

**APRIL 6, 2005**

**CLOSED SESSION**

The Police Commission of the City and County of San Francisco met in Room 400, City Hall, #1 Dr. Carlton B. Goodlett Place, San Francisco, at 5:19 p.m., in Closed Session.

PRESENT: Commissioners Renne, Orr-Smith, Chan, Keane, Sparks,  
Marshall, Veronese

**PUBLIC COMMENT ON ALL MATTERS PERTAINING TO CLOSED SESSION**

None

**VOTE ON WHETHER TO HOLD CLOSED SESSION TO CONFER WITH LEGAL COUNSEL. (SAN FRANCISCO ADMINISTRATIVE CODE SECTION 67.10(d))**

Motion by Commissioner Veronese to hold Closed Session, second by Commissioner Marshall. Approved 7-0.

Motion by Commissioner Veronese to recuse Commissioner Sparks from the Closed Session discussion and voting, second by Commissioner Keane. Approved 6-0.

**CLOSED SESSION PURSUANT TO GOVERNMENT CODE SECTION 5496.9 AND SAN FRANCISCO ADMINISTRATIVE CODE SECTION 67.10(d)**

CONFERENCE WITH LEGAL COUNSEL

- a. Julie Yee v. City and County of San Francisco, EEOC Charge No. 3270A300288

**APRIL 6, 2005**

**REGULAR MEETING**

The Police Commission of the City and County of San Francisco met in Room 400, City Hall, #1 Dr. Carlton B. Goodlett Place, San Francisco, at 5:32 p.m., in a Regular Meeting.

PRESENT: Commissioners Renne, Orr-Smith, Chan, Keane, Sparks,  
Marshall, Veronese

**VOTE TO ELECT WHETHER TO DISCLOSE ANY OR ALL DISCUSSION HELD IN CLOSED SESSION (SAN FRANCISCO ADMINISTRATIVE CODE SECTION 67.12(a))**

Motion by Commissioner Orr-Smith for non disclosure, second by Commissioner Veronese. Approved 7-0.

**APPROVAL OF CONSENT CALENDAR**

**RESOLUTION NO. 17-05**

**JULIE YEE v. CITY AND COUNTY OF SAN FRANCISCO**

RESOLVED, that the recommendation of the City Attorney for settlement of the litigation of "Julie Yee v. City and County of San Francisco" in EEOC Charge No. 3270A300288, be, and the same are hereby approved.

Date of Incident: May 21, 2001 and continuing

AYES: Commissioners Renne, Orr-Smith, Chan, Keane, Marshall,  
Veronese

RECUSED: Commissioner Sparks

### **PUBLIC COMMENT**

Lorraine Altamirano discussed concerns regarding the Sheila Deto case and stated that Judge Warren, Superior Court, did not make a decision in the case and he has up to 90 days to do so.

Sally Stevens, Chair of SF Dog Owners Group, discussed concerns regarding increased enforcement on leash laws in parks. She discussed concerns that there are not place for people to walk their dogs off leash in San Francisco.

Brent Plater, Attorney for Center for Biological Diversity, a dog owner, discussed concerns of non enforcement of leash laws.

Eugenie Marrick, Friends of Holly Park, discussed concerns regarding non enforcement of leash laws. She asked that other agencies need to step up and make it right for the little children.

Robin Buckley discussed concerns regarding enforcement of leash laws.

John Farber, Corona Heights, discussed concerns regarding non enforcement of leash laws. He stated that within 150 yards is a park sanctioned for off leash dogs and yet the park next to his house is overwhelmed with dogs that are supposed to be on leash.

Unidentified discussed concerns lack of enforcement of the leash laws.

Darryl Brown discussed concerns regarding children and elders not able to use public parks. He stated that off leash dogs are all over and it is irresponsible on the part of dog owners.

Lindsey Keyholder, Dolores Park, stated that off leash exercise areas are important. She stated that dog bites do not happen in parks but in private residences. She stated that officers should spend their time on real public issues and not imaginary ones.

