and the IPA. It is available in English, Spanish, and Vietnamese, both in print and on the IPA website (www.sanjoseca.gov/ipa/), as well as on the National Association for Civilian Oversight of Law Enforcement's website (www.NACOLE.org). In 2007 major revisions to the Student Guide were coordinated by IPA staff. The updated and expanded version will be available during the summer of 2008.

IV. Community Forums

The IPA has organized and/or participated in several community informational forums in the past 14 years. The IPA has played a key role in bringing the community and police together to discuss controversial issues and has worked to foster relationships with community leaders while maintaining an objective perspective. IPA forums offer community members an opportunity to raise issues and provide critical information to the IPA regarding community concerns related to police practices in San José.

A community forum sponsored by the IPA and the City's Human Rights Commission (HRC) and funded by the City Manager's Office was held in January 2007 at the Administrative Office of the East Side Union High School District. Approximately 200 people attended the forum and 45 individuals offered testimony. IPA Barbara Attard and HRC Chairperson Lawrence Boesch were joined by Chief of Police Rob Davis to receive public testimony. The issues raised by speakers at the forum with the greatest frequency were: the need for improved officer

Rev. Jeff Moore & Guest Emcee Roberta Gonzales at Community Forum regarding Police Practices, January 18, 2007.

communication skills, disrespectful and discourteous interactions with SJPD officers, the existence of racial profiling, and the ineffectiveness of the existing complaint process. As a result of this forum and one held in November of 2006, the IPA and the HRC submitted recommendations requesting that the City of San José consider taking steps to address the issues discussed by members of the community. During a special City Council meeting on June 21, 2007, the Council considered the issues raised at the two community forums along with several other reports and recommendations. A recommendation was passed directing the Police Department, City Manager and IPA work together to develop a revised complaint process; see text box on **Page 15**.

Nuala O'Loan, Police Ombudsman of Northern Ireland, and Shivaun Nurre, Assistant IPA, at the 2007 NACOLE Conference in San José, September 2007.

V. IPA Hosts National Conference and Presents at International and Statewide Forums

IPA Barbara Attard served as the immediate past president on the Board of Directors of the National Association for Civilian Oversight of Law Enforcement (NACOLE) in 2007. The IPA hosted the Thirteenth Annual NACOLE Conference in San José in September 2007. The national conference was the most successful in NACOLE history, drawing 300 attendees from 26 states and 13 countries.

In 2007 the IPA traveled to Mexico and collaborated with human rights advocates regarding the creation of a civilian oversight system for Mexican law enforcement agencies. She was also a guest speaker on civilian oversight at events in Eureka, Fresno, and Palo Alto, California.

VI. Independent Police Auditor Advisory Committee (IPAAC)

The Independent Police Auditor Advisory Committee (IPAAC) was established in 1999 with the purpose of identifying, mobilizing and coordinating resources to assure maximum public, private, agency and individual commitment to effective police oversight. Members of the advisory committee include community leaders, grassroots organizers, and committed individuals representing the Vietnamese, Hispanic/Mexican/Latino, African American, Filipino, Asian American, Islamic, Sikh, Gay/Lesbian, business, nonprofit and legal communities of San José. The support, advice, and insights offered by the IPAAC have been an integral part of the success of the IPA. For more information regarding the IPAAC and its members see **Page *iii***.

CASES BY COUNCIL DISTRICT

Chapter Eight

This chapter presents data reflecting the complaints, allegations, inquiries, and citizen contacts received from each of the City's ten council districts. **Illustration 8-A** lists the council districts and the types of complaints that originated in each district. The distribution indicates the location where the incident occurred, not necessarily where the complainant resides. The category Unknown/Outside City Limits represents incidents in which the location could not be identified or did not occur within the City of San José. The locations of incidents in inquiries are not always provided, and citizen contacts usually do not specify a location.

Complaints are classified into one of seven categories: citizen initiated, department initiated, command review, procedural, inquiry, policy, and citizen contacts (which are not complaints against the SJPD). In the 2006 Annual Report the IPA addressed data collection problems resulting from the use of the inquiry classification in which officer names are not tracked and limited investigation is conducted; the IPA recommended that the complaint classification be reviewed and revised. As detailed in **Chapter Three**, in 2007 the total number of complaints increased, the number of cases classified as inquiries decreased, and the number of formal cases receiving a full investigation increased from 107 to 200. **Illustration 8-A** shows that the number of citizen issue complaints receiving formal investigations increased in almost all council districts.

I. Cases by Council District in 2007

Illustrations 8-A and 8-B report the distribution of complaints and contacts received by the IPA and Internal Affairs in 2006 and 2007. The numbers reported in these tables include citizen contacts which, while they do not reflect complaints about the SJPD, reflect the continuing community awareness of the Office of the Independent Police Auditor and SJPD Internal Affairs Unit, and the availability of these offices to accept and respond to questions and complaints. The chart identifies the council district as well as the classification of the complaint received. District 3, which includes the downtown area, continues to generate the largest number of complaints. Complaints across the remainder of the City are fairly equally divided.

The large number of cases Unknown/Outside City Limits fell to 115, 19% of all cases filed, compared to 156, 30%, in 2006. The availability of this information may reflect the reduced frequency of the inquiry classification, and a reduced number of citizen contacts which often do not identify a location.

Illustration 8-A: 2007 Reported Incidents By Council District (Including Citizen Contacts)

COUNCIL DISTRICTS	CI	DI	CR	PO	PR	IQ	CW	CC	Total Cases	%
District 1	5	0	0	0	4	3	1	1	**14**	2%
District 2	5	2	0	0	4	16	0	4	**31**	5%
District 3	89	16	1	1	22	42	3	14	**188**	31%
District 4	7	1	0	1	3	7	1	5	**25**	4%
District 5	17	2	0	0	6	17	4	2	**48**	8%
District 6	19	2	0	0	9	29	0	1	**60**	10%
District 7	15	4	0	1	6	17	3	2	**48**	8%
District 8	4	1	0	0	6	7	0	1	**19**	3%
District 9	7	1	0	0	8	10	0	0	**26**	4%
District 10	13	1	0	0	4	15	0	1	**34**	6%
Unknown/Outside of City Limits	19	26	0	2	12	24	2	30	**115**	19%
Total Cases Received	**200**	**56**	**1**	**5**	**84**	**187**	**14**	**61**	**608***	**100%**

* Includes all cases received regardless of classification

Illustration 8-B: 2006 Reported Incidents by Council District (Including Citizen Contacts)

