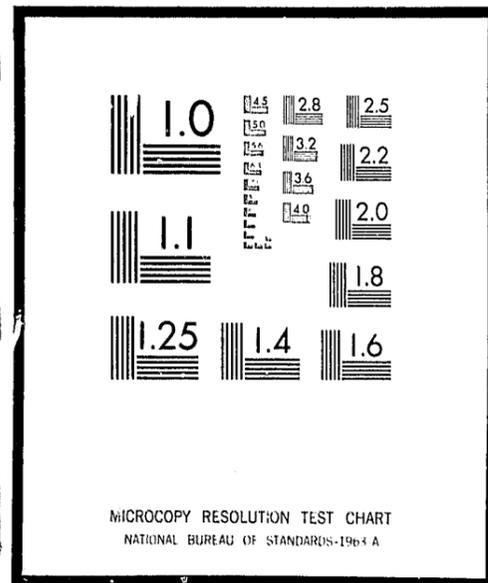


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## LAW ENFORCEMENT ASSISTANCE ADMINISTRATION (LEAA)

### POLICE TECHNICAL ASSISTANCE REPORT

SUBJECT: Development of Disciplinary Process and Citizen Complaint Procedures

PROJECT NUMBER: 76-159-087

FOR: Atherton, California Police Department

Population: 8,300

Police Strength: 23

Square Mile Area: 6

RACTOR: Public Administration Service  
1776 Massachusetts Avenue, N.W.  
Washington, D. C. 20036

ULTANT: George W. Greisinger

RACT NUMBER: J-LEAA-002-76

: October, 1976

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DEPARTMENT OF JUSTICE

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## I. INTRODUCTION

Atherton, California, is a small affluent residential community located about 30 miles south of San Francisco. The City is composed almost entirely of single family residences, eighty-five percent of which are located on lots of one acre or more. About 8,300 persons permanently reside in Atherton. During the school year the City's daytime population swells to over 18,000 with the influx of elementary and high school students from neighboring communities.

The City has recently appointed a new Chief of Police, Chief Richard Moore. Chief Moore was previously a lieutenant on the Atherton Police Department and was appointed to his present position on August 1, 1976.

One of the Chief's first priorities is to establish formal procedures for handling citizen complaints and disciplinary matters. Formerly, citizen complaints and disciplinary incidences were handled on an informal ad hoc basis. The Chief feels this is an undesirable practice which could result in unfair treatment and cause low morale among Department personnel.

Any new policies which are developed, however, must accommodate the provisions of the Peace Officers' Procedural Bill of Rights recently passed by the State legislature. The Peace Officers' Bill of Rights was signed into law by Governor Brown on August 18, 1976 and will become effective January 1, 1977. The Bill has been the object of some controversy and, more than likely, will be subject to legal challenges and judicial interpretation before its final impact can be determined.

The request for the technical assistance summarized by this report emanates from the Chief's desire to establish an effective and progressive disciplinary program. The Chief's request was submitted to and approved by the Law Enforcement Assistance Administration. LEAA, in turn, notified its technical assistance contractor, Public Administration Service (PAS), Washington, D.C., who assigned a member of its staff to perform the work. The PAS staff member provided on-site technical assistance during the week of September 13, 1976. The following local officials were interviewed and were of assistance in conducting the study.

Mr. Richard L. Moore, Chief of Police  
Mr. George Stanton, Lieutenant  
Mr. Jerome Reynolds, Administrative Assistant to the  
City Manager  
Mr. Bradford Jeffries, City Attorney

### III. ANALYSIS OF THE PROBLEM

This chapter provides the following information. First, a brief overview of the Department is provided. Second, some organizational prerequisites to effective discipline are discussed and compared to existing management policies in Atherton. Finally, the consultant outlines some key elements in an effective police discipline program and compares these to Atherton's existing practices.

#### An Overview of the Atherton Police Department

The Atherton Police Department can be described as a small progressive police agency that provides a high level of police service to its residents. The Department consists of 19 sworn police officers and four communications/records personnel. The sworn ranks include 13 police officers, 4 sergeants, one lieutenant and, of course, a chief. The communications personnel include one communications supervisor and three "police dispatcher/clerks". Communications personnel are not police officers per se, but they do hold reserve officer status.

In addition to its full-time complement the Department utilizes part-time and volunteer resources in various capacities. For example, the Department maintains a reserve force of 10 police officers, each of whom has received basic police officer training. The reserve officers substitute for regular officers on the latter's days off, vacations, and other absences. Reserve officers perform the same duties as regular police officers. In addition, five college cadets (ages 18-21) and fifteen explorer cadets (ages 14-18) serve in a volunteer capacity and help the Department by performing a variety of administrative and parapolice duties. The Department's reserve officer and cadet programs are a productive use of part-time and volunteer resources to improve police services to the community.

