

APRIL 19, 2006

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 5:45 p.m. in Regular Meeting.

PRESENT: Commissioners Renne, Sparks, Campos, DeJesus, Marshall
ABSENT: Commissioner Veronese

PUBLIC COMMENT

Eric Toronto discussed events in October and the closing of streets for this event and discussed concerns regarding officers actions.

Barbara Growth discussed concerns regarding Officer Nelson.

Ace Washington discussed concerns regarding his press pass.

DISCUSSION AND POSSIBLE ACTION TO APPROVE THE CHIEF'S RECOMMENDATION FOR STIPULATED DISPOSITION OF THE DISCIPLINARY CHARGES FILED AGAINST OFFICER JOHN TORRISE (FILE NO. C05-137 JCT)

and

DISCUSSION AND POSSIBLE ACTION TO APPROVE THE CHIEF'S RECOMMENDATION FOR STIPULATED DISPOSITION OF THE DISCIPLINARY CHARGES FILED AGAINST INSPECTOR EILEEN M. MURPHY (FILE NO. C05-039 JCT)

The Commission decided to consider these items in Closed Session.

PUBLIC COMMENT ON ALL MATTERS PERTAINING TO CLOSED SESSION

None.

Motion by Commissioner Marshall, second by Commissioner DeJesus to go into Closed Session. Approved 5-0.

The Commission went into Closed Session at 5:50 p.m. and reconvened to Open Session at 6:15 p.m.

VOTE WHETHER TO DISCLOSE ANY OR ALL OF THE DISCUSSION HELD IN CLOSED SESSION PURSUANT TO S.F. ADMINISTRATIVE CODE SECTION 67.12(a)

Motion by Commissioner Marshall, second by Commissioner DeJesus for non disclosure of discussion held in Closed Session. Approved 5-0.

HEARING OF OFFICER JOHN TORRISE (FILE NO. C05-137 JCT)

The hearing of Officer John Torrise, Star No. 1765, was called it having been set for this date. Officer Torrise was charged, in a properly verified complaint by Heather J. Fong, Chief of Police of the San Francisco Police Department, with violating the Rules and Procedures, as follows:

SPECIFICATION NO. 1

Possession of controlled substances as defined under the California Uniform Controlled Substances Act while off-duty (violation of Department General Order 2.03 of the San Francisco Police Department).

SPECIFICATION NO. 2

Possession of paraphernalia for unlawful use of controlled substances as defined under the California Uniform Controlled Substances Act while off-duty (violation of Rule 9, Department General Order 2.01 of the San Francisco Police Department).

SPECIFICATION NO. 3

Using controlled substances as defined under the California Uniformed Controlled Substances Act (violation of Department General Order 2.03 of the San Francisco Police Department).

SPECIFICATION NO. 4

Engaging in conduct which tends to subvert the good order, efficiency or discipline of the Department or which reflects discredit upon the department (violation of Rule 9, Department General Order 2.01 of the San Francisco Police Department).

Ms. Kelly O=Haire, Attorney at Law, appeared on behalf of the San Francisco Police Department.

Officer John Torrise appeared in person and was represented by Mr. Steve Johnson, POA.

Officer Torrise admitted to the truth of the allegations contained in Specification Nos. 1, 2, 3, and 4 and accepts responsibility for his actions.

The Police Commission unanimously accepted the plea of Officer Torrise.

Based on Officer Torrise=s admission, the Commission requested a recommendation from Chief of Police Heather J. Fong.

It is the recommendation of Chief of Police Heather J. Fong that Officer John Torrise be terminated, with such termination held in abeyance for five (5) years pending any further acts of misconduct; that Officer Torrise be suspended for eighty (80) days; that Officer Torrise enroll and complete the Department=s 11.11 Program for a period of three (3) years; and that Officer Torrise be subject to random substance testing for five (5) years, without limitations.

The Commission took the matter under submission and the following resolution was adopted:

RESOLUTION NO. 30-06

DECISION - HEARING OF OFFICER JOHN TORRISE, CENTRAL (FILE NO. C05-137 JCT)

WHEREAS, on November 9, 2005, Heather J. Fong, Chief of Police of the San Francisco Police Department, made and served charges against Officer John Torrise, as follows:

SPECIFICATION NO. 1

Possession of controlled substances as defined under the California Uniform Controlled Substances Act while off-duty (violation of Department General Order 2.03 of the San Francisco Police Department).