COUNCIL DISTRICTS	CI	DI	CR	PO	PR	IQ	CW	NB	CC	Total Cases	%
District 1	4	0	0	0	2	3	0	0	0	**9**	2%
District 2	7	1	0	0	2	10	0	0	1	**21**	4%
District 3	35	20	0	6	16	55	1	2	8	**143**	26%
District 4	7	0	1	0	2	7	0	0	4	**21**	4%
District 5	8	1	0	0	6	15	2	1	5	**38**	7%
District 6	11	3	0	1	8	22	0	3	1	**49**	9%
District 7	10	2	0	1	12	11	1	3	1	**41**	7%
District 8	3	1	0	1	3	12	0	1	3	**24**	4%
District 9	5	0	0	0	8	8	1	0	4	**26**	5%
District 10	5	0	0	1	5	8	0	0	3	**22**	4%
Unknown/Outside of City Limits	12	6	0	0	12	82	2	0	51	**165**	30%
Total Cases Received	**107**	**34**	**1**	**10**	**76**	**233**	**7**	**10**	**81**	**559***	**100%**

* Includes all cases received regardless of classification

CI= Citizen-Initiated Complaint	PO= Policy Complaint	CW= Complaint Withdraw
DI= Department-Initiated Complaint	PR= Procedural Complaint	NB= No Boland
CR= Command Review Complaint	IQ= Inquiry	CC= Citizen Contact

Illustration 8-C: Five-Year Overview of Reported Incidents by Council District (Including Citizen Contacts)

COUNCIL DISTRICTS	2003	%	2004	%	2005	%	2006	%	2007	%
District 1	6	2%	16	4%	15	3%	9	2%	15	2%
District 2	35	9%	21	5%	25	5%	21	4%	30	5%
District 3	122	31%	116	29%	123	25%	143	26%	204	34%
District 4	32	8%	21	5%	19	4%	21	4%	24	4%
District 5	47	12%	35	9%	42	9%	38	7%	48	8%
District 6	43	11%	28	7%	35	7%	49	9%	60	10%
District 7	27	7%	21	5%	37	8%	41	7%	47	8%
District 8	8	2%	15	4%	21	4%	24	4%	18	3%
District 9	18	5%	19	5%	17	3%	26	5%	25	4%
District 10	22	6%	23	6%	21	4%	22	4%	34	6%
Unknown/Outside of City Limits	39	10%	81	20%	132	27%	165	30%	103	17%
Total Cases Received	**399**	**100%**	**396**	**100%**	**487**	**100%**	**559**	**100%**	**608***	**100%**

* Includes all cases received regardless of classification

Illustration 8-C shows a comparative five-year analysis of all cases received, identified by council district.

II. Unnecessary Force Allegations by Council District

Unnecessary force complaints are divided into two groups: Class I includes allegations of unnecessary force causing serious bodily injury that requires medical care; Class II complaints include the remainder of unnecessary force allegations. Most complaints alleging unnecessary force are classified and investigated as formal complaints. In 2007, fewer unnecessary force complaints were classified as inquiries as compared to 2006.

The highest number of unnecessary force complaints reported in 2007 was in District 3. In addition to reporting the largest number of force complaints in 2007, 50, District 3 also received the largest percentage of the increased number of force complaints, 44 %, a 12 percent increase over those reported in 2006. **Illustrations 8-D and 8-E** present the cases alleging unnecessary force in 2006 and 2007 by the Council District in which they were reported to have occurred. The table in **8-D** reports the total number and level of unnecessary force complaints filed in 2006 and 2007. The information in **8-E** presents the number and level of unnecessary force complaints classified by IA as inquiries. The number of complaints containing unnecessary force allegations fell slightly in 2007 as did the number of force cases classified as inquiries.

Illustration 8-F provides a five-year comparison of the numbers of investigated unnecessary force complaints and unnecessary force cases classified as inquiries from 2003-2007. For a more detailed analysis of unnecessary force complaints see **Chapter Four**.

Illustration 8-D: Two-Year Comparison of Unnecessary Force Complaints Reported By Council District

COUNCIL DISTRICTS	2006 UF Class I	2006 UF Class II	2006 Total Cases	2006 %	2007 UF Class I	2007 UF Class II	2007 Total Cases	2007 %
District 1	0	0	**0**	0%	0	2	**2**	2%
District 2	0	3	**3**	3%	1	3	**4**	3%
District 3	5	26	**31**	32%	5	45	**50**	43%
District 4	0	4	**4**	4%	1	6	**7**	6%
District 5	1	9	**10**	10%	1	7	**8**	7%
District 6	1	11	**12**	12%	0	8	**8**	7%
District 7	1	14	**15**	15%	0	7	**7**	6%
District 8	1	2	**3**	3%	2	1	**3**	3%
District 9	1	4	**5**	5%	0	4	**4**	3%
District 10	2	5	**7**	7%	3	8	**11**	9%
Unknown/Outside of City Limits	1	6	**7**	7%	1	12	**13**	11%
Total UF Complaints Received	**13**	**84**	**97**	**100%**	**14**	**103**	**117**	**100%**

Illustration 8-E: Two-Year Comparison of the Unnecessary Force Cases Classified as Inquiries

COUNCIL DISTRICTS	2006 UF Class I Inquiries	2006 UF Class II Inquiries	2006 Total UF Inquiries	2006 %	2007 UF Class I Inquiries	2007 UF Class II Inquiries	2007 Total UF Inquiries	2007 %
District 1		1	**1**	4%			**0**	0%
District 2				0%			**0**	0%
District 3	2	6	**8**	32%		3	**3**	43%
District 4		1	**1**	4%			**0**	0%
District 5		2	**2**	8%			**0**	0%
District 6	1	2	**3**	12%		1	**1**	14%
District 7		5	**5**	20%			**0**	0%
District 8				0%			**0**	0%
District 9	1	1	**2**	8%		1	**1**	14%
District 10		1	**1**	4%		1	**1**	14%
Unknown/Outside of City Limits		2	**2**	8%	1		**1**	14%
Total UF Complaints Received	**4**	**21**	**25**	**100%**	**1**	**6**	**7**	**100%**

Illustration 8-F: Five-Year Overview of Unnecessary Force Complaints Filed

YEAR	FORMAL/INFORMAL COMPLAINTS UF Class I Complaints	UF Class II Complaints	Total UF Complaints	% Total Complaints	INQUIRY COMPLAINTS UF Class I in Inquiry Complaints	UF Class II in Inquiry Complaints	Total UF in Inquiry Complaints	Total Number Complaints
2003	7	42	**49**	**15%**	N/A*	N/A*	**N/A***	**323**
2004	7	55	**62**	**17%**	N/A*	N/A*	**N/A***	**366**
2005	4	66	**70**	**16%**	1	11	**12****	**429**
2006	9	63	**72**	**15%**	4	21	**25**	**478**
2007	13	97***	**110**	**20%**	1	6	**7**	**547**

* Not applicable. Prior to 2005, allegations were not tracked in inquiries.