Mary Harris, Coleman Advocates, stated that animal have teeth and if they have teeth they can bite. She stated that it is not fair to children to be subject to something that they are afraid of. She asked that there be enforcement by the police.

Marybeth Wallace, President Coleman Advocates for children, asked for enforcement of the leash laws in parks. Off leash dogs should be in a designated area.

Judy Macchi discussed concerns regarding off leash dogs in parks and how she had to pay more to use the park for her daughter's soccer team and the dogs get to use it for free.

Andrea O'Leary discussed concerns regarding quality of parks in the City and enforcement of the leash laws. She stated that there are 26 off-leash parks in the city.

Karen Woodrow asked the Commission to please enforce the leash laws in the City in order for her grand kids to have a place to play.

Cary Mitchell asked for enforcement of the leash laws and asked the police to get involved before anybody gets hurt.

Eugenia Valendi asked that there be a compromise to share the park with the kids, family and the dogs.

Kevin Wallace would like the leash laws enforced.

Donald Beard asked that the leash laws be enforced.

Bill Carlin discussed concerns of the leash laws enforcement.

### **CHIEF'S REPORT**

#### **a. Update on significant policing efforts by Department members**

Chief Fong introduced Commander Shinn and Officer John Denny to address the concerns raised by the public.

Commander Shinn stated that he was invited to attend the meeting of the Dog Advisory Committee. He stated that at that meeting, he was provided with the various health code violations in having dogs off leash and the number of parks that allow off leash dogs. He stated that there are currently 20 parks that allow off leash dogs. He stated that he informed all the captains of the information so that they can pass it on to the community via their daily emails.

Officer Denny has been with the Vicious and Dangerous Dog Hearings since about 1993. He explained about the Vicious and Dangerous Dog Court. He stated that they do address every incident of dog bites to humans, to domestic animals and any menacing behavior by a dog.

Commissioner Orr-Smith asked how many citations for off leash dogs are issued annually and how many complaints are received. Officer Denny stated that citations are from the Animal Control and district stations and currently there are no combined totals available. He stated that Animal Control keep statistics. As far as complaints, last year there were 384 dog bites in San Francisco but that doesn't include the near misses.

Commissioner Orr-Smith made the following statement: "In hearing this, I must say – I'm a dog lover. I'm not a dog owner currently. But I do sympathize with the realities of the challenges faced by citizens by off leash dogs. I appreciate that everyone has their passion but I would also ask everyone to appreciate in this climate, where we've had dog maulings, the level of anxiety around dogs has heightened considerably. And I hear those who are advocating for dogs who think the off leash law is ridiculous, I would ask you to have a little more empathy for people who might be fearful of dogs in this situation. You know in jogging around Lake Merced, when I did jog, I was just crossing the street to get on the track and was charged by a dog who was, you know, with its guardian, off leash, they were jogging along, you know, as a breeze, but it was traumatic for me. I was so shaken by that because that doesn't happen. And as a dog lover, I wasn't the least bit anxious by approaching the dog but to be charged like that really shook me up and I could imagine what that experience might be for a child in the park. I'm concerned that the sports fields are not accessible or available if there's, you know, this disregard and disrespect for the impact of your dogs' poo in the space where your neighbors have to operate and when someone says it's the height of incivility to object to that, I think, it's the height of arrogance and incivility not to be sensitive to it. The parks are for everyone and we've been accused of not being a child-friendly city and I don't want to see that happen. You know I raised a child in this town, had a soccer playing little girl, and believe me, it's frightening when a mother has to go over and rescue a child from a dog and the owners says, "Oh, he's harmless. Don't worry about it. He wouldn't hurt a flea." I don't know that. And in that moment I'm frightened and so is my child. So I would ask that we at least hear each other and look for meaningful ways to resolve this but I think the laws ought to indeed be enforced, and I think that people need to take it upon themselves if you're going to care for a dog then you need to identify where are the appropriate places to let your dog run free. I agree a dog does deserve that but those are the realities of living in an urban community. And until we have adequate resources for dogs to run free, I think the leash laws should definitely be enforced and not the reverse. So I'm proud to hear Commander Shinn that the Department is in fact enforcing these laws and I would encourage us to continue doing that because we don't want to be driven to the point of crisis, fear, or anxiety before we react and then those that would say the Department had to do an opportunity to do something and wasn't enforcing it. I think that just in doing our duty as law enforcement arm of the city, just by enforcing the laws in the books will make it safer for everyone else and there's got to be cooperation of both sides. So that's all I've got to say."