- (1) At all times herein mentioned John Torrise, Star Number 1765, (referred to as the accused) was a police officer, employed by the San Francisco Police Department, assigned to the Central Police Station.
- (2) As a member of the Department, the accused was and is responsible for knowing and obeying the rules, orders, and procedures of the San Francisco Police Department.
- (3) On March 9, 2005, in the evening hours, the accused was off duty and present at the Fire and Ice Restaurant located at the Marriott Hotel's Timber Lodge in South Lake Tahoe, California. There, he inadvertently left his jacket and its contents behind when he left the establishment and returned to his accommodations at a different nearby hotel. Later that evening, he was contacted via telephone by Loss Prevention personnel from Marriott who advised him that he had left his jacket and its contents, including a pipe and an Altoids can containing marijuana, he was advised how to retrieve his property.
- (4) The accused left his hotel and went to the Marriott Loss Prevention office, where he identified his jacket and was given the jacket and a can of smokeless tobacco contained in it. When the accused asked for the return of his pipe and marijuana, he was advised by Loss Prevention personnel that they had contacted the South Lake Tahoe Police Department regarding those items and that, pending their arrival, those items would remain in the custody of Loss Prevention. The accused agreed to remain at the Loss Prevention office pending the arrival of the police and their decision regarding the status of the pipe and marijuana.
- (5) After approximately one half hour, and having been told by the Marriott Loss Prevention personnel that the police response had been delayed, the accused elected to leave the Marriott and walk back to his hotel. Having been alerted to this fact by Loss Prevention personnel, South Lake Tahoe Police contacted and detained the accused on the street. After identifying himself by his California driver's license and San Francisco Police Department identification card, in response to their questions the accused confirmed that the jacket, marijuana, and pipe were his. The accused was then released and no further legal action was taken regarding the accused by the South Lake Tahoe Police Department; they did later take custody of the marijuana and pipe from Loss Prevention. Subsequent tests conducted by the California Department of Justice Bureau of Forensic Services at the request of South Lake Tahoe Police Department revealed that the pipe contained 0.18 grams of marijuana and the Altoids can contained 3.08 grams of marijuana.
- (6) California Health and Safety Code Section 11357(b) states:

Ab. Except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars (\$100)
- (7) The accused engaged in conduct which, in a criminal context, violates the California Health and Safety Code by possessing marijuana without any legal authorization.
- (8) California Health and Safety Code Section 11360 (b) states:

A(b) Except as authorized by law, every person who gives away, offers

to give away, transports, offers to transport, or attempts to transport not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars (\$100.)@

- (9) The accused engaged in conduct which, in a criminal context, violates the California Health and Safety Code by transporting marijuana without any legal authorization.
- (10) The accused, by committing such actions, has engaged in conduct that any reasonable police officer must know violates the standards of the Department and is cause for discipline or dismissal from employment; such conduct violates Department General Order 2.03, which states:

AI. POLICY

A. STATEMENT. Police officer hold a trust from the public. As part of that trust, police officers are empowered to use lethal force without recourse to other than their immediate judgment. This power demands that those who hold it should at all times be in complete physical and mental control. Furthermore, police officers are empowered to deprive other citizens of their freedom when they violate the law. Because they have this power, the public expects, and rightly so, that police officers live up to the highest standards of conduct they enforce among the public generally.

There is sufficient evidence to conclude that the use of illegal drugs, drug dependence, and drug abuse seriously impairs an employee=s performance and general physical and mental health.

The Department could be liable for not taking the appropriate steps to ensure that all its members can perform their duties without endangering themselves or the public they serve. The illegal possession or use of drugs is a crime and as such will not be tolerated.

C. ILLEGAL DRUGS

1. Possession/Use. It is the policy of the San Francisco Police Department that members (both sworn officers and non-sworn employees) shall not illegally possess or use any drug or controlled substance identified under Section 11053 to 11058 inclusive of the Health and Safety Code. Narcotic evidence obtained in the course of police duties and processed according to Department policy and procedures is not subject to this policy.@

SPECIFICATION NO. 2

Possession of paraphernalia for unlawful use of controlled substances as defined under the California Uniform Controlled Substances Act while off-duty (violation of Rule 9, Department General Order 2.01 of the San Francisco Police Department).

- (11) Paragraphs 1 through 10 of Specification No. 1 are incorporated in this charge by reference and realleged as though set forth in full.
- (12) The accused, by transporting and possessing a pipe he used to ingest a controlled substance, marijuana, engaged in conduct which any reasonable police officer must know violates the standards of the department and is cause for discipline or dismissal from employment; such conduct violates Rule 9 of Department General Order 2.01, which states:

AMISCONDUCT. Any breach of the peace, neglect of duty, misconduct or any conduct by an officer either within or without the state that tends to undermine the order, efficiency or discipline of the

Department, or reflects discredit upon the Department or any member, or is prejudicial to the efficiency and discipline of the Department, although not specifically defined or set forth in Department policies and procedures, shall be considered unofficer-like conduct subject to disciplinary action. @

SPECIFICATION NO. 3

Using controlled substances as defined under the California Uniformed Controlled Substances Act (violation of Department General Order 2.03 of the San Francisco Police Department).

