

Lee Brand
Councilmember
District 6

RESOLUTION FOR "INFILL DEVELOPMENT ACT"

November 1, 2012

To: Fresno City Council Members
From: Councilman Lee Brand



Agenda Item

Recommend that the Fresno City Council adopt Resolution No. _____, better known as the "Infill Development Act," to establish City of Fresno review/adoption of infill development policies and the creation of Infill Development Finance Task Force and Ad Hoc Council Subcommittee.

Background

About six months ago, the Council adopted Plan A modified as the preferred model for the 2035 General Plan. This plan stresses revitalization and densification of established transit corridors within our existing sphere of influence. This is an historic and ambitious plan that does not provide for growth outside of our existing sphere of influence. A total of 34,500 residential units or 45% of the total of 76,000 residential units are designated for infill and downtown. To put some perspective on how ambitious this plan is, over the past 10 years less than 5% of residential units were developed downtown or in infill areas.

We cannot afford to continue historic growth patterns like we have for the past 50 years. The financial condition of the City is directly related to planning and growth policies. The EPS software modeling using metric cost analysis clearly showed a causal relationship between growth and land use policies and the cost to operate municipal government.

This Act presents a thorough examination of infill development policies and practices with specific recommendation to become future policies that will guide our City over the coming years. The termination of the Redevelopment Agency removes most of the financial incentives for infill development. Infill development will not work without a business model that provides the financial incentives for developers to build infill projects but, more importantly, the incentives to attract consumers to infill projects.

Recommended Action

Adopting Resolution No. _____ will initiate infill development policies in the Infill Development Act; establish an Infill Development Finance Task Force and establish an

Ad Hoc Council Subcommittee. Policies in the Act will be integrated into the Development Code, the 2035 General Plan Master Environmental Impact Report and the 2035 General Plan. Recommendations that are adopted by Council as policies from the Infill Development Finance Task Force and the Ad Hoc Council Subcommittee will also be integrated into the Development Code, the 2035 General Plan Master Environmental Impact Report and the 2035 General Plan.

RESOLUTION NO. _____

RESOLUTION OF COUNCIL OF THE CITY OF FRESNO TO ESTABLISH THE INFILL DEVELOPMENT ACT TO INSTITUTE INFILL DEVELOPMENT POLICIES

WHEREAS, the goals of the 2035 General Plan update include a total of 34,500 residential units or 45% of the total of 76,000 residential units are designated for infill and downtown; and

WHEREAS, the historic record for successful infill development in our City has been very low and less than 5% of residential units developed in our City in the previous decade were infill; and

WHEREAS, the implementation of Preferred Plan A modified for the 2035 General Plan update will present enormous challenges to the City; and

WHEREAS, the termination of the Redevelopment Agency will remove many financial incentives for infill development; and

WHEREAS, successful implementation of the 2035 General Plan infill goals will require development of new infill policies and a workable business model to provide financial incentives; and

WHEREAS, an Infill Development Finance Task Force comprised of infill development professionals will be necessary to review and evaluate financing and financial incentives for successful infill projects and make findings and recommendations to the Council for adoption of new infill policies; and

WHEREAS, an Ad Hoc Council Subcommittee will be necessary to review and evaluate development related fees; the plan check and permitting process; the legal review process for development related issues; and CFD financing.

NOW, THEREFORE, BE IT RESOLVED, BY THE COUNCIL OF THE CITY OF FRESNO, as follows:

SECTION 1. The attached Exhibit 'A' Infill Development Act is hereby adopted

SECTION 2. This resolution shall become effective and in full force upon its final passage.

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STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2012.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2012

Mayor Approval/No Return: _____, 2012

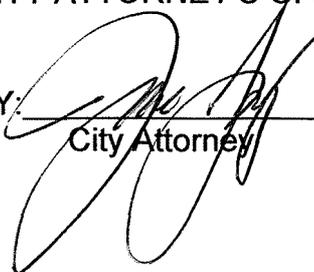
Mayor Veto: _____, 2012

Council Override Vote: _____, 2012

Yvonne Spence
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY:  _____
City Attorney

DATE: _____

CITY OF FRESNO
INFILL DEVELOPMENT ACT



OCTOBER 26, 2012

The following policies are enacted to address the crucial issue of Infill Development in our City and provide policy guidelines to successfully implement Infill Development.

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FOREWORD: FINDING SOLUTIONS FOR INFILL DEVELOPMENT

On April 19, 2012, the Fresno City Council voted on the preferred growth model for the 2035 General Plan. The Council adopted a modified Plan A, also referred to as the Boulevard Plan. This plan stresses revitalization and densification of established transit corridors within our existing sphere of influence. The highest levels of densities are achieved in our urban core with decreasing densities the further the development moves to the perimeters of our existing sphere of influence.

This is an historic and ambitious plan that does not provide for growth outside of the existing sphere of influence. A total of 34,500 residential units or 45% of the total 76,000 residential units are designated for infill and downtown. To put some perspective on how ambitious this plan is, over the past 10 years less than 5% of residential units were developed downtown or in infill areas.

The successful implementation of the preferred Plan A will present enormous challenges to the City. For example, the densification and development of the Highway 41 corridor goes back to the 1984 General Plan. Now, over 28 years later there has been almost no high-density residential development along the Highway 41 corridor. There are major barriers to successful infill development in our City that are discussed, in detail, in this Act. With the demise of the Redevelopment Agency, there is currently no workable business model that will provide the financial incentives necessary to attract developers to infill areas.

Successful infill developments in other cities such as Portland, Seattle, or San Diego are not analogous to our unique challenges for a variety of reasons including historic development patterns, greater central government involvement and support, a different cultural perspective on density and different housing options. We can borrow some of their best practices but, in the end, we must find those solutions that recognize our unique urban problem that work in our market not another market with similar characteristics.

Topography represents one of the most significant obstacles to infill development. We do not have any physical barriers such as oceans or mountains that constrain our growth. The Central Valley has endless flat land that stretches over the horizon. Thousands of acres of grape vines, fig orchards, pasture land and other rural land uses have been plowed under to accommodate an expanding urban population of the Central Valley. These issues have been thoroughly studied and evaluated by Shawn Kantor, PhD from UC Merced, *The Financial and Institutional Challenges to Smart Growth Implementation: A Focus on California's Central Valley* and other scholars.

Dr. Kantor has laid out the challenges of achieving smart growth, and by extension, infill development, in the Central Valley. According to Dr. Kantor, "One of the greatest challenges to achieving smart growth is simply overcoming the inertia borne by over 60 years of automobile-centric living. The majority of Californians and the super majority of Central Valley residents live

in single-family detached homes. The Central Valley has clearly developed, and continues to develop, in a manner that has taken advantage of its relatively abundant and inexpensive land.”

We must develop a specific, workable infill development model for our City that incorporates best practices from other jurisdictions (city, county and state) across the United States and adopts and/or modifies those policies and practices to fit our unique urban challenges. The path has been mapped going back to the Urban Land Institute (ULI) report, “Downtown Fresno, California” completed in 1999. Some of the specific recommendations in the ULI report include: 1) developing a clear, compelling and overarching vision linking Fresno’s four main downtown modes; 2) redesigning the Fulton Mall by restoring the street grid; 3) introducing more housing choices; and 4) updating codes and regulations. These objectives and others are part of the ongoing planning being completed on the “Downtown Neighborhood Community Plan” and the “Fulton Corridor Specific Plan” that will be included in the 2035 General Plan update next year. We must also expand these planning efforts citywide on other neglected, older neighborhoods.

