

## City Proposal 3.12.21

### ARTICLE 29. Internal Security Interview Procedure

#### Section 1. Investigations Through The Chain Of Command.

Minor allegations of misconduct made against officers which are of the type set out in the Complaint Matrix contained in the General Manual shall be investigated within the Officer's chain of command within twenty-one (21) calendar days of receipt of the written complaint. The Captain of the station/section will conduct the investigation under procedures and guidelines set out in the General Manual. Such an investigation of the Officer shall be confined to the written complaint, and that complaint only. If the Officer is the rank of Captain or above, or if the Officer has no Captain in their chain of command, the Officer's Division Commander, Bureau Commander, or Chief of Police or designee will investigate. Suspensions, if imposed, may be for up to five (5) working days (maximum 40 working hours) if approved by the Chief. If the accused Officer does not agree with the final terms of the contemplated disciplinary decision within five (5) calendar days, the case will be forwarded to the Internal Affairs Unit for further investigation. Suspensions agreed to by an Officer may not be appealed to or altered by the Commission, an arbitrator, or by any court. Investigations through the chain of command do not entitle the Officer to have an attorney present during interviews with his commanding officer, but nothing herein prohibits an Officer from seeking advice from an attorney or an Association representative provided it is within the five (5) day time limit. The Officer will be advised in writing of the procedures applicable to the line complaint investigative process by the Captain prior to providing a report or response. Officers shall have a reasonable opportunity to consult with counsel before writing a response, statement, or report resulting from a complaint. The term "complaint" as used in this article does not include questions about performance of duty raised by the Supervisor or fellow Officers.

#### Section 2. Internal Affairs Investigations.

This procedure shall apply to all non-criminal investigations of misconduct by officers except investigations through the chain of command conducted under Section 1 above.

A. An interview of the charged Officer shall take place at a location designated by the investigating Officer, usually at the police facility to which the Officer is assigned or the Internal Affairs Office. If the Officer is required to complete written interrogatories the Officer must do so at the facility designated by the investigating Officer, and the Officer may not remove the interrogatories (or any copy of the interrogatories) from the designated facility

B. The Officer shall be informed of the rank, name and command of the Officer in charge of the investigation, and the identity of all persons present during the interview. If an Officer is directed to leave his post and report for interview to another command, the Officer's assigned command shall be promptly notified of the Officer's whereabouts.

C. The Officer under investigation shall be informed ~~twenty-four~~~~forty-eight~~ (2448) hours prior to being interrogated or asked to otherwise respond to an investigation of the general nature of the investigation, and sufficient information to reasonably apprise the officer of the allegations shall be provided. The Officer shall be allowed to review but not copy body worn camera recordings involving the incident and ~~verbatim or photocopy any complaints, affidavits, other written statements, GPS/AVL readouts, video recordings, audio recordings, and photographs~~, which have been gathered as part of the administrative investigation. The Officer shall not release the provided information to any person other than his attorney or representative.

D. The interview/interrogatories shall be completed with reasonable dispatch. Reasonable respites shall be allowed. Time shall be provided also for personal necessities, meals, telephone calls, and rest periods as are deemed necessary. Except in exigent circumstances where the seriousness of the complaint warrants an extended interrogation, or when the complaint will expire within sixty (60) calendar days, an Officer shall not be required to submit to any single interview/interrogatories for longer than ~~eight (8)~~~~six (6)~~ hours not including the time to review body worn camera footage and GPS/AVL readouts. The interviewing Officer shall advise the Officer being interviewed of an estimated time for the interview process. Interview sessions may be held on consecutive days until the interview process is completed. ~~Provisions in Subsection A regarding the removal of interrogatories do not apply to this subsection.~~

E. The Officer shall not be subjected to any offensive language, nor shall he be threatened with transfer, dismissal or other disciplinary punishment. No promise of reward shall be made as an inducement to answering questions. Nothing herein is to be construed so as to prohibit the investigating Officer from informing the Officer under investigation that this conduct can become the subject of disciplinary action resulting in disciplinary punishment.

F. In all cases where an Officer is to be interviewed concerning an alleged act which, if proven, may result in any disciplinary action, the Officer under investigation shall be afforded a reasonable opportunity and facilities to contact and consult privately with an attorney of his own choosing or a representative of the Association before being interviewed. An attorney of his own choosing or a representative may be present during the interview. A representative may not be a Police Officer who is related to the respondent, or a supervisor with involvement in the incident being investigated. Such representative may not participate in the interview except to counsel the Officer, or to assert any rights afforded to the Officer under this article in a manner which does not impair the ability of the investigator to conduct the interview and obtain information directly from the Officer. At any time during the interview the Officer under investigation may request to consult with his attorney or representative in private, prior to continuing the interview, provided that the investigator may impose reasonable limits on such conferences in order to complete a meaningful investigative interview and to obtain a written statement or response from the Officer in the Officer's own words.