- (13) Paragraphs 1 through 10 of Specification No. 1 and paragraphs 11 through 12 of Specification No. 2 are incorporated in this charge by reference and realleged as though set forth in full.
- (14) The Department, based upon its knowledge of the facts contained in Specifications No. 1 and No. 2, ordered the accused on March 11, 2005 to supply a urine sample for analysis for drug usage; the accused complied with this directive. The accused also said that he believed the results of this urine analysis would reveal the presence of marijuana in his system resulting from recent use, stating that he had last used marijuana some three to four weeks prior to the March 11, 2005 test and had been using marijuana for at least two years prior to that time.
- (15) The Department=s guidelines for requesting that a member submit to a drug test is contained in Department General Order 2.03, Drug Use by Members, which states:

AF. DRUG TESTS

1. Requirement. Members are required to immediately submit to a drug test when ordered by the Chief of Police or a Management Control Division investigator. Management Control Division investigators shall complete the Department of Justice 1150 H & S drug influence course for the recognition and detection of drug use prior to carrying out any provision of this order.

2. When a Test May Be Administered. A supervisor may request a drug test be administered by the Management Control Division when there is reasonable suspicion to believe that a member has recently used or is under the influence of any drug. The decision to test will be that of the Chief of Police or the Management Control Division investigator. When any of the following facts are present during an investigation, a drug test (urine or blood) shall be ordered:

- Member admits to the use of drugs.*
- Member=s body shows evidence of drug use (e.g., track marks).*
- Member is found to be in unlawful possession of any drug, or in close open proximity of a suspected illegal drug.*
- Member appears to be under the influence of a drug. @*

- (16) The Department=s guidelines for drug toxicology laboratory testing results are contained in Department General Order 2.03, Drug Use by Members, which states:

AG. SCIENTIFIC AND TECHNICAL GUIDELINES FOR LABORATORY TESTING (CUTOFF LEVELS)

1. Initial Test. Initial Testing shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The following initial cutoff levels shall be used when screening specimens to determine negative or positive results for these five drugs or classes of drugs:

	<u>ng/ml</u>
<i>Marijuana metabolites</i>	100
<i>Cocaine metabolites</i>	300
<i>Opiates</i>	300
<i>Phencyclidine</i>	25
<i>Amphetamines</i>	1000

2. *Confirmatory Test. All specimens identified as positive on the*

initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques. Quantitative GC/MS confirmation procedures at the following cutoff values shall be used for

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	<u>ng/ml</u>
<i>Marijuana metabolites</i>	20
<i>Cocaine metabolites</i>	50
<i>Opiates</i>	300
<i>Phencyclidine</i>	25
<i>Amphetamines</i>	300

Results below these cutoff values shall be considered negative. Results above these cutoff values shall be considered positive evidence that a member has used illegal drugs, except that tests for marijuana and cocaine shall be handled as set forth below.

3. GS/MS Tests Results for Marijuana and Cocaine. Test results for marijuana between 20 and 50 ng/ml and test results for cocaine between 50 and 150 ng/ml shall be considered along with other evidence to ascertain whether or not a member has used illegal drugs. Results over 50 ng/ml for marijuana, and over 150 ng/ml for cocaine shall be considered positive evidence that a member has used illegal drugs. @

- (17) On March 18, 2005, the Department received the toxicological report regarding the accused=s March 11, 2005 urine sample. The accused tested positive for marijuana metabolites. A subsequent quantitative test indicated that the accused=s urine contained approximately 3,414 ng/ml of marijuana metabolites.
- (18) The accused, by ingesting a controlled substance, marijuana, has engaged in conduct that any reasonable police officer must know violates the standards of the Department and is cause for discipline or dismissal from employment; such conduct violates Department General Order 2.03, which states:

AC. ILLEGAL DRUGS

1. Possession/Use. It is the policy of the San Francisco Police Department that members (both sworn officers and non-sworn employees) shall not illegally possess or use any drug or controlled substance identified under Section 11053 to 11058 inclusive of the Health and Safety Code. Narcotic evidence obtained in the course of police duties and processed according to Department policy and procedures is not subject to this policy. @

SPECIFICATION NO. 4

Engaging in conduct which tends to subvert the good order, efficiency or discipline of the Department or which reflects discredit upon the department (violation of Rule 9, Department General Order 2.01 of the San Francisco Police Department).

