

Date: June 28, 2011

Item No. 6 & 7  
File No. 11035

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Marlon Crump against the Police Commission**
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Completed by: Chris Rustom

Date: June 24, 2011

**\*This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

\*\* The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.



DENNIS J. HERRERA  
City Attorney

JERRY THREET  
Deputy City Attorney

Direct Dial: (415) 554-3914  
Email: jerry.threet@sfgov.org

**MEMORANDUM**

TO: Sunshine Task Force  
FROM: Jerry Threet  
Deputy City Attorney  
DATE: June 21, 2011  
RE: Complaint No. 11035: Marlon Crump v. Police Commission

**COMPLAINT**

**THE COMPLAINANT ALLEGES THE FOLLOWING:**

Complainant Marlon Crump ("Complainant") alleges that, on March 23, 2011, the San Francisco Police Commission (the "Commission") violated the Ordinance in some less than fully specified manner.

**COMPLAINANT FILES COMPLAINT:**

On April 27, 2011, Complainant filed this complaint against the Commission, specifically stating therein that the Commission violated sections 67.15(d) and 67.25 of the Ordinance.

**JURISDICTION**

The Commission is a policy body under the Ordinance and therefore the Task Force generally has jurisdiction to hear an alleged violation of public meetings laws. Because Complainant arguably alleges a violation of his rights under section 67.15(d) to provide public testimony without it being abridged, it appears that the Task Force has jurisdiction to hear this complaint.

**APPLICABLE STATUTORY SECTION(S):**

**Section 67 of the San Francisco Administrative Code:**

- Section 67.15(d) governs the requirements for a policy body to provide an opportunity for public comment at its meetings.
- Section 67.25 governs the time for responding to and Immediate Disclosure Request.

**Section 54950 et seq. of the Cal. Gov't Code**

- Section 54954.3 governs the requirement for a legislative body to provide an opportunity for public comment at its meetings.

**APPLICABLE CASE LAW:**

- None

**MEMORANDUM**

TO: Sunshine Task Force  
DATE: June 21, 2011  
PAGE: 2  
RE: *Complaint No. 11035: Marlon Crump v. Police Commission*

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**ISSUES TO BE DETERMINED**

**Uncontested/Contested Facts:** Complainant alleges that, on March 23, 2011, he provided public testimony at a meeting of the San Francisco, including reading a letter "concerning a kid who was traumatized by a member of the SFPD." Complainant further alleges that Commission President Joe Marshall responded to his public comment by asking "Did he file a complaint?" Complainant alleges that this comment by the Commission President was insensitive. Complainant further alleges that he criticized President Marshall on April 6, 2011 during public comment at the Commission meeting, after which Dr. Marshall "attempted to recant" his previous comments about Complainant's public testimony.

The Police Commission responds to the complaint by noting the Complainant fails to allege directly that the Commission President abridged his public testimony in any way, and therefore does not provide allegations sufficient to constitute a violation of Section 67.15. The Commission further responds that Complainant never sought any public information from the Commission and therefore there can be no violation of Section 67.25.

**QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:**

- What exactly were President Marshall's comments in response to complainant's public testimony on March 23, 2011? On April 6, 2011?
- Did Complainant make any request for public information from the Commission?
- If so, was it an Immediate Disclosure Request?
- If so, when, if ever, did the Commission respond?

**LEGAL ISSUES/LEGAL DETERMINATIONS:**

- Has the Commission complied with the requirements of the Ordinance, the Brown Act and the Public Records Act?

**CONCLUSION**

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE **TRUE OR NOT TRUE.**

**MEMORANDUM**

TO: Sunshine Task Force  
DATE: June 21, 2011  
PAGE: 3  
RE: *Complaint No. 11035: Marlon Crump v. Police Commission*

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**CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)****SEC. 67.15. PUBLIC TESTIMONY.**

(d) A policy body shall not abridge or prohibit public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activities, or of the acts or omissions of the body, on the basis that the performance of one or more public employees is implicated, or on any basis other than reasonable time constraints adopted in regulations pursuant to subdivision (c) of this section.