The Act will build upon the existing foundation of strategic infill development planning efforts and present a thorough examination of infill development issues, policies and practices with specific recommendations to become policies that will guide our City over the coming years. Policies developed from this Act will be integrated with the development code, 2035 General Plan update and Master Environmental Impact Report (MEIR) for downtown planning and citywide infill planning policies.

It will discuss and evaluate subjective, qualitative attributes of infill development. The real measure of a successful infill model will be an objective, quantitative analysis defined most accurately by market success. Infill development will not work without a business model that provides the financial incentives for developers to build infill projects but, more importantly, the incentives to attract consumers (renters, home buyers, and businesses) to infill projects. The overall goal of this thorough examination will be development of a workable business model.

An Infill Development Finance Task Force composed of statewide industry professionals is included in this Act. The team of infill development professionals shall be assembled to further examine and refine proposed financing options and financial incentives outlined in this Act as well as a thorough examination of any other potential financial options available for infill developments. Based on the schedule of key City staff and the timing of the 2035 General Plan update, it is anticipated that this task force will be formed in January, 2013. It is anticipated that the Task Force will present their findings and recommendation on financing and incentives to the Council, to coincide with the Council’s review and approval of the draft 2035 General Plan update. Any policy recommendations that are approved and adopted by the Council will be integrated into the Development Code, the 2035 General Plan Master Environmental Impact report, and the 2035 General Plan.

A Council Ad Hoc Subcommittee composed of three Council members shall be established upon Council's adoption of this Act to focus on the following elements in this Act: 1) development related fees; 2) plan check and permitting process; 3) legal review process for planning and development related projects; and 4) review, examine and make recommendations on CFD financing for future development projects. Any policy recommendations that are approved and adopted by the Council will be integrated into the Development Code, the 2035 General Plan Master Environmental Impact report, and the 2035 General Plan.

Current housing and development policies have allowed a variety of housing to be developed in the City of poor design and quality. This deficiency fails to create a community that is competitive with other communities of our size that will attract young professionals that have abandoned Fresno as an alternative to other large metropolitan areas. Further, housing that is poorly designed and constructed ultimately creates neighborhoods that demand more in community services, deteriorate surrounding areas of the City and have a disproportionate high demand on public safety and social welfare services.

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ARTICLE I DEFINITIONS

Adaptive Reuse

Adaptive Reuse is defined as the process of adapting old structures for new purposes. It will encourage more investment and reinvestment of underutilized buildings and lots in downtown areas and also encourage more efficient use of existing infrastructure resources.

Brownfield Development

Refers to previously developed land or derelict, encompassing a range of sites in terms of size and location.

Community Facility District (CFD)

Community Facility Districts established by local government agencies as a means of obtaining funding for services in newly developed areas. Within these clearly defined areas a special property tax on real estate is imposed on real estate located within the district for the purpose of financing public improvements. Improvements typically include streets, water, sewage, drainage, electricity, schools, parks, fire and police protection. The taxes associated with properties located in these districts are in addition to other established local government taxes and assessments.

City

“City” means the City of Fresno, a municipal corporation.

Conduit Loan

A conduit loan is any form of loan that has been securitized and resold as an asset.

Exclusionary Zoning

Exclusionary zoning will exclude low cost, affordable housing requirements on new residential developments from a municipality through zoning code.

Gentrification

The process of renewal and rebuilding in older neighborhoods accompanying the influx of middle-class or more affluent people into deteriorating areas that will often displace poorer residents.

Greenfield Development

In construction and development, Greenfield Development refers to land that has never been used, where there is no need to demolish or rebuild any existing structures.

Greyfield Development

Greyfield development is defined as the development of older, functionally obsolescent retail areas including strip malls and old institutions that are converted to complete communities.

Impact Fees

Fees adopted by any regulatory agency that requires new developments to pay its proportional share of costs associated with providing necessary public infrastructure.

Inclusionary Zoning

Inclusionary zoning are zoning ordinances that require new residential development to set aside a certain percentage of housing units for low to moderate income households and offer developers financial incentives in return.

Infill Development

Infill Development involves building and developing in vacant areas in city centers or urban settings. This improves the urban core of a city and leaves rural and open spaces undeveloped.

Infrastructure

Infrastructure is defined as facilities that support the daily life and growth of the City, including roads, water and sewer lines, public buildings, parks and airport facilities.

Land Value Tax

A Land Value Tax taxes unimproved property using a "Land Value Tax" that taxes the land and not the improvements. The Land Value Tax incentivizes property improvements and will discourage land speculation.

Leap Frog Development

Leap Frog Development is the development of lands in a manner requiring the extension of public facilities and services from their existing terminal point through intervening undeveloped rural areas that are scheduled for development at a future date pursuant to the plans of the local governing body having jurisdiction for the area.

Mello-Roos

The Mello-Roos Act of 1982 allows any county, city, special district, school district or joint powers authority to establish a Mello-Roos Community Facilities District (CFD) that allows for financing of public improvements and services. These CFD special taxes must be approved by a two-thirds vote of registered voters within the district (unless there are fewer than 12 registered voters, in which case the vote is by landowners), and are secured by a special tax on the real property within the district. These types of obligations, although repaid through additional special taxes levied on a discrete group of taxpayers, constitute overlapping indebtedness of the City and have an impact on the overall level of debt affordability.

Property Tax

A general ad valorem tax levied on both real and personal property according to the property's assessed valuation and the tax rate.

Public Facilities

Public facilities can be any facility, including, but not limited to, property, recreation areas, fire stations, police stations, water and sewer treatment plants or city administrative buildings.

Refill Development

Refill development is defined as growth that includes all development that may occur within the boundaries of already developed urbanized areas of infill, redevelopment, Greyfield and Brownfield.

Tax Shift or Swap

A tax swap involves a trade or swap of one type of tax for another tax. Taxes considered for swapping primarily would include income personal income taxes, sales taxes, and property taxes.

Special Assessment/Special Tax

Funds generated through the formation of an assessment district or special tax and the levy of an additional charge reflecting the special benefit to individual properties, typically used to provide public improvements such as street construction and flood control.

Urban Sprawl

Urban Sprawl is defined as the increased development of land in surrounding suburban and rural areas outside of their respective urban centers. This is usually an expansion of low density residential development.

**ARTICLE II
PURPOSE OF ACT**

The purpose of this Act is to build upon our existing policy structure and develop the framework for citywide infill development policies. Policies included and developed from this Act will be integrated with the development code, 2035 General Plan update and MEIR for downtown planning and citywide infill planning policies. Creation and implementation of detailed citywide infill policies will serve the public interest by optimizing the efficiency of the utilization of public services, infrastructure, and facilities as a means to achieve balanced growth that is accepted by the market. Developing an effective infill policy will provide for efficient land use and cost-effective delivery of City services that does not burden the City in the medium and long term with poor quality housing. This Act recognizes the inherent design and cost challenges to developing infill properties and attempts to find creative solutions and incentives to implement a successful citywide program.

Objectives of Act:

1. To encourage efficient use of land and public services and making better use of our urban land inventory
2. To improve cost-efficient delivery of City services
3. To stimulate investment in established neighborhoods of our City
4. To define comprehensive City policies for infill development that the City commits to implementing if projects meet specified qualitative development criteria.
5. To provide the economic incentives to encourage quality infill development
6. To provide refill developers with the flexibility to achieve high quality design and develop infill projects that strengthen existing neighborhoods.
7. To protect and preserve agricultural and rural land surrounding our City by reducing the pressure to convert agricultural land to urban uses.
8. To improve our quality of life with lower consumption of energy and improving our air quality.
9. To strengthen real estate markets and property values through the renewal of older neighborhoods.
10. To improve housing design and quality throughout our entire City.