- (18)*sic* Paragraphs 1 through 10 of Specification No. 1, paragraphs 11 through 12 of specification No., 2, and paragraphs 13 through 18 of Specification No. 3 are incorporated in this charge by reference and realleged as though set forth in full.

- (17)*sic* The accused, by knowingly possessing illegal controlled substances, by

knowingly transporting illegal controlled substances, by knowingly possessing paraphernalia to ingest illegal controlled substances, and by ingesting illegal controlled substances, engaged in conduct which any reasonable police officer must know violates the standards of the Department and is cause for discipline or dismissal from employment; such conduct violates Rule 9 of Department General Order. 2.01, which states:

AMISCONDUCT. Any breach of the peace, neglect of duty, misconduct or any conduct by an officer either within or without the state that tends to undermine the order, efficiency or discipline of the Department, or reflects discredit upon the Department or any member, or is prejudicial to the efficiency and discipline of the Department, although not specifically defined or set forth in Department policies and procedures, shall be considered unofficer-like conduct subject to disciplinary action. @

WHEREAS, a hearing on said charges was held before the Police Commission pursuant to Appendix A, Section A 8.343 of the Charter of the City and County of San Francisco on April 19, 2006, where the matter was submitted to the Police Commission for decision; and

WHEREAS, based on Officer John Torrise=s admissions, the Commission finds the allegation contained in Specification Nos. 1, 2, 3, and 4 of the disciplinary charges as preferred by Chief of Police Heather J. Fong against Officer Torrise are sustained; and the Commission adopts the sustained specification as its findings in this matter; therefore be it

RESOLVED, that based on these findings, consistent with the Commission=s duty to protect the health, safety, and general welfare of the citizens of the City and County of San Francisco and the public in general, and in order to promote efficiency and discipline in the San Francisco Police Department, the Police Commission orders the following discipline be imposed:

<u>SPECIFICATION NO. 1:</u>	Sustained
<u>SPECIFICATION NO. 2:</u>	Sustained
<u>SPECIFICATION NO. 3:</u>	Sustained
<u>SPECIFICATION NO. 4:</u>	Sustained

That Officer John Torrise be terminated, with said termination held in abeyance for five (5) years; and that Officer Torrise be suspended for one hundred eighty (180) days; and that Officer Torrise shall participate in Department General Order 11.11 program for three (3) years, and that he be subject to random substance testing for five (5) years, from the date of this meeting.

FURTHER RESOLVED, that said one hundred eighty (180) day suspension imposed shall commence on Wednesday, April 19, 2006, at 0001 hours, and terminate on Sunday, October 15, 2006, at 2400 hours. Officer Torrise is directed to make telephone contact with his commanding officer three (3) days before the end of his suspension for further direction regarding his return to duty. If Officer Torrise is unable to reach his commanding officer, he shall report to his unit by 0900 hours on the day his suspension ends.

If this decision is subject to review under Code of Civil Procedure ' 1094.5, then the time and within which judicial review must be sought is governed by California Code of Civil Procedure, ' 1094.6.

AYES: Commissioners Renne, Sparks, Campos, DeJesus, Marshall

ABSENT: Commissioner Veronese

**HEARING OF INSPECTOR EILEEN M. MURPHY
(FILE NO. C06-039)**

The hearing of Inspector Eileen M. Murphy, Star No. 1263, was called it having been set for this date. Inspector Murphy was charged, in a properly verified complaint by Heather J. Fong, Chief of Police of the San Francisco Police Department, with violating the Rules and Procedures, as follows:

SPECIFICATION NO. 1

Driving a motor vehicle while intoxicated, conduct which undermines the good order, efficiency and discipline of the Department and which brings discredit on the Department (violation of Rule 9 of Department General Order 2.01 of the San Francisco Police Department).

Ms. Kelly O'Haire, Attorney at Law, appeared on behalf of the San Francisco Police Department.

Inspector Eileen M. Murphy appeared in person and was represented by Mr. Steve Johnson, POA.

Inspector Murphy admitted to the truth of the allegations contained in Specification No. 1 and accepts responsibility for her actions.

The Police Commission unanimously accepted the plea of Inspector Murphy.

Based on Inspector Murphy's admission, the Commission requested a recommendation from Chief of Police Heather J. Fong.

It is the recommendation of Chief of Police Heather J. Fong that Inspector Eileen M. Murphy be suspended for forty-five (45) days and shall participate in the Department's General Order 11.11 program for three (3) years from tonight.