Commissioner Sparks asked what is the policy of the Department as far as citing off leash dog owners. Commander Shinn stated that it is to the discretion of the officers either to admonish the owner or to issue an infraction. Commissioner Sparks stated she's concerned that the law is not being enforced. She agrees with Commander Shinn that it's important to give the officers that discretion but since there is no way of tracking how many admonishments were issued and how many citations were issued, it falls back to the Department not enforcing the law.

Commissioner Chan asked if the Department can come up with statistics and if so, when can that be available. Commander Shinn stated that he will have to check with the Planning Division if that can be done. Officer Denny explained that pamphlets were created by Park and Rec and Animal and Care Control Officers were assigned to different parks to hand out the pamphlets which stated which are legitimate off leash areas with the idea that a month later they will begin citing and Animal Care and Control has began citing.

Commissioner Veronese stated that law is the law and asked the Department to look at what the State is doing in regards to this matter.

## **OCC' DIRECTOR'S REPORT**

### **a. Review of Recent Activities**

Director Allen asked the Commission if the discussion that was tabled in regards to General 8.11 be presented before the Department's presentation for item #11.

Commissioner Sparks asked Director Allen if he is prepared to say whether or not he has a completion date of the investigation in regards to the Cammerin Boyd matter since the one year anniversary is approaching. Director Allen stated that it is nearing completion.

Commissioner Sparks also asked about the Metreon shooting. Director Allen stated that the OCC investigation on the Metreon incident is still open and he will be happy to meet with the Commissioner in regards to this incident.

Commissioner Sparks also asked about the OCC Annual Report and a report in regards to First Amendment Violations. Director Allen stated that the Annual Report and the First Quarter report will be provided to the Commission.

Commissioner Chan asked Director Allen if he has any idea when the District Attorney's case will be concluded. Director Allen stated that he has spoken with the DA's representative and the representative stated that there is still a criminal investigation pending and that they are not at liberty to comment. Director Allen also stated that their investigation is not dependant upon the DA's investigation. It is dependant on the information provided by the District Attorney.

Commissioner Sparks asked Director Allen, since OCC is investigating policy failures, what from the District Attorney would OCC be waiting for on the Boyd matter. Director Allen stated that the OCC is doing a complete investigation of the shooting.

Commissioner Veronese asked the City Attorney if an amendment to a complaint is barred by a statute of limitations and asked the City Attorney if she can find out if it is barred.

Director Allen stated that it is not a question of whether or not it is barred. It's a question of whether or not it will go into litigation. He stated that the OCC is trying to give the Commission a completed investigation that would hopefully stay out of litigation. They are trying to prevent the case from going into litigation.

Commissioner Keane addressed Director Allen and stated that in terms of filing complaints, there are certain number of charges available to him in regard to police officer conduct and they are fairly broad in regard to those aspect of misconduct. Commissioner Keane stated that after a year of looking at a case, if you are going to have evidence relating to misconduct, you would have evidence relating to the specific charges that would go with that misconduct that you would be filing. Commissioner Keane stated that Director Allen probably wouldn't have a lot to worry about in regard to needing to amend something later on. The charges are there, the particular offenses are there. If you have evidence that you believe that supports them but the evidence still may develop even a little bit further, that's not a question of amending that complaint, it's just going to be more information that you might get. Commissioner Keane recommended that if Director Allen has the broad outline of the charges, file them before the one-year period goes by.

Commissioner Orr-Smith asked Director Allen if charges will be filed before the 27<sup>th</sup> of this month and Director Allen stated that it will be filed before the 27<sup>th</sup>. Director Allen stated that the OCC has up to the last day of the 365 to file and he stated that he is aware that the OCC can file the charges and they will be prepared to do that if need be. He stated that the exception is that the OCC can do that to prevent the statute of limitations from running on this matter.