G. If an Officer is or maybe likely to be placed under arrest, that is if the Officer under investigation is a suspect or the target of a criminal investigation, the Officer shall be given his rights pursuant to the Miranda Decision. Nothing in this subsection shall be construed to limit the

authority of the Chief to conduct administrative investigations nor shall anything in this subsection be construed to relieve the Officer of his obligation to fully cooperate with said investigations, to comply with the Rules and Regulations and Procedures of the San Antonio Police Department, or to provide thorough, complete and truthful responses to requests for written statements and written interrogatories in connection with said administrative investigations. In all investigations where the Officer is subject to a companion or concurrent criminal investigation, the Department shall ensure that any officer's statement gathered as part of the administrative investigation shall not be released to the criminal investigating entity, except as required by a subpoena or required to be disclosed by law or Court decision.

H. The Officer under investigation shall be given an exact copy of any written statement he may execute.

I. The refusal by an Officer to answer pertinent questions concerning any administrative matter may result in disciplinary action.

J. An Officer shall have the right to have the interview tape or digitally recorded, provided the Officer furnishes the tape and the recorder and advises all parties of the recording prior to the beginning of the interview session. The tapes or digital file shall remain in the custody of the Internal Affairs Unit of the Police Department but shall be available for review by the Officer or the Officer's designated representative in the event the interview may result in disciplinary action, or a grievance.

K. No conversation between an Officer and an investigating officer may be recorded without disclosure prior to the conversation by the party making the recording, that it will be recorded. Prior to entering the Internal Affairs office, an Officer must disclose the existence of any recording device in his possession or be subject to disciplinary action. The Chief may authorize the wearing of a concealed recording device during any criminal investigation which may involve an Officer.

L. A polygraph examination may be required of an Officer by the Chief only in the strictest confidence and where the complainant, and any complaining witnesses who give a written statement have been examined and found wholly truthful by a licensed examiner. The fact that an examination is ordered or administered and the results thereof shall not be disclosed by the Chief or the examiner to any person, except following execution of a written agreement between the Chief and the examined Officer.

M. The Chief's office shall provide written notice, in a sealed envelope, to the individual Officer of the final status of any complaint filed with the Internal Affairs Unit where the Officer in question had to respond in writing to the complaint.

N. The results of a formal investigation will be forwarded to the Advisory Action Board for recommendations.

### **Section 3. Chief's Complaint and Administrative Review Board.**

Chief's Complaint and Administrative Review Board (CCARB) as used in this section shall mean the combined Police portion of the Complaint and Administrative Review Board and the Citizen's portion of the Complaint and Administrative Review Board.

A. The Police portion of the CCARB shall consist of seven (7) voting members: a Deputy Chief who shall serve as chairperson; one Captain; one Lieutenant; one Sergeant; one Detective Investigator; and two Patrol Officers. The members shall be appointed by the Chief. Those members shall serve for one hundred and eighty (180) calendar days.

B. The Citizen Advisory Action Board shall act as the Citizen's portion of the CCARB.

1. This Board shall be comprised of seven (7) appointees selected from a panel of fourteen (14) available members appointed as set forth below. Of the initial seven (7) appointees, 3-4 appointees shall be replaced following the expiration of 180-days from the date of their first Board meeting with 3-4 members of the panel of fourteen (14) not having served on the Board in the previous 180-days. The rotation of Board members shall continue until such time as all fourteen (14) members have served on the Board and after such time shall continue with no Board appointee serving for more than two (2) consecutive 180-day periods. The Chairman shall be entitled to alter the rotating list in order to coordinate the schedules of the participants. The Chairman may approve agendas for matters not involving the use of force, bodily injury, or unlawful search or seizure, in instances where workload for the Board makes it necessary, which do not require the attendance of the citizen Board members. The Chairman shall schedule any complaint for civilian member participation, upon request by the Officer or the complainant; if it is reasonably possible to do so based on the workload and availability of civilian members. Notice shall be given to the President of the Association. It is understood and agreed that the civilian members shall, nevertheless, be required to hear the full range of disciplinary cases and controversies presented to the Board, in order to develop an accurate sense of context and fairness.

2. Members of the panel for the Citizen Advisory Action Board shall be selected by the City Council from a list of names provided by the City Manager. Prior to providing names to the Council, the City Manager shall solicit applications from qualified citizens of good character, and objective ability, and shall recruit qualified individuals as necessary to have a sufficient list for consideration. The City Manager shall determine whether or not to recommend each of the individuals who apply. In addition, the Chief of Police shall determine whether or not to recommend each of the individuals. The input and recommendation of the San Antonio Police Officer's Association shall also be obtained as to each of the individuals. The City Council shall receive a compilation of the applicants along with the separate recommendations by the City Manager, the Chief of Police, and the Association. Each party agrees that the selections and the final list shall be representative of the diversity of the community. The City Council may select a new member to replace anyone removed from the panel by selecting from any remaining names, or from a new list provided in accordance with the forgoing provisions in the event of vacancies.

3. Citizens appointed to serve on the panel shall meet the minimum requirements for eligibility established under state statute for service on the Fire and Police Civil Service Commission and shall take an oath of office as members of the panel. In addition, no person shall be appointed to serve on this panel who has been indicted for a felony or a crime of moral turpitude, or officially charged with a Class A or B Misdemeanor. Members of the panel shall serve at the pleasure of the City Council, which may remove them, or replace them at any time, with or without cause. Members shall have no right to the position, and shall not be entitled to removal proceedings or a hearing. If not removed or replaced, a member shall serve for a two (2) year period. The City Ethics ordinance shall apply to all members of the Citizen Advisory Action Board.