Accomplishing the above stated objectives will promote a more balanced growth in our City, improve older neighborhoods, and create a City services delivery model that is more cost-efficient.

**ARTICLE III
SCOPE OF ACT**

Infill or refill development is not confined to our urban core and covers the boundaries of already developed urbanized areas. There are vacant land parcels, underused buildings and isolated properties in all areas of the City. The most impacted urban areas (i.e. downtown) will receive more attention and infill areas will be categorized by the level of need (discussed in more detail later in this document). The policies articulated in this Act shall apply on a citywide basis.

**ARTICLE IV
INFILL DEVELOPMENT EVALUATION CRITERIA**

Effective infill development will require prioritization of infill parcels to better determine suitability for residential/commercial development and achieving General Plan objectives. Criteria that will assist in an objective analysis will include the following:

1. The current real estate market conditions for both residential and commercial developments;
2. Current financing alternatives and options for infill projects;
3. The capacity and condition of infrastructure;
4. Area public and private support services and amenities;
5. Character and make-up of the neighborhood including income levels, percentage of home owners and renters, and other relevant demographic data;
6. Configuration of parcel (s);
7. Size of parcel (s); and
8. Evaluation of existing residential and commercial structures including size, condition, quality, and value.
9. Historic building survey
10. Strategic location of the parcels relative to catalyzing private investment

**ARTICLE V
INFILL BARRIERS**

Infill development offers many challenges. Land configuration, regulatory conditions, lack of political will, and construction costs for higher density make infill development very difficult, risky, and expensive. Developing in Greenfield areas is more efficient and inherently less risky. Successful infill development must recognize significant barriers and find solutions to overcome those obstacles. Infill barriers include the following:

Economic Barriers

Land acquisition costs are usually higher for infill sites. In our current financial climate it is difficult to finance new developments. Infill developments are more problematic because of the inherent risk in these ventures. Developers will find the easiest site to develop with the fewest threats to shorten development time and minimize risks. The infill development process in older neighborhoods is many times less economically competitive than in developed areas. Consequently, capital lending markets consider infill projects more risky with higher equity demands and less competitive loan rates. It is also more difficult to attract investors for infill projects.

Infrastructure Barriers

Infill projects are in older neighborhoods where existing infrastructure is old and lacking in capacity. Prime locations for infill projects suffer from weak demand for housing and insufficient, aging public utilities. Changing land uses (i.e. commercial to residential) will require significant increase in infrastructure capacity. There can be an enormous cost to upgrading infrastructure to accommodate infill projects. The problem is exacerbated in smaller, incremental infill projects struggling to achieve economies of scale.

Regulatory and Policy Barriers

Regulatory constraints will work in opposition to good design and create obstacles against innovation, A slow review process, inflexible building codes, lack of political will to approve projects that meet all development criteria but opposed by neighbors and zoning restrictions stall infill projects. Historical City zoning codes encourage low density, single use automobile dependent use. The time and complexity of the site plan review and permitting process are always more difficult in infill areas. There is no clearly defined capital investment policy to upgrade public facilities and infrastructure in infill areas.

Land Assembly and Cost of Land Barriers

Physical site constraints usually limit the feasibility of developing infill sites. Assembling sufficient size land in parcels large enough to attract developers and create cost efficiencies is very difficult in infill developments. Assembling land in infill areas is expensive and often requires developers to deal with multiple property owners who may not want to sell their parcels. Very few cities maintain a vacant land inventory or make serious efforts to help assemble land to attract potential infill developers. Landfill assembly can also present problems in newer growth areas such as West of Highway 99.

Neighborhood and Social Resistance Barriers

Most people are resistant to change and a natural fear of the unknown. As a result, infill development plans may encounter vociferous opposition based on unfounded fears. Neighbors are concerned about the safety, health and well being of residents. Our consumer-orientated society is driven to “newer is better” philosophy. Building high-density residential development near existing low-density single-family homes can create a “NIMBY” attitude. This will generate a fear of increased traffic and crime problems that will contribute to lower property values. Developers can be deterred by perceived public safety risks by potential homebuyers or renters without assurances of substantial public reinvestment in infill areas.

Tax Incentive Barriers

The statewide termination of Redevelopment Agencies has taken away a major tool in revitalizing our core urban areas. Tax increment funded Redevelopment project areas for years. Most tax incentives are created at the state and federal levels to encourage and incentivize infill development.

Under Performing Schools Barriers

Under performing schools in infill areas will make it difficult to attract young families. The major catalyst for development in our growth areas has been successful school districts like Clovis Unified and Central Unified. Fresno Unified has made more academic gains than any other large urban district in California in recent years, but there is still much room for improvement. The City must continue to partner with Fresno Unified to help turn around troubled neighborhoods as that will have a direct and positive impact on the neighborhood schools.

Under Performing Properties in Southeast and Southwest Fresno Barriers

The older neighborhoods in Southeast and Southwest Fresno have historically lagged behind the newer areas of Fresno resulting in lower market values as reflected in lower property tax revenues. Older areas also have higher service demand levels on City resources. Over time, an expanded, successful infill development policy will help lift market values, make more livable neighborhoods and reduce City service demand levels.

Topographic Barriers

The physical layout of the land will impact the real estate market and influence growth to Greenfield areas. In coastal areas, the ocean forms a natural border in one direction and mountains or hills form another natural barrier. Limited land area will determine future growth and directly impact infill development. The flat expanses of agricultural land in the San Joaquin Valley have created cheap land prices that induce development on the urban fringe. Unrestrictive growth policies will discourage infill development.

Financing Barriers

Financing is one of the most serious obstacles in achieving our General Plan infill development goals. Since the economic meltdown in September 2008, both private and public sector financing has been dramatically changed. It is much more difficult to finance residential and commercial projects in any location. Lenders are requiring more investor equity (30% plus in most projects) and higher standards including pre-leasing at least 80% of the project. Commercial or residential projects proposed for inner City locations are even more difficult to finance. Lenders are more cautious of innovative developments such as mixed-use projects that have first story retail and upper story residential.

ARTICLE VI INFILL INCENTIVES

A review of the best practices of other cities reveals potential solutions to infill barriers through the careful and selective use of infill incentives. Infill incentives can cover a broad array of options that will directly or indirectly impact the cost of infill development and provide a competitive business model for developers. An infill business model must be created that is

directly aligned to market conditions (supply and demand) and provides a profit incentive for the developer, within reasonable risk standards, and competitive pricing for consumers (buyers or renters).

Financial Incentives

Finding workable financial incentives will be essential to developing a business model for infill development. The City should be the hub for coordinating and finding financing for infill projects. The City Interdepartmental Infill Development team discussed in Article VIII is responsible for assisting infill developers in obtaining attractive, below market level financing. Based on a review of best practices of many cities and counties across the country, there are a myriad of potential financial incentives that can encourage infill development. Because each municipal entity and each state have different laws and regulations, we must find those financial incentives that comply with local and state laws. In some cases, we may be best served by asking our state legislators to enact laws that can provide the right financial incentives to make infill development work in our City. Financial incentive policies adopted by other cities include:

1. Property Tax Exemption/Abatement

Property taxes are a significant expense in income properties operating costs. Offering exemptions over a given period of time can generate significant savings to a developer. Some cities offer a 10-year property tax exemption on mixed used developments. Extending 10-year property tax exemptions that include buyers of single-family homes, PUDs or Condos could provide a viable incentive to encourage living in infill areas. On commercial and multi-family projects the exemption would not start until the project is completed and does not serve to subsidize the construction costs. Development of this type of incentive policy would require a legislative act from the state since the County, Schools, State and Special Districts would be affected

2. Development Impact Fees

The City should offer abatement, discounting and deferral of development impact fees as an incentive for infill projects exceeding current policies. The City recently approved a new Master Fee Schedule for the Planning and Resource Management Department related fees, with an approximate fee discount of 50% for projects located in the inner City. A more precise, calibrated approach should be developed to incentivize infill project development and more closely align municipal costs to fees. A complete study and re-evaluation of all development related fees are necessary. This policy is discussed in greater detail in Article XI and XIII below.

