

JUNE 23, 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 5:42 p.m., in a Regular Meeting.

PRESENT: Commissioners Marshall, Mazzucco, DeJesus, Chan, Hammer

APPROVAL OF MINUTES

- **Regular Meeting of March 10, 2010**

Motion by Commissioner Mazzucco, second by Commissioner Hammer.
Approved 5-0.

PUBLIC COMMENT

Ace Washington spoke in regards to the African American Police Community Board and concerns about being harassed.

Diana Martinez spoke in regards to her fiancé being deported due to a traffic violation and asked the Commission to look into this matter.

Francisco spoke in support of S-Comm resolution and talked about sanctuary ordinances.

Clyde spoke in regards to the crime lab.

Barbara Groth discussed concerns.

REPORTS TO THE COMMISSION

a. Chief's Report

- **Review of recent activities**
- **Status report regarding DNA Backlog**
- **Status report regarding development of Brady Policy**
- **Presentation of Purple Heart Certificate to the family of Officer Waldemar Jentsch who died in the line of duty on December 25, 1937**
- **Report on best practices for forensic analysis in other jurisdictions of sexual assault evidence**

Lt. Reilly discussed the presentation of Purple Heart Certificate to the family of Officer Waldemar Jentsch, #1241, who died in the line of duty on December 25, 1937. Chief Gascón and Commissioner Marshall then presented the Purple Heart Award to the family of Officer Jentsch.

Chief Gascón gave a brief crime statistical report.

Commander McEachern presented the status report regarding the DNA backlog and the report on best practices for forensic analysis in other jurisdictions of sexual assault evidence.

Chief Tabak presented the status report regarding development of the Brady Policy.

b. OCC Director's Report

- **Review of recent activities**

Director Hicks gave a brief report regarding the OCC's complaint statistics.

c. Commission Report

- **Commission President's Report**
- **Commissioners' Reports**

Status Report
- Patrol Special Study

Commissioner Marshall has no report.

Commissioner Mazzucco reported regarding a recent officer-involved shooting.

Commissioner Mazzucco also gave a brief update in regards to the Patrol Special Study. Lt. Reilly stated that he will confirm a date with the Controller's Office as to status of the study.

PUBLIC COMMENT

Clyde spoke in regards to the crime lab.

DISCUSSION AND POSSIBLE ACTION TO ADOPT REVISED DEPARTMENT GENERAL ORDER 3.01, "WRITTEN COMMUNICATION SYSTEM"

Sergeant Paget Mitchell presented DGO 3.01, "Written Communication System."

Motion by Commissioner Hammer, second by Commissioner DeJesus. Approved 5-0.

RESOLUTION NO. 72-10

APPROVAL TO ADOPT REVISED DEPARTMENT GENERAL ORDER 3.01, "WRITTEN COMMUNICATION SYSTEM"

RESOLVED, that the Police Commission hereby adopts revised Department General Order 3.01, "Written Communication System," as amended (draft dated 6/4/10).

AYES: Commissioners Marshall, Mazzucco, DeJesus, Hammer, Chan

PUBLIC COMMENT

None

DISCUSSION AND POSSIBLE ACTION TO ADOPT A RESOLUTION REQUIRING THE SAN FRANCISCO POLICE DEPARTMENT TO AUDIT THE IMPACT OF "S-COMM" OR "SECURE COMMUNITIES"

Commissioner Chan introduced and explained the resolution.

Gordon Brussow, ID Manager, explained the process within the SFPD.

PUBLIC COMMENT

Francisco Garte, Immigration Attorney, spoke in favor of the resolution.

Motion by Commissioner Chan, second by Commissioner Hammer. Approved 5-0.

RESOLUTION NO. 73-10

ADOPTION OF RESOLUTION REQUIRING THE SAN FRANCISCO POLICE DEPARTMENT TO AUDIT THE IMPACT OF "S-COMM" OR "SECURE COMMUNITIES"

RESOLVED, that the Police Commission hereby adopts the following resolution requiring the San Francisco Police Department to audit the impact of "S-Comm" or "Secure Communities," as stated below:

**Resolution Requiring the San Francisco Police Department
to Audit the Impact of "SComm"
or "Secure Communities**

WHEREAS, San Francisco is a city which has historically welcomed its immigrant population, which comprises more than 37% of the city's residents; and,

WHEREAS, Arizona enacted SB1070, which promotes racial profiling by encouraging local law enforcement to inquire about an individual's immigration status if they are "suspected" of being undocumented; and,

