

JANUARY 13, 2010

REGULAR MEETING

The Police Commission of the City and County of San Francisco met in Room 400, City Hall, #1 Dr. Carlton B. Goodlett Place, San Francisco, at 5:40 p.m., in a Regular Meeting.

PRESENT: Commissioners Marshall, Mazzucco, DeJesus, Lee, Hammer, Onek, Pan

(Commissioner Lee arrived at 5:53 p.m.)

PUBLIC COMMENT

Barry Tarranto discussed concerns regarding the taxi detail.

PUBLIC COMMENT ON ALL MATTERS PERTAINING TO CLOSED SESSION

(Taken out of order)

None

VOTE ON WHETHER TO HOLD CLOSED SESSION

Motion by Commissioner Mazzucco, second by Commissioner Onek. Approved 6-0.

CLOSED SESSION: Taken out of order 5:54 p.m. – 7:07 p.m.)

a. PERSONNEL EXCEPTION: Status and calendaring of the following pending disciplinary matters:

- JCT C06-190
- ALW C09-186
- JCT C06-185

b. PERSONNEL EXCEPTION: Discussion and possible action to accept or reject Stipulated Disposition of disciplinary charges filed in Case No. JWA C03-190 (Resolution No. 6-10)

(PRESENT: Commissioners Marshall, Mazzucco, DeJesus, Lee, Hammer, Onek, Pan, Assistant Chief Lynch, Lieutenant Reilly, Deputy City Attorney Blits, Attorney Worsham, Mr. S. Johnson, and members involved)

VOTE TO ELECT WHETHER TO DISCLOSE ANY OR ALL DISCUSSION HELD IN CLOSED SESSION

Motion by Commissioner Mazzucco, second by Commissioner Onek for non disclosure. Approved 7-0

REPORTS TO THE COMMISSION

a. Chief's Report

- Update on significant policing efforts by Department members
- Report on status of the Justice Facilities Improvement Program

Assistant Chief Lynch introduced Mr. Charles Higuera, Department of Public Works for presentation of report on status of the Justice Facilities Improvement Program.

Mr. Charles Higuera, Department of Public Works, presented the status report in regards to the Justice Facilities Improvement Program.

b. OCC Director's Report

- Review of recent activities

No report.

c. Commission Reports

- Commission President's Report

- **Commissioners' Reports**

Commissioner Pan asked about status of hiring for Commission staff. Commissioner Marshall stated that there is nothing definitive to report at this point.

PUBLIC COMMENT

None

ROUTINE ADMINISTRATIVE BUSINESS

a. Commission Announcements

- **Assignment of an Appeal of the Chief's Suspension in Disciplinary Case No. KMO D08-013 to an individual Commissioner for the taking of evidence on a date to be determined by the Commissioner**
(Resolution No. 4-10, Assigned to Commissioner Yvonne Lee)

b. Scheduling of items identified for consideration at future Commission meetings

Commissioner DeJesus would like a status report on hiring of director/policy analyst for the Commission office. Commissioner DeJesus would also like a hearing on implementation of laws in regards to prostitution as per press conference scheduled for tomorrow.

Director Hicks also stated that next week the OCC will present a preliminary budget to the Commission.

PUBLIC COMMENT

None

DISCUSSION AND POSSIBLE ACTION TO ADOPT A RESOLUTION URGING THE BOARD OF SUPERVISORS TO ISSUE A RESOLUTION URGING THE CALIFORNIA ATTORNEY GENERAL TO APPEAL THE RULING BY THE SECOND DISTRICT COURT OF APPEAL INVALIDATING SECTION 12370 OF THE CALIFORNIA PENAL CODE, WHICH HAD BANNED POSSESSION OF BODY ARMOR BY PERSONS CONVICTED OF VIOLENT FELONIES

Commissioner Onek suggested amending the resolution to all felons be banned from possession of body armor instead of just violent felons.

Chief Gascón stated that the Attorney General will in fact go forward with the appeal.

Motion by Commissioner Mazzucco to approve resolution as amended. Second by Commissioner Lee. Approved 7-0.