3. Tax Increment Financing District

The termination of Redevelopment Agencies statewide has left a huge gap in funding blighted areas of our City. Some jurisdictions have created Tax Increment Financing Districts (TIF) where property tax revenue can be directed to fund infrastructure and other improvements. TIF works by temporarily freezing the tax base at the pre-

development level within a defined district. A Joint Powers agreement between taxing entities may provide the taxing authority to establish a TIF with a 10-20 year life.

There are two bills, AB 2259 and SB 1156 that would, in part, replace Redevelopment law in California. Of the two, SB 1156 is the most ambitious. It would allow cities and counties to separately create "Sustainable Communities Investment Authorities" with the powers of the old Redevelopment Agencies. The new agency could issue bonds, divert property taxes and acquire property (including eminent domain) if the projects promoted higher density, transit orientated, and greenhouse gas reducing development. The Governor has vetoed these bills and the City will have to followup to see if they return in a modified form.

4. Government Property Lease Tax (GPLET)

The state of Arizona established a Government Property Lease Excise Tax incentive program for developers and businesses that lease land parcels in designated infill incentive areas of the City. In this program, the City owns the land and offers a long-term (i.e. 25-50 years) ground lease. All property taxes are waived since the City owns the parcel and the developer/tenant (s) pay an excise tax. The excise tax is based on the type of land use and on a square foot basis. The City would negotiate a lease rate and excise tax that would be considerably less than paying the property taxes.

Each deal has unique terms based on such factors as the exact location of the parcel, the number of jobs created, the amount of improvements (must be at least 100% of land value) and the length of the lease. The excise tax is typically waived the first few years of the lease and incrementally increased over the term of the lease. There are legal issues with this incentive program including possessory user tax provisions. The establishment of GPLET would require state legislation to enact.

5. Land Value Tax

Some jurisdictions discourage holding of unimproved property using a "Land Value Tax" that taxes the land and not the improvements. The Land Value Tax incentivizes property improvements and will discourage land speculation. For various reasons, our City has pockets of areas where property owners are not motivated to sell their vacant land parcels. This will impede infill developers who acquire entitlements increasing the property value and who will be penalized by higher property taxes for "sitting" on the land for an extended period waiting for the right economy to sell their land at a profit. Philadelphia swapped (explained below in item 5) property tax rates on structures to land use taxes to discourage land speculation and encourage economic development. Pittsburgh restructured its property tax system in 1979-80 to one in which the land is taxed at more than 500% the tax rate applied to improvements to the land. Land Value Taxes could be implemented on a tiered basis that is discussed in detail in Article XIII.

6. Tax Shifts or Swaps

Several jurisdictions including Florida, Pennsylvania, Mississippi, Tennessee, Wyoming and Illinois, have debated legislation for tax swaps. A tax swap involves a trade or swap of one type of tax for another tax. Taxes considered for swapping primarily would include personal income taxes, sales taxes, and property taxes.

Each tax is structured differently relating to the beneficiaries. For example, state personal income tax is exclusively for the state. Property taxes, by comparison, are split between cities, counties, schools, and special districts. Only one percent of state sales tax goes to the City or County excepting special taxes such as Measure C.

Examples of tax shifts or swaps include the following: 1) In Illinois, a one percent increase in personal income tax was swapped for a corresponding reduction in property taxes; 2) Wyoming swapped sales tax, use tax and business personal property tax in exchange for a flat income tax; and 3) some jurisdictions using cap and trade to affect tax swaps.

Applying a tax swap concept would exchange reductions or abatement of property taxes for targeted infill areas in exchange for increase in other taxes to be determined. Because of the complex nature of each specific tax, tax swaps are inherently risky and may have unintended consequences. Each entity affected including the state, counties, cities, schools and special districts could experience net economic gains or losses depending upon the unique nature of the swap. These types of policies can be generated from the local or state levels and would require cooperation from taxing entities and enabling legislation. Serious review and evaluation of tax swaps should be undertaken.

7. HUD Section 108 loan program

The Section 108 Loan Guarantee Program is a source of financing allotted for the economic development, housing rehabilitation, public facilities rehab, construction or installation for the benefit of low- to moderate-income persons, or to aid in the prevention of slums.

Section 108 is the loan guarantee provision of the Community Development Block Grant (CDBG) program. Section 108 provides communities with a source of financing for economic development, housing rehabilitation, public facilities, and large-scale physical development projects. This makes it one of the most potent and important public investment tools that HUD offers to local governments. It allows them to transform a small portion of their CDBG funds into federally guaranteed loans large enough to pursue physical and economic revitalization projects that can renew entire neighborhoods. Current trends in Federal government cutbacks may limit future funding for such programs to get its budget in order.

8. HUD Section 223 (f) loan program

This federally insured loan program is designated for purchases of multifamily projects and for refinancing existing projects. FHA provides insurance on the loan allowing the lender to sell the security to fund the loan. Even though HUD/FHA underwrites and approves the loan they do not fund it. This is a non-recourse, conduit loan. Lenders on these loans offer more liberal loan to value (LTV) ratios (80% on cash out refinances and 85% on acquisitions), with a minimum debt service coverage (DCR) ratio of 1.175. These loans also have no yield maintenance or defeasance prepay penalties.

A project must have been completed or substantially rehabilitated for at least three years prior to the application for mortgage insurance and have demonstrated an occupancy rate of at least 90% for at least 90 consecutive days.

HUD Section 223 (f) loans offer low interest rates and longer amortization periods. Current loan rates are low and amortization periods are up to 35 years. Debt service is usually the single biggest cost of any multifamily or mixed-use project. Reducing the interest rates coupled with a longer amortization period, and more liberal LTV ratios offers more leverage and a substantial reduction in debt service costs to a developer.

Newly constructed multifamily projects are not eligible for Section 223 (f) loans because they are not seasoned (less than 3 years old). Developers must seek conventional take out loans, with much tougher LTV ratios and higher interest rates, when the construction is completed.

One of the goals of the Infill Task Force described in Article XVIII will be to work with HUD officials to persuade them to waive the 3-year project age requirement in core urban areas to incentivize infill development.

Policy Recommendation

Finding viable financial incentives for infill projects will be one of the most important factors in successful citywide infill development. There are financial incentive programs in this section that can be achieved at the local level without enabling legislation. Other financial incentives will require enabling state legislation. One of the primary duties of the Infill Development Task Force describe in Article XVII below will be to thoroughly evaluate all financial incentives contained in this Act and any other financial incentives that may fit our unique market to determine which plan(s) can substantively incentivize and impact infill development in our City.