Along these same lines it would appear the Department has done an outstanding job of analyzing its service problems and developing effective programs to cope with them. Without going into unnecessary detail, the Department has systematically analyzed service demands and established operational programs to meet those demands. Evidence of the Department's responsiveness to service demands is found in the existence of its crime prevention and traffic accident prevention programs. Testimony to the success of these programs is found in relatively low crime rates, high clearance rates, and dramatically decreased number of traffic accidents.

The importance of the very brief Department profile provided above is twofold. First, Atherton is a small Police Department. Because it is a small, close-knit organization, management of Departmental affairs is

often handled in personal and informal ways. Consequently, it does not have a fully developed system of formal written directives covering administrative and personnel policy matters. Second, by present performance standards, Atherton is doing a better than average job of providing police services to the community. Although the Department fully intends to continue to provide a high level of services it is now able to devote more attention towards internal management matters. One area that is receiving immediate attention is disciplinary actions.

#### Atherton's Discipline Problems

It needs to be stated at the outset, however, that the Department is not experiencing widespread disciplinary problems among its employees. Although the consultant was not able to personally examine the Department's personnel files, interviews indicated the Department is experiencing a level of complaints that would be considered normal for a force of its size. The problem, then, is not one of numbers, but rather that of determining how to handle cases when they do arise.

#### Organizational Prerequisites for Effective Discipline

Discipline should not, indeed cannot, be considered in isolation from other parts of the management system. To be effective, disciplinary procedures must be integrated into the total management system.

The following are three management components which should be considered necessary to the development of an effective disciplinary system.

#### Clearly Defined Objectives, Roles and Responsibilities

The foundation for progressive discipline can be found in an organization where organizational objectives, and individual roles and responsibilities are clearly defined for each position and understood by each person. The reasoning behind this principle is clear and simple: before employees can conform to certain expected behavior patterns they must know what the organization (management) is trying to accomplish and what is expected of them as employees. In short, an employee should know where an organization is headed and how they are to help it get there.

Although it is highly unlikely that unacceptable behavior can be completely eliminated it is reasonable to assume that such behavior can be reduced by eliminating, to the extent possible, ambivalence in worker roles and responsibilities. Moreover, clearly defined management objectives and expectations provide both management and the worker with a yardstick to measure performance.

The Chief of Police in Atherton recognizes the importance of these organizational considerations and has begun to take measures to more clearly define roles and duty responsibilities within the Police Department. For example, he has recently had prepared a set of job descriptions for each class of positions within the Department. Each job description contains a general work definition, examples of position duties, as well as desirable worker qualifications.

He has also instituted a system of bi-weekly staff meetings with his sergeants and lieutenant. Also present at the staff meeting is a representative of the local police officers' association. During these meetings the Chief solicits the viewpoints and concerns of his supervisory staff and discusses administrative and operational problems and issues that may arise. He also tries to set forth and discuss his program priorities and expectations.

Most importantly, the Chief is holding individual interviews with each member of the Police Department. During these sessions the Chief tries to communicate his plans and objectives for the Department and discusses the kind of performance he expects from his officers.

Each of the above measures taken by the Chief are intended to create an organizational setting wherein every employee knows what is expected of him. These are praiseworthy efforts, and needless to say, they should be continued.

#### Performance Evaluation

Another important element in progressive discipline is the presence of an appropriate and workable employee performance evaluation program. One of the purposes of employee evaluation is to give the worker sufficient and reliable performance information to maintain behaviors which are appropriate from the organization's viewpoint (strengths) and eliminate those which are inappropriate (weaknesses). Communication and feedback between the supervisor and employee are essential to productive performance evaluation, as they are to disciplinary actions.

An employee evaluation system is a way of routinizing communication. It is a way of insuring that feedback relative to performance actually takes place between the supervisor and the employee. Behavior patterns which are considered inappropriate should surface during performance appraisals and means by which they could be eliminated discussed. Conversely, behavior which is to be encouraged should be identified and lauded. In short, a well-executed performance appraisal system should lessen the probability that formal disciplinary action will be necessary.

Nevertheless, a well-documented system of employee performance will enable the responsible official to make a better informed decision regarding disciplinary action should the need arise.

Atherton does not have a formal performance evaluation system. Naturally, owing to the Department's size, there is considerable daily contact between the employee and supervisor. The circumstance offers the supervisor a unique opportunity to encourage acceptable behavior and dissuade less desirable actions on an informal and personal basis. Whether this type of "coaching" is taking place is difficult to determine without some system of formal documentation. Besides, without formal written documentation it is nearly impossible for the Lieutenant or the Chief to determine if individual job responsibilities are being carried out in the prescribed manner.

