

FILE NO.

Amendment of the Whole Bearing Same Title 9/18/03  
ORDINANCE NO.

1 [Improving coordination between the San Francisco Police Department and the Office of  
2 Citizen Complaints.]

3 **Ordinance amending the Administrative Code by adding a new Chapter 96, establishing**  
4 **requirements governing the authority and duties of the Police Department, the Office of**  
5 **Citizen Complaints and the Police Commission with respect to investigations by the**  
6 **Office of Citizen Complaints, including reporting on the status of sustained cases,**  
7 **minimum requirements for disclosure of documents by the Police Department,**  
8 **providing the Office of Citizen Complaints with subpoena power against third parties,**  
9 **imposing training requirements for police officers on whistleblower protection laws,**  
10 **and for police commissioners on public safety officer discipline, and adding uncodified**  
11 **provisions to require the Police Commission to consider revisions to the Early Warning**  
12 **System and study restricting promotions for officers disciplined for misconduct;**  
13 **require the Police Department and the Office of Citizen Complaints to meet and report**  
14 **on the development of a shared case tracking system; and require current police**  
15 **commissioners to receive training on public safety officer discipline.**

16 Note: Additions are *single-underline italics Times New Roman*;  
17 deletions are *strikethrough italics Times New Roman*.  
18 Board amendment additions are double underlined.  
19 Board amendment deletions are ~~strikethrough normal~~.

20 Be it ordained by the People of the City and County of San Francisco:

21 Section 1. The San Francisco Administrative Code is hereby amended by adding  
22 Chapter 96, to read as follows:

23 **CHAPTER 96**  
24 **COORDINATION BETWEEN THE POLICE DEPARTMENT AND THE OFFICE OF**  
25 **CITIZEN COMPLAINTS**

1           **Sec. 96.1. Definitions.**

2           (a)       “Chief of Police” shall mean the Chief of the Police Department or his or her designee.

3           (b)       “OCC” shall mean the Office of Citizen Complaints.

4           (c)       “Sustained complaint” shall mean a determination by the Office of Citizen Complaints  
5 that a preponderance of the evidence proves that the misconduct or failure to perform a duty  
6 complained of did occur.

7           **Sec. 96.2. Reporting on Status of Sustained Complaints.**

8           (a)       The Chief of Police shall report in writing to the OCC and the Police Commission not  
9 less than once per month on the status of all sustained complaints the OCC has transmitted to the  
10 Police Department for review and determination of appropriate action.

11           (b)(1) For each sustained complaint for which the Chief of Police has not issued a decision on  
12 the discipline to be imposed, if any, the report shall set forth the number of the complaint, the date the  
13 complaint was filed with the OCC, the date on which the OCC transmitted the complaint to the Police  
14 Department, the type of complaint, a summary of the OCC’s findings, the current status of the  
15 complaint within the Police Department, the date by which the Chief of Police expects to issue a  
16 decision, and any other information the Commission may direct. The report shall be a public record,  
17 and shall be posted on the website of the Police Commission.

18           (2)       In any instance where the OCC sustains a complaint and transmits it to the Police  
19 Department with a recommendation that discipline be imposed, and the Chief of Police has failed to act  
20 within 45 days from the date of transmittal, the secretary to the Police Commission shall place the  
21 sustained complaint on the agenda for the next regularly scheduled meeting of the Police Commission,  
22 consistent with applicable laws governing notice of public meetings. At this meeting, the Police  
23 Commission shall inquire into the status of the complaint and any reasons for the delay on the part of  
24 the Chief of Police. The Commission shall require that the Chief of Police provide an explanation for  
25 the delay in acting upon the complaint, and shall impose a deadline not to exceed 14 calendar days

1 from the date of the meeting by which the Chief of Police shall act on the complaint, unless the Police  
2 Commission finds good cause for a reasonable extension in excess of 14 calendar days, and the Chief  
3 of Police establishes that such additional delay will not preclude the imposition of discipline pursuant  
4 to California Government Code Section 3304.

5 (3) At the first Commission meeting following passage of the deadline, the Chief of Police  
6 shall report to the Commission on the status of the complaint. If the Chief of Police has failed to take  
7 final action on the complaint, the secretary to the Police Commission shall send written notice to the  
8 Mayor and the Board of Supervisors of the Chief's failure to act. For each complaint on which the  
9 Chief of Police has failed to act, the notice of inaction shall state the number of the complaint, the date  
10 the complaint was filed with the OCC, the date on which the OCC transmitted the complaint to the  
11 Police Department, the type of complaint, and a summary of the OCC's findings.

12 (c) For each sustained complaint for which the Chief of Police has issued a decision on the  
13 discipline to be imposed, if any, the report shall set forth the number of the complaint, the date the  
14 complaint was filed with the OCC, the date on which the OCC transmitted the complaint to the Police  
15 Department, the type of complaint, a summary of the OCC's findings, the date on which the Chief of  
16 Police issued a decision, the discipline imposed, if any, and the date of any discipline imposed.