**SEC. 67.25. IMMEDIACY OF RESPONSE.**

(a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

(b) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following the request.

(c) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request.

(d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this article.

**BROWN ACT (GOVT. CODE §§ 54950, ET SEQ.)**

**MEMORANDUM**

TO: Sunshine Task Force  
DATE: June 21, 2011  
PAGE: 4  
RE: Complaint No. 11035: Marlon Crump v. Police Commission

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**SECTION 54954.3. OPPORTUNITY FOR PUBLIC TO ADDRESS LEGISLATIVE BODY; ADOPTION OF REGULATIONS; PUBLIC CRITICISM OF POLICIES**

(c) The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.



DENNIS J. HERRERA  
City Attorney

JERRY THREET  
Deputy City Attorney

Direct Dial: (415) 554-3914  
Email: jerry.threet@sfgov.org

**MEMORANDUM**

TO: Sunshine Ordinance Task Force  
FROM: Jerry Threet  
Deputy City Attorney  
DATE: June 9, 2011  
RE: *Complaint 11035: Marlon Crump v. Police Commission*

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**Background**

Complainant Marlon Crump ("Complainant") alleges that, on March 23, 2011, the San Francisco Police Commission (the "Commission") violated the Ordinance in some less than fully specified manner.

**Complaint**

On April 27, 2011, Complainant filed this complaint against the Commission, specifically stating therein that the Commission violated sections 67.15(d) and 67.25 of the Ordinance.

**Discussion and Analysis of Jurisdiction**

The Commission is a policy body under the Ordinance and therefore the Task Force generally has jurisdiction to hear an alleged violation of public meetings laws. Because Complainant arguably alleges a violation of his rights under section 67.15(d) to provide public testimony without it being abridged, it appears that the Task Force has jurisdiction to hear this complaint.



RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

2011 APR 27 PM 3:35

BY AK

SUNSHINE ORDINANCE TASK FORCE  
1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102  
Tel. (415) 554-7724; Fax (415) 554-7854  
http://www.sfgov.org/sunshine  
**SUNSHINE ORDINANCE COMPLAINT**

Complaint against which Department or Commission San Francisco Police Commission

Name of individual contacted at Department or Commission against Joe Marshall  
Vice president

Alleged violation public records access  
 Alleged violation of public meeting. Date of meeting March 23rd, 2011 at 5:30

Sunshine Ordinance Section 67.15 (d) and 67.25 Immediacy of Response  
(If known, please cite specific provision(s) being violated) (possible)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

On March 23rd, 2011, I presented an opening address of a letter concerning a kid who was traumatized by members of the S.F.P.D. Joe Marshall asked me following my public comment, a rather insensitive question "Did he file a complaint?" On April 6th I criticized him for it. Marshall attempted to recant, during my public comment.

Do you want a public hearing before the Sunshine Ordinance Task Force?  yes  no  
Do you also want a pre-hearing conference before the Complaint Committee?  yes  no

(Optional)<sup>1</sup>  
Name Marlon Crump, POOR Magazine, P.M.M. Address 27 91 16th St, #41  
Telephone No. (415) 948-5534 E-Mail Address marloniwn@a.yahoo.com

Date 4/27/11 Marlon Crump  
Signature

I request confidentiality of my personal information.  yes  no

<sup>1</sup> NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).