#### Probationary Status

One of the most opportune times to supply employees with performance feedback is during the probationary period. Typically, the probationary period presents unique opportunities that do not exist in a classroom or training environment. It also presents an opportunity to affect behavior before the socialization process takes hold and at a time when employee is more susceptible to altering behavior patterns.

Also, from a legal standpoint, an organization has more latitude to deal with employees during the probationary period. Legally speaking, an employee on probation has no expectation of job security, and no "property interest".<sup>1/</sup>

Atherton does not presently take advantage of the many opportunities available through probationary status because it does not have a formal, structured probationary period.

#### Summary

The management components discussed above constitute some—but not all—of the organizational prerequisites to effective discipline. These particular components are highlighted in this report because they are of

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<sup>1/</sup> International Association of Chiefs of Police. "Managing for Effective Discipline". (IACP, Gaithersburg, Maryland, 1975), p. III, 29.

special significance to Atherton. Without them it is doubtful the Atherton Police Department could be entirely successful in achieving its goal of establishing an effective and progressive disciplinary policy.

Program Elements for an Effective Discipline System

Besides the organizational prerequisites discussed above there are certain key program ingredients which are necessary for a successful disciplinary system. These ingredients, along with an explanation of how they are handled by the Atherton Police Department are presented below.

Written Directives

One of the key ingredients to an effective discipline program is the existence of written directives, particularly those dealing with policy, procedures, and rules. Written directives provide a vehicle by which management expectations are communicated. Moreover, they set forth standards of conduct by defining acceptable behavior. In many ways they are the rules of the game.

In many police agencies written directives are found in the format of a General Duty Manual. Duty manuals typically contain rules, regulations, and general policy and procedures which deserve the attention of all departmental employees.

Although the Atherton Police Department has a general duty manual it is a very rudimentary document. The table of contents for Atherton's duty manual is presented in Appendix "A". A review of the table of contents shows that of the 26 subject categories to be covered by the manual only nine have been completed. Moreover, most of the material that has been completed was prepared in 1972 and has not been systematically updated.

Another consideration that must be addressed is the Police Officers' Procedural Bill of Rights recently passed by the California legislature. A copy of the Bill is included in this report as Appendix "B". Even though it is not possible to determine the Bill's final impact it is clear its provisions have significant implications for designing discipline policy.

For example, Section 3304(b) of the Bill states:

"No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal."

In short, if the disciplinary policy and procedures of the Atherton Police are to conform to the law they must include procedures for the administrative appeal of "punitive" disciplinary decisions.<sup>2/</sup> The important point, however, is that written directives must be legal. Atherton's existing written policy does not fully meet that important criteria. There are other examples that could be provided but that would be repetitive.

#### Communication

Once the "rules" have been established it is, of course, necessary to ensure that they are communicated to employees in a clear and effective manner. There are, at minimum, three ways to communicate policy effectively: written communication, personal contact, and participation in police formulation.

Naturally, a written directive is a communication device in itself. The importance of written directives was discussed earlier and need not be repeated here. Suffice it to say the Department should not have any difficulty in ensuring that all its employees receive copies of written directives.

Personal contact is a very effective means of communicating and enhancing the understanding of written policy, especially when emphasizing the "seriousness" or "importance" of the subject at hand. In Atherton, personal contact between the supervisor and officer occurs on a daily basis.

A third method for communicating written policy, participation in policy formulation, could be used more productively in Atherton. Probably, the most effective method for enhancing an employee's understanding (and acceptability) of written policy is to provide for employee input into the drafting of such policy. Although some administrators "feel" they lose control when they allow for increased employee involvement the reverse is often the case. In its study of internal discipline, the National Advisory Commission on Criminal Justice Standards and Goals, concluded the following:<sup>3/</sup>

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<sup>2/</sup> The Department's present written directives do not contain procedures for appeal of disciplinary determinations.

<sup>3/</sup> National Advisory Commission of Criminal Justice Standards and Goals. "Police", Washington, D.C., 1973, p. 471.

"The police chief executive maintains ultimate control because he provides the final decision in any disciplinary matter. But those chief executives who have allowed for employee participation have found that it has strengthened the internal discipline system, as well as their own position and authority, by increasing employee support and observance of the internal discipline policies, procedures, and rules."

#### Uniform and Consistent Application

Once disciplinary policy has been established and made known it must be administered in a uniform and impartial manner. Even the best written policy can be rendered ineffective if it is not administered properly.