The Commission took the matter under submission and the following resolution was adopted:

RESOLUTION NO. 31-06

**DECISION - HEARING OF INSPECTOR EILEEN M. MURPHY,
DOMESTIC VIOLENCE RESPONSE UNIT (FILE NO. C06-039 JCT)**

WHEREAS, on March 7, 2006, Heather J. Fong, Chief of Police of the San Francisco Police Department, made and served charges against Inspector Eileen M. Murphy, as follows:

SPECIFICATION NO. 1

Driving a motor vehicle while intoxicated, conduct which undermines the good order, efficiency and discipline of the Department and which brings discredit on the Department (violation of Rule 9 of Department General Order 2.01 of the San Francisco Police Department).

- (1) At all times herein mentioned, Eileen M. Murphy, Star Number 1263, (referred to as the accused) was a police officer, employed by the San Francisco Police Department, assigned to the Investigations Bureau, Domestic Violence Response Unit.
- (2) As a member of the Department, the accused was and is responsible for

knowing and obeying the rules, orders and procedures of the San Francisco Police Department.

- (3) On March 28, 2005, at approximately 1620 hours, the accused was off duty driving her personal vehicle, a 2004 Honda automobile, west on Sir Francis Drake Boulevard in the City of Fairfax, Marin County, California.
- (4) As the accused turned south from Sir Francis Drake toward Alhambra Circle, the accused collided with a 2003 Chevrolet Tahoe that was traveling east on Sir Francis Drake Boulevard.
- (5) Fairfax Police Department personnel responded to this collision. A Fairfax Police Officer approached the accused, whom in the aftermath of the accident was still seated in the driver=s side seat of her vehicle behind the steering wheel. The Fairfax Police Officer detected the odor of an alcoholic beverage on the accused=s breath. The accused=s eyes were bloodshot and watery and her speech was slurred. The accuse, in response to a question posed by the Fairfax Police Officer, said that she had consumed beer. The accused informed the Fairfax police Officer that she would be unable to attempt to perform any field sobriety test because she was unstable. The officer determined that the accused might be under the influence of alcohol, and administered a preliminary alcohol screening test at 1643 hours. The accused tested at 0.312/.335 percent blood alcohol by volume.
- (6) Based on his observations the Fairfax Police Officer arrested the accused for violating California Vehicle Code ' 23152(a) and informed her of the requirement for testing under the implied consent law. The accused agreed to take a breath test which was performed at the Marin County Main Jail at 1723 hours. The results of the blood alcohol tests were .27 and .25 percent of alcohol, by weight, in her blood.
- (7) California Vehicle Code ' ' 23152 (a) and (b), state:

A ' 23152. DRIVING UNDER THE INFLUENCE.

(a) It is unlawful for any person while under the influence of any alcoholic beverage or drug, or under the combined influence of any alcoholic beverage and drug, to drive a vehicle.

(b) It is unlawful for any person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle...@

- (8) The accused engaged in conduct which, in a criminal context, violates the California Vehicle Code: by driving a motor vehicle while under the influence of alcoholic beverages which violates ' 23152(a); and by driving a vehicle with more than 0.08 percent, by weight, of alcohol in her blood, which violated California Vehicle Code ' 23152(b); any reasonable police officer must know that such conduct violates the standards of the Department and is cause for discipline or dismissal from employment; such conduct violates Rule 9 of Department General Order 2.01, which states:

AMISCONDUCT. Any breach of the peace, neglect of duty, misconduct or any conduct by an officer either within or without the state that tends to undermine the order, efficiency or discipline of the Department, or reflects discredit upon the Department or any member, or is prejudicial to the efficiency and discipline of the Department, although not specifically defined or set forth in Department policies and procedures, shall be considered unofficer-like conduct subject to disciplinary action.@

WHEREAS, a hearing on said charges was held before the Police

Commission pursuant to Appendix A, Section A 8.343 of the Charter of the City and County of San Francisco on April 19, 2006, where the matter was submitted to the Police Commission for decision; and

WHEREAS, based on Inspector Eileen M. Murphy=s admissions, the Commission finds the allegation contained in Specification No. 1 of the disciplinary charges as preferred by Chief of Police Heather J. Fong against Inspector Murphy are sustained; and the Commission adopts the sustained specification as its findings in this matter; therefore be it

RESOLVED, that based on these findings, consistent with the Commission=s duty to protect the health, safety, and general welfare of the citizens of the City and County of San Francisco and the public in general, and in order to promote efficiency and discipline in the San Francisco Police Department, the Police Commission orders the following discipline be imposed:

SPECIFICATION NO. 1: Sustained

That Inspector Eileen M. Murphy be suspended for forty-five (45) days commencing forthwith, and that Inspector Murphy shall participate in the Department=s General Order 11.11 program for three (3) years from the date of this meeting.