WHEREAS, in the wake of SB 1070, Immigration and Custom Enforcement (ICE) imposed a program known as "Secure Communities" or "S-Comm" on San Francisco on June 8, 2010, which will investigate the immigration status of anyone, who is arrested and fingerprinted for any alleged crime, no matter the severity, by automatically crosschecking the individual's fingerprints, birth date, and other personal information against immigration databases prior to the individual receiving due process regarding any allegations; and,

WHEREAS, this new program will result in ICE obtaining custody of and effecting the deportation of individuals who are suspected of being undocumented, regardless of whether the individual committed the alleged offense or committed a first-time misdemeanor offense; and,

WHEREAS, a recent study by the U.C. Berkeley School of Law's Warren Institute showed that introduction of immigration screening to jails led to a rise in arrests of Latinos for petty offenses;¹

WHEREAS, the Sheriff of San Francisco, the San Francisco Board of Supervisors, numerous civil rights organizations, and members of the public, have voiced serious concerns about whether the "Secure Communities" program, like Arizona SB 1070, will compromise the safety of local communities by eroding the hard-earned trust built over the past decades between immigrant community members and local law enforcement by making individuals fearful of reporting crimes and cooperating with the police in solving crimes; and,

WHEREAS, although the stated goal of the "Secure-Communities" is to deport noncitizens who have been convicted of level 1 crimes, which include major drug offenses and violent crimes, only 9% of individuals who have been targeted by S-Comm nationwide have been charged with level 1 serious offenses in contrast to the 86% of the individuals who have been targeted by S-Comm nationwide who have been charged with level 2 and level 3 offenses, which are non-violent, lesser offenses, and misdemeanors;² and,

WHEREAS, under the current "Secure Communities" program nationwide, approximately 5% of United States Citizens have been mistakenly identified as undocumented, leading to illegal ICE detainers;³ and,

¹ See Trevor Gardner II and Aarti Kohli, "The C.A.P. Effect: Racial Profiling in the ICE Criminal Alien Program," The Chief Justice Earl Warren Institute on Race, Ethnicity & Diversity, Berkeley Law, University of California, Sept. 2009, available at <http://www.law.berkeley.edu/6218.htm>.

² See "IDENT/IAFIS Interoperability Statistics, October 27, 2008 - October 31, 2009," Immigration and Customs Enforcement, Nov. 10, 2009.

³ See *id*

WHEREAS, the cover letter to the California MOA between the California Department of Justice (DOJ) and ICE, dated January 23, 2009, expressly states that counties and localities, prior to implementing the “Secure Communities” program, must sign a “Statement of Intent” (SOI) “. . . to ensure those agencies understand and adhere to the principles set forth in the MOA and a set of Standard Operating Procedures,” and the MOA states that “either party, upon 30 days written notice to the other party, may terminate the MOA at any time”; and,

WHEREAS, San Francisco has not been given an opportunity to sign or to refuse to sign a SOI in accordance with the cover letter of the Agreement; and,

WHEREAS, San Francisco already has firm policies in place to deal with non-citizens who have been convicted for serious crimes; and,

WHEREAS, the “Secure Communities” was adopted at the federal level without any known study as to its impact on public safety, police practices, and racial profiling,

WHEREAS, in consideration of the harms to public safety and likelihood of racial profiling that would accompany implementation of the S-Comm program, the City Council for Washington D.C. unanimously introduced the “Secure Communities Act of 2010”, a resolution to prohibit the District of Columbia from transmitting arrest data of any individual with ICE;

WHEREAS, it is important to have systems in place that monitor the effects of SComm on police practices and the use of jail facilities for immigration holds. It is in the interest of local law enforcement agencies and their communities to track the potential diversion of scarce criminal law enforcement resources to this civil immigration enforcement program.⁴ In addition, because S-Comm may discourage crime victims from seeking assistance, local law enforcement agencies should monitor changes in 911 and domestic violence calls, disaggregated by location.

THEREFORE BE IT RESOLVED, that the San Francisco Police Commission will closely monitor the implementation and effects of the program known as S-Comm or “Secure Communities”; and, be it

FURTHER RESOLVED, that on July 14, 2010, and bimonthly thereafter on the 2nd Wednesday of the month, the Chief of Police or a designee will provide a report to the San Francisco Police Commission regarding: (1) the number of individuals who were reported by ICE to SFPD as “matches,” according to the S-Comm program;⁵ (2) the aggregate charges for individuals who were reported as “matches” under the S-Comm program, including a breakdown regarding the number of individuals who were charged with level 1, level 2, and 3 offenses; (3) aggregate data regarding the race and sex of any individuals, along with

⁴ See “Editorial: Immigrants, Criminalized,” NY Times, Nov. 27, 2009, available at http://www.nytimes.com/2009/11/27/opinion/27fri2.html?_r=1&pagewanted=print (“This hurts public safety. If you want to know the consequences of turning the police and jails into instruments of deportation, ask the law-enforcement officials who have complained about programs that muddy the line between local crime-fighting and federal enforcement, and make immigrants fear and shun the police.”).

