



## OFFICE OF THE INDEPENDENT POLICE AUDITOR

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**RULES COMMITTEE: 07-29-09**  
**ITEM: 3.2a**

July 15, 2009

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) 2008 Year End Report submitted for your approval. This annual report details complaints received, closed, and audited during the 2008 calendar year. It provides an overview of the classification of cases, officer demographics, complaints by Council District, and our multi-faceted community outreach program. Significant changes to the police misconduct complaint process were implemented by the San Jose Police Department in July 2008. This report presents an overview of those changes and preliminary effects on the complaint process following implementation.

I want to acknowledge IPA staff for their dedication and hard work. While a permanent IPA has yet to be selected, the IPA staff continues to diligently fulfill our mandated duties, with a particular emphasis on receiving police misconduct complaints, monitoring investigations, and conducting community outreach. I would also like to thank the IPA Advisory Committee (IPAAC) for their time, support and input throughout the year. They are a valuable resource to the IPA and City of San Jose.

On behalf of the IPA staff, I would like to recognize the San José Police Department for the quality of their service to the San Jose community. In particular, I would like to acknowledge the Internal Affairs Unit for providing information needed to prepare this report and for their continuous cooperation and collaboration throughout the year.

Thank you for your ongoing support of the Office of the Independent Police Auditor. I look forward to presenting this report at the August 11, 2009 City Council Meeting. I welcome your comments and will be available to answer questions or provide further information as needed.

Respectfully submitted,

Shivaun Nurre  
Acting Independent Police Auditor

Enclosure

## EXECUTIVE SUMMARY

### Chapter One: The Office of the Independent Police Auditor and Updates on Policy Recommendations

As the City of San José grows and the population becomes increasingly diverse, a positive relationship between the police and the community is essential. Police misconduct is a serious issue that impacts the trust and support the public has in its police department. In its fifteenth year, the Office of the Independent Police Auditor (IPA), in cooperation with the San José Police Department (SJPD), strives to provide San José residents with a police misconduct complaint process that is efficient and effective. By providing independent oversight of police misconduct investigations, the IPA seeks to increase public confidence in the complaint process. Through outreach to the San José community and 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.

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 discussion of new and past recommendations.

This year end report covers the period of January 1 to December 31, 2008. It does not advance any new policy recommendations; updates are provided on two prior recommendations:

- In October 2008 public concern focused on news coverage which called into question SJPD's approach to public intoxication arrests pursuant to California Penal Code 647(f). The issue of 647(f) arrests was heard by the City Council in November 2008. The IPA prepared a report on the issue after examining 68 police misconduct complaints from 2003 through 2008 in which the complainant was arrested for 647(f). The IPA recommended to Council that the City Manager be directed to institute a policy that an officer making an arrest for 647(f) must complete a chemical test on that person. At the November 18, 2008 Council meeting, the Chief of Police announced that police practice would be amended to permit anyone arrested on a 647(f) charge to request a breath alcohol analysis test.
- In the 2006 IPA Year End Report, the IPA recommended that a new complaint process be implemented — one that used objective criteria for complaint classification. The Revised Complaint Process (RCP) went into effect on July 1, 2008. See summary in Chapter Two.

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### **Chapter Two: The Complaint Process**

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The City Charter and Municipal Code mandate the basic functions of the Office and designate the Office as an alternative location at which community members may file complaints against San José Police Officers. After a complaint is filed, the complaint is classified and investigated by Internal Affairs (IA). The IPA works closely with IA to ensure that every case is classified appropriately and includes all potential allegations. The IPA participates in interviews of subject officers for complaints involving force and other serious allegations. To complete the complaint process the IPA audits closed complaint investigations. If the audit process generates any questions or concerns, they are promptly communicated by the IPA to IA for consideration. A formal process by which the IPA can appeal to the City Manager is also in place.

In short, the complaint process is comprised of five steps: intake, classification, investigation, closing and audit. Chapter Two provides a review of the complaint process with focus on the first two steps, intake and classification.

In the 2006 IPA Year End Report, the IPA recommended that a new complaint process be implemented — one that used objective criteria for complaint classification. In mid-2007, at the direction of the City Council, the City Manager assembled a Revised Complaint Process Working Group (“Working Group”) for that purpose. On January 28, 2008, the Office of the City Manager presented a report on the new complaint process to the City Council. The City Council received the presentation including the recommendation that the proposed changes be implemented. The Council also directed that the City Manager return in one year with a progress report on the performance of the revised process and present any proposed changes. The Revised Complaint Process (RCP) went into effect on July 1, 2008 and the IPA and IA worked together to ensure uniformity in approach and application of the RCP changes.