FURTHER RESOLVED, that said forty-five (45) day suspension imposed shall commence on Thursday, April 20, 2006, at 0001 hours, and terminate on Saturday, June 3, 2006, at 2400 hours. Inspector Murphy is directed to make telephone contact with her commanding officer three (3) days before the end of her suspension for further direction regarding her return to duty. If Inspector Murphy is unable to reach her commanding officer, she shall report to her unit by 0900 hours on the day her suspension ends.

If this decision is subject to review under Code of Civil Procedure ' 1094.5, then the time and within which judicial review must be sought is governed by California Code of Civil Procedure, ' 1094.6.

AYES: Commissioners Renne, Sparks, Campos, DeJesus, Marshall
ABSENT: Commissioner Veronese

CHIEF=S REPORT

- a. Update on significant policing efforts by Department members**
- b. Department of Human Resources= update on Q-50 Sergeants Examination**

Chief Fong updated the Commission on events in the past weeks. She also talked about attending a drill at the Office of Emergency Services where Emergency Operations and the Department Operations discussed working shifts in an event or incident lasting over 12 hours. The Chief also stated that the Mayor had convened a Policy Executive Education Seminar on homeland security issues.

Commissioner Sparks asked if there has been any discussions regarding emergency preparedness how many officers live in city or outside the city and how many will be available for a sustained period of time in case of an emergency. Chief Fong stated it depends on the day and time of the week; day watch vs swing vs mids.

Commissioner Sparks asked how many, as far as the command staff, lieutenants and above lives in the City. Chief Fong stated that it has not been broken down as of yet but will get it to the Commission

Chief Fong talked about dispatch and calls for service.

Dr. Bruce Top, DHR, made presentation regarding the Q50 Sergeant examination.

Commissioner Renne thank Dr. Topp for a very professional presentation.

Commissioner Sparks asked if banding is still used with the sergeant=s and lieutenant=s lists. Dr. Topp said that the Civil Service has the rule of five.

Commissioner Sparks asked about the lieutenants promotions. Chief Fong stated that there will be promotions soon.

Commissioner Renne asked if DHR is involved in recruiting and asked how to update and modernized ways in which to recruit officers. Dr. Topp stated that he has hired a recruiting manager for DHR and that person will start on the 24th.

Commissioner Campos asked about recruiting and would like to hear more on a recruitment plan and to have something in writing that outlines strategy, and Commissioner Campos also would like to know about involvement of communities. Dr. Topp stated that they will certainly have a plan.

Commissioner Marshall asked why is there a small available work force. Dr. Topp stated that it=s due to a bubble with the baby boomers who are now getting older and the number of applicants are much smaller.

Commissioner Sparks asked about year round recruiting and when tests are scheduled. Dr. Topp stated that there=s a three-month testing time frame. Commissioner Sparks asked about background investigators. Dr. Topp stated that the Department needs background investigators to get candidates into the academy. Commissioner Sparks asked how the City can compete with other cities. Dr. Topp stated that the Department is very competitive and that salaries are very good but the cost of living is a challenge. Commissioner Sparks asked if the city has looked into housing assistance. Dr. Topp stated that they are being discussed.

Commissioner Campos stated he would like to see police recruiting in schools and send a message to young people and go into communities.

PUBLIC COMMENT

None

OCC DIRECTOR=S REPORT

- a. Review of Recent Activities**
- b. OCC Policy regarding notifications of complaints against officers**

Director Allen reported on the OCC=s policy regarding notifications of complaints against officers.

Commissioner Sparks asked when officers are notified do they receive a narrative from the complainant. Director Allen stated yes, that is correct and they are notified of the allegations as well as the complaint form. Officers are immediately notified upon receipt of the complaint.

Commissioner Sparks stated that officers should know the specifics of the complaints. Director Allen stated that is correct. Whatever the complainant fills out and gives to the OCC, it is forwarded to the officer.

Commissioner Sparks asked at what point are officers notified of

additional allegations. Director Allen stated that by the time the officer arrives for his interview, all allegations are known and listed.

Commissioner Marshall stated that getting agreements between the different entities is very difficult and that there should be a way to get the POA and the OCC side by side and work things out.

Mr. Steve Johnson, POA, stated that this is not about notice. He stated that Mr. Allen is confusing the process with the policy. Mr. Johnson stated that the process works and the policy doesn't. He stated that the policy decision should be determined by the Commission and not by Director Allen. It is not the notice itself but the policy decision by the director of not letting the officers know specifically what the allegation means.

Commissioner Renne stated that when the OCC contacts the officer, there's a copy with the substance of the complaint given to the officer. But what the POA is saying if the complaint says there was an unwarranted arrest, there should be specificity as to the unwarranted arrest.