** 10 inquiries recorded in 2005 had no allegations delineated.

*** Two cases which contained both Class I & Class II force allegations are counted as Class I complaints.

Comparative Complaint Information from Other US Cities

At year end 2005 the Mayor and City Council requested comparative population and complaint data from other communities. The table below provides information from a variety of cities, both locally and nationwide. As has been demonstrated in a recent study compiled by SJPD, complaints are collected and classified differently by law enforcement agencies locally and nationally. The wide variations in the complaints relative to the number of officers and population in the jurisdictions below confirm this.

Effective law enforcement, and the analysis of complaints arising therefrom, requires consideration of many variables. An accurate analysis of comparative complaint information must be undertaken with the assistance of sociologists trained to enumerate the appropriate variables and should include a complete analysis and comparison of these variables.

City/State	Population	# Officers	Complaints
Berkeley, CA	108,000	200	99
Boise, ID	212,000	300	204
Denver, CO	570,000	1500	644
Oakland, CA *	400,619	730	1000
Philadelphia, PA	1,500,000	7000	704
San Francisco, CA	744,041	2,000	954
Seattle, WA	586,200	1288	603
San José, CA	**950,000**	**1400**	**444**
Washington D.C. **	581,530	3912	440

* Oakland, CA 2007 update is not available; numbers presented are 2006

** Washington D.C. numbers report only cases filed with the Office of Police Complainants and do not include those filed directly with the Metropolitan Police Department

Conclusion

This 2007 IPA Year End Report documents the work of the IPA in oversight of the SJPD complaint process and outreach efforts in the community, and brings forth three new policy recommendations.

Complaints have increased steadily over the last five years, reflecting an increase in both external community-initiated complaints as well as internal department-initiated investigations. There was an increase in complaints formally investigated and a corresponding decrease in the number of complaints classified by IA as inquiries in 2007. The number of complaints closed by IA and audited by the IPA nearly doubled in 2007, from 132 in 2006 to 254 in 2007. The number of cases in which the IPA disagreed with the IA investigation also increased significantly, from 19 to 55; the increase in disagreements is due in large part to the number of cases in which the IPA challenged the complaint classification and the thoroughness of the investigations. The IPA continues to be concerned about the increasing number of complaints that are closed without an interview of the subject officer.

Significant time this year was spent responding to City Council referrals stemming from the presentation of the 2006 IPA Year End Report. Council directed the City Manager and the Chief of Police, with input from the IPA, to develop a revised complaint process that determines classifications based upon objective criteria and definitions for complaint categories. The revised complaint process will be instituted in 2008 and will be discussed in future IPA reports. The proposed changes to the complaint process will directly impact the classification of complaints and complaint investigations. The success of the new classifications in providing more objective criteria and definitions and its impact on the overall complaint process will be assessed and documented.

The IPA advanced its mission to conduct community outreach by participating in 222 events in 2007 reaching more than 7,000 individuals. A community forum held in January 2007, the second of two community forums, was well attended. Issues presented by community members were brought to the City Council in a joint report by the IPA and the Human Rights Commission.

In 2007 the IPA hosted the Thirteenth Annual NACOLE (National Association for Civilian Oversight of Law Enforcement) Conference, the most successful in NACOLE history, drawing more than 300 attendees to San José from 26 states and 13 countries.

With increases in complaints received, closed and audited, as well as increased outreach, the IPA staff worked diligently to meet the expectations of the community and the City.

The profession of civilian oversight of law enforcement is developing and expanding across the country. The IPA is proud to have the opportunity to perform this important function in San José. It is through a cooperative relationship with the San José Police Department and collaboration with members of the community that the benefits of civilian oversight are fully achieved.

APPENDIX A

SAN JOSÉ MUNICIPAL CODE CHAPTER 8.04 AND SAN JOSÉ CITY CHARTER §809

SAN JOSÉ MUNICIPAL CODE CHAPTER 8.04

OFFICE OF THE INDEPENDENT POLICE AUDITOR

8.04.010 Duties and responsibilities.

In addition to the functions, powers and duties set forth elsewhere in this code, the independent police auditor shall have the duties and responsibilities set forth in this section.

A. Review of internal investigation complaints. The police auditor shall review police professional standards and conduct unit investigations of complaints against police officers to determine if the investigation was complete, thorough, objective and fair.

   1. The minimal number of complaints to be reviewed annually are:

      a. All complaints against police officers which allege excessive or unnecessary force; and

      b. No less than twenty percent of all other complaints.

   2. The police auditor may interview any civilian witnesses in the course of the review of police professional standards and conduct unit investigations.

   3. The police auditor may attend the police professional standards and conduct unit interview of any witness including, but not limited to, police officers. The police auditor shall not directly participate in the questioning of any such witness but may suggest questions to the police professional standards and conduct unit interviewer.

   4. The police auditor shall make a request, in writing, to the police chief for further investigation whenever the police auditor concludes that further investigation is warranted. Unless the police auditor receives a satisfactory written response from the police chief, the police auditor shall make a request, in writing, for further investigation to the city manager.

B. Review of officer-involved shootings. The police auditor shall participate in the police department's review of Officer-Involved shootings.

C. Community function.

   1. Any person may, at his or her election, file a complaint against any member of the police department with the independent auditor for investigation by the police professional standards and conduct unit.

   2. The independent police auditor shall provide timely updates on the progress of police professional standards and conduct unit investigations to any complainant who so requests.

D. Reporting function. The police auditor shall file annual public reports with the city clerk for transmittal to the city council which shall:

   1. Include a statistical analysis, documenting the number of complaints by category, the number of complaints sustained and the actions taken.

   2. Analyze trends and patterns.

   3. Make recommendations.

E. Confidentiality. The police auditor shall comply with all state laws requiring the confidentiality of police department records and information as well as the privacy rights of all individuals involved in the process. No report to the city council shall contain the name of any individual police officer.

(Ords. 25213, 25274, 25922.)

8.04.020 Independence of the police auditor.

A. The police auditor shall, at all times, be totally independent and requests for further investigations, recommendations and reports shall reflect the views of the police auditor alone.

B. No person shall attempt to undermine the independence of the police auditor in the performance of the duties and responsibilities set forth in Section 8.04.010, above.

(Ord. 25213.)