17 (d) The Police Commission shall hold a public hearing at least once every quarter to  
18 consider the status of all sustained complaints awaiting action by the Police Department. The  
19 Commission shall submit a report to the Mayor and the Board of Supervisors within 30 days from the  
20 date of the hearing setting forth the number of each complaint, the date each complaint was filed with  
21 the OCC, the date on which the OCC transmitted the complaint to the Police Department, the type of  
22 complaint, a summary of the OCC's findings, and the current status of the complaint within the Police  
23 Department.

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1           Sec. 96.3. Disclosure of Documents to OCC.

2           (a) In accordance with the obligation of the Police Department and members of the  
3 uniformed ranks under Charter Section 4.127 to provide prompt and full cooperation and assistance in  
4 connection with complaints being investigated by the OCC, the Police Department shall promptly  
5 disclose all documents and records requested by the OCC except where disclosure to the OCC is  
6 prohibited by law. Unless (i) the Police Department and the OCC mutually agree in writing to an  
7 alternative deadline(s), or (ii) the Police Commission, by a two-thirds vote, establishes an alternative  
8 deadline(s) not to exceed ten business days, the Police Department shall disclose all such documents  
9 within five business days from the date of OCC's request.

10           (b) Unless the Police Department and the OCC have mutually agreed in writing to alternative  
11 procedures, where the Police Department intends to withhold a document or record from being  
12 disclosed to the OCC, the following procedures shall apply:

13           (1) Within five business days of the receipt of OCC's request, the Police Department shall  
14 notify the OCC in writing of the proposed objection. Both the Police Department and OCC shall  
15 submit written requests to the City Attorney for a determination of whether disclosure of the document  
16 or record to OCC is prohibited by law. The City Attorney shall respond to the requests within five City  
17 business days of receiving the requests, unless the City Attorney notifies the Police Department and  
18 OCC that due to the complexity of the legal issues presented, more time is required to respond.

19           (2) Within two business days of receiving the City Attorney's response, the Police  
20 Department shall either transmit the requested documents or records to the OCC or notify the OCC  
21 that it does not intend to comply with the OCC's request. Where the Police Department declines to  
22 disclose the documents or records, the Department and the OCC shall meet and confer within three  
23 business days of the Department's notice to the OCC to discuss resolving the objection. The time for  
24 the meeting may be extended by mutual agreement of the Police Department and the OCC.

1           (3) If the Police Department and the OCC have been unable to reach agreement concerning  
2 disclosure of the documents or records within five calendar days from the date of the meet and confer,  
3 the OCC shall notify the secretary to the Police Commission, who shall calendar the question of  
4 disclosure for hearing before the Police Commission at the next regularly scheduled meeting of the  
5 Commission, consistent with applicable laws governing public notice of meetings. The Police  
6 Commission shall inquire into the dispute. Unless the Police Commission determines based on the  
7 advice of counsel that the law prohibits the Police Department from releasing the requested document  
8 or record to the OCC, the Commission shall order the Chief of Police to disclose the requested  
9 document or record to the OCC within two business days unless at the meeting the Commission: (i)  
10 determines that unusual circumstances warrant a longer deadline; (ii) explains the basis for that  
11 determination; and (iii) sets a different deadline.

12           **Sec. 96.4. Notice to OCC of Proposed Action.**

13           Whenever the Chief of Police proposes to act on a complaint sustained by the OCC and the  
14 proposed action is not consistent with the OCC's recommendation to refer the matter to the Police  
15 Commission for discipline because the Chief of Police is proposing either a suspension of ten days or  
16 less, or no discipline, the Chief of Police shall, prior to taking action, notify the OCC in writing of the  
17 proposed action, and shall meet and confer with the OCC Director within five business days of the  
18 written notice to resolve the disagreement over the appropriate discipline. Where the OCC and the  
19 Chief of Police are unable to reach agreement on the appropriate discipline, the OCC and the Chief of  
20 Police shall send written notice to the Police Commission identifying the sustained complaint and  
21 describing the disagreement. This notice shall be a part of the Director's Report at the next  
22 Commission meeting, consistent with applicable laws governing public notice of meetings.

23           **Sec. 96.5. Guidelines for Failure to Comply.**

24           Not later than 90 days from the effective date of this Chapter, the Police Commission shall  
25 promulgate guidelines for penalties to be imposed against an officer in instances where a police officer,

1 including an officer functioning in an administrative or supervisory role, fails to produce documents or  
2 records in accordance with this Chapter, or fails comply with the duty imposed by Charter Section  
3 4.127 to cooperate with and assist the OCC. The Police Commission shall transmit a copy of the  
4 guidelines to the Board of Supervisors.