# The Police Commission

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CITY AND COUNTY OF SAN FRANCISCO

May 23, 2011

Mr. Chris Rustom  
Sunshine Ordinance Task Force  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

THOMAS MAZZUCCO  
President

DR. JOE MARSHALL  
Vice President

PETRA DEJESUS  
Commissioner

ANGELA CHAN  
Commissioner

JAMES HAMMER  
Commissioner

CAROL KINGSLEY  
Commissioner

R. JAMES SLAUGHTER  
Commissioner

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Lieutenant Timothy Falvey  
Secretary

**Re: Sunshine Ordinance Task Force Complaint #11035 (Marlon Crump vs. SF Police Commission)**

Dear Mr. Rustom,

On behalf of the San Francisco Police Commission, I am writing in response to Complaint #11035 (see copy attached), filed with the Sunshine Ordinance Task Force ("Task Force") by Mr. Marlon Crump against Dr. Joseph Marshall, Vice-President of the Police Commission. Based upon my review of the complaint, I do not believe there are any violations of the Sunshine Ordinance and therefore contest the jurisdiction of the Task Force.

In his own handwriting on his complaint form, Mr. Crump writes, "Marshall attempted to recant, during my public comment", and alleges that this is a violation of §67.15(d) of the Sunshine Ordinance. Mr. Crump does not complain that Dr. Marshall abridged or prohibited public criticism, but rather that he "attempted to recant". I have reviewed the applicable section and find that "recant" does not appear (see copy of §67.15(d) of the Sunshine Ordinance, attached). Therefore, this section does not apply. I find no mention of a prohibition of recanting anywhere in the Sunshine Ordinance. (It should be noted that when reviewed, Dr. Marshall's statement only clarifies his previous comment in order to assist Mr. Crump and does not recant anything.) After Dr. Marshall's statement, Mr. Crump says, "But I'm done with that. Thank you for having me speak that testimony."  
([http://sanfrancisco.granicus.com/mediaplayer.php?view\\_id=21&clip\\_id=11908](http://sanfrancisco.granicus.com/mediaplayer.php?view_id=21&clip_id=11908), Agenda Item #2, from 00:10:22 through 00:10:27). Based upon his own statement, Mr. Crump was not abridged or prohibited from making his criticisms. There is no violation of §67.15(d) of the Sunshine Ordinance and therefore no jurisdiction.

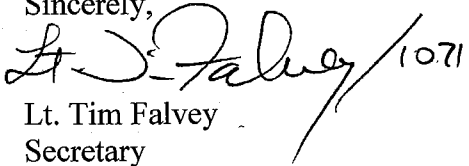
As to the second Sunshine Ordinance section allegedly violated, § 67.25 *Immediacy of Response*, there is no violation of this section as the Sunshine Ordinance



does not apply here. Mr. Crump never made any written request in this instance for information described in any category of non-exempt public information. Since he made no request for information, the section is unequivocally non-applicable (see copy of §67.25 of the Sunshine Ordinance, attached). Therefore, as this section of the Sunshine Ordinance is not even applicable, the Task Force clearly does not have any violation over which to have jurisdiction.

Based upon the above, I am requesting that the Sunshine Ordinance Task Force summarily dismiss this matter as being out of their jurisdiction due to the lack of any violations.

Sincerely,

A handwritten signature in cursive script that reads "Lt. Tim Falvey" followed by a large, sweeping flourish that extends to the right and slightly downwards, ending in the number "1071".

Lt. Tim Falvey  
Secretary  
Police Commission



RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

2011 APR 27 PM 3:35

#Y AK

SUNSHINE ORDINANCE TASK FORCE

1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102

Tel. (415) 554-7724; Fax (415) 554-7854

http://www.sfgov.org/sunshine

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission San Francisco Police Commission

Name of individual contacted at Department or Commission against Joe Marshall  
Vice President

Alleged violation public records access

Alleged violation of public meeting. Date of meeting March 23rd, 2011 at 5:30

Sunshine Ordinance Section 67.15 (d) and 67.25 Immediacy of Response  
(If known, please cite specific provision(s) being violated) (possible)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

On March 23rd, 2011, I presented an opening address  
of a letter concerning a kid who was traumatized by members  
of the S.F.P.D. Joe Marshall asked me following my public comment, a  
rather insensitive question "Did he file a complaint?" On April 6th, I  
criticized him for it. Marshall attempted to recant, during my public comment.