SAN JOSÉ CITY CHARTER § 809

OFFICE OF THE INDEPENDENT POLICE AUDITOR

The Office of the Independent Police Auditor is hereby established. The Independent Police Auditor shall be appointed by the Council. Each such appointment shall be made as soon as such can reasonably be done after the expiration of the latest incumbent's term of office. Each such appointment shall be for a term ending four (4) years from and after the date of expiration of the immediately preceding term; provided, that if a vacancy should occur in such office before the expiration of the former incumbent's terms, the Council shall appoint a successor to serve only for the remainder of said former incumbent's term.

The office of Independent Police Auditor shall become vacant upon the happening before the expiration of his or her term of any of the events set forth in subsections (a), (b), (c), (d), (e), (h), (i), (j), (k) and (l) of Section 409 of this Charter. The Council, by resolution adopted by not less than ten (10) of its members may remove an incumbent from the office of the Independent Police Auditor, before the expiration of his or her term, for misconduct, inefficiency, incompetence, inability or failure to perform the duties of such office or negligence in the performance of such duties, provided it first states in writing the reasons for such removal and gives the incumbent an opportunity to be heard before the Council in his or her own defense; otherwise, the Council may not remove an incumbent from such office before the expiration of his or her term.

APPENDIX A

SAN JOSÉ MUNICIPAL CODE CHAPTER 8.04 AND SAN JOSÉ CITY CHARTER §809

The Independent Police Auditor shall have the following powers and duties:

(a) Review Police Department investigations of complaints against police officers to determine if the investigation was complete, thorough, objective and fair.

(b) Make recommendations with regard to Police Department policies and procedures based on the Independent Police Auditor's review of investigations of complaints against police officers.

(c) Conduct public outreach to educate the community on the role of the Independent Police Auditor and to assist the community with the process and procedures for investigation of complaints against police officers.

Added at election November 5, 1996.

§ 809.1. Independent Police Auditor; Power Of Appointment

(a) The Independent Police Auditor may appoint and prescribe the duties of the professional and technical employees employed in the Office of the Independent Police Auditor. Such appointed professional and technical employees shall serve in unclassified positions at the pleasure of the Independent Police Auditor. The Council shall determine whether a particular employee is a "professional" or "technical" employee who may be appointed by the Independent Police Auditor pursuant to these Subsections.

(b) In addition, subject to the Civil Service provisions of this Charter and of any Civil Service Rules adopted pursuant thereto, the Independent Police Auditor shall appoint all clerical employees employed in the Office of the Independent Police Auditor, and when the Independent Police Auditor deems it necessary for the good of the service he or she may, subject to the above-mentioned limitations, suspend without pay, demote, discharge, remove or discipline any such employee whom he or she is empowered to appoint.

(c) Neither the Council nor any of its members nor the Mayor shall in any manner dictate the appointment or removal of any such officer or employee whom the Independent Police Auditor is empowered to appoint, but the Council may express its views and fully and freely discuss with the Independent Police Auditor anything pertaining to the appointment and removal of such officers and employees.

Added at election November 5, 1996.

APPENDIX B

CALIFORNIA PENAL CODE §832.5 AND §832.7

§ 832.5. Citizen's complaints against personnel; investigation; retention and maintenance of records; removal of complaints; access to records

(a) (1) Each department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public.

(2) Each department or agency that employs custodial officers, as defined in Section 831.5, may establish a procedure to investigate complaints by members of the public against those custodial officers employed by these departments or agencies, provided however, that any procedure so established shall comply with the provisions of this section and with the provisions of Section 832.

(b) Complaints and any reports or findings relating to these complaints shall be retained for a period of at least five years. All complaints retained pursuant to this subdivision may be maintained either in the peace or custodial officer's general personnel file or in a separate file designated by the department or agency as provided by department or agency policy, in accordance with all applicable requirements of law. However, prior to any official determination regarding promotion, transfer, or disciplinary action by an officer's employing department or agency, the complaints described by subdivision (c) shall be removed from the officer's general personnel file and placed in separate file designated by the department or agency, in accordance with all applicable requirements of law.

(c) Complaints by members of the public that are determined by the peace or custodial officer's employing agency to be frivolous, as defined in Section 128.5 of the Code of Civil Procedure, or unfounded or exonerated, or any portion of a complaint that is determined to be frivolous, unfounded, or exonerated, shall not be maintained in that officer's general personnel file. However, these complaints shall be retained in other, separate files that shall be deemed personnel records for purposes of the California Public Records Act (Chapter 3.5 commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and Section 1043 of the Evidence Code.

(1) Management of the peace or custodial officer's employing agency shall have access to the files described in this subdivision.

(2) Management of the peace or custodial officer's employing agency shall not use the complaints contained in these separate files for punitive or promotional purposes except as permitted by subdivision (f) of Section 3304 of the Government Code.

(3) Management of the peace or custodial officer's employing agency may identify any officer who is subject to the complaints maintained in these files which require counseling or additional training. However, if a complaint is removed from the officer's personnel file, any reference in the personnel file to the complaint or to a separate file shall be deleted.

(d) As used in this section, the following definitions apply:

(1) "General personnel file" means the file maintained by the agency containing the primary records specific to each peace or custodial officer's employment, including evaluations, assignments, status changes, and imposed discipline.

(2) "Unfounded" means that the investigation clearly established that the allegation is not true.

(3) "Exonerated" means that the investigation clearly established that the actions of the peace or custodial officer that formed the basis for the complaint are not violations of law or department policy.

CALIFORNIA PENAL CODE §832.7

§ 832.7. Confidentiality of peace officer records: Exceptions

(a) Peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code. This section shall not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office.

(b) Notwithstanding subdivision (a), a department or agency shall release to the complaining party a copy of his or her own statements at the time the complaint is filed.

(c) Notwithstanding subdivision (a), a department or agency that employs peace or custodial officers may disseminate data regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against its officers if that information is in a form which does not identify the individuals involved.

(d) Notwithstanding subdivision (a), a department or agency that employs peace or custodial officers may release factual information concerning a disciplinary investigation if the officer who is the subject of the disciplinary investigation, or the officer's agent or representative, publicly makes a statement he or she knows to be false concerning the investigation or the imposition of disciplinary action. Information may not be disclosed by the peace or custodial officer's employer unless the false statement was published by an established medium of communication, such as television, radio, or a newspaper. Disclosure of factual information by the employing agency pursuant to this subdivision is limited to facts contained in the officer's personnel file concerning the disciplinary investigation or imposition of disciplinary action that specifically refute the false statements made public by the peace or custodial officer or his or her agent
or representative.

(e) (1) The department or agency shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition.

(2) The notification described in this subdivision shall not be conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court, or judge of this state or the United States.

(f) Nothing in this section shall affect the discovery or disclosure of information contained in a peace or custodial officer's personnel file pursuant to Section 1043 of the Evidence Code.

