

Model Ordinance for Civilian Oversight of Police Misconduct

Section 1.

The citizens of _____ enact this ordinance to advance and promote the following public policies:

- (a) To guarantee equal protection of the law to all (Fourteenth Amendment to the United States Constitution and Article One, Section 7 of the California Constitution);
- (b) To guarantee due process of the law to all (Fourteenth Amendment to the United States Constitution and Article One, Section 7 of the California Constitution);
- (c) To enforce the right of the people to safety (Article One, Section 1 of the California Constitution);
- (d) To enforce the right of the people to privacy (Article One, Section 1 of the California Constitution);
- (e) To enforce the public policies of the State of California to freedom of information balanced by privacy concerns as enumerated in the Information Practices Act and the California Public Records Act;
- (f) To protect the rights of peace officers and their collective bargaining representatives exercising their rights under the public policies enumerated in Section 923 of the California Labor Code.

Section 2.

A Civilian – Police Oversight Commission shall be elected as follows:

- (a) Four members shall be elected in the same manner and at the same time as members of the _____ City Council as specified in the _____ Municipal Code;
- (b) One member shall be selected by the collective bargaining agent, if any, representing officers of the _____ police department who are peace officers in any manner the collective bargaining agent determines in accordance with its constitution and/or bylaws; if peace officers of the _____ police department are not represented by a collective bargaining agent, then each peace officer who has been employed by the department for not less than 30 days prior to a date set for election by municipal ordinance shall be eligible to vote for a representative to the commission in a manner to be determined by municipal ordinance; the term of said commission member shall be the same as the term for any other member of the commission.

Section 3.

The authority and duties of the Civilian – Police Oversight Commission shall be as follows:

- (a) To receive, and in its discretion to administer and investigate, complaints from the public at large involving allegations of police misconduct;
- (b) To receive, and in its discretion to administer and investigate, complaints from peace officers employed by _____ regarding the administration and supervision of the _____ Police Department;
- (c) To receive, and in its discretion investigate tort claims involving police misconduct or misconduct concerning the administration and supervision of the _____ Police Department;
- (d) To receive a copy of all tort claims filed with the City Clerk, of all complaints filed with the _____ Police Department, of all lawsuits in state or federal courts served upon the City of _____, and all grievances filed by officers against other officers or supervisory personnel of the _____ Police Department which shall be provided to the Commission within thirty (30) calendar days;
- (e) To utilize the services of the _____ Police Department and/or to hire (as employees or as independent contractors as needed) Private Investigators licensed by the

- Bureau of Security & Investigative Services of the California Department of Consumer Affairs to investigate complaints as specified in subsections (a) and (b), above;
- (f) To hire or contract for the services of polygraphers, questioned documents examiners, fingerprint experts, eyewitness identification experts, and other forensic experts as needed to assist with investigations of complaints as specified in subsections (a) and (b), above;
 - (g) To hold hearings to determine whether any police officer or any civilian suspect assigned to the police department has violated any laws or rules or regulations relating to the police department;
 - (h) To subpoena and require the attendance of witnesses, and the production of books and papers pertinent to the investigation and to administer oaths to such witnesses to the extent permissible by law;
 - (i) To thereafter make recommendations concerning allegations regarding police misconduct, including but not limited to recommendations for settlement or litigation of tort claims, lawsuits, and employee grievances to the City Administrative Officer and/or to the City Council;
 - (j) To refer such matters that the Commission concludes are violations of law to the District Attorney of the County of Los Angeles, to the Attorney General of the State of California, and/or to the Federal Bureau of Investigation and/or United States Department of Justice for prosecution;
 - (k) To make available to the public and to the news media any materials which fall under the purview of the California Public Records Act in consultation with the _____ City Attorney and to consult independent legal counsel for a second opinion if deemed necessary to protect the right of the public to information necessary to the functioning of a free and open society.

Section 4.

In making decisions regarding the hiring or contracting of investigative personnel and auxiliary assistants, the Commission shall consult:

- (a) The collective bargaining representative for the _____ Police Department;
- (b) The Los Angeles County Criminal Defense Investigators Association (or any local criminal defense investigators association);
- (c) The District Directors and District Governors of the California Association of Licensed Investigators residing within the County of _____;
- (d) The collective bargaining representatives for investigators employed by the Office of the County Public Defender and the Office of the Alternate Public Defender (if any);
- (e) Any other association or union which in the discretion of the Commission would be necessary and proper to making hiring/contracting decisions to determine the competence, background, training, certification, reputation, education, and experience of auxiliary forensic experts.

Section 5.

The People of _____ declare that it is the public policy to conduct investigations and to protect the rights of the public to the greatest extent possible. This public policy is inconsistent with the sociological phenomena known as the "Code of Silence" observed by many peace officers. To mitigate the results of the "Code of Silence" to the greatest extent possible, polygraph evidence shall be admissible and considered by the Commission in performing its duties when the polygraph is utilized as an investigative tool under the following conditions:

- The polygraph is freely and voluntarily taken
- The polygraph is administered by a Private Investigator Licensed by the Bureau of Security and Investigative Services of the California Department of Consumer Affairs
- The polygrapher is certified by the American Polygraph Association and the National Polygraph Association

No officer employed by the _____ Police Department shall be required to take a polygraph or to do any act prohibited by the Peace Officers Bill of Rights.