Commissioner Renne asked what is done if the allegation is not explained and is there some discussion after the officer is interviewed. Mr. Johnson explained that he goes to the interview. The interview is unwarranted action for the arrest and an incomplete or inaccurate police report. So the OCC will do their job and ask the officer what happened. The officer complies and gives the information and at the end when the OCC investigator asks, do you have any other questions, Mr. Johnson stated that he would always say, yes, I have a question. Was the allegation of unwarranted action for the arrest answered? Was that allegation answered by the officer's comments? The investigator will then say, we can't tell you that. Mr. Johnson stated that how can the POA be sure that the officer was given a full opportunity to answer the OCC's concerns. The investigator will then say, well, we can't tell you that. We were told not to tell you.

Commissioner Renne asked if the officer goes in, presumably the investigation has been done by the time the investigator talks to the officer and is the officer never again given notice if the complaint is going to be sustained. Mr. Johnson stated that the officer is never again given notice. Commissioner Renne asked does the officer just get a notice that the charge is sustained. Mr. Johnson stated that the officer does have an opportunity for an OCC investigative hearing.

Director Allen stated that it is a preliminary investigation and makes preliminary findings. If there is a sustainable charge, all the OCC is making is a suggestion to the Chief. Director Allen stated that matters are turned over to the Chief. He stated that the interview is conducted in accordance with the Government Code. The officer can bring a representative. The representatives are afforded time to ask questions of the officers. So if an officer comes in and the investigator says, did you conduct an arrest on this date. Yes. Did you conduct it in accordance with your training. Yes. Did you arrest this person. Yes. The investigator may go through all those questions. If the representative is effective in doing their job, they can ask the officer why did you arrest this person. Did you have probable cause to arrest this person. Did you feel this was a valid arrest. The representatives are afforded all that time at the end of the interview. Director Allen stated that what Mr. Johnson is asking is for the representative to stop the interview and ask an investigator, did we satisfy your questions as of right now. Director Allen stated that from depositions to police interrogations, he stated that he has never seen an interview that would go in that fashion. Director Allen stated that a representative is there to protect the rights of the officer. Director Allen stated that he never had an investigator cut a representative off at the end of the interview. Director Allen stated that they ask every question from the point of the officer's point of view, that would be

fine.

Commissioner Renne stated that what she understands the complaint to be is that the officer will give his/her version of the story and that's the end of dialogue and then out of the clear blue there is a notice of sustained/not sustained complaint without any further dialogue. Director Allen stated the OCC's finding is a preliminary finding that is turned over to the Chief. MCD reviews the OCC's sustained findings. OCC will write up a complete summary of all allegations that are sustained and turn that over to the Chief. If it is not sustained, the officer receives a letter that says this is not sustained. This was proper conduct. Once the OCC investigation is turned over to MCD they will make a suggestion based on their review, suggest that to the Chief, and send letter to the officer as far as the findings. OCC is a preliminary finding and it is a recommendation that's made to the Chief.

Commissioner Renne asked that it goes to the Chief and then the Chief will make a final determination of whether it is sustained or not the OCC's preliminary findings. Director Allen stated, yes, that is correct. But at this point the officer has seen and may have a chance to ask for an investigative hearing after they receive their letter, generally if they can provide new information, the OCC will turn that over to an independent hearing officer who will bring both parties in. The officer can do a case review. The complainant can do a case review and the would both go in and present their case to an investigative hearing officer who can then suggest to the OCC Director if the hearing officer agree with the OCC's findings.

Commissioner Renne asked what is done with the cases when the Director can come directly to the Commission. Director Allen stated that those cases will still have to go through the Chief for a meet-and-confer process with the Chief. Commissioner Renne stated that sometimes there is not a lot of time between the OCC turning over matters to the Chief and the Chief having to make a determination. Director Allen stated that is true. Commissioner Renne stated that that is a problem.

Director Allen explained that people view the interview as a hearing when they come in. It is not a hearing, it is an interview. It's a time to gather information. It is akin to a deposition or any other interview. Director Allen stated that the sustained report that MCD receives has all the witness statements, the police report, the interview tapes. Officers are given an opportunity for a full hearing either before the Commission or before the Chief where information is presented.

Commissioner Sparks asked an officer is charged with incomplete report. Do the OCC, in discussion with the officer, say it is an incomplete report because of X. Director Allen stated no. The OCC asks the officer, did you write a report on this day. Yes, I did. What did you include in your report? I included such and such. Why did you include that? Because of my training experience, I included this information. Do you feel that it was a complete and accurate report? Yes, I do.

Commissioner Sparks asked Director Allen if it is explained to the officer the problem with the report is and why not. Director Allen stated that his indications from other departments, that is not the way interviews are conducted.

