



## LEGISLATIVE ANALYST REPORT

**To:** Members of the Board of Supervisors  
**From:** Adam Van de Water, Office of the Legislative Analyst  
**Date:** September 15, 2006  
**RE:** **Police Disciplinary Procedures** (BOS File No. 061140) (OLA No. 071-06)

### SUMMARY OF REQUESTED ACTION

The Board passed a motion introduced by Supervisor Elsbernd requesting that the Office of the Legislative Analyst research the disciplinary practices in other California police departments. The report should focus on comparing the disciplinary authority of San Francisco's Police Chief, Office of Citizen Complaints (OCC) and Police Commission with peer police departments throughout California.

### METHODOLOGY

The OLA contacted the Police Executive Research Forum's Center for Force and Accountability, the International Association of Chiefs of Police, the Police Assessment Resource Center, and University of Nebraska Professor of Criminal Justice and police accountability expert Samuel Walker and found that no research was known to exist on the comparative disciplinary processes of California police departments.

The OLA therefore surveyed the eight largest cities in California by population – Los Angeles, San Diego, San Jose, San Francisco, Long Beach, Fresno, Sacramento, and Oakland – and worked with Anthony Ribera, Director of the University of San Francisco's International Institute of Criminal Justice Leadership (IICJL) and former Chief of the San Francisco Police Department (SFPD), to determine the authority of the Chief of Police to discipline officers for misconduct. The OLA interviewed police department staff in each of the eight jurisdictions and Mr. Ribera issued a request for similar information to all members of the California Police Chiefs Association. Mr. Ribera received 42 responses, mostly from small to mid-size California cities.

Results of the two surveys are combined in Appendix I, attached.

### PUNISHMENT FOR OFFICER MISCONDUCT – AN OVERVIEW

In response to an accusation of officer misconduct, most California police departments place officers on administrative leave, temporary suspension or in an office position that minimizes public contact while an internal affairs division conducts an investigation. At the conclusion of the investigation and if the allegation is sustained, the Chief or his or her commanding officers impose one of many punitive actions. This can include counseling or training, written reprimand, transfer for purposes of punishment, reduction in salary, suspension without pay, demotion (though rare), or termination of employment.

In most cases the actual disciplinary action invoked is determined by explicitly defined disciplinary guidelines in combination with the case-by-case details of the situation and the officer's history, if any, of prior misconduct. This allows for both prescriptive discipline (known punishments for known offenses) and progressive discipline (discipline that increases in severity with each successive offense).

In all cases, officers may appeal disciplinary actions to an objective third party identified by the local public agency (typically a civil service commission, city department, or citizen oversight board).<sup>1</sup>

### **San Francisco Police Department**

SFPD has a very strong level of public oversight with an Office of Citizen Complaints (OCC), and a citizen Police Commission. San Francisco is cited by the U.S. Department of Justice and researchers at the University of Nebraska as providing “meaningful civilian oversight”<sup>2</sup> with an OCC that serves as a best practice model in the area of policy recommendation<sup>3</sup> and the investigative model of civilian review<sup>4</sup>.

However, as a result SFPD also has a very decentralized disciplinary process relative to other jurisdictions. In the eyes of many police professionals the OLA interviewed, this shared responsibility can create a decentralized disciplinary environment that challenges effective leadership of the department.

Whereas most jurisdictions vest command staff and the Chief with exclusive disciplinary authority (sometimes with the approval of a city manager or civil service commission – see below), disciplinary action within SFPD is shared by the Chief and his or her command staff, the Office of Citizen Complaints (OCC), and the Police Commission.

Minor officer infractions (such as failure to appear on the range or failure to complete a mandatory physical fitness evaluation) are handled by the commanding officer at each district station. More serious allegations are either investigated internally by SFPD's Management Control Division (MCD) or by the OCC and may be referred to the Police Commission for disciplinary action. While either body can investigate any allegation (and sometimes both do), typically MCD investigates officer shootings, in-custody deaths, or allegations while the officer is off-duty while the OCC investigates allegations of excessive force, civilian harassment, and other infractions while in the line of duty. OCC and MCD investigations determine whether or not the allegation is sustained and may include a recommendation to the Chief for disciplinary action. The OCC may also independently file charges with the Police Commission.

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<sup>1</sup> The Public Safety Officer' Procedural Bill of Rights Act (California Government Code Sections 3300-3311, enacted January 1, 1977 and the first of its kind) specifies the conditions under which any public safety officer in California may be investigated or interrogated if it could lead to punitive action. Section 3304 (b) also specifically provides for the right to administrative appeal for any punitive action or denial of promotion on grounds other than merit.

<sup>2</sup> “Principles for Promoting Police Integrity”, U.S. Department of Justice, January 2001.