Do you want a public hearing before the Sunshine Ordinance Task Force?  yes  no

Do you also want a pre-hearing conference before the Complaint Committee?  yes  no

(Optional)<sup>1</sup>

Name Marlon Crump, POOR Magazine, Address 27 9/16th St, #41  
P.I.N.M.

Telephone No. (415) 948-5534 E-Mail Address marloncrump@yahoo.com

Date 4/27/11 Marlon Crump  
Signature

I request confidentiality of my personal information.  yes  no

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**SEC. 67.15. PUBLIC TESTIMONY.**

(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address a policy body on items of interest to the public that are within policy body's subject matter jurisdiction, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Section 67.7(e) of this article. However, in the case of a meeting of the Board of Supervisors, the agenda need not provide an opportunity for members of the public to address the Board on any item that has already been considered by a committee, composed exclusively of members of the Board, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the Board.

(b) Every agenda for special meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item prior to action thereupon.

(c) A policy body may adopt reasonable regulations to ensure that the intent of subdivisions (a) and (b) are carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker. Each policy body shall adopt a rule providing that each person wishing to speak on an item before the body at a regular or special meeting shall be permitted to be heard once for up to three minutes. Time limits shall be applied uniformly to members of the public wishing to testify.

(d) A policy body shall not abridge or prohibit public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activities, or of the acts or omissions of the body, on the basis that the performance of one or more public employees is implicated, or on any basis other than reasonable time constraints adopted in regulations pursuant to subdivision (c) of this section.

(e) To facilitate public input, any agenda changes or continuances shall be announced by the presiding officer of a policy body at the beginning of a meeting, or as soon thereafter as the change or continuance becomes known to such presiding officer. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

**SEC. 67.25. IMMEDIACY OF RESPONSE.**

(a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

(b) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following the request.

(c) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request.

(d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this article. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)



The Police Commission  
CITY AND COUNTY OF SAN FRANCISCO

June 21, 2011

Mr. Chris Rustom  
Sunshine Ordinance Task Force  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

RECEIVED  
SUPERVISOR  
2011 JUN 21 PM 3:01  
THOMAS CAHILL  
President  
JOE MARSHALL  
Vice President  
PETRA DEBBES  
Commissioner  
ANGELA CHAN  
Commissioner  
CAROL KINGSLEY  
Commissioner  
R. JAMES SLAUGHTER  
Commissioner

Lieutenant Timothy Falvey  
Secretary

**Re: Sunshine Ordinance Task Force Complaint #11035 (Marlon Crump vs. SF Police Commission)**

Dear Mr. Rustom,

On behalf of the San Francisco Police Commission, I am writing in response to Complaint #11035 filed with the Sunshine Ordinance Task Force ("Task Force") by Mr. Marlon Crump against Dr. Joseph Marshall, Vice-President of the Police Commission. Attached to this letter are three exhibits to be considered by Task Force members, prior to the hearing.

The three exhibits are:

- 1) Charter of the City and County of San Francisco, §4.127.
- 2) DVD copy of the Wednesday, March 23, 2011 meeting of the Police Commission (Agenda Item #1, pertinent portion is from approximately 00:07:20 through 00:11:00).
- 3) DVD copy of the Wednesday, April 6, 2011 meeting of the Police Commission (Agenda Item # 2, pertinent portion is from approximately 00:07:40 through 00:10:27).

Sincerely,

*T. J. Falvey / 1071*  
Lt. Tim Falvey  
Secretary  
Police Commission

(d) Advise about available sources of governmental and private funding for youth programs.

(e) Submit recommendations to the Mayor and Board of Supervisors about juvenile crime prevention, job opportunities for youth, recreational activities for teenagers, opportunities for effective participation by youth in the governmental process, and changes in City and County regulations that are necessary to improve the social, economic, educational, and recreational advantages of children and youth.