Commissioner Sparks stated that unless Director Allen is prepared to say that there are violations of policy, the Commission shouldn't do a presumption of filing of charges because the Commission does not want to assume a presumption of charges being filed. Director Allen stated that if there is misconduct found, if the OCC is going to file charges, charges will be filed before the year is up.

Commissioner Renne stated that the Commission will have its own hearing on the first week of May with or without the District Attorney or the OCC having made a decision.

#### **PUBLIC COMMENT:**

Steve Johnson, POA, discussed concerns regarding comment made about the disciplinary process as a game. He stated that this is not a game. This is a process and the members do not want to go through this process more than anyone else and they'd like to have it done within a year.

Marylon Boyd discussed concerns regarding the Detoy matter and why it's taking seven years for the investigation and thanked the Commission for discussion the issue of 3304 cases.

#### **PRESENTATION OF THE QUARTERLY REPORT - PROVISION OF DOCUMENTS TO THE OFFICE OF CITIZEN COMPLAINTS (OCTOBER - DECEMBER 2004)**

Lieutenant Doug Groshong, Legal Division, presented the quarterly report - Provision of Document to the OCC for October to December 2004.

Commissioner Chan asked how the protocol is working out with the OCC. Director Allen stated that the protocol does get the document to the OCC.

PUBLIC COMMENT:

None

**DISCUSSION AND POSSIBLE ACTION TO ADOPT IN FINAL FORM  
REVISED GENERAL ORDER 3.10, "FIREARM DISCHARGE  
REVIEW BOARD"**

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**DISCUSSION AND POSSIBLE ACTION TO ADOPT IN FINAL FORM  
REVISED GENERAL ORDER 8.11, "OFFICER-INVOLVED  
SHOOTINGS"**

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Both items were called together.

*(The Commission took a five minute recess at 7:35 p.m. and reconvened at 7:45 p.m.)*

Ms. Samara Marion, Policy Analyst for OCC, presented a report regarding other departments' practices as to when officers return to duty after being involved in a shooting. She stated she contacted 10 departments and provided the Commission a written summary of those practices.

Ms. Marion advocated for Commissioner Sparks' amendment that place an officer on administrative leave for a minimum of 10 days following a shooting. She also suggested that Management Control Division provide either the review board or the Chief of Police a report of the officer's discipline history which would include pending complaints, prior shootings, use of force incidents, and information from the officer's immediate supervisor to examine if there is a pattern of use of force or discipline.

Ms. Kendall Go, Policy Analyst for OCC, talked about Dr. Benner's testimony in regards to post traumatic stress syndrome. She discussed concerns regarding Dr. Benner's testimony. She suggested that the 10 days is appropriate to give the Behavioral Science Unit time to evaluate the officer suffering the post traumatic stress.

Captain Keohane, Risk Management, explained that on March 16<sup>th</sup>, the Commission directed the Department to revisit General Orders 3.10 and 8.11, and specifically Commissioner Sparks requested amendments as to the length of time an officer would remain on administrative leave, time lines for OIS investigations, and a time frame for the firearm discharge review board to review the facts of officer-involved shooting and prepare a written report to the Chief concerning the return of an officer back to his/her normal duties, also presentation of a written report by the Chief to the Commission regarding his/her decision whether or not to return an officer back to work. Additionally, Commissioner Veronese requested the Department to revisit its position on having a citizen on the firearm discharge review board and suggested that the Department view some of the materials provided by the OCC on agencies that had a citizen on its board.

In response, the Department sought input from both the OCC and the POA and, furthermore, the Department met and conferred with the POA as mandated by State statutes.

Captain Keohane explained the amendments made in both the General Orders. He stated that on 3.10, the Department added a citizen observer. The qualifications, duties, and responsibilities are based on the Seattle model which the OCC touted as a best policy practice.