<sup>3</sup> “Citizen Review of Police – Approaches & Implementation”, U.S. DOJ, National Institute of Justice (NIJ), March 2001.

<sup>4</sup> “Best Practices in Police Accountability – Models of Citizen Oversight”, from the Department of Criminal Justice, University of Nebraska, December 2002.

Perhaps the largest difference between the SFPD and other jurisdictions is the concentration of disciplinary power in the hands of the Police Commission rather than the Chief of Police or City Manager/City Administrator. Per Charter Section A8.343, the Police Commission, a citizen oversight body and one of the few of its kind in the state with disciplinary authority, determines all disciplinary action beyond 10-day suspensions and serves as the appellate body for all officer appeals. Police Commissions in jurisdictions such as Los Angeles do not intervene in disciplinary cases, serving instead as a policy review body for and supervisor of the Chief of Police. This is why some practitioners of comparative police oversight have called San Francisco “notoriously unique.”<sup>5</sup>

### FINDINGS

#### **Finding #1: Most large California jurisdictions afford the Chief of Police wider latitude to discipline officers for misconduct than does the City and County of San Francisco.**

In Council-Manager forms of government, the City Manager/Administrator typically retains final disciplinary power, but delegates most, if not all, of the less serious cases to the Chief of Police. This is true, for instance, in the similarly sized jurisdictions of Oakland<sup>6</sup>, San Jose, and Long Beach. Even in many jurisdictions where the Charter or Municipal Code specifically names the City Manager as responsible for disciplinary action, in practice the Chief of Police recommends and ultimately imposes most disciplinary action and the City Manager only intervenes formally and when necessary.

In other jurisdictions, the Chief of Police is afforded wide latitude to discipline officers without external oversight, up to and including both suspension and termination. In these cases, disputes may be appealed to a civil service commission, city department, or citizen oversight board.

These survey findings among large jurisdictions are backed by similar findings by retired SFPD Chief Anthony Ribera who posed the question to the California Police Chiefs Association. More than half of all responding jurisdictions (24 of 42) afforded their Chief of Police exclusive disciplinary authority and the remainder (18 of 42) provided varying degrees of authority to suspend, ranging from a purely advisory role to the City Manager up to a maximum suspension of one year in length (see Appendix I below).

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<sup>5</sup> Phone interview with former SF Deputy City Attorney, current counsel to the City of Santa Cruz Citizen Police Review Board, and long-term police management consultant Bob Aronson, 8/17/06. Tony Ribera of the USF IICJL expressed a similar sentiment.

<sup>6</sup> Though Oakland now has a “strong mayor” form of government, police discipline is still overseen by the City Administrator.

**Finding #2: Suspensions beyond 30 days are rare and largely considered unnecessary.**

A common threshold for suspensions by the Chief of Police and/or the City Manager appears to be 30 days. Other than San Francisco, only three cities surveyed – the Cities of Burbank, Pacifica, and Santa Ana – are known to allow for suspensions beyond 30 days.

In the words of Deputy Chief Michael Berkow of the Los Angeles Police Department,

*“SFPD stands alone in the state in doing long term suspensions. I have surveyed in the state (and I was a Chief in three other departments in CA): basically no one suspends for more than 30 days. Conduct worthy of longer than 30 days equals termination.”*

**CONCLUSION**

SFPD is unique among its peer California police departments in how it handles discipline for officer misconduct. With both an Office of Citizen Complaints and a citizen-run Police Commission, SFPD’s disciplinary structure has stronger citizen oversight than other comparable jurisdictions but also has a more decentralized disciplinary environment that some have criticized as ineffective.

The OLA could find no other jurisdiction that concentrated so much disciplinary authority in the hands of a civilian body like San Francisco’s Police Commission.