RESOLUTION NO. 5-10

RESOLUTION REQUESTING THE BOARD OF SUPERVISORS (1) TO URGE THE CALIFORNIA SUPREME COURT TO ACCEPT REVIEW OF THE STATE LAW PROHIBITION AGAINST VIOLENT FELONS WEARING BODY ARMOR AND (2) TO URGE STATE LAWMAKERS TO DO ALL THINGS NECESSARY TO ENSURE THAT VIOLENT FELONS ARE PROHIBITED FROM WEARING BODY ARMOR

WHEREAS, in 1994, in San Francisco, a gunman protected by full body armor was able to fend off 120 armed police officers for 32 minutes and in the process killed San Francisco Police Officer James Guelff; and

WHEREAS, three years later, in North Hollywood, two bank robbers in body armor engaged in a one-hour gun battle with 350 police officers that resulted in two deaths and injuries to more than ten others; and

WHEREAS, as a result of these tragic events, the state legislature enacted the “James Guelff Body Armor Act of 1998,” Penal Code Section 12370 (the Act), in honor of slain San Francisco Police Officer James Guelff; and

WHEREAS, The Act outlaws the possession of body armor by a person previously convicted of a violent felony; and

WHEREAS, the legislative intent behind the Act was to stop the threat of violent felons who are able to thwart police officers by wearing body armor, potentially injuring or killing innocent officers or civilians in the process; and

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WHEREAS, in a recently decided case entitled *People v. Saleem*, No. B204646 (2009 WL 4852440 (Cal.App. 2 Dist.)), the California Court of Appeal determined that the Act’s definition of “body armor” was unconstitutionally void for vagueness, based on the Court’s conclusion that an ordinary person would not know what type of body armor was prohibited by the law, and on that basis reversed the conviction of the defendant, who was on parole for voluntary manslaughter and wearing a flak jacket vest; and

WHEREAS, the decision was decided by a two to one vote, over a vigorous dissent that rejected that majority’s conclusion that a defendant would need to be aware of the technicalities of what constituted body armor and therefore concluded that: “If a violent felon chooses to possess an item that appears to be body armor, the People prove that the garment actually is body armor, i.e., withstands penetration by the relevant test ammunition, then there is no reason why the conviction should not stand;” and

WHEREAS, the Attorney General has announced that his office will seek review of the appellate court decision by the California Supreme Court; now, therefore, be it

RESOLVED, that the San Francisco Police Commission requests the San Francisco Board of Supervisors to urge the California Supreme Court to accept review of the case of *People v. Saleem*; and, be it

FURTHER RESOLVED, that the San Francisco Police Commission requests the San Francisco Board of Supervisors to urge state lawmakers to do all things necessary to ensure that violent felons are prohibited from wearing body armor.

AYES: Commissioners Marshall, Mazzucco, DeJesus, Lee, Hammer, Onek, Pan

PUBLIC COMMENT

None

REVIEW AND DISCUSSION OF THE POLICE COMMISSION’S RULES GOVERNING TRIALS OF DISCIPLINARY CASES

Commissioner Hammer asked Deputy City Attorney Blits in regards to procedures followed by the Fire Commission. Ms. Blits stated that the draft rules will be forwarded to the Commission as soon as it is finished.

Commissioner DeJesus stated that if there is going to be a Charter amendment, it should be heard by the full Commission and transparent to the public.

Commissioner Hammer stated that the Fire Commission hears the charges within 60 days after it is filed and resolved after 120 days.

Commissioner Marshall would like a copy of the draft to all Commissioners for their input and comments and return drafts to Ms. Blits.

Commissioner Onek would like short time line for comments to be returned to Ms. Blits and that it be place back on the calendar in two weeks or the first meeting in February.

Ms. Blits stated that she hopes to get the draft out to the Commission by Friday or Monday.

PUBLIC COMMENT

None

ADJOURNMENT

Motion by Commissioner Onek to adjourn the meeting in memory of the earthquake victims in Haiti. Second by Commissioner Pan. Approved 7-0.

Thereafter, the meeting was adjourned at 8:24 p.m. in memory of the earthquake victims in Haiti.

Lieutenant Joseph Reilly
Secretary
San Francisco Police Commission

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