Captain Keohane stated that officers involved in officer-involved shootings and officer-involved discharges will be placed on administrative duties for five days rather than the three which was initially in the order and

the firearm discharge review board will present a recommendation to the Chief as to whether or not a member should be returned to normal duties. The members of the board will make the recommendation to the Chief if a member should be returned to duty or not, not the OIC of Homicide, not the D/C of investigation and so on. Captain Keohane stated that this will have more continuity in the investigation.

**PUBLIC COMMENT:**

Steve Johnson, POA, thanked Captain Keohane and his staff for doing a great job during the meetings. He expressed concerns regarding too many policy analysts at the OCC.

Marylon Boyd recommended that Grand Jury investigations be explored in regards to officer-involved shootings.

**DISCUSSION AND POSSIBLE ACTION TO ADOPT IN FINAL FORM  
REVISED GENERAL ORDER 3.10, "FIREARM DISCHARGE  
REVIEW BOARD"**

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Commissioner Veronese recommended having the Director of OCC on the Board in an advisory position or having a member of the Commission on the Board.

Commissioner Keane stated that the OCC Director should remain on the Board and also that one of the member of the Commission also serve along with the Director of the OCC.

Commissioner Chan requested that if the OCC Director being on the Board is in question, then there should be a Commissioner on the board for the interim.

Commissioner Renne stated she doesn't think that there's any question that if a member of the Commission sits on the Firearm Review Board that he/she could not sit in on the disciplinary due to conflict and given the responsibility of the OCC Director, Commissioner Renne stated that that's a conflict.

Sergeant Reilly explained that the versions dated 3/10/05 for General Orders 8.11 and 3.10 are currently enforced by action of this Commission and they stand now as Department General Orders.

Commissioner Veronese asked that the Commission take two votes on DGO 3.10 since there are two issues. The first being I.C., Commissioner Veronese made a motion to remove the OCC Director and put a Commissioner on the Board chosen by the President of the Commission to serve for one year. Second by Commissioner Chan.

Commissioner Keane moved to amend the motion and add a Commissioner to the Firearm Review Board along with the Director of the OCC. The Commissioner will be appointed by the President of the Commission to serve on the Firearm Review Board for one year.

Deputy City Attorney Morley requested that the Commission make a proposal and vote that proposal, up or down, and that would be a proposal to take back to the POA for meet and confer so that they would have a chance to give their thoughts on that proposal.

Motion by Commissioner Veronese to replace the OCC Director with a Commissioner, appointed by the Chair, for a one-year period. Second by Commissioner Chan.

AYES: Commissioners Orr-Smith, Chan, Veronese

NAYS: Commissioners Renne, Keane, Marshall, Sparks

Motion fails 4-3.

Motion by Commissioner Keane to add a Commissioner, appointed by the Chair for a one-year term, to the Firearm Discharge Review Board with the Director of the OCC on it. Second by Commissioner Sparks.

AYES: Commissioners Orr-Smith, Chan, Keane, Sparks, Veronese

NAYS: Commissioners Renne, Marshall

Motion approved 5-2.

Commissioner Renne stated that this proposal will have to go to the POA for meet and confer.

Motion by Commissioner Sparks to change 90 days to 120 days.  
Second by Commissioner Orr-Smith.

Discussion follows in regards to time frames of both DGO 3.10 and 8.11.

Commissioner Renne suggested that in paragraph D.1 of DGO 3.10 a sentence be added, "Within 10 days of a shooting event the Firearm Discharge Review Board shall convene the panel to discuss whether it is appropriate for the involved member to return to duty." And "Within 30 days the Chair shall convene with the panel to determine whether the shooting was in policy." Above is Commissioner Sparks' motion. Second by Commissioner Orr-Smith.

Commissioner Chan expressed concern that discretion is given to management to hold the officer in limbo for a minimum of 10 days. Commissioner Chan stated that he prefers that the panel be convened as soon as possible particularly if there is an OIS.