APPENDIX C
NATIONAL ASSOCIATION FOR CIVILIAN OVERSIGHT OF LAW ENFORCEMENT CODE OF ETHICS (CODE)

Preamble

Civilian oversight practitioners have a unique role as public servants overseeing law enforcement agencies. The community, government, and law enforcement have entrusted them to conduct their work in a professional, fair and impartial manner. They earn this trust through a firm commitment to the public good, the mission of their agency, and to the ethical and professional standards described herein.

The standards in the Code are intended to be of general application. It is recognized, however, that the practice of civilian oversight varies among jurisdictions and agencies, and additional standards may be necessary. The spirit of these ethical and professional standards should guide the civilian oversight practitioner in adapting to individual circumstances, and in promoting public trust, integrity and transparency.

Personal Integrity

Demonstrate the highest standards of personal integrity, commitment, truthfulness, and fortitude in order to inspire trust among your stakeholders, and to set an example for others. Avoid conflicts of interest. Conduct yourself in a fair and impartial manner and recuse yourself or personnel within your agency when significant conflict of interest arises. Do not accept gifts, gratuities or favors that could compromise your impartiality and independence.

Independent and Thorough Oversight

Conduct investigations, audits, evaluations and reviews with diligence, an open and questioning mind, integrity, objectivity and fairness, in a timely manner. Rigorously test the accuracy and reliability of information from all sources. Present the facts and findings without regard to personal beliefs or concern for personal, professional or political consequences.

Transparency and Confidentiality

Conduct oversight activities openly and transparently providing regular reports and analysis of your activities, and explanations of your procedures and practices to as wide an audience as possible. Maintain the confidentiality of information that cannot be disclosed and protect the security of confidential records.

Respectful and Unbiased Treatment

Treat all individuals with dignity and respect, and without preference or discrimination including but not limited to the following protected classes: age, ethnicity, culture, race, disability, gender, religion, sexual orientation, socioeconomic status or political beliefs.

Outreach and Relationships with Stakeholders

Disseminate information and conduct outreach activity in the communities that you serve. Pursue open, candid, and non-defensive dialog with your stakeholders. Educate and learn from the community.

Agency Self-examination and Commitment to Policy Review

Seek continuous improvement in the effectiveness of your oversight agency, the law enforcement agency it works with, and their relations with the communities they serve. Gauge your effectiveness through evaluation and analysis of your work product. Emphasize policy review aimed at substantive organizational reforms that advance law enforcement accountability and performance.

Professional Excellence

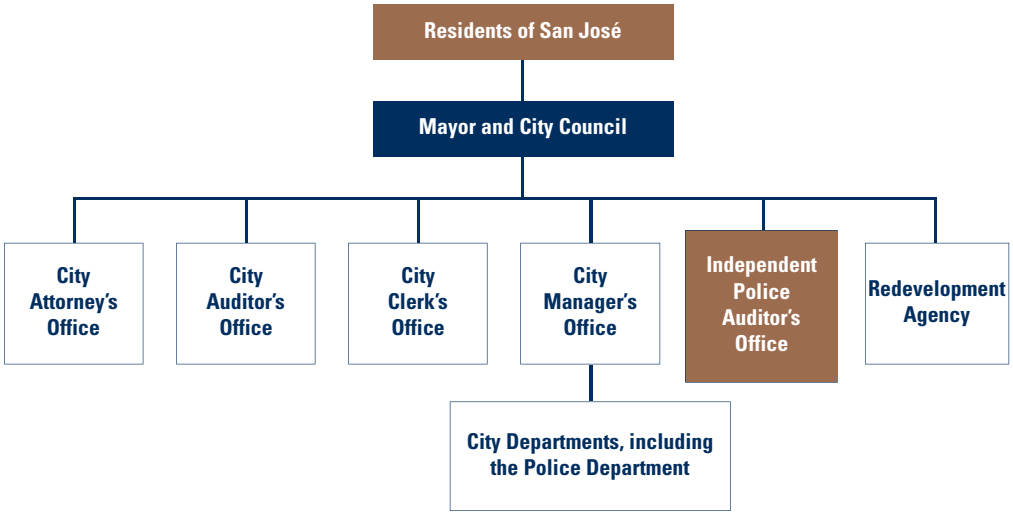
Seek professional development to ensure competence. Acquire the necessary knowledge and understanding of the policies, procedures, and practices of the law enforcement agency you oversee. Keep informed of current legal, professional and social issues that affect the community, the law enforcement agency, and your oversight agency.

Primary Obligation to the Community

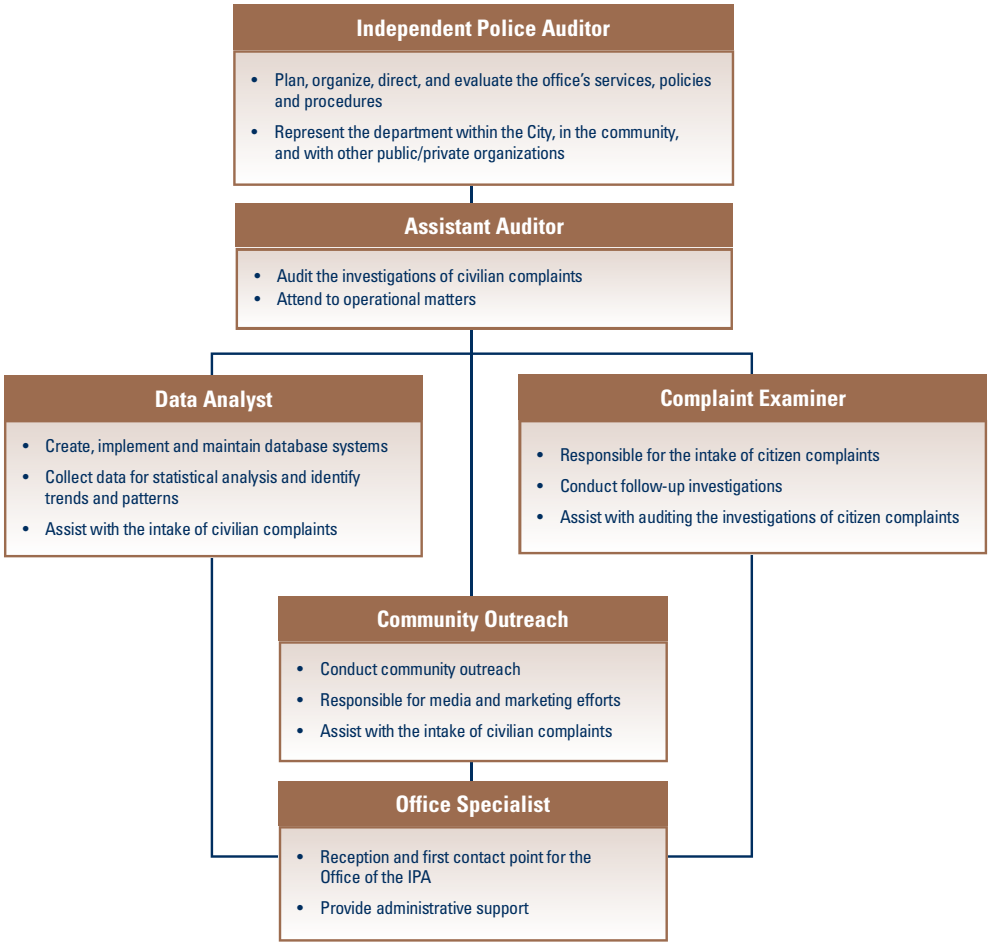
At all times, place your obligation to the community, duty to uphold the law and to the goals and objectives of your agency above your personal self-interest.