(f) Respond to requests for comment and recommendation on matters referred to the Commission by officers, departments, agencies, boards, commissions and advisory committees of the City and County.

(g) Report to the Board of Supervisors the activities, goals, and accomplishments of the Commission by July 1 of each calendar year, effective July 1, 1997.

#### **SEC. 4.125. JURISDICTION.**

The Commission shall be under the jurisdiction of the Board of Supervisors; the Commission shall have only those powers created by Sections 4.122 through 4.125 or by ordinance of the Board of Supervisors.

#### **SEC. 4.126. DEPARTMENTS—GENERAL PROVISIONS.**

Except as otherwise provided by this Charter, the responsibilities of each department within the executive branch shall be prescribed by ordinance.

The administration and management of each department within the executive branch shall be the responsibility of the department head. Such officials may:

1. Appoint qualified individuals to fill all positions within their departments which are exempt from the Civil Service provisions of this Charter;

2. Adopt rules and regulations governing matters within the jurisdiction of their respective departments, subject, if applicable, to Section 4.102; and

3. With the approval of the City Administrator, reorganize their respective departments.

No person serving on a board or commission created by state law to discharge a state function specifically within the City and County may be employed as a paid staff member to a board or commission created by this Charter.

#### **SEC. 4.127. POLICE DEPARTMENT.**

The Police Department shall preserve the public peace, prevent and detect crime, and protect the rights of persons and property by enforcing the laws of the United States, the State of California and the City and County.

The Chief of Police may appoint and remove at pleasure special police officers.

The Chief of Police shall have all powers which are now or that may be conferred upon a sheriff by state law with respect to the suppression of any riot, public tumult, disturbance of the public peace or organized resistance against the laws or public authority.

**DISTRICT POLICE STATIONS.** The Police Department shall maintain and operate district police stations. The Police Commission, subject to the approval by the Board of Supervisors, may establish additional district stations, abandon or relocate any district station, or consolidate any two or more district stations.

**OFFICE OF CITIZEN COMPLAINTS.** The Mayor shall appoint a nominee of the Police Commission as the director of the Office of Citizen Complaints, subject to confirmation by the Board of Supervisors. The director shall serve at the pleasure of the Police Commission. If the Board fails to act on the appointment within 30 days, the appointment shall be deemed approved. In the event the office is vacant, until the mayor makes an appointment and that appointment is confirmed by the Board, the Police Commission shall appoint an interim director who shall serve at the pleasure of the Police Commission. The appointment shall be exempt from the civil service requirements of this Charter. The director shall never have been a uniformed member or employee of the department. The director of the Office of Citizen Complaints shall be the

appointing officer under the civil service provisions of this Charter for the appointment, removal or discipline of employees of the Office of Citizen Complaints.

The Police Commission shall have the power and duty to organize, reorganize and manage the Office of Citizen Complaints. Subject to the civil service provisions of this Charter, the Office of Citizen Complaints shall include investigators and hearing officers. As of July 1, 1996, the staff of the Office of Citizen Complaints shall consist of no fewer than one line investigator for every 150 sworn members. Whenever the ratio of investigators to police officers specified by this section is not met for more than 30 consecutive days, the director shall have the power to hire, and the City Controller must pay, temporary investigators to meet such staffing requirements. No full-time or part-time employee of the Office of Citizen Complaints shall have previously served as a uniformed member of the department. Subject to rule of the Police Commission, the director of the Office of Citizen Complaints may appoint part-time hearing officers who shall be exempt from the civil service requirements of this Charter. Compensation of the hearing officers shall be at rates recommended by the Commission and established by the Board of Supervisors or by contract approved by the Board of Supervisors.