One writer on the subject, Wallace Wohlking, contends that discipline should be administered to prevent past problems from re-occurring and new ones arising, rather than on administering punishment.<sup>4/</sup> He further contends that the most effective way to administer discipline is to rely on the "hot stove rule". As Wohlking explains:<sup>5/</sup>

" The "hot stove" approach to discipline suggests that, like touching a hot stove, the person will have an experience which is 1) immediate; 2) consistent, and 3) impersonal. The person touching the stove may get angry at the stove, but this quickly passes. However, the lesson is learned rapidly by most people.

" In this approach to discipline, the employee experiences the discipline and infraction as one related event. The employee is not disciplined for moral reasons, but because a rule has been violated; the discipline is seen as more directed at the act than at the person. The employee normally resents the discipline; however, the more automatic the discipline, the less likely this is to occur. It is a well-established principle in learning theory that the more immediate the reward or punishment of a particular act, the more rapid the learning. "

In a police department the size of Atherton final responsibility for administering discipline must rest with the Chief. Because the Chief sits "at the top" of the organization he is in a unique position to ensure that discipline is administered in a fair and even-handed manner. He must constantly be alert to inconsistent treatment that may arise between his supervisory personnel. Furthermore, the Chief needs to be involved in the

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<sup>4/</sup> Wallace Wohlking, "Effective Discipline in Employee Relations," Personnel Journal, September, 1975 p. 489

<sup>5/</sup> Ibid.

disciplinary process because the "way in which discipline is administered" in and by itself communicates management's philosophy and expectations. Improperly administered, discipline can directly and negatively affect employee morale.

#### Supervisor's - Knowledge and Responsibility

There can be little question that supervisors are a key to effective discipline. Through the exercise of positive "first line" leadership they can prevent problems from arising whereas inept supervision can have serious consequences.

In order to exercise effective discipline every supervisor must know and understand disciplinary procedures and must be aware of his authority in dealing with problem situations. The supervisor represents the first step in dealing with behavior problems. If he is not clear about his role, responsibilities, and authority, inconsistent and ineffective disciplinary action may result. Thus the responsibility and authority of supervisors in dealing with problems must be clearly delineated by the organization.

#### Citizen Complaints

In police departments numerous disciplinary problems arise from officer's interaction with citizens. To respond to these situations most police departments have established formal procedures for handling such complaints. In California such procedures are mandated by State law. Section 832.5 of the State Penal code states in part "... each City police department in this state shall establish a procedure to investigate citizen's complaints against the personnel of such departments, and shall make a written description of the procedure available to the public."

The Atherton Police Department has a written procedure for handling citizen complaints (see Appendix "C") but it lacks sufficient procedural detail. In effect, the procedure simply states complaints will be made known to the ranking officer on duty or to the Chief, and upon investigation the complainant and the police personnel concerned will be notified of the disposition of the case. Although complaint procedures should be designed so as not to be burdensome they should also detail the basic steps involved in:

- (1) the taking of a complaint
- (2) the investigation of a complaint
- (3) the disposition of the case including notification of the outcome.

## IV. FINDINGS AND CONCLUSIONS

On the whole, the Atherton Police Department is a well-run, progressive police agency. Judging by contemporary standards it is doing an effective job in providing a high level of police services to the residents of the City.

Recently, the Department has turned its attention towards the improvement of its internal management processes. One area of concern is the Department's present methods for handling disciplinary matters in general and citizen complaints in particular.

Even though the Department does not experience a large volume of such incidences it must be concerned that each case is given prompt, fair, and consistent treatment. To do otherwise, would be a disservice to Departmental employees and to the citizens they serve.

Organizational Prerequisites

Discipline policy is part of the total management system. Consequently, there are certain management components that must be present before a totally effective and positive disciplinary policy can be implemented. Among others, these include a clear set of management objectives and clearly defined roles and responsibilities; a formal performance evaluation program; and the effective utilization of the "probationary status" concept.

The Atherton Police Department is presently working towards the achievement of these components. For example, the Chief has been conducting regular staff meetings and holding individual interview sessions with each member of the Department. The purpose of these meetings is to set forth his expectations regarding programs and performance and to clearly define individual roles and responsibilities. The preparation of position descriptions should also contribute to a clarification of job duties and responsibilities.

Less headway has been made with respect to the performance evaluation and probationary status components. Briefly, the Department needs to develop an employee performance evaluation program for the reasons discussed earlier in this report. Two of the key factors in analyzing discipline problems (when they arise) are the history and quality of an employee's performance. This is difficult to do without having a mechanism for systematically documenting performance.