APPENDIX D

CITY OF SAN JOSÉ STRUCTURE



OFFICE OF THE INDEPENDENT POLICE AUDITOR STRUCTURE



APPENDIX E

INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

DATE OF REPORT	RECOMMENDATIONS	SJPD RESPONSES	RESOLUTION PERIOD
1993 1st Quarter Report	Create a new system for the classification of complaints.	Adopted	1st Quarter, 2nd Quarter, and 1994 Year End Report
	Standardize the definition of Procedural and Informal Complaints.	Adopted	2nd Quarter and 1994 Year End Report
	Apply Intervention Counseling to all types of complaints.	Adopted	2nd Quarter and 1994 Year End Report
	Establish procedures to address potential bias between Internal Affairs Investigators and complainants and subject officers.	Adopted	2nd Quarter and 1994 Year End Report
	Enact policy to ensure objectivity in the Intake of citizen complaints.	Adopted	2nd Quarter and 1994 Year End Report
1994 3rd Quarter Report	Establish a timetable with goals in which to classify and investigate complaints.	Adopted	1994 Year End Report
	Implement a citizen "Onlooker Policy" that addresses a person's right to witness a police incident.	Adopted	1995 Mid-Year Report
	Standardize the way all investigations are written by IA personnel.	Adopted	1994 Year End Report
	Provide report writing training in "Drunk in Public" cases to include the basis for the arrest. Reports are to be retained on file.	Adopted	1994 Year End Report
	Provide chemical testing for "Drunk in Public" cases to verify if the person was in fact intoxicated.	Not Adopted	
	Send minor complaints to the Bureau of Field Operations to expedite investigations.	Adopted	1994 Year End Report
1994 Year End Report	Establish procedures to insure neutrality in the classification of complaints.	Adopted	1994 Year End Report
	Interview complainants and witnesses within three months of the initiation of a complaint.	Adopted	1994 Year End Report
	Contact complainants at regular intervals through updates and closing letters.	Adopted	1994 Year End Report
	Provide a copy of all SJPD reports relevant to complaint to the Police Auditor.	Adopted	1994 Year End Report
	Require written authorization before conducting a search of a home based on consent.	Not Adopted	
	Enact policy to require that, in cases where an officer's use of force caused great bodily injury, supervisors collect evidence and conduct an investigation into the need for the officer to use such force.	Adopted	1995 Year End Report
	Ensure that handcuffs are double locked to prevent wrist injuries.	Adopted	1994 Year End Report
	Write the complainant's statement in addition to tape recording and provide a copy to the complainant.	Adopted	1994 Year End Report
	Improve IA investigator's interpersonal skills in interacting with complainants.	Adopted	1994 Year End Respot
	Handle complaints classified as Command Review through counseling by the Field Supervisor and contact the complainant (where requested).	Adopted	1994 Year End Report
	Revise letters sent to complainants to include information about the IPA's role.	Adopted	1994 Year End Report
1995 Mid-Year Report	Maintain a central log of all public contacts for tracking purposes and to reduce the number of complaints that are lost or misplaced.	Adopted	1995 Year End Report
	Obtain additional office space for IA so that complainants are interviewed in private.	Adopted	1997 Year End Report
	Require the Police Department to offer complainants a choice to file complaints at either IA or IPA.	Adopted	1995 Year End Report
	Implement policy to standardize the format used in subject and witness officer interviews.	Adopted	1995 Year End Report
1995 Year End Report	Create policy to require closer scrutiny when conducting strip searches for misdemeanor arrests.	Adopted	1995 Year End Report
	Revise Off-Duty Employment Practices to provide accountability of the type and number of hours worked by officers off duty.	Adopted	1997 Year End Report
1996 Mid-Year Report	Connect IPA to City of San José's internet network.	Adopted	1997 Year End Report
	Conduct preliminary investigation of complaints closed because they lack a signed Boland Admonishment to determine the seriousness of the allegations.	Adopted	1996 Mid-Year Report
	Retain the name of the subject officer where a Boland Admonishment is not signed (but need not place in personnel file).	Not Adopted	
	Require complaint classification to appropriately reflect the nature of the complaint.	Adopted	1996 Mid-Year Report