**APPENDIX I: SURVEY RESPONSES BY CALIFORNIA JURISDICTION**

**Eight Largest California Jurisdictions Surveyed by the OLA**

	<b>Disciplinary Authority</b>	<b>Max. Suspension Authority for Chief of Police</b>	<b>Additional Suspension Lengths Approved By</b>	<b>Police Department Structure</b>	<b>Contact</b>
<b>Los Angeles</b>	The Chief may discipline up to and including a 22-day unpaid suspension. Officers may accept this suspension or may appeal to a Board of Rights composed of one civilian and 2 officers at the Captain level or above. The Board of Rights handles all higher disciplinary actions. The Mayor and City Manager do NOT get involved in police disciplinary actions. If Board of Rights renders a guilty decision, they recommend a penalty to the Chief who may only accept or lower the penalty.	22 days	Board of Rights	Approximately 9,200 sworn officers, City Manager, Board of Rights.	Lieutenant Rob Hauck
<b>San Diego</b>	The Chief of Police has exclusive disciplinary power, though cases may be appealed to the Civil Service Commission. Internal Affairs unit conducts all investigations on a case-by-case basis. Officer's superior then recommends punishment based on the totality of the employee's experience.	30 days	N/A	Approximately 2,100 sworn officers. No Police Commission. Citizen's Review Board plays an advisory though not investigative role.	Lieutenant Brian Blagg – Internal Affairs
<b>San Jose</b>	Chief makes recommendations on notices of discipline. Office of Employee Relations and City Attorney still has to approve. Appeals are to an arbitrator or to the Civil Service Commission.	1 day (10 hours)	City Manager's Office of Employee Relations	Approximately 1,400 sworn officers. No Police Commission. Independent Police Auditor.	Barbara Attard or Sergeant Phan Ngo Internal Affairs

	<b>Disciplinary Authority</b>	<b>Max. Suspension Authority for Chief of Police</b>	<b>Additional Suspension Lengths Approved By</b>	<b>Police Department Structure</b>	<b>Contact</b>
<b>San Francisco</b>	Chief can suspend for up to 10 days. Office of Citizen Complaints Director can (after meet and confer with the Chief) take disciplinary charges directly to the Police Commission. Suspensions beyond ten days may only be issued by Police Commission.	10 days	Police Commission	1,971 minimum sworn officers; Office of Citizen Complaints; Police Commission	Sergeant Rob O’Sullivan and Police Commission Clerk Risa Cuizon
<b>Long Beach</b>	The Charter grants disciplinary authority to the City Manager but in practice this is delegated to department heads (including the Police Chief) for all discipline short of termination.	30 days <i>(though in practice the City Manager only intervenes in cases of termination)</i>	City Manager	Approximately 970 sworn officers.	Lieutenant Lembi in Internal Affairs
<b>Fresno</b>	Internal Affairs investigates claims of misconduct. Chief makes all disciplinary decisions. Civil Service Board handles all appeals. Disciplinary action often depends on officer’s previous record.	Unknown	N/A	Approximately 1,000 sworn officers. No Police Commission.	Sergeant Wilson in Internal Affairs
<b>Sacramento</b>	Discipline is entirely handled by the department, in consultation with the City’s Labor Relations Department. The Chief determines all suspensions and their lengths.	20 days (160 hours)	N/A	700-750 sworn officers. City Manager Office of Public Safety Accountability. No citizen oversight body.	Sergeant Paul Freeman
<b>Oakland</b>	The Chief handles discipline, with oversight by the City Administrator. The OPD Discipline Matrix outlines 5 levels of disciplinary action, including suspension. Citizen’s Police Review Board may also recommend discipline to the Chief.	10 days	City Administrator	Approximately 740 sworn officers. City Manager, Citizen’s Police Review Board.	Officer Christopher Bolton, OPD Internal Affairs

**ADDITIONAL CHIEFS OF POLICE SURVEYED BY TONY RIBERA OF USF'S INTERNATIONAL INSTITUTE FOR CRIMINAL JUSTICE LEADERSHIP**

**18 Jurisdictions Have Limited Power to Terminate or Suspend**

	<b>Disciplinary Authority</b>	<b>Max. Suspension Authority for Chief of Police</b>	<b>Additional Suspension Lengths Approved By</b>	<b>Contact</b>
<b>1. Antioch</b>	Documented counselings to termination require City Manager approval.	Recommend only	City Manager	Chief Jim Hyde
<b>2. Arcata</b>	City Manager imposes disciplinary action beyond 3 days, at the recommendation of the Chief of Police.	3 days	City Manager	Chief Randy Mendosa
<b>3. Berkeley</b>	Suspensions beyond 3 days are imposed by the City Manager at the recommendation of the Chief. Maximum suspensions by the City Manager are for 30 days.	3 days	City Manager	Chief Douglas Hambleton
<b>4. Carmel</b>	Chief of Police may only recommend suspensions to City Administrator who has final authority to impose modify the Chief's recommendation.	Recommend only	City Administrator	Chief George Rawson
<b>5. Greenfield</b>	Only the City Manager may impose an action resulting in a loss of pay (other than a removal from special assignment) for failure to perform.	Recommend only	City Manager	Chief Joe Grebmeier
<b>6. Grover Beach</b>	Chief of Police has the authority for all disciplinary action including terminating an officer with concurrence of the City Manager.	Unknown	City Manager	Chief Jim Copsey
<b>7. Half Moon Bay</b>	City Manager is the only executive that can impose disciplinary action.	Recommend only	City Manager	Chief Israel Ortiz
<b>8. Laguna Beach</b>	The Chief of Police may recommend any disciplinary action but does not have the authority to impose it.	Recommend only	Unknown	Chief Michael Sellers
<b>9. Lompoc</b>	Chief of Police may suspend for up to 30 days and may terminate with the concurrence of the City Manager and Personnel Officer.	30 days	City Manager and Personnel Officer	Chief William F. Brown, Jr.