AYES: Commissioners Renne, Orr-Smith, Chan, Keane, Marshall, Sparks,  
Veronese

Commissioner Chan had a question in regards to Section D(4) of DGO 3.10, draft dated 4/4/05. On the second sentence of paragraph 4 of Section D, the word completion is underlined and Commissioner Chan asked completion of what. Commissioner Chan asked that the second sentence of paragraph 4 of Section D, DGO 3.10, reads as follows: "Within 15 days of completion of the investigation referred to in D(1), the Firearm Discharge Review Board will submit to the Chief of Police, for his/her concurrence, a written summary of its findings on the officer-involved shooting." Second by Commissioner Keane.

Commissioner Renne suggested that the above proposal be forwarded to the POA for meet and confer and returned to the Commission within one week.

**DISCUSSION AND POSSIBLE ACTION TO ADOPT IN FINAL FORM  
REVISED GENERAL ORDER 8.11, "OFFICER-INVOLVED  
SHOOTINGS"**

Moved to adopt change in Section C.3(h) of DGO 8.11 (draft dated 4/4/05). Motion by Commissioner Veronese, second by Commissioner Chan. Approved 7-0.

Moved to adopt language in Section D.4 of DGO 8.11 (draft dated 4/4/05). Motion by Commissioner Sparks, second by Commissioner Veronese. Approved 7-0.

In Section G.4 of DGO 8.11 (draft dated 4/4/05), Commissioner Sparks asked that the 5-day period of time be changed to 10 days.

Commissioner Sparks motion to accept all the changes on paragraph 4, DGO 8.11, (draft dated 4/4/05), with the exception of changing 5 calendar days in the first paragraph of section 4 to 10 and on the second paragraph, 5 days to 10 in officer-involved shootings. Second by Commissioner Marshall.

AYES: Commissioners Renne, Orr-Smith, Keane, Marshall, Sparks, Veronese  
NAYS: Commissioner Chan

Approved 6-1.

Motion by Commissioner Sparks to adopt addition of Paragraph #6, DGO 8.11 (draft dated 4/4/05), page 6. Second by Commissioner Marshall. Approved 7-0.

Adoption, as a proposal for meet and confer with the POA, the 4/4/05 version of DGO 8.11 with two changes that appear on page 5, paragraph 4 the first two subparagraphs, numeral 5 have been changed to 10.

AYES: Commissioners Renne, Orr-Smith, Chan, Keane, Marshall, Sparks,  
Veronese

Approved 7-0.

Director Allen asked that after the meet and confer is conducted if information can be disseminated as quickly as possible so that the OCC can look it over early in the process.

Motion by Commissioner Orr-Smith to reconsider DGO 3.10. Second by Commissioner Veronese. Approved 7-0.

Motion by Commissioner Keane that the Commission member appointed to the Firearms Discharge Review Board be a regular member and not advisory. Second by Commissioner Orr-Smith.

AYES: Commissioners Orr-Smith, Chan, Keane, Sparks  
NAYS: Commissioners Renne, Marshall, Veronese

Approved 4-3.

Adoption, as a proposal for meet and confer with the POA, the 4/4/05 version of DGO 3.10 with changes made by the Commission.

AYES: Commissioners Renne, Orr-Smith, Chan, Keane, Marshall, Sparks,  
Veronese

Approved 7-0.

#### **APPROVAL OF MINUTES FOR THE POLICE COMMISSION MEETING OF JANUARY 5, 2005**

Motion by Commissioner Marshall, second by Commissioner Keane to approve the minutes. Approved 7-0.

#### **COMMISSIONER ANNOUNCEMENTS**

#### **RESOLUTION NO. 18-05**

#### **ASSIGNMENT OF COMMISSIONER AND SETTING OF DATE FOR**

**HEARING ON DISCIPLINARY CHARGES FILED IN CASE  
NO. C04-280 JWA) (Assigned to Commissioner Sparks)**

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Commissioner Orr-Smith asked Chief Fong to report back regarding Grand Jury Report on command staff overtime and asked the Chief to make a recommendation.

**SCHEDULING OF ITEMS IDENTIFIED FOR CONSIDERATION AT  
FUTURE COMMISSION MEETINGS**

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None

Thereafter, the meeting was adjourned at 9:47 p.m.

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Sergeant Joseph Reilly  
Secretary  
San Francisco Police Commission

1497/rct