⁵ A “match” is an interoperability hit following a fingerprint query including, but not limited to, any instance in which a SCOMM query matches an individual to a record in any DHS database.

the number of juveniles and number of adults, who were reported by the S-Comm program to SFPD to be a “match;” (4) the number of ICE detainers or holds that were issued as a result of the S-Comm program, including a breakdown between the number of individuals who were charged with level 1, 2, and 3 offenses; (5) the number of individuals who were released to ICE as a result of ICE detainers or holds issued pursuant to the S-Comm program, including the breakdown between level 1, 2, and 3 offenses; (6) aggregate data regarding the race, sex, primary language, and age of any individuals, who were the subject of ICE holds or detainer pursuant to the S-Comm program; (7) aggregate data regarding the race, sex, primary language, and age of any individuals, who were released to ICE as a result of ICE detainers or holds issued pursuant to the S-Comm program; (8) the length of time individuals who were the subject of ICE detainers or holds pursuant to the S-Comm program were held pending transfer into custody by ICE; and (9) if administratively feasible, aggregate data regarding the zip code where arrested and the language of any individuals who are reported as “matches” under the S-Comm program. Any information listed above that is not maintained by SFPD shall be requested from the Sheriff’s Department by SFPD.

FURTHER RESOLVED, that the San Francisco Police Commission will undertake a review of the possible risks to public safety and community policing under the ICE program known as “Secure Communities” as well as changes to San Francisco Police Department General Orders and practices that could minimize those risks.

AYES: Commissioners Marshall, Mazzucco, DeJesus, Hammer, Chan

DISCUSSION AND POSSIBLE ACTION TO CONVENE A PUBLIC HEARING REGARDING THE DEPARTMENT’S RESPONSE TO MEDICAL MARIJUANA (COMPASSIONATE USE ACT OF 1996)

Commissioner DeJesus presented this item and explained why she wanted this item on the agenda. Commissioner DeJesus would like this on the agenda in two weeks.

Commander Loftus addressed the Commission in regards to marijuana issues and stated that the Department is working with the Department of Public Health and asked that this item be agendize after July 13th.

Commissioner DeJesus suggested August 4th for the agenda.

PUBLIC COMMENT

None

(The Commission took a short break at 7:52 p.m.)

ELECTION OF COMMISSION OFFICERS

Motion by Commissioner Mazzucco, second by Commissioner Hammer to continue this item for one week to June 30th. Approved 4-1.

AYES: Commissioners Chan, Hammer, Marshall, Mazzucco,

NAYS: Commissioner DeJesus

ROUTINE ADMINISTRATIVE BUSINESS

a. Commissioner Announcements

Lieutenant Reilly announced that the Commission not meet in the Park District at the Grattan Elementary School on June 30th because the school is under construction. The Commission will meet at City Hall on the 30th.

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

Commissioner Hammer would like a running update in regards to the crime lab under the Chief's Report.

Commissioner DeJesus talked about item regarding civil warrants and a closed session item in regards to Copley and releasing of information to the press and would like it calendared as soon as possible.

PUBLIC COMMENT

None

PUBLIC COMMENT ALL MATTERS PERTAINING TO CLOSED SESSION

None

VOTE ON WHETHER TO HOLD CLOSED SESSION

Motion by Commissioner Mazzucco, second by Commissioner Hammer. Approved 5-0.

CLOSED SESSION (8:39 p.m. to 9:40 p.m.)

a. PERSONNEL EXCEPTION: Discussion and possible action to affirm or reverse rulings on dispositive motions made by the Hearing Officer in Case C04-137 (Resolution No. 74-10)

(Present: Commissioners Marshall, Mazzucco, DeJesus, Chan, Hammer, Lt. Reilly, Deputy City Attorney Blits, Chief Gascón, Attorney Worsham, Attorney Mazzola, and member involved)

b. PERSONNEL EXCEPTION: Status and calendaring of pending disciplinary cases

Continued to next week.

c. CONFERENCE WITH LEGAL COUNSEL: Anticipated Litigation. City as Defendant; Number of Potential Cases: One

Continued to next week.

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

Motion by Commissioner Mazzucco, second by Commissioner Hammer for non disclosure. Approved 5-0.

ADJOURNMENT

Motion by Commissioner Hammer, second by Commissioner Mazzucco to adjourn the meeting in honor of Officer Jentsch. Approved 5-0.

Thereafter, the meeting was adjourned at 9:42 p.m.

Lieutenant Joseph Reilly
Secretary
San Francisco Police Commission

/rct