Infrastructure Incentives

The City should prioritize infrastructure investment in infill areas that can support sustainable development, including water, sewer, dry utilities, storm drains, and road improvements. Infrastructure incentives are a key component in reducing infill costs. Focused public

investment will fill the gaps where essential infrastructure is missing or needs substantial upgrading. It will improve aged infrastructure and add public amenities such as parks and streetscapes. These upgrades will make a target area more attractive to potential developers and potential buyers/renters.

Targeted infill areas shall have reduced impact fees and waivers for infrastructure hookup fees. The specific impact fee schedule and detailed incentives are discussed in Article IX of this Act. Article XIII below discusses, in more detail, develop impact fee methodology and application.

Regulatory Incentives

We are in the process of upgrading our codes and preparing the 2035 General Plan. Creative models that encourage infill development are actively being discussed and formulated in our Downtown Neighborhood Community Plan (DNCP) and the Fulton Corridor Specific Plan (FCSP). These new principals should also be extended across our City to encourage infill development in impacted urban neighborhoods in Southwest and Southeast Fresno. Removing regulatory barriers will encourage development by reducing development costs and allow for innovative and creative plans that will be more appealing to consumers. Below are specific regulatory items that should be modified for infill developments to allow for more flexibility and potential cost reductions.

- 1. Parking
Standard parking ratios (i.e. 1.5 parking spaced per residential unit) should be relaxed on infill developments. Parking should be encouraged in the rear of buildings. Parking standards should be minimized to prevent too much land being used for parking.

- 2. Setbacks
Setback requirements for infill projects should be modified to accommodate a higher density development. All setback requirements should be modified in infill areas including: 1) Front setbacks to conform to existing building lines and limitations established to prevent from being set back too and 2) Side setbacks should be reduced to as far as zero lot lines.

- 3. Lot Sizes
We have already begun the process to reduce residential lot sizes. This process will continue and become more intense with the implementation of the 2035 General Plan. Overall lot widths should be minimized.

- 4. Height Requirements
Most residential development outside of the downtown area has been limited to two stories. To find the financial incentives to enable developers to build more residential units on a smaller lot, the zoning will need to be upgraded and higher densities allowed. Cost factors for exceeding two stories must be accounted for in raising height requirements and finding the incentives to attract consumers at attractive price points.

Requiring minimum height levels that are not cost-efficient will deter potential developers.

5. Signage

Regulations governing sign size and placement must be modified in infill development projects to allow for maximum flexibility. Sign ordinances should be amended to encourage creative and appropriately sized signs.

6. Street Width

Higher density infill projects will need to adopt narrower street width designs and innovative pedestrian walkways circulation to be successful. Changing a street width from 40 feet to 30 feet will have a huge impact on the infill project design appearance (i.e. European narrow street design). It will be essential to find innovative ways to move pedestrian traffic within infill projects without having to have two sidewalks on every street. The biggest challenge for narrower streets will be the accommodation of larger vehicles such as City fleet trucks including refuse trucks, street sweepers and fire trucks. See Article XIV for a more detailed policy for City vehicles.

7. Walkways

Standard sidewalks on both sides of the street will not be conducive to high density infill projects. The City should develop creative and innovative walkways systems that connect to established pedestrian routes.

8. CEQA

The City should develop policies to streamline the CEQA process for infill projects. The City should take advantage of CEQAs tiering provision by preparing programmatic documents, which can substantially accelerate the review of subsequent infill projects and avoid a slow, inefficient process that proceeds on a project-by-project development. The key element is to have a complete master plan EIR that has considered all these logical infill options to reduce the chance of a developer having to do advanced CEQA work.

9. Variances

Variances or permits for nonconforming development may be necessary for infill parcel development. The City should, however, try to avoid variances by effectively using zoning codes and or master plan that should address most infill problems and deal with them without cumbersome variance processing.

10. Zoning/Density Bonus

Many jurisdictions use density bonuses as an incentive to encourage infill development in targeted urban core areas. Density bonus policies must set a level that provides infill projects a competitive edge over traditional projects. Density bonuses should not result in projects out of scale and character with existing neighborhoods.

Fast Tracking Plan Check and Permitting

For years, the City has been slow to adopt flexible policies to move projects forward. Time is money for developers. Article X below provides a detailed policy to improve plan check and permitting.

Land Assembly and Cost of Land Incentives

Infill sites across the City are small, scattered and hard to find. Incremental purchasing of infill lots can be very expensive. Geographic Information Systems (GIS) can identify small parcels, streamline the information exchange process for transferring City and RDA owned parcels and accelerate the entitlement and permitting process.

Utilizing grant funds, the City should consider a policy program to purchase, on a voluntary basis, and hold land in infill areas for future development to minimize developer risk associated with land assembly. Assembling small parcels into larger blocks of land under common ownership will greatly improve their development potential. The City will be acquiring land that has no immediate need but will be “banked” for a future day when market conditions are right for development.

Transfer of Development Rights (TDR)

Transfer of Development Rights programs or TDR offer local government the opportunity to use the real estate market to implement and pay for development location and density decisions. Property rights are more complex than simply owning an area of land on which to build a residential or commercial building. There are an inherent bundle of rights associated with land ownership including the right to build, exploit natural resources (i.e. gas and oil), restrict access and farm. Landowners also have the right to sell the land, subdivide the land, lease the land or grant easements across the land.

In a TDR program, the land rights become the currency of development. The development value is equal to the TDR credit. In practice, credits can be bought and sold at any time. In an open market, developers, individual landowners, and land trusts can all participate in the buying and selling of TDR credits. Local or regional government can serve as a broker and TDR bank, buying TDR credits and selling them at a later date.

A TDR program will allow landowners to sever the development rights from certain properties they own and sell them. Typically, rural or agricultural properties could sell their development rights to other landowners who want to increase the density of their developments. One of the primary goals of TDR programs is to preserve open space/agricultural land. Local government entities use TDR programs to mitigate the economic impact of land use regulations. This will enable them to compensate landowners for perceived partial takings. This process will also enable landowners a means to recapture some lost economic value when their property is downzoned from residential use to agricultural use for preservation purposes.

Another benefit of TDR is to provide funding for preservation of open and agricultural land. TDR programs will leverage private sector markets funds to achieve land preservation goals. TDR programs can also provide more consistency in zoning regulations.

There are challenges to TDR programs. They have had limited success across the country. TDR's can be very complex and expensive to administer. They will not work without comprehensive planning efforts and consistent zoning ordinances. It is difficult for one local government entity to successfully implement a TDR program. Usually TDRs require regional planning efforts to successfully carry the programs and equitably distribute development and tax revenues.

Inclusionary Zoning

Inclusionary zoning requires developers to make an allowance for a certain percentage of housing units in new residential developments available to low and moderate income homebuyers. Municipal government will compensate developers for inclusionary zoning through density bonuses, zoning variances, fee abatement or deferral and other financial incentives. Inclusionary zoning can be either mandatory or voluntary. Most programs across the state and country are mandatory.

Inclusionary zoning will not materially improve or affect infill development in our City. In fact, it may actually hinder infill policies by encouraging inner city low to moderate income households to move into new Greenfield developments.

ARTICLE VII INVENTORY INFILL LAND IN OUR CITY

Policy Recommendation

The City shall create an inventory of the vacant land and underutilized property in our older neighborhoods. The list will be updated each year. This survey shall include the following:

1. Vacant lots and land areas;
2. Underutilized properties, identified by comparing the current use with surrounding properties and what could be supported by infrastructure and location;
3. Poorly maintained properties that might be redeveloped or improved;
4. Condition of public facilities, including street, sidewalk, and drainage problems that may need to be addressed in order to promote refill development in the area; and
5. Existing neighborhood patterns of landscaping, tree canopy, and architectural features that may be factored into guidelines for compatibility of a new refill development.