APPENDIX E

INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

DATE OF REPORT	RECOMMENDATIONS	SJPD RESPONSES	RESOLUTION PERIOD
	Design and implement a new computer database system that links the IA and IPA on real time.	Adopted	1996 Mid-Year Report
1996 Year End Report	Implement a process to respond to citizen's requesting an officer's identification.	Adopted	1997 Year End Report
	Establish Class I and Class II Use of Force type of complaints.	Adopted	1996 Year End Report
	Complete Class I Use of Force investigations within 180 days	Adopted	1996 Year End Report
	Complete all investigations of citizen complaints within 365 days	Adopted	1996 Year End Report
	Request that the City Attorney issue an opinion clarifying the IPA's authority to audit DI cases with a nexus to a citizen.	Adopted	1997 Year End Report
1997 Year End Report	Require that officers identify themselves in writing when requested.	Adopted	1998 Year End Report
	When forcibly taking a blood specimen from an uncooperative suspect, do so in an accepted medical environment, according to accepted medical practices and without the use of excessive force.	Adopted	1998 Year End Report
	All complaints not covered under a Cardoza exception should be investigated by the IA and reviewed by the Chain of Command within 10 months, allowing the IPA enough time to request additional investigation, if needed.	Adopted	1998 Year End Report
	Time limits and a reliable tracking system should be implemented in every bureau and City department involved with reviewing a citizen complaint.	Adopted	1998 Year End Report
1998 Year End Report	Expand the IPA jurisdiction to review all officer-involved shootings even if a complaint is not filed.	Adopted	1999 Year End Report
1999 Year End Report	Request the City Council to authorize added staff for the IPA, to increase communication and personal contact with individual complaints and increase community outreach.	Adopted	2000 Year End Report
	Recommended that the City Council grant to the Internal Affairs Investigators subpoena power to compel the attendance of civilian witnesses and to compel the production of documentary or physical evidence.	Adopted	2000 Year End Report
	Amend the Municipal Code to define a citizen complaint audit and clarify that an audit includes examining physical evidence and follow up contact with complainants and witnesses.	Not Adopted	
	It is recommended that the SJPD explore the feasibility of implementing a voluntary mediation program within the next six months.	Adopted	2000 Year End Report
	It is recommended that the SJPD design a training course focused specifically on improving day-to-day verbal communications for officers to use in interacting with the public.	Adopted	2000 Year End Report
	It is recommended that in cases where the police erred, i.e. the wrong house was searched, an explanation and/or apology be given as soon as possible, preferably at the onset.	Adopted	2000 Year End Report
	It is recommended that motorists be told the reason for the enforcement action such as why s/he was stopped, searched, and/or detained as soon as possible and preferable at the onset.	Adopted	2000 Year End Report
	It is recommended that the SJPD formalize a process whereby an officer is assigned to be the contact person or liaison to family members of people that were killed or died in police custody. This will assist the family in obtaining necessary but non-confidential information.	Adopted in practice only	2000 Year End Report
2000 Year End Report	To assure the public that it is safe to file complaints, the Chief of Police should create a policy to prohibit actual or attempts to threaten, intimidate, mislead, or harass potential or actual complainants and/or witnesses.	Adopted	2001 Year End Report
	The Chief of Police should include in all citizen complaint printed materials wording that clearly states, *"Retaliation against complainants is prohibited. The Chief of Police will not tolerate retaliation, and immediate action will be taken if an officer retaliates against a complainant or witness directly or indirectly,"* or similar words that emphasize the Chief's position.	Adopted	2001 Year End Report
	The San José Police Department Duty Manual does not include a comprehensive Whistleblower policy. By incorporating federal Whistleblower guidelines, the Chief of Police should create a comprehensive Whistle Blower policy for the San José Police Department.	Not Adopted but adopted in practice	2001 Year End Report

APPENDIX E

INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

DATE OF REPORT	RECOMMENDATIONS	SJPD RESPONSES	RESOLUTION PERIOD
2000 Year End Report	The Chief of Police should continue to develop Ethics and Integrity Training to reflect and align police practices with ethical standards expected by the citizens of San José.	Adopted	2001 Year End Report
	The Chief of Police should expand the fields in the racial profiling data collection to determine how an individual who has been stopped by the police was treated during the contact, i.e. was a search conducted. The data should include search information, the factual basis for the stop and action taken by the police officer as a result of the stop.	Not Adopted	
	Develop a uniform definition of and process for tracking all "Racial Profiling" allegations in all instances where the complainant alleges that his/her vehicle stop or police contact was racially motivated.	Adopted	2001 Year End Report
	The San José Police Department should expand the platform of the database used by the Internal Affairs Unit to facilitate the recording, tracking, and analysis of "Racial Profiling" and all other types of citizen complaints.	In progress	2001 Year End Report
	The San José Police Department's Internal Affairs Unit should formally investigate allegations of officers refusing to identify themselves under an Improper Procedure allegation.	Adopted	2001 Year End Report
	Continue to identify alternate, less lethal weapons, and make them more readily accessible.	Adopted	2001 Year End Report
	Provide specialized training in handling suspects armed with non-automatic projectile weapons.	Adopted	2001 Year End Report
	The Crisis Incident Response Team's presence at the scene is very important. Continue to provide special training in identifying and handling suspects with history of mental illness.	Adopted	2001 Year End Report
	Increase recruiting efforts to hire more officers with bilingual skills. Examine the current strategies and marketing material used for recruiting.	Adopted	2001 Year End Report
	The Disciplinary Review Panel, which determines if a complaint should be sustained and the type of discipline to impose, should document the basis for their findings to enable the IPA to conduct an audit of this phase of a citizen complaint investigation.	Not Adopted	
2001 Year End Report	A study should be conducted to assess the feasibility of expanding the front lobby to alleviate the crowded conditions that exist.	Adopted	2002 Year End Report
	A separate waiting area should be developed for designated services such as sex offenders waiting to register, criminals waiting to self-surrender, and other people that would pose a threat to the safety of others waiting in the lobby area of the main police station.	Not Adopted	
	An interview room should be made available for desk officers to obtain statements from walk-in victims and/or witnesses of crimes that affords privacy.	Adopted	2002 Year End Report
	Additional courtesy telephones should be installed in the Information Center.	Adopted	2002 Year End Report
	Monitors should be installed in the lobby of the San José Police Station displaying information such as activities, services, and meetings taking place in the Police Administration Building.	Pending	
	Access to public restrooms should be made available to the public from within the San José Police Station lobby. This would eliminate the requirement to sign-in with desk officers, go through the security gate, and provide access to restricted areas of the police department.	Not Adopted	
	A receptionist should be placed in the San José Police Station lobby to provide assistance and information to the general public.	Pending	
	Customer service training should be developed and provided to officers assigned as desk officers working at the Information Center located in the lobby of the SJPD.	Adopted	2002 Year End Report
	Information Center Sergeants should have the front desk as their primary responsibility and they should be provided office space where they can monitor the activities of the Information Center.	Adopted	2002 Year End Report
	The Chief of Police should implement incentives to attract officers to work at the Information Center.	Pending	