The Department does not currently take advantage of the opportunities available during the probationary period for new employees but it should. The managerial basis for this finding was discussed earlier but there is also a practical consideration as well. In order for local police agencies in California to be eligible for fund reimbursements for State sponsored training programs, they must comply with certain criteria (standards) established by the California Commission on Peace Officers Standards and Training (POST).

One of POST's standards is the utilization of a one year probationary period for police recruits.<sup>6/</sup> Atherton is not in compliance with this standard, and thus, could be risking the loss of its eligibility status for reimbursement of training costs.

#### Program Elements for Effective Discipline

If the Atherton Police Department is going to establish an effective and progressive discipline policy certain program elements need to be provided.

The Department's existing set of written directives is incomplete and inadequate. In 1972 the Department started the preparation of a duty manual containing policy, procedures, and rules but the effort was never completed. The disciplinary process must start with a set of written directives which set forth standards of conduct and behavior norms. Naturally, to be effective, written directives should be acceptable to those they affect. One of the more useful techniques is to provide more input by employees into the development of written directives. For example, the Chief has recently asked a number of patrol officers to submit ideas to him regarding the development of a uniform (clothing) policy. This practice could be more widely used by the Department to develop an up-to-date set of written policy directives.

Another weakness in Atherton's current operation is that the responsibility and authority of supervisory personnel have not been clearly defined.<sup>7/</sup> There is no written policy pertaining to a supervisor's responsibility and authority in initiating and handling disciplinary action and this creates uncertainty in dealing with disciplinary situations. In short, the Department needs to develop a written policy for handling disciplinary actions.

Another area where there is an immediate need for the development of a formal written policy is in the handling of citizen complaints. Although the Department has a written policy of sorts, it is more distinguished by what it does not say than what it does say. In order to have a credible policy and to insure fair treatment, the handling of citizen complaints must be based on formal written policies and procedures which are understandable to the citizen and to the employee. The Atherton Police Department has yet to develop such a policy.

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<sup>6/</sup> As reported during interviews with Atherton police officials.

<sup>7/</sup> The term supervisory personnel as used here refers to sergeants and the communication supervisor.

## V. RECOMMENDATIONS

The following recommendations are offered to the Atherton Police Department for the development of an effective discipline policy.

1. The Department should design and implement an employee performance evaluation system. The system need not be complicated or overly sophisticated. A system which (1) accurately documents employee work history, (2) keeps the employee informed of how well he or she is doing, and (3) promotes personal communication between the superior and subordinate would be sufficient. Performance criteria should be job specific and concentrate on job performance standards rather than personal characteristics — and remember the perfect rating system has yet to be designed.
2. The Department should use the probationary, or working test period, as the final stage of its selection process for new employees. It should do this in order to comply with POST requirements and to insure the employee meets Departmental performance standards. A probationary period of one year is recommended.
3. The Department should begin at once to prepare written directives (a manual) which define policy, establish procedures, and spell out rules and regulations. Written directives must be legal and for Atherton this means directives need to recognize the legal principles contained in the Police Officer's Procedural Bill of Rights. Directives which deserve priority attention are discussed below.
4. The Department should develop written rules of conduct to serve as the basis for an effective disciplinary system. A list of prototype rules of conduct is set forth in Appendix D. Content subject matter and suggested language for rules of conduct can be found in "The Police Discipline Series", published by the International Association of Chiefs of Police, Gaithersburg, Maryland.
5. The Department should design a written directive for handling citizen complaints. A model procedure for handling citizen complaints has been prepared by the consultant and appears in Appendix E.

6. The Department should design a written directive for handling internal disciplinary actions. The directive should clearly define the supervisors' responsibility and authority for handling disciplinary situations and establish procedures for initiating different disciplinary actions. Examples of written directives pertaining to disciplinary actions and other areas identified by the Department are being mailed to the Chief under separate cover.
7. The Department should provide for increased employee input into the draft preparation of policy, procedures, rules and regulations.

Appendix "A"  
Atherton Police Department  
Police Manual

PERSONNEL

Boundaries and Beat Systems  
Department Organization  
Departmental Directives  
Duty Schedule and Reporting Requirements  
Training (Not completed)  
Conduct in Public  
Personal Affairs  
Financial Considerations

RECORDS AND INFORMATION

Police Information (Not completed)  
Reporting Procedures - General (Not completed)  
Incident Reporting (Not completed)  
Crime Reporting (Not completed)  
Accident Reporting (Not completed)  
Arrests and Complaints (Not completed)  
Vehicles and Bicycles (Not completed)  
Services Division Records Processing (Not completed)