Infill parcels should also be examined to determine development limitations. Limitations may include current zoning; soils; residual capacity of public facilities; school district; water; sewer; parks; pedestrian walkways; streets; storm water drainage; and public transportation.

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**ARTICLE VIII
MAPPING INFILL LAND PARCELS IN OUR CITY**

Policy Recommendation

The City shall prepare a map of the entire city that displays all of the vacant land parcels and underutilized or by-passed parcels. This map shall be updated each year. Based upon an assortment of factors including demographic data (median family income, crime statistics), condition of public facilities/infrastructure, and market conditions (i.e. resale values, vacancy rates for the area), the individual vacant and underutilized parcels shall be assigned a priority development rating on a scale of 1-10 with 1 being the highest priority to develop and 10 having the lowest need for improvement. This priority ranking shall serve as a guide and direction for future infill development and serve as a basis for establishment of Infill Development Overlay Districts as discussed in Article VIV below.

**ARTICLE IX
INFILL DEVELOPMENT ZONING AND OVERLAY DISTRICTS**

Zoning and Overlay Districts are designed to implement The Downtown Neighborhood Community Plan (DNCP) and the Fulton Corridor Specific Plan (FCSP) by establishing land use designations and a regulatory plan. Infill Development Overlay District (Overlay District) is established to encourage and incentivize infill development in core urban areas of the City. The Overlay District is primarily focused on residential development, targeting by-passed and under-utilized parcels. It can also include mixed used and commercial development, if appropriate for the neighborhood. The Downtown Development Code codifies the specific Municipal Code regulations and standards for Infill Development Zoning and Overlay Districts that includes district maps.

The specific goals of the Infill Development Overlay District will be to accomplish the following:

1. Encourage and facilitate new development on vacant and under-utilized land in urban areas that already have infrastructure, utilities, and public facilities;
2. Establishment of specific land uses, development standards, alternative fees, and streamlined review process to stimulate and incentivize reinvestment and development in by-passed, under-utilized and abandoned properties.
3. Encourage efficient use of land and public services in established communities;
4. Establish flexible development standards to facilitate infill development and redevelopment;
5. Direct residential construction in close proximity to employment centers and public services;
6. Preserve, restore and improve older neighborhoods through redevelopment of blighted, distressed and under-utilized properties;

7. Encourage the development of affordable housing; and
8. Encourage the development of parks and open spaces;
9. Direct an area analysis of market values. For example, what do homes sell for in that area? Thus the sales price of the new development is determined by the value it can be sold for that includes land costs, infrastructure costs (if any), hard building costs, on and off sites fees, financing costs and a reasonable profit margin.

Criteria for Establishing Overlay Districts

It is essential to define the appropriate land areas within the City that are suitable for Overlay District designation. The creation of an Infill Overlay District shall be directed toward parcel (s) that have been by-passed and based on the following criteria:

1. The parcel (s) are located in areas served by public water and sewer;
2. There are a significant number of vacant older or rundown structures;
3. There is a high incidence of Code Enforcement violations;
4. There is a high incidence of crime reported in the area;
5. There is a lack of new development or renovation activity compared to other areas of the City;
6. There are a significant number of buildings that were designed for obsolete land uses;
7. There are outdated zoning ordinances appropriate for the area;
8. The area population has either been stagnant or declining over the past 10 years;
9. There are a high number of vacant or underused parcels;
10. Parcel (s) that are less than 5 acres in size, unless approved by the City Manager; and
11. Parcels that are uneconomical to develop

A given parcel (s) does not have to meet all of the above criteria to receive the Overlay District designation but should have met at least half of the above criteria.

Policy Recommendation

The Downtown Development Code establishes code regulations and design standards for Zoning and Overlay Districts. The following recommendations will be added to improve Zoning and Overlay District policies:

1. The City should evaluate other impacted neighborhoods outside of the current zoning areas with similar demographic, geographic and socio-economic profiles to consider establishing Zoning and Overlay Districts;
2. Reduce the size of Zoning and Overlay Districts to concentrate resources on a smaller footprint for a greater impact on the neighborhood;
3. Evaluate the potential gains of creating sub-overlay districts within a defined district; and
4. Provide more flexible development and design standards within Overlay Districts that reconcile reasonable and appropriate design standards and finding cost efficiencies.

Overlay District standards must be less prescriptive with more attention to cost factors to incentivize infill development.

ARTICLE X INTERDEPARTMENTAL INFILL DEVELOPMENT TEAM

Policy Recommendation

The City shall form an Interdepartmental Infill Development Team comprised of professional staff from development related departments and the City Manager's office. The City Manager shall select team members and select the team leader. The team will be responsible for the following:

1. Pre-project review including informal meetings with prospective developers;
2. Review all applications that have been submitted for infill development projects;
3. Identify critical issues early in the application process;
4. Review all conditions of approval suggested by reviewing departments and agencies to insure the integrity of the project is maintained as envisioned and is economically feasible to complete
5. Address all technical issues and develop solutions in a timely manner, with a maximum turn around time of 30 days; and
6. Tracking all infill development projects from the inception to completion.

ARTICLE XI EVALUATION OF DEPT. OF PLANNING & RESOURCE MANAGEMENT FEES AND COSTS

Matrix Consulting Group completed a comprehensive study analysis on May 23, 2012 of City planning fees and cost recovery. The purpose of the study analysis was to determine a nexus between the Department of Planning and Resource Management fees and costs associated with those fees. The study found that the Planning Division and Land Section are currently recovering approximately 53% of estimated costs of providing most fee services. The last time the City completed a comprehensive study analysis was in 1992-93.

The Matrix Consulting Group study provided a comparative planning fee analysis with other California cities including cities in the Central Valley. Fees compared included Conditional Use Permits (CUP), Tentative and Final Tract Maps, Plan Amendments, Rezones, and Environmental Impact Report (EIR). In nearly every category the City of Fresno was higher than both Central Valley cities and other peer cities (i.e. Sacramento) in the state. There are serious underlying issues that need to be explored to determine why our costs for services related to planning and building activities is so high. Reducing the costs of development related fees will not only benefit infill projects but also all development projects citywide. Reducing the time frame for

the plan check, permitting, and project inspection phases will also provide significant cost savings for all building projects. One of the tasks of the Infill Development Task Force detailed in Article XXX will be to study and evaluate why City costs are so high and recommend changes or justify current schedule.

Policy Recommendation

Based on the recommendations from the Matrix Consulting study, the City shall adopt the following policies: 1) adopt and implement a formal cost recovery policy for the Planning and Division and Land Section; 2) implement a mechanism for the annual update of Building fees for service; and 3) perform a complete periodic update of User Fee Study every 3 years.

There are additional policies necessary to incentivize infill development. The City needs to expand and refine infill area fee reductions and non-fee recoverable work through the General Fund and work with other agencies that add on fees that are counterproductive to successful infill ventures e.g. Flood Control/Air District/Irrigation districts/School Districts/ etc.

ARTICLE XII FAST TRACKING PLAN CHECK AND PERMITTING

An essential element in successfully implementing infill development or any development in our City is streamlining the plan check and permitting process. Recent efforts including the P.I.P.E.S. program have systematically reviewed the overall plan check and permitting process. Although this program has improved the overall process, there are still bottlenecks and unnecessary delays. This Act will use the foundation laid out in the P.I.P.E.S. program and provide enhanced features to address outstanding issues. Policies and practices approved in this Act will also extend to all development projects on a citywide basis. It is absolutely essential that the City become more business friendly and give top priority to improving its business practices that relate to planning and development related issues. Consequently, this element of the Act will be given the highest priority for implementation.