Chapter Two describes some of the significant changes that occurred in July 2008, and identifies issues that may be monitored by the IPA for discussion in future reports. It should be noted that data from the old and new processes cannot be easily compared. The process has been simplified by reducing the number of allegations and classifications available; the effect on the complaint process has yet to be fully understood.

### **Chapter Three: Year End Statistics**

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This chapter discusses the IPA’s involvement in the complaint process including receiving complaints, monitoring the investigation, and auditing completed IA reports. Information about the types of cases received in 2008 by both IA and the IPA, the classification of cases, findings reached by IA, officer discipline, and the audit process is detailed and analyzed.

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In 2008 a total of 625 matters were filed; this figure includes complaints filed by members of the community as well as matters classified as INQUIRIES, NON-MISCONDUCT CONCERNS, and investigations initiated by the SJPD.

The total number of matters designated as external complaints decreased from 491 in 2007 to 467 in 2008. This decrease may be due to the creation of the NON-MISCONDUCT CONCERNS which, by department-created definition, are not complaints.

Between January and December 2008, 467 civilian-initiated cases and 56 department-initiated investigations were filed; these cases contained 1,147 separate allegations. The three types of allegations most frequently reported were *Procedure*, *Courtesy* and *Force*.

The IPA audits complaint investigations closed by IA. The IPA audited a larger number of complaints closed by IA in 2008 compared to years past; audits of 338 investigated cases were conducted this year. The IPA audited all force cases and approximately 93% of the investigated complaints closed. During audit, IPA staff look for those key factors mandated by the municipal code — namely was the investigation complete, thorough, objective and fair. Issues that are reviewed include timeliness, classification, supporting documentation, officer and witness interviews, application of policy to facts, and weighing of evidence. Of the 338 investigated cases audited, the IPA agreed with 83% of the investigations and disagreed with 17%. In 2008, 80 officers received discipline as a result of the complaint process; the type of discipline imposed most often was training and/or counseling.

### **Chapter Four: Use of Force Analysis**

This chapter provides information and data concerning complaints alleging that San José police officers used force and contains information about the process which occurs when there is an officer-involved shooting incident. A "Force Case" is a complaint which includes one or more allegations of *Force* by a San José officer. In 2008 there were 117 Force Cases — the same number of Force Cases reported in 2007. Of the 1,147 allegations contained in all complaints, 16% were allegations of *Force*; the number and percentage of *Force* allegations has remained steady over the last two years.

There were no officer-involved shooting incidents or fatal critical incidents involving SJPD officers in 2008.

### **Chapter Five: Subject Officer Demographics**

In 2008, there were 1,383 sworn officers in the SJPD — the largest number of officers in more than ten years. There were 394 officers named in complaints — 28% of sworn officers. Of these



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individuals, 96 were named in more than one complaint. Information about officers receiving complaints is presented in this chapter.

SJPD started the Intervention Counseling program as an "Early Warning System" to address minor allegations of misconduct at an early stage. Early intervention provides the Department with a tool to identify potential problems and provide timely guidance to officers. Fourteen officers received counseling as part of the Department's Early Intervention Program in 2008.

### **Chapter Six: Community Outreach**

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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. Better informed residents are more inclined to seek the assistance of the IPA and to have confidence in the existence of effective oversight.

The IPA and staff participated in 180 events, meetings, and presentations in 2008, reaching more than 5,800 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 180 outreach events the IPA participated in during 2008, 84 or 47% involved one or both of these targeted populations.

In 2008 the IPA released a revised and expanded edition of a Student's Guide to Police Practices (Guide), first published in March 2003. The Guide was created to educate youth, parents, and teachers about basic legal rights, common crimes that sometimes involve youth, and how young people can avoid becoming victims. The revised Guide contains new sections that discuss serious social issues facing today's youth — gangs, hate crimes, internet safety, and dating abuse. Both print and CD versions of the Guide were updated in English, Spanish, and Vietnamese.

### **Chapter Seven: Cases By Council District**

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Chapter Seven provides a discussion of complaints and concerns 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 distributed. This chapter also provides information on Force Cases by council district.

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### Conclusion

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The challenges that accompany increased population and changing demographics reinforce the need for professional and trustworthy law enforcement and for fair and effective oversight. The Office of the Independent Police Auditor is committed to fulfilling its mandated duties and instilling confidence in the complaint process through community outreach and objective review of police misconduct investigations. The IPA anticipates continuing to work cooperatively with SJPD to ensure that revisions made to the complaint process reflect the goals and objectives established in 2008.

*Executive Summary*