OPERATIONS

Administrative Procedures (Not completed)  
Uniforms, Property, and Equipment  
Police Services (Not completed)  
Enforcement - General (Not completed)  
Traffic Enforcement (Not completed)  
Intoxication Arrests (Not completed)  
Emergencies (Not completed)  
Use of Force

## Appendix "B"

## PUBLIC SAFETY OFFICERS

## Procedural Bill of Rights

## Chapter 9.7

3300. This chapter is known and may be cited as the Public Safety Officers Procedural Bill of Rights Act.

3301. For purposes of this chapter, the term public safety officer means all peace officers as defined under Penal Code Sections 830.2 and 830.2(a), (b), including peace officers who are employees of a charter city or county. The Legislature hereby finds and declares that the rights and protections provided to peace officers under this chapter constitute a matter of state-wide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that such stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers as defined in this section wherever situated within the State of California.

3302. Except as otherwise provided by law, or whenever on duty or in uniform, no public safety officer shall be prohibited from engaging, or be coerced or required to engage, in political activity.

3303. When any public safety officer is under investigation and subjected to interrogation by his commanding officer, or any other member of the employing public safety department, which could lead to punitive action, such interrogation shall be conducted under the following conditions. For the purpose of this Chapter, punitive action is defined as any action which may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

- a. The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If such interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for such off-duty time in accordance with regular department procedures, and the public safety officer shall not be released from employment for any work missed.
- b. The public safety officer under investigation shall be informed prior to such interrogation of the rank, name, and command of the officer in charge of the interrogation, the interrogation officers, and all other persons to be present during the inter-

rogation. All questions directed to the public safety officer under interrogation shall be asked by and through no more than two interrogators at one time.

- c. The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation.
- d. The interrogating session shall be for a reasonable period taking into consideration gravity and complexity of the issue being investigated. The person under interrogation shall be allowed to attend to his own personal physical necessities.
- e. The public safety officer under interrogation shall not be subjected to offensive language or threatened with punitive action, except that an officer refusing to respond to questions or submit to interrogations shall be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action. No promise of reward shall be made as an inducement to answering any question. The employer shall not cause the public safety officer under interrogation to be subjected to visits by the press or news media without his express consent nor shall his home address or photograph be given to the press or news media without his express consent.
- f. The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. No notes or reports which are deemed to be confidential may be entered in the officer's personnel file. The public safety officer being interrogated shall have the right to bring his own recording device and record any and all aspects of the interrogation.
- g. If prior to or during the interrogation of a public safety officer it is deemed that he may be charged with a criminal offense, he shall be immediately informed of his constitutional rights.
- h. Upon the filing of a formal written statement of charges or whenever an interrogation focuses on matters which are likely to result in punitive action against any public safety officer, that officer at his request shall have the right to be represented by a representative of his choice who may be present at all times during such interrogation. The representative shall not be a person subject to the same investigation.

This section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities.

- i. No public safety officer shall be loaned or temporarily reassigned to a location or duty assignment if a sworn member of his department would not normally be given that duty assignment under similar circumstances.
3304. a. No public safety officer shall be subjected to punitive action or denied promotion or be threatened with any such treatment, because of the lawful exercise of the rights granted under this chapter, or the exercise of any rights under any existing administrative grievance procedure.

Nothing in this section shall preclude a head of an agency from ordering a public safety officer to cooperate with other agencies involved in criminal investigations. If any officer fails to comply with such an order, the agency may officially charge him with insubordination.

- b. No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal.
3305. No public safety officer shall have any comment adverse to his interest entered in his personnel file, or any other file used for any personnel purposes by his employer without the public safety officer having first read and signed the instrument containing the adverse comment indicating he is aware of such comment except that such entry may be made if after reading such instrument the public safety officer refuses to sign it. Should a public safety officer refuse to sign, that fact shall be noted on that document, and signed or initialed by such officer.
3306. A public safety officer shall have 30 days within which to file a written response to any adverse comment entered in his personnel file. Such written response shall be attached to, and shall accompany, the adverse comment.
3307. No public safety officer shall be compelled to submit to a polygraph examination against his will. No disciplinary action or other recrimination shall be taken against a public safety officer refusing to submit to a polygraph examination, nor shall any comment be

entered anywhere in the investigator's notes or anywhere that the public safety officer refused to take a polygraph examination, nor shall any testimony or evidence be admissible at a subsequent hearing, trial, or proceeding, judicial or administrative, to the effect that the public safety officer refused to take a polygraph examination.