The old axiom in business is that time is money. This certainly applies to all development projects. It is critical that the plan check, permitting and site inspection timeline be compressed to minimal levels to ensure all development projects move expeditiously throughout the process. The severe budget cuts that the City has experienced the past four years has dramatically reduced staff levels in the Planning Department and other departments involved in the planning process. Consequently, timelines will be more difficult to achieve and successful implementation of the proposed policies and practices in this Act will not be fully realized until staff levels recover to pre-recession levels.

An essential element of improving the overall plan check and permitting process will be the creation of an "Interdepartmental Infill Development Team" per Article X above.

The goals of streamlining the plan check and permitting process shall include the following:

1. Reducing the costs for plan check and permitting;
2. Reducing the timeline on all development projects citywide;
3. Standardizing the plan check and permitting process;
4. Improving communications with applicants; and
5. Maximizing the performance and better coordination of all City departments and other agencies involved in the plan check and permitting process.

Obstacles to Streamlining Plan Check and Permitting

1. No clear line of authority with someone in charge of the overall process
2. Lack of incentives
3. Lengthy and unpredictable appeals process
4. No single point of contact or entity to navigate through the bureaucracy (we can have a single point of contact, but if they will have to have authority to make decisions).
Enforcement of strict timelines for advancing from one stage to another
5. Bottlenecks and redundancies in plan check and permitting.
6. Inadequate staffing in DARM due to budget cuts
7. Inconsistent technical rulings between staff members and departments
8. Overly conservative and lengthy legal analysis

Policy Recommendation: All of the items below shall be reviewed and examined by the Council Subcommittee described in Article XVII.

Improving the Plan Check and Permitting Process

1. Pre-application conferences: A pre-application conference will review the development concept, potential issues for the City and the developer, costs of development, timelines and other concerns. This allows for an informal review of a proposed development in the design stage. This conference should include pre-application minutes being taken and distribute to review team and applicant outlining project expectations for any follow-up actions. It will be essential that the City Attorney's office legal briefs on relevant planning issues be reviewed at an early stage to avoid costly delays later in the development process.
2. Single Point of Contact: The City should identify a single point of contact to with all applicants. The City should consider giving the planner the authority to negotiate any DARM commitments. The role of the planner would be to shepherd the proposed development through the entire planning process and coordinate all departmental comments on the project. A single point of contact will serve as a conduit for the flow of information, improve the communication process between the City, and the applicant and help expedite the overall process.

3. Interdepartmental Infill Development Team: This establishment of this team and their duties is outlined in Article VIII above. Having representatives from the different departments related to the process will resolve technical issues on a timely basis and improve overall communication.
4. Legal Analysis: There are consistent complaints from developers about over reaching legal analysis and unnecessary delays in development projects. The City needs to formulate a definitive legal threshold for determining the acceptable level of risk on development related issues. For example, the minimum threshold for accepting a development agreement would be a 90% chance of defending the City's actions. Timelines should be developed on legal review to insure a development project is not unnecessarily delayed. This policy can be fully refined working with the City Attorney, the City Manager and the Infill Development Task Force.
5. Proactive Planning: The City should encourage and develop incentives to implement proactive planning. After sites have been zoned or re-zoned, the City can elect to "pre-permit" the site in conformity with municipal zoning and site design guidelines. Early site selection and pre-permitting will expedite regulatory oversights before specific, time consuming and constrained projects are proposed. Pre-permitting may require code amendments.
6. Outside Consultants: Contracting with third party consultants (i.e. engineers, attorneys, planners, etc.) will expand City staff capacity. Budget cuts have depleted many positions in D.A.R.M. and using third party consultants expedite the process and provide impartial evaluation of projects. Some issues are complex and very technical calling for outside review such as traffic mitigation or water related issues.
7. Site Inspections: The City should limit field inspections to the verification of construction compliance to approved plans to avoid problems with inspectors re-inspecting codes and over-ruling Planning staff reviewers. Every attempt should be made to use the same inspector (s) from the inception to the completion of a project to avoid inconsistent rulings and unnecessary delays.
8. Access to Information: The City shall provide easy public access to all municipal ordinances, procedures and policy guidelines at the City website. Compiling a Permit Guidebook will help navigate the process for all applicants.
9. Permitting Online: The City should setup on its website easy access to permitting. Any builder or private citizen should have the ability to pay for and pull permits online.
10. Establish uniform timelines: The City should establish clearly delineated timelines to enable projects to be executed in a rational, consistent and transparent manner. The State of California Permit Streamlining Act requires public agencies to follow

standardized time limits and procedures for specified land use decisions. Subject to CEQA review, the City should develop a list detailing the following timelines:

- a) All professionally drawn site plans should be reviewed and returned to the applicant in no more than (to be determined) days;
- b) All professionally drawn plans will be reviewed and have permits issued no longer than (to be determined) calendar days;
- c) All Environmental Impact Reports (EIR) shall be completed no longer than (to be determined) days from the application for the project, depending on the specific CEQA report;
- d) All Conditional Use Permits shall be reviewed and presented to the City Planning Director and/or Planning Commission no later than (to be determined) days.

There is no specific recommendation for the consequences of the City not meeting the defined timelines. The Infill Development Task Force, discussed in Article XVII, shall review and make recommendations on all timelines and any subsequent actions.

Timeline standards should also be applied to the planning and entitlement process. All timelines are based on the assumption that all applications and information required from the applicants has been completed. Below are recommended timelines:

- a) General Plan Amendment shall not exceed (to be determined) days.
- b) Rezone Application shall not exceed (to be determined) days.
- c) All Tentative Maps shall be reviewed and presented to the Planning Commission no later than (to be determined) days.
- d) All Final Tract Maps shall be reviewed and presented to the Planning Commission no later than (to be determined) days.
- e) All Site Plan Reviews shall not exceed (to be determined) days.

11. Provide easy access to City ordinances, directives and policies: The City shall provide easy access to all local ordinances, procedures and policy guidelines in a central location at City Hall and be available in both printed versions and electronic versions on the City website.
12. Create a permit tracking system: The City shall develop an electronic permit tracking system. Permit tracking software will enable the City to produce status reports and determine problems that can hold up the permitting process. An electronic permit tracking system will provide more efficient use of staff time on administrative functions and improve transparency and accuracy in the permitting process.
13. Require periodic signoffs: The City shall require that any agreements made in the permitting process remain valid regardless of whether new staff reviewers get involved and call for changes.

14. Pre-approved single-family home plans: Under this program concept, house plans can be pre-approved for common size lots located in infill areas that meet the guidelines of the City's design standards. The plans would be pre-approved through the design review and plan check processes and purchased at a discounted rate for developers or property owners who wish to use them.
15. Performance Standards: The City should establish performance standards for the DARM section that processes and approves plan check and permitting. At the end of each year the Planning Director should review and evaluate performance levels.

ARTICLE XIII FEE EVALUATION AND ESTABLISHING TIERED SERVICE AREAS

With some exceptions, the City charges uniform building, impact, planning, and Urban Growth Management Fees. Major streets impact fees do charge additional fees for developments located in new growth areas. The Planning Division Master Fee Schedule adopted in June 21, 2012, did offer an exception for inner City planning fee reductions of approximately 50%. There are four Inner City areas defined in the Master Fee Schedule.