	<b>Disciplinary Authority</b>	<b>Max. Suspension Authority for Chief of Police</b>	<b>Additional Suspension Lengths Approved By</b>	<b>Contact</b>
<b>10. Los Angeles</b>	<i>-- See above --</i>			
<b>11. Milpitas</b>	The Chief of Police may enforce up to and including termination, with the concurrence of the City Manager.	Unknown	With concurrence of City Manager	Chief Dennis Graham
<b>12. Newport Beach</b>	Chief of Police has the authority up to and including termination, with the concurrence of the Civil Service Commission.	Unknown	Civil Service Commission	Chief Bob McDonell
<b>12. Novato</b>	Chief of Police may suspend for up to 30 days and may terminate with the concurrence of the City Manager.	30 days	With concurrence of City Manager	Chief Joseph Kreins
<b>13. Pacifica</b>	Chief of Police may suspend for up to one year and may terminate with the concurrence of the City Manager.	1 year	N/A	Chief Jim Saunders
<b>14. Salinas</b>	The Chief of Police may enforce up to and including termination, with the concurrence of the City Manager.	Unknown	With concurrence of City Manager	Chief Daniel Ortega
<b>15. San Bruno</b>	Chief of Police may suspend for up to 30 days and may recommend termination to the City Manager.	30 days	City Manager	Chief Lee Violet
<b>16. Santa Clara</b>	Chief of Police can only recommend discipline, beyond a letter of reprimand.	Recommend only.	City Manager	Chief Stephen Lodge
<b>17. Walnut Creek</b>	Chief of Police may suspend for up to 3 days and may recommend longer suspensions or termination to the City Manager.	3 days	City Manager	Captain Dennis Bell



<b>24 Jurisdictions Have Exclusive Power to Terminate or Suspend</b>		
	<b>Max. Suspension Authority for Chief of Police (if specified)</b>	<b>Contact</b>
<b>1. Anaheim</b>		Chief John Welter, jwelter@anaheim.net
<b>2. Banning</b>		Chief John Horton, jhorton@ci.banning.ca.us
<b>3. Beverly Hills</b>		Sergeant Michael Publicker, mpublicker@beverlyhills.org
<b>4. Burbank</b>	90 days	Chief Tom Hoefel, Thoefel@ci.burbank.ca.us
<b>5. Burlingame</b>		Chief Jack Van Etten, vanetten@police.ci.burlingame.ca.us
<b>6. Chula Vista</b>		Captain Gary Wedge, Gwedge@chulavistapd.org
<b>7. Davis</b>		Assistant Chief Steven Pierce spierce@ci.davis.ca.us
<b>8. Fremont</b>	No limit	Chief Craig Steckler, csteckler@ci.fremont.ca.us
<b>9. Fresno</b>		-- see above --
<b>10. Huntington Beach</b>		Chief Kenneth Small, ksmall@hbpd.org
<b>11. Inglewood</b>	30 days	Lieutenant Mark Fronterotta, mfronterotta@cityofinglewood.org
<b>12. Livermore</b>		Chief Steve Krull, skrull@ci.livermore
<b>13. Mountain View</b>		Chief Scott Vermeer, scott.vermeer@mountainview.gov
<b>14. Orange</b>		Chief Robert Gustafson, rgustafson@orangepd.org
<b>15. Placerville</b>		Chief George Nielsen gnielsen@ci.placerville.ca.us
<b>16. Ripon</b>	3 days	Chief Richard Bull, rabull@cityofripon.org
<b>17. Rohnert Park</b>		Chief Tom Bullard, tbullard@rpcity.org
<b>18. San Carlos</b>		Chief Gregory Rothaus, grothaus@cityofsancarlos.org
<b>19. Santa Ana</b>	90 days	Asst. City Attorney Paula Coleman, pcoleman@ci.santa-ana.ca.us
<b>20. Seal Beach</b>	10 days	Chief Jeff Kirkpatrick, jkirkpatrick@ci.seal-beach.ca.us
<b>21. South San Francisco</b>		Chief Mark Raffaelli, mark.raffaelli@ssf.net
<b>22. Twin Cities</b>		Captain Todd Cusimano, tcusimano@tcpd-authority.org
<b>23. Vallejo</b>		Bob Nichelini, rnichelini@cil.vallejo.ca.us
<b>24. Yuba City</b>		Chief Richard Doscher, rdoscher@ubacity.net