Complaints of police misconduct or allegations that a member of the Police Department has not properly performed a duty shall be promptly, fairly and impartially investigated by staff of the Office of Citizen Complaints. The Office of Citizen Complaints shall investigate all complaints of police misconduct, or that a member of the Police Department has not properly performed a duty, except those complaints which on their face clearly indicate that the acts complained of were proper and those complaints lodged by other members of the Police Department. The Office of Citizen Complaints shall use its best efforts to conclude investigations of such complaints and, if sustained, transmit the sustained complaint to the Police Department within nine (9) months of receipt thereof by the Office of Citizen Complaints. If the Office of Citizen Com-

plaints is unable to conclude its investigation within such nine-month period, the director of the Office of Citizen Complaints, within such nine-month period, shall inform the Chief of Police of the reasons therefor and transmit information and evidence from the investigation as shall facilitate the Chief's timely consideration of the matter. The Office of Citizen Complaints shall recommend disciplinary action to the Chief of Police on those complaints that are sustained. The director of the Office of Citizen Complaints, after meeting and conferring with the Chief of Police or his or her designee, may verify and file charges with the Police Commission against members of the Police Department arising out of sustained complaints; provided, that the director may not verify and file such charges for a period of 60 days following the transmittal of the sustained complaint to the Police Department unless the director issues a written determination that the limitations period within which the member or members may be disciplined under Government Code Section 3304, as amended from time to time or any successor provisions thereto, may expire within such 60-day period and either (i) the Chief of Police fails or refuses to file charges with the Police Commission arising out of the sustained complaint, (ii) the Chief of Police or his or her designee fails or refuses to meet and confer with the director on the matter, or (iii) other exigent circumstances necessitate that the director verify and file charges to preserve the ability of the Police Commission to impose punishment pursuant to Section A8.343. The director of the Office of Citizen Complaints shall schedule hearings before hearing officers when such is requested by the complainant or a member of the department and, in accordance with rules of the Commission, such a hearing will facilitate the fact-finding process. The Board of Supervisors may provide by ordinance that the Office of Citizen Complaints shall in the same manner investigate and make recommendations to the Chief of Police regarding complaints of misconduct by patrol special police officers and their uniformed employees.

Nothing herein shall prohibit the Chief of Police or a commanding officer from investigat-

ing the conduct of a member of the department under his or her command, or taking disciplinary or corrective action, otherwise permitted by this Charter, when such is warranted; and nothing herein shall limit or otherwise restrict the disciplinary powers vested in the Chief of Police and the Police Commission by other provisions of this Charter.

The Office of Citizen Complaints shall prepare in accordance with rules of the Commission monthly summaries of the complaints received and shall prepare recommendations quarterly concerning policies or practices of the department which could be changed or amended to avoid unnecessary tension with the public or a definable segment of the public while insuring effective police services. The Office of Citizen Complaints shall prepare a report for the President of the Board of Supervisors each quarter. This report shall include, but not be limited to, the number and type of complaints filed, the outcome of the complaints, and a review of the disciplinary action taken. The President of the Board of Supervisors shall refer this report to the appropriate committee of the Board of Supervisors charged with public safety responsibilities. Said committee may issue recommendations as needed.

In carrying out its objectives the Office of Citizen Complaints shall receive prompt and full cooperation and assistance from all departments, officers and employees of the City and County which shall promptly produce all records requested by the Office of Citizen Complaints except for records the disclosure of which to the Office of Citizen Complaints is prohibited by law. The director may also request and the Chief of Police shall require the testimony or attendance of any member of the Police Department to carry out the responsibilities of the Office of Citizen Complaints.

**BUDGET.** Monetary awards and settlements disbursed by the City and County as a result of police action or inaction shall be taken exclusively from a specific appropriation listed as a separate line item in the Police Department budget for that purpose.

**POLICE STAFFING.** The police force of the City and County shall at all times consist of not fewer than 1,971 full duty sworn officers. The staffing level of the Police Department shall be maintained with a minimum of 1,971 full duty sworn officers thereafter. That figure may be adjusted pursuant to Section 16.123.