APPENDIX E

INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

DATE OF REPORT	RECOMMENDATIONS	SJPD RESPONSES	RESOLUTION PERIOD
	Include in police job descriptions and recruiting material those skills necessary to effectively implement community policing such as communication, conflict resolutions, and interpersonal skills.	Adopted	2002 Year End Report
	Design and implement recruiting strategies that depict and address family related issues.	Adopted	2002 Year End Report
	Revise the policies governing transfer opportunities for SJPD sergeants to require that openings be posted, and that the application and selection process, provide all candidates an equal opportunity for the assignment.	Adopted	2002 Year End Report
	Continue to develop and provide training in communication and interpersonal skills as ongoing CPT.	Adopted	2002 Year End Report
	Train all SJPD staff members, especially those who are in positions of providing information to the public, about the citizen complaint process, the functions of the IPA and IA Unit, and where a complaint can be filed.	Adopted	2002 Year End Report
	The SJPD should compile vehicle stop data on an annual basis so that a comparative analysis can be made from year to year.	Adopted	2002 Year End Report
	The Chief of Police should expand the fields for data collection to determine how an individual who has been stopped by the police was treated during the contact, i.e. was a search conducted. The data should include search information, the factual basis for the stop and action taken by the police officer as a result of the stop.	Renewed and Adopted	2002 Year End Report
2002 Mid-Year Report	Complete the investigation of all citizen complaints within six months.	Not Adopted	
2002 Year End Report	It is recommended that the Chief of Police continue to provide Intervention Counseling for subject officers meeting a set criterion.	Adopted	2003 Year End Report
	It is recommended that the Chief of Police implement procedures to ensure that officers attending Intervention Counseling are well informed about the early warning system and Intervention Counseling prior to participating.	Adopted	2003 Year End Report
	It is recommended that the Chief of Police direct the Command staff to factor an officer's work assignment and level of proactive policing as part of the discussion held during the intervention counseling session.	Adopted	2003 Year End Report
	It is recommended that the Chief of Police direct the Command staff to incorporate discussion about the allegations and findings of the officer's complaint history to determine if a pattern exists.	Adopted	2003 Year End Report
	It is recommended that the Chief of Police upgrade the SJPD's early warning system to include other indicators such as civil claims and lawsuits.	Not Adopted	
	It is recommended that the Chief of Police in conjunction with the City Manager develop a written policy that addresses the procedure to follow when serious misconduct allegations are filed against top ranking SJPD officers.	Adopted	2003 Year End Report
2003 Mid-Year Report	A written policy should be drafted and implemented that designates personnel whose primary focus would be to serve as the liaison to the family of the person injured or killed as the result of an officer-involved shooting.	Adopted	2003 Year End Report
	The San José Police Department (SJPD) should improve dissemination of information to the public by developing and providing written materials that describe the process, agencies and general information that address frequently asked questions about officer-involved shootings or fatal incidents involving public safety officers.	Adopted	2003 Year End Report
	The SJPD should prepare an annual report detailing the work of the Officer-Involved Shooting Review Panel and any new recommendations/ policies/ or findings.	Adopted	2003 Year End Report
	The SJPD should refrain from making any statements that appear to predetermine the outcome of the investigation or unnecessarily place the injured or deceased person in a negative light.	Adopted	2003 Year End Report
	The IPA should be part of the roll-out team to the scene of an officer-involved shooting. **Amended To**: The IPA will be notified immediately after an officer-involved shooting by the Internal Affairs Commander. The IPA may respond to the scene of the officer-involved shooting and contact the Internal Affairs Commander at the outer perimeter of the crime scene. On-scene personnel will then brief the IPA and Internal Affairs Commander as to the details of the incident.	Amended and Adopted	2004 Year End Report

APPENDIX E

INDEPENDENT POLICE AUDITOR RECOMMENDATIONS

DATE OF REPORT	RECOMMENDATIONS	SJPD RESPONSES	RESOLUTION PERIOD
	The IPA's review of officer-involved shootings, where no citizen complaint is filed, should be as thorough as its review of officer-involved shootings where a citizen complaint is filed and should mirror the oversight of citizen complaints. **Amended To**: The IPA will be provided with a copy of the Internal Affairs administrative investigation document of the officer-involved shooting for auditing purposes as soon as practical after the criminal case has been concluded, but prior to the closing of the administrative investigation. The IPA will coordinate outreach efforts immediately after an officer-involved shooting incident and the SJPD will ensure that it participates in these forums.	Amended and Adopted	2004 Year End Report
	The San José Municipal Code should be amended to include the IPA on the list of council appointees authorized to enter into contractual agreements. **Amended To**: The City Manager or the City Attorney as the case may be, will cooperate with the IPA to utilize their respective contracting authority to assist the IPA in obtaining expert consultants for purposes of training, and not for the purpose of reviewing any specific complaint. In the event of a disagreement, or the need for services that cost in excess of $100,000, the request may be referred to the City Council for decision. This agreement will be evaluated after one year to determine if the IPA's needs are being adequately addressed.	Amended and Adopted	2004 Year End Report
2004 Year End Report	The IPA supports continued tracking of TASER use by the SJPD, ongoing analysis of updated information about the use of TASERs, and recommends continued reporting of TASER use by SJPD officers.	Adopted	2005 Year End Report
	The IPA and Internal Affairs (IA) should revise intake procedures to comply with California Penal Code §832.7, which requires agencies receiving citizen complaints to provide complainants with a copy of their statements at the time the complaint is filed.	Adopted	2005 Year End Report
2005 Mid-Year Report	The IPA should be issued a copy of all Homicide reports and other documents provided to Internal Affairs (IA) in officer-involved shooting cases. The IPA will secure the reports in a locked file and return them to the SJPD after all analysis is completed.	Adopted	2005 Year End Report
	That the SJPD establish written guidelines for TASER use in the Use of Force chapter of the Duty Manual. **Amended To**: The TASER Usage Guidelines presented to the City Council on November 29, 2005 by the SJPD will be issued to all officers as a Training Bulletin that will become part of the training curriculum. The TASER guidelines will be binding on officers and they will be held accountable to them as they are to policies in the SJPD Duty Manual.	Amended and Adopted	2005 Year End Report
2005 Year End Report	That the SJPD establish an expanded shooting at vehicles policy. **Amended To:** The SJPD staff is directed to consider establishing an expanded Shooting at Vehicles Policy and report back to the City Council.	Amended and Adopted	2005 Year End Report Policy change implemented April 2007
	That the SJPD continue to train officers to wait for backup, when practical, in situations where there are reasonable objective indicators that the situation could escalate to violence.	Adopted	2005 Year End Report
2006 Year End Report	That the Mayor and City Council: a) Direct the City Manager to direct the SJPD to implement a complaint process which utilizes objective criteria for complaint classification in collaboration with the IPA; b) Grant the IPA concurrent authority over the classification of complaints.	Several directives adopted in response to (a). Item (b) not adopted	Changes to complaint process accepted January 2008
	That the Mayor and City Council: a) Direct the City Manager to direct the SJPD to conduct administrative investigations in all critical incidents in which an officer's use of force or any other department action results in death or serious bodily injury; b) Mandate that the IPA review the administrative investigation in all such cases.	Further action requested	Council approved the formation of an SJPD in-custody death review panel in January 2008.
	That the Mayor and City Council consider granting the IPA specific limited authority to investigate. Exercise of such authority would be limited to: a) Investigation of community-initiated complaints which IA did not investigate; b) Investigation of critical incidents in which any SJPD action resulted in death or serious bodily injury and the SJPD did not conduct an administrative investigation; c) Investigations of complaints or critical incidents that are deemed by the IPA to be incomplete.	No Council action on this item	