4. Appointment and selection for the meetings of the Board shall be accomplished in sufficient time to be able to provide each appointee with not less than twenty-four (24) hours of training, including orientation work at Professional Standards, and one shift on the ride along program. The responsibility for the training of each new member of the panel shall fall upon the Commander of the Professional Standards Section.

C. Right to Privacy.

1. An accused Officer has a right to privacy and all members of the CCARB shall respect that right to privacy, and shall have a duty to maintain the confidentiality of privileged information. Each member of the Uniform and Citizen Board shall sign a pledge of confidentiality, agreeing to maintain the right of privacy as to privileged matters under applicable law. Any violation of this right shall be grounds for disqualification or removal from the panel, as set forth below. "Right to privacy" shall mean only the right of any accused Officer of the Department to have the allegations, facts, testimony and evidence brought before the Board held in confidence by the members hearing the case, and shall not extend to include any public information or information imparted to the Board members from public information, or from individuals not officially connected to the Internal Security process. The Chairman shall keep and maintain all records of the Board, and no members shall have or maintain any records other than during the meetings of the Board, or on Department premises, in connection with their official duties. This article shall not be interpreted to impair or effect the right of any person, including the citizens on the Board, to make report of facts to the Chief of Police, the District Attorney, or the FBI, or to testify under subpoena, the rules of discovery, or order of any court; nor shall this article be interpreted to impair or affect the rights of any Officer under *Garrity vs. New Jersey* or its progeny and *Miranda vs. Arizona* or its progeny.

2. If any member of the Citizen Advisory Action Board is accused by an Officer of a violation of the right to privacy, the Civil Service Commission shall convene and if a determination is made that a member of the Citizen Advisory Action Board violated an Officer's right to privacy, then the Civil Service Commission may remove that member. If the breach of privacy involves a direct report of confidential information by the member to the public or the press, removal by the Civil Service Commission shall be mandatory. In any event, the Civil Service Commission shall send a report of its findings and action to the City Council. The purpose of these hearings shall be to protect the interests of accused Officers and the complainants, and

shall not give rise to any rights on the part of the member accused of a breach of right to privacy.

D. Except as specifically provided for in this article, the CCARB will be conducted in accordance with the San Antonio Police Department's General Manual.

E. All members of the CCARB shall be given the opportunity to review each case that will be presented for consideration subject to the Chiefs approval of exceptions, based on workload, as noted above.

F. The Chairperson of the CCARB shall be responsible for the maintenance of the confidentiality of all files submitted for review by the CCARB.

G. The Chairperson of the CCARB, on recommendation from any member of the CCARB may elect to hear testimony from complainants or responding Officers. Attendance to these boards meetings where testimony is requested are entirely voluntary and complainants or responding Officers may elect to remove themselves at any stage of the questioning by either board without fear of reprisal. The Chairperson of the CCARB shall determine the manner in which all meetings shall be conducted and shall be the determining factor as to the hearing of testimony or attendance by any person. No responding Officer or complainant shall have the right to be represented by counsel, but may be accompanied by an observer.

H. Each board shall make independent recommendations and forward these recommendations to the Chief of Police. Such recommendations are advisory only and are not binding on the Chief. The Citizen Advisory Action Board may not conduct a separate independent investigation but may recommend to the Chief of Police that further investigations should be undertaken.

I. Any matter which is brought before the CCARB. where a final ruling by the Chief of Police has occurred, the Chief of Police shall direct the Commander of the Professional Standards Section to notify the Complainant(s) and accused Officer(s) as to the final disposition of the case within twenty-one (21) calendar days.

#### **Section 4. Crash Evaluation and Review Board.**

A. The Chiefs Advisory Action Board as described in Section 3 of this Article will no longer review cases involving City motor vehicle accidents. All cases involving City motor vehicle accidents previously assigned to the Crash Evaluation and Review Board will be assigned to the Chiefs City Vehicle Accident Advisory Action Board in accordance with this section.

B. The Crash Evaluation and Review Board will consist of one (1) Captain, one (1) Sergeant, one (1) Detective Investigator and two (2) Patrol Officers appointed by the Chief. The Captain shall serve as chairperson. Members shall serve from January through June or from July through December of each calendar year.

C. Except as specifically provided for in this Article, the Chiefs City Vehicle Accident

Advisory Action Board will be conducted in accordance with General Manual provisions and the Chiefs Advisory Action Board outlined in this Article.

D. An Officer will be retrained for an accumulation of points or the number of accidents at the Chief's discretion. The occurrence of two chargeable accidents within a two-year period will serve as a baseline for the Chief or the Board to review individual cases and training needs. Ultimately, retraining will be determined on the basis of severity of the accidents, which may drastically differ from one case to another.

Date: \_\_\_\_\_

\_\_\_\_\_  
For the City

\_\_\_\_\_  
For the Association