5 **Sec. 96.6. Subpoena Power.**

6 The Director of the OCC shall have the authority to subpoena witnesses, compel their  
7 attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena  
8 the production of books, papers, records or other items relevant to investigations under the jurisdiction  
9 of the OCC. This subpoena power shall not extend to departments, officers or employees of the City  
10 who are obligated to provide prompt and full cooperation to the OCC pursuant to Charter Section  
11 4.127.

12 **Sec. 96.7. Notification to Claimants in Police Matters.**

13 When the City receives a claim alleging improper conduct by a police officer, other than a  
14 claim seeking only damages for damage to property resulting from the operation of a Police  
15 Department vehicle, the City Attorney shall send the claimant a notice that describes the OCC's role in  
16 investigating complaints of police officer misconduct, and includes information on how to contact the  
17 OCC.

18 **Sec. 96.8. Training Requirements for Police Commissioners and Police Officers.**

19 (a) The Police Commission shall provide, and each commissioner shall attend within six  
20 months of appointment, training provided by experts in the state and local laws and Police Department  
21 policies governing public safety officer discipline. This training shall be not less than three hours in  
22 length.

23 (b) Following the effective date of this Chapter, the Police Department shall include a  
24 written summary in the training materials provided to police officer trainees of the requirements of  
25 Chapter 1 of the San Francisco Campaign and Governmental Conduct Code, entitled "Reporting

1 Improper Government Activity; Protection of Whistleblowers,” as amended from time to time. The  
2 summary required by this paragraph shall be approved by the City Attorney.

3 **Sec. 96.9. Protection of Peace Officer Privacy.**

4 Nothing in this Chapter shall be construed to require the disclosure of any information the  
5 disclosure of which would constitute a violation of a peace officer’s privacy interests under the  
6 California Constitution, California Penal Code Sections 830 et seq., or California Government Code  
7 Sections 3300 et seq. (the Public Safety Officers Procedural Bill of Rights).

8 **Sec. 96.10. Noncompliance as not Invalidating Discipline.**

9 The failure of the Chief of Police or the OCC to follow the requirements of this Chapter shall  
10 not constitute a basis for invalidating a decision by the Chief of Police or the Police Commission to  
11 impose discipline.

12 **Sec. 96.11. Severability.**

13 If any provision, subdivision, section, paragraph, phrase or clause of this Chapter or the  
14 application thereof is for any reason held to be invalid or unconstitutional by a court of competent  
15 jurisdiction, such decision shall not affect the validity of the remainder of this Chapter. The remainder  
16 of this Chapter shall remain effective and enforceable to the fullest extent allowed by law. All clauses  
17 and provisions of this Chapter are hereby declared to be severable.

18 **SECTION 2. Revisions to Early Warning System.**

19 The Chief of Police is currently developing proposed revisions to the Early Warning  
20 System administered by the OCC to track citizen complaints. In furtherance of this effort, not  
21 later than 90 days from the effective date of this ordinance, the Police Commission shall hold  
22 one or more public hearings to consider revising and expanding the system. Within 180 days  
23 from the effective date of this ordinance, the Police Commission shall issue a report on  
24 recommended changes to the Early Warning System. In addition to any other  
25 recommendations, the report shall address the changes to the system recommended by the

1 Office of the Controller in the report entitled "Best Practices Review of Police Complaint  
2 Investigations and Civilian Review" dated April 25, 2003, including consideration of each of  
3 the 20 indicators set forth in the Settlement Agreement Re: Pattern and Practice Claims  
4 entered into by the City of Oakland and plaintiffs in Delphine Allen, et al. v. City of Oakland,  
5 Case No. C00-4599THE(JL) (N.D. Cal., January 2003). The Police Commission shall hold a  
6 public hearing on implementing the recommended changes within 30 days of the release of  
7 the report.

8 **SECTION 3. Study on Restricting Promotions of Officers Disciplined for**  
9 **Misconduct.**

10 The Police Commission shall study the potential benefits and impacts of prohibiting the  
11 promotion of police officers who have been disciplined for misconduct within the previous six  
12 months. The Police Commission shall complete this study and issue a report to the Mayor  
13 and the Board of Supervisors containing the Commission's recommendation on whether to  
14 enact such a prohibition within six months from the effective date of this ordinance.

15 **SECTION 4. Development of Case Tracking System.**

16 The Police Department and the OCC shall meet and confer on the development of a  
17 case tracking system that would be accessible to both offices and that would track the status  
18 of investigations opened by the OCC as well as sustained complaints. The OCC and the  
19 Police Department shall submit a joint report to the Mayor and the Board of Supervisors  
20 addressing the costs and feasibility of establishing a case tracking system within six months  
21 from the effective date of this ordinance.

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1           **SECTION 5. Training for Current Police Commissioners**

2           Current members of the Police Commission commissioners shall receive the training  
3 required by Administrative Code Section 96.8 within six months of the effective date of this  
4 ordinance.

5 APPROVED AS TO FORM:  
6 DENNIS J. HERRERA, City Attorney

7 By: \_\_\_\_\_  
8 DAVID A. GREENBURG  
9 Deputy City Attorney

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