Commissioner Sparks asked if Director Allen believes that when the officer leaves the interview, that they are fully aware of why they were charged with this particular allegation. Director Allen stated yes. Commissioner Sparks would it be fair to ask the question, do you understand why these allegations are being made. Is that an unreasonable question to ask the officer. Director Allen stated that that is something that can be considered. Commissioner Sparks stated that it should be a fair question to ask the officer

if he understands why he is being charged. Director Allen stated if need be he will transcribe one of the interviews so that the Commission can see the steps.

Mr. Johnson stated that what he would like to see is tell the officer why the report is inaccurate and on an unwarranted action on the arrest, tell the officer what is unwarranted about the arrest and just to keep it simple.

Commissioner DeJesus stated that it is very important that an officer file an accurate report and maybe the Commission should see some examples of the incomplete report or the unwarranted arrest allegations. Commissioner DeJesus stated that due process is very important and hopefully the two can meet and confer and resolve this issue.

Commissioner Campos stated that the Commission should look at a couple of examples to get a better sense of what the issues are. There is a specific concern and would like to have a follow up on this.

Chief Fong wanted to clarify Director Allen's statement that when the OCC sustains a complaint, preliminary finding they send it to MCD. Chief Fong stated that on each summary document, there is a face sheet, and on that face sheet, it says AI recommend it go to the Commission or AI recommend it remain at the Chief's Level. If it's to be remained at the Chief's level, then it is the Department's responsibility to review it, decide to sustain it, and then pursue appropriate discipline, if it is appropriate. If it's checked, AI recommend that it go to the Commission, then the Chief has to go to that meet-and-confer process and the Chief has no further authority unless she can convince the Director or show him that these are the facts that make it appropriate to go to the Commission and if so, then I'm willing to sign the charges or, in some cases, if the Chief says she doesn't think it is a Commission level case, she will file it with the Chief's level, Chief Fong stated that she has no authority. Chief Fong stated that once that box is checked, the ball is in Director Allen's court no matter how she argues around that. Chief Fong stated that all cases come to the Department but until that process is followed, depending on what is checked on that face sheet, the Chief only has a certain amount of authority.

Commissioner Renne asked isn't it the case on the officer's personnel chart that once the OCC writes sustained, that's there regardless of what happens later. Chief Fong stated that in the MCD card, if it does come from the OCC, it is listed as sustained or ultimately the Department's action. Chief Fong stated that she is not sure if that change is made on the OCC card. She stated that if that case did come with a preliminary finding of sustained and it was ultimately not sustained, then both the OCC multiple card and the Department's MCD card should reflect that change in the status.

Commissioner Marshall stated that Mr. Johnson's concern is that it takes a tremendous amount of time away from the job. There needs to be tweaking in this process and asked the Commission President as to what to do. Director Allen stated that he will provide transcripts of tapes so that the Commission can see the interview techniques of the OCC. Commissioner Marshall asked that the problem ones be given to the Commission.

Commissioner Campos asked what the department has to say about this issue and maybe the Department can say something.

Commissioner Renne asked once the box is checked sustained, can they talk to the investigator. Director Allen stated that they can request for an investigative hearing and findings have been changed in the past and they have overturned findings.

Mr. Johnson stated that there is a direct impact on morale. He will

work with Director Allen to fix this thing and hopefully come into an agreement.

Chief Fong stated that when an allegation of misconduct are lodged against on of the officer, it is important that the Department get to the bottom of it to find out what happened. Chief Fong stated that part of that process is making sure it=s not just disciplining somebody, it is making sure that whatever the dilemma was, whatever the problem was is resolved and the officer understands that if a mistake was made, if there was a problem, that that=s handled so that it doesn=t become a problem in the future and it=s not repeated again. Chief Fong stated that sometimes by sustaining a complaint it results in discipline, Chief Fong stated that for her it is more important to make sure the officer understands what they did wrong, what mistake was made so that it doesn=t happen again. Chief Fong stated that it is important the officers know exactly what was the problem and this is why the decision is made.

PUBLIC COMMENT

None

COMMISSION ANNOUNCEMENT

The Commission will hold their district meeting in the Central District on April 26th, at 6:00 p.m., Pier One, Embarcadero and Washington Streets.

SCHEDULING OF ITEMS IDENTIFIED FOR CONSIDERATION AT FUTURE COMMISSION MEETINGS

Commissioner Marshall reminded the Commission of their priority list.

Motion by Commissioner Campos, second by Commissioner Marshall to adjourn the meeting.

Thereafter the meeting was adjourned at 8:15 p.m.

Sergeant Joseph Reilly
Secretary
San Francisco Police Commission