All officers and employees of the City and County are directed to take all acts necessary to implement the provisions of this section. The Board of Supervisors is empowered to adopt ordinances necessary to effectuate the purpose of this section including but not limited to ordinances regulating the scheduling of police training cases.

Further, the Commission shall initiate an annual review to civilianize as many positions as possible to maximize police presence in the communities and submit that report to the Board of Supervisors annually for review and approval.

The number of full duty sworn officers in the Police Department dedicated to neighborhood policing and patrol for fiscal year 1993-1994 shall not be reduced in future years, and all new full duty sworn officers authorized for the Police Department shall also be dedicated to neighborhood community policing, patrol and investigations.

**PATROL SPECIAL POLICE OFFICERS.** The Commission may appoint patrol special police officers and for cause may suspend or dismiss patrol special police officers after a hearing on charges duly filed with the Commission and after a fair and impartial trial. Patrol special police officers shall be regulated by the Police Commission, which may establish requirements for and procedures to govern the position, including the power of the Chief of Police to suspend a patrol special police officer pending a hearing on charges. Each patrol special police officer shall be at the time of appointment not less than 21 years of age and must possess such physical qualifications as may be required by the Commission.

Patrol special police officers may be designated by the Commission as the owners of a certain beat or territory which may be estab-



lished or rescinded by the Commission. Patrol special police officers designated as the owners of a certain beat or territory or the legal heirs or representatives of the owners may dispose of their interest in the beat or territory to a person of good moral character, approved by the Police Commission and eligible for appointment as a patrol special police officer.

Commission designation of beats or territories shall not affect the ability of private security companies to provide on-site security services on the inside or at the entrance of any property located in the City and County. (Amended November 2003; March 2004)

#### **SEC. 4.128. FIRE DEPARTMENT.**

The Fire Department shall perform duties and enforce all applicable laws pertaining to the protection from, and the prevention, suppression, control and investigation of fires.

The Fire Chief shall cause the Fire Department to inspect all occupied or vacated structures to determine compliance with applicable laws relative to fire prevention, protection and control and also the protection of persons and property from fire.

The Fire Chief may during a conflagration cause to be removed any structure for the purpose of checking the progress of the conflagration.

#### **SEC. 4.129. DEPARTMENT OF ADMINISTRATIVE SERVICES.**

The director of the Department of Administrative Services shall purchase all supplies, equipment and contractual services required by the several departments and offices of the City and County, except as otherwise provided in the Administrative Code. Except in cases of emergency, the director shall not enter into any contract or issue any purchase order unless the Controller shall certify thereon that sufficient unencumbered balances are available in the proper fund to meet the payments under such purchase order or contract as these become due. The

director shall have charge of the central warehouses, central storerooms, central garage and shop.

The director shall by rules and regulations approved by the Controller, designate and authorize appropriate personnel within the Department of Administrative Services to exercise the director's signature powers for purchase orders and contract.

The director shall have authority to exchange used materials, supplies and equipment to the advantage of the City and County, advertise for bids, and to sell and otherwise dispose of personal property belonging to the City and County. The director shall have authority to require the transfer of surplus property in any department to stores or to other departments.

The director shall manage all public buildings, facilities and real estate of the City and County, unless otherwise provided for in this Charter.

Additional duties and functions of the Department of Administrative Services shall be assigned the City Administrator, by ordinance or pursuant to Section 4.132.

#### **SEC. 4.130. DEPARTMENT OF PUBLIC WORKS.**

The duties and functions of the Department of Public Works shall be assigned by the City Administrator, by ordinance or pursuant to Section 4.132.

#### **SEC. 4.131. COUNTY CLERK.**

The County Clerk shall perform all duties of the County Clerk-Recorder until such office is merged into the Office of the Assessor-Recorder pursuant to Section 6.101.

#### **SEC. 4.132. EXECUTIVE BRANCH REORGANIZATION.**

The Mayor, by issuing a notice to the Board of Supervisors, may reorganize duties and functions between departments and other units of government within the executive branch. Such