Section 6.

The hearing process of the Commission shall be open to the public to the extent legally possible and insofar as it does not conflict with state or federal laws or the California Constitutional Right to Privacy (Article One, Section 1).

The records of the Commission shall be available to the public to the greatest extent permitted by the California Public Records Act and the California Information Practices Act.

Section 7.

Violations of the Information Practices Act involving the improper accessing of address or other personal information of any person by any employee of the _____ Police Department shall be immediately reported to the victim(s) of the offense in writing and shall be reported to the Commission within (30) calendar days.

Any investigator assigned to investigate violations of the Information Practices Act shall attempt to ascertain any facts or theories from the victims of the violations as to any potential motive for the violation.

If the violation results in, aids, or abets any violation of the Ralph Civil Rights Act, Section 51.7 of the California Civil Code, the Bane Civil Rights Act, Section 52.1 of the Civil Code, and/or results in, aids or abets any violation of any statute prohibiting any "hate crime" and/or violation of any state or federal statute protecting the civil rights and/or voting rights of any person or class of persons, the City of _____ shall not indemnify, reimburse, or pay any portion of a punitive damage award against an individual unless compelled to do so by state law.

Section 8.

Peace officer investigators assigned to the Commission shall be required to cross-train with continuing education courses on criminal defense as well as prosecution oriented police techniques; civil plaintiff and defense coursework related to police misconduct and civil rights investigations; and ethnic studies courses consistent with gaining understanding of major population groups within the City of _____.

Private Investigators hired by or contracted for by the Commission shall demonstrate background, training, education and experience with prosecution and defense of criminal activity, civil plaintiff and defense related to police misconduct and civil rights investigations; and ethnic studies courses consistent with gaining understanding of major population groups within the City of _____.

Section 9.

Any and all policies and procedures regarding or concerning eyewitness identification techniques of the _____ Police Department shall be consistent with the recommended standards of the California Commission on the Fair Administration of Justice (CCFAJ) and *Eyewitness Evidence: A Guide for Law Enforcement*, authored by the Technical Working Group for Eyewitness Evidence and published by the National Institute of Justice, October 1999. All officers shall be trained in the use of these procedures. To the extent that the 1999 NIJ Guidelines conflict with those recommended by the CCFAJ, the CCFAJ procedures shall prevail.

Section 10.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of the ordinance. The City Council of the City of _____, California

hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases are declared unconstitutional.

Commentary by the Author – Jan B. Tucker

The importance of the above proposed model ordinance is based upon some 30 years of investigative experience, both defending and opposing police officers accused of misconduct, conducting plaintiff and defense civil investigations, and rising within the private investigative community to service on the Board of Directors of the California Association of Licensed Investigators (CALI), the world's largest organization of private eyes. As of 2008, I am serving my 6th term as chair of CALI.

I have built some basic value judgments into this proposal. For one, rank and file peace officers deserve independent, public scrutiny over their own grievances with management to protect them from undue influence by the brass and politicians. For this reason, I have built in representation for the officers themselves and expanded the traditional scope of the "police commission" to include authority to investigate and address these grievances. Another value judgment is respect for the voters' right to elect commission members and by-pass the mayoral-council appointment systems in the usual commission.

Certain aspects of this proposal, e.g., who gets hired to conduct investigations and how they are to be trained, is based upon the simple fact that police departments are not the fountains of all wisdom. Private investigators have different training and different approaches, often gained after a career in law enforcement. A combination of approaches to the investigation is best and a smart commission will have both police and private investigators work side by side in a team to get the best of all worlds.

The requirement that victims of Information Practices Act violations be notified and questioned seems like a no-brainer, but the LAPD had two Lieutenants "investigate" illicit access to personal records of over 200 persons (myself included), without ever bothering to inform or question the victims. Had they done so, they would have learned that the illegal acquisition by an LAPD investigator of my home address coincided with Swastikas being painted on my car, obviously a relevant factor.

Finally, I have included a requirement that the police officially adopt the California Commission on the Fair Administration of Justice (CCFAJ) on eyewitness identification procedures and the 1999 guidelines for eyewitness identifications which were promulgated by a task force of prosecutors, law enforcement, and others throughout the United States which worked at then-Attorney General Janet Reno's request to design techniques which would help prevent wrong identifications which lead to the conviction of the innocent and to the guilty going free (all too many cases cleared after conviction and prison sentences by DNA results were based on eyewitness identifications and testimony). Some police departments have come around gradually to using these techniques. Others, like Long Beach, have confirmed in writing that *they have no policies, procedures, or guidelines at all* in response to a California Public Records Act request.