3308. No public safety officer shall be required or requested for purposes of job assignment or other personnel action to disclose any item of his property, income, assets, source of income, debts or personal or domestic expenditures (including those of any member of his family or household) unless such information is obtained or required under State law or proper legal procedure, tends to indicate a conflict of interest with respect to the performance of his official duties, or is necessary for the employing agency to ascertain the desirability of assigning the public safety officer to a specialized unit in which there is a strong possibility that bribes or other improper inducements may be offered.
3309. No public safety officer shall have his locker, or other space for storage that may be assigned to him searched except in his presence, or with his consent, or unless a valid search warrant has been obtained or where he has been notified that a search will be conducted. This section shall apply only to lockers or other space for storage that are owned or leased by the employing agency.
3310. Any public agency which has adopted, through action of its governing body or its official designee, any procedure which at a minimum provides to peace officers the same rights or protections as provided pursuant to this chapter shall not be subject to this chapter with regard to such a procedure.
3311. Nothing in this chapter shall in any way be construed to limit the use of any public safety agency or any public safety officer in the fulfilling of mutual aid agreements with other jurisdictions or agencies, nor shall this chapter be construed in any way to limit any jurisdictional or interagency cooperation under any circumstances where such activity is deemed necessary or desirable by the jurisdictions or the agencies involved.
- SEC. 2. There are no local costs in this act that require reimbursement under Section 2231 of the Revenue and Taxation Code because there are no duties, obligations or responsibilities imposed on local entities in the 1975-76 fiscal year by this act. However there are state-mandated local costs in this act in the 1976-77 fiscal year and subsequent years that require reimbursement under Section 2231 of the Revenue and Taxation Code which can be handled in the regular budget process.
- SEC. 3. This act shall become operative on January 1, 1977.

Source: PORAC NEWS, Volume 5, No. 21, August, 1976.

## Appendix "C"

Atherton Police Department Present Procedure  
For Citizen Complaints of MisconductPurpose

The public has a right to expect and demand fair and impartial law enforcement services. In providing these services, the police officer must be free to exercise his best judgment and to initiate action in a reasonable, lawful, and impartial manner without fear of reprisal.

While the mutual rights of the public and the police officer are normally respected, unusual situations do occur when these rights are violated. To protect the rights of the public and the police officer, it is necessary that any allegation of police misconduct be thoroughly investigated. It is, therefore, the policy of the Atherton Police Department to accept, record, and promptly initiate an investigation of all complaints of misconduct concerning police personnel which are made by any member of the public.

Procedure in Citizen Complaints

- a. Complaints made to any member of this Department alleging misconduct of police personnel will be treated with serious consideration. Any such complaint will be immediately made known to the ranking supervisory officer on duty. The supervisory officer will interview the complainant and write a report to include the complete identity of the complainant and any other person having pertinent information, together with a narrative of the allegation. The report will then be brought to the attention of the Chief of Police at his earliest convenience. Complaints of serious gravity will be brought to the immediate attention of the Chief of Police regardless of the hour.
- b. Should the complainant not be satisfied with making a report of the complaint to a supervisory officer of this Department, he will be advised that he may also feel free to make the complaint to the Chief of Police, personally.
- c. The complainant and the police personnel concerned will be notified of the results of the investigation and the disposition of the complaint.

## Appendix "D"

## LIST OF PROTOTYPE RULES OF CONDUCT

1. Violation of Rules
2. Unbecoming Conduct
3. Immoral Conduct
4. Conformance to Laws
5. Reporting for Duty
6. Neglect of Duty
7. Fictitious Illness or Injury Reports
8. Sleeping on Duty
9. Meals
10. Unsatisfactory Performance
11. Employment Outside of Department
12. Alcoholic Beverages and Drugs in Police Installations
13. Possession and Use of Drugs
14. Use of Alcohol/On-Duty
15. Use of Alcohol/Off-Duty
16. Use of Tobacco
17. Insubordination
18. Conflicting or Illegal Orders
19. Gifts, Gratuities, Bribes or Rewards
20. Abuse of Position
21. Endorsements and Referrals
22. Identification
23. Citizen Complaints
24. Courtesy
25. Requests for Assistance
26. Associations
27. Visiting Prohibited Establishments
28. Gambling
29. Public Appearances and Statements
30. Personal Appearance
31. Political Activity
32. Labor Activity
33. Payment of Debts
34. Residence
35. Telephone
36. Dissemination of Information
37. Intervention
38. Departmental Reports
39. Processing Property
40. Abuse of Process/Withholding Evidence
41. Use of Department Equipment
42. Operating Vehicles
43. Carrying Firearms
44. Truthfulness

45. Use of Polygraph; Medical Examinations; Photographs; Lineups
46. Financial Disclosure
47. Treatment of Persons in Custody
48. Use of Force
49. Use of Weapons
50. Arrest, Search and Seizure

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NOTE: (Subject content for Prototype Rules of Conduct can be found in a publication entitled, "Managing for Effective Discipline", Final Project Report, International Association of Chiefs of Police, 1975, pp. VI, 17-27.)

## Appendix "E"

Proposed Procedure for Citizen Complaints

The following directive was prepared for the Atherton Police Department for the handling of Citizen Complaints. It was developed based upon a review of the current literature, and some of the language contained in the directive is taken from similar directives of other police departments.

Citizen ComplaintsI. Purpose

The public has a right to expect and demand fair and impartial law enforcement services. In providing these services, the police officer must be free to exercise his best judgement and to initiate action in a reasonable, lawful, and impartial manner without fear of reprisal. To protect the rights of the public and the police officer, it is necessary that any allegation of police misconduct be thoroughly investigated.

II. Policy

All complaints, including anonymous complaints, against an employee or against the Department shall be investigated within the guidelines set forth in this directive.

III. ProcedureA. Accepting Citizen Complaints

1. Any citizen complaint regardless of seriousness shall be recorded on the attached complaint form as soon as practical. Any employee shall record a complaint or shall refer the complaint to a superior.
2. All complaints are to be forwarded to the employee's supervisor as soon as possible. If the complaint is against the supervisor the complaint should be forwarded to the Lieutenant.

B. Investigating Complaints

1. All complaints shall be forwarded immediately to the Lieutenant. The Lieutenant shall review the complaint and assign an impartial officer to investigate the allegations. In some instances the Lieutenant shall investigate the complaint himself.
2. Any employee who is complained against, shall be notified by the Lieutenant, unless to do so might jeopardize the investigation of the complaint. Also, the Lieutenant shall notify the citizen complainant, if any, that the complaint is being investigated.

3. Any employee who is the subject of an investigation shall be afforded all rights and protections provided by law and by Departmental rules and regulations.
4. The Lieutenant shall see that the investigation is complete within 15 calendar days of receipt of the complaint by the Department. If unable to complete the investigation within 15 calendar days, the Lieutenant will notify the Chief of Police and request an extension of the deadline.
5. Upon completion of the investigation, the Lieutenant will forward the results of the investigation, along with his recommendations, to the Chief of Police. (Less serious complaints need not be forwarded to the Chief of Police.) The Lieutenant shall state that on the basis of evidence the complaint was substantiated on unsubstantiated, and shall:
  - (a) Recommend charges and corrective or disciplinary action for the employee complained against;
  - (b) Recommend counseling, training or other remedial action for the employee complained against; or
  - (c) Recommend exoneration of the employee.
6. Whenever possible the Lieutenant's report shall include an analysis of any administrative problems he found contributed to the incident and suggest methods of handling similar situations in the future.
7. Upon receipt of the Lieutenant's determinations, the Chief of Police shall review the case, the investigation conducted, and the findings of the Lieutenant. The Chief will either concur or not concur with the determinations of the Lieutenant.

C. Final Disposition and Notification

1. In all cases, the Chief of Police, after due consideration, will notify the Lieutenant of his final determination concerning the case.
2. When notified by the Chief of Police the Lieutenant will close the case and execute the following notification, in writing, stating the findings.

(a) The complainant will be notified by letter prepared by the Lieutenant for the signature of the Chief. The letter shall be signed and mailed within 10 calendar days.

3. The Chief of Police will then notify the Department member by letter of the disciplinary action taken. This letter shall be signed and mailed within 10 calendar days.

D. Appeal Process

1. An employee who has been charged, within 10 days of receiving the charging letter from the Chief of Police, may submit a written request for a hearing to the City Manager.

2. The City Manager shall conduct an administrative hearing within a reasonable time period and the determinations of the City Manager shall be final.

Day/Date/Time Reported \_\_\_\_\_

How reported:  Person  Mail  Phone  Annon

I. COMPLAINANT

Name (Last, First, Middle) \_\_\_\_\_

Address/City \_\_\_\_\_

Phone No: Residence \_\_\_\_\_ Business \_\_\_\_\_

II. PERSONNEL INVOLVED

Name \_\_\_\_\_ I.D. No. \_\_\_\_\_ Veh. No. \_\_\_\_\_

Name \_\_\_\_\_ I.D. No. \_\_\_\_\_ Veh. No. \_\_\_\_\_

III. INCIDENT

Day/Date/Time \_\_\_\_\_

Location \_\_\_\_\_

Nature of Incident \_\_\_\_\_

Police Report No. \_\_\_\_\_

Description of Complaint \_\_\_\_\_

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\*Report form adapted from Fremont, California,  
Police Department

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Signature of Officer

**END**

7 11/22/11