Level of service standards are consistent citywide with some exceptions. Best practices in other cities reveals a "tiered" development/impact fees program, where development fees, impact fees, building fees and service level standards (i.e. transportation) are lower in urban core areas and higher in Greenfield developments. Reducing impact fees for infill areas more accurately reflects the true costs of providing municipal services. Current downtown fee incentive programs are backfilled by some form of legally acceptable revenue. A nexus study may be required for any proposed modifications to fee reductions.

The UGM Fee structure provides a geographic or service area impact fee while the City has also adopted a citywide impact fee structure, wherein fees are calculated based upon capital improvement plans citywide. Historically, this program has been difficult to administer and has presented some litigation issues on its application. In 2005, the City adopted citywide impact fees to, over time, replace the UGM fee structure. This Act will re-define the citywide UGM impact fee program to become more precise and equitable in measuring appropriate geographic and citywide fees. In essence, this Act is bringing back an improved citywide fee program similar to the UGM methodology to enhance infill development.

Proposition 218 established that all municipal fees that are an incident of property ownership must have a nexus to costs and benefits. The primary focus of Proposition 218 is on user fees (i.e. water fees).

The Mitigation Fee Act (Gov. Code 66000-66025) governs development and impact fees and most provisions are included in AB1600. A Charter City like Fresno has the additional power to regulate by virtue of its plenary authority with respect to municipal affairs. Since a development fee is not a tax or special assessment, it is by definition required to be reasonably related to the cost of the service provided or the improvements constructed by the City. Impact fees must bear a reasonable relationship to the impact intended to mitigate. The City must also be able to clearly account for all fees collected.

A tiered development and impact fee structure will provide economic incentives to infill development. In theory, any discounts offered to inner City areas cannot be offset by higher, offsetting fees in other geographic areas of our City. The other alternative to reduced fees is to backfill the reductions with General Fund or other appropriate revenues. This Act will develop the rationale and economic measurement model to legally and financially justify a tiered fee structure.

A calibrated methodology will make infill parcels more attractive and build greater equity into urban growth patterns. For example, a parks impact fee is assessed at \$2,764 per multifamily unit. This assessment is too vague. A 100 unit multifamily project that averages 1,000 square feet per unit or a total of 100,000 square feet would be assessed \$276,400. Another 100 units multifamily complex that averaged 800 square feet or a total of 80,000 square feet (20% smaller) would have to pay the same \$276,400 park impact fee without justification for the higher cost. A more accurate assessment would be based on a per square foot basis instead of a per unit basis.

Citywide Fire Impact Fees are set at \$539 per single-family unit and \$439 per multifamily unit. Notwithstanding existing fee reductions, inner City infill developments should have a dramatically lower fee than Greenfield projects because the capital outlay for fire stations is not necessary because there are existing fire stations that have been operational for years.

To establish a more precise measure of development related fees, we should first examine our current fee structure.

Building Fees: The City Master Fee Schedule provides uniform building fees citywide regardless of location with the exception of Enterprise Zone Areas and Municipal Restoration Zones. Building Fees include: permit fee; grading plan check fee; grading permit fee; electrical permit fee; plumbing permit fee; mechanical permit fee; plan check fee; fire department plan check fee; public works departments plan check fee; inspection fee; fire; and appeals fee.

Latest Fee Study Update

I am unaware of any building fee evaluation and nexus study in the past 10 years. Fee levels are adjusted periodically by Council action.

Methodology for Establishing Fee Structure

Building fees are based on estimated City costs including department personnel costs, inter-departmental personnel costs, estimated time allocated per project and City support services charges.

Land Use Planning and Zoning Fees: The City employs a uniform planning fee schedule and uniform level of service standards for all developments regardless of location with the exception of defined “Inner City” areas. The Planning Division Master Fee Schedule adopted in June 21, 2012, offers Inner City planning fee reductions of approximately 50%. There are four Inner City areas (downtown area, Highway City, Pinedale, and Herndon Townsite) defined in the Master Fee Schedule. The current list of infill areas receiving fee reductions should be expanded. Planning fees include: application; tentative map; final map; plan amendments; rezone; conditional use permit (CUP); site plan review; variance; modification to zoning condition; and environmental assessments including EIR.

Latest Fee Study Update

The Matrix Consulting Group last completed a comprehensive evaluation of planning fees and City costs on May 23, 2012.

Methodology for Establishing Fee Structure

The Matrix Consulting used a cost allocation methodology where several cost components are calculated for each fee or service. All of the components are built upon each other to develop the total cost for providing service. Cost components include direct costs; department overhead; citywide overhead; cross-departmental support; and plan, policy, and systems update and maintenance.

Impact Fees: The City has a uniform impact fee schedule regardless of the location of the project. Impact fees include; local drainage; sewer connection; lateral sewer connection; over size sewer connection; trunk sewer charge; wastewater facilities charge; water connection charge; frontage charge; transmission grid main charge; transmission grid main bond debt service charge; well head treatment charge; recharge fee; and 1994 bond debt service fee.

Latest Fee Study Update

I am unaware of any building fee evaluation and nexus study in the past 10 years. Fee levels are adjusted periodically by Council action.

Methodology for Establishing Fee Structure

Fees are based on the estimated costs to cover the costs of infrastructure improvements for proposed development projects.

Urban Growth Management Fees (UGM): UGM Fees were established in 1977 to finance City infrastructure and facility improvements that would need to be built when development reached a given level in a defined area. The original fee policy called for annual nexus studies and fee adjustments to reflect changing costs. There were no studies for fee adjustments for the first 10 years of this program. Over its history, nexus studies and fee adjustments have been sparse.

UGM Fees are assessed for both a specific geographical area and citywide. In both the specific geographic area and citywide, the UGM Fees are assessed to finance growth-induced public facilities (i.e. fire station). In the Master Fee Schedule, the geographic areas are assigned Zone Districts where the fees vary by district. UGM Fees include: fire station; neighborhood park; major street (see more detail below); major bridge; grade separation; trunk sewer; and traffic signal.

Latest Fee Study Update

I am unaware of any building fee evaluation and nexus study in the past 10 years. Fee levels are adjusted periodically by Council action.

Methodology for Establishing Fee Structure

Fees are based on the estimated costs of growth induced municipal facilities in defined geographical areas and the estimated costs to pay for growth induced citywide costs of municipal facilities.

Citywide Regional Street Impact Fee: The Citywide Regional Street Impact Fee is a condition on all development entitlements granted and the fee is calculated based on the net acreage of the entire property subject to the development entitlement and based on the planned land use.

Latest Fee Study Update

These fees were established by resolution August 29, 2007.

Methodology for Establishing Fee Structure

Fees are based on the estimated costs to cover the costs of major street improvements for proposed development projects on a citywide basis.

New Growth Area Major Street Impact Fee: The New Growth Area Major Street Impact Fee is a condition on all development entitlements granted in the New Growth Area and is calculated on a net acreage of the entire property subject to the development entitlements based upon the planned land use.

Latest Fee Study Update

These fees were established by resolution August 29, 2007.

Methodology for Establishing Fee Structure

Fees are based on the estimated costs to cover the costs of major street improvements for proposed development projects in new growth areas.

Other Agency Development Fees

Other Agencies that assess development related fees on new development include the San Joaquin Valley Air District Board; The Fresno Metropolitan Flood District; and Caltrans. The City should work closely with these agencies to refine their fee methodology to more precisely measure project impacts and costs.

Policy Recommendation

Section 1: City Investment Strategy for Infill Development

The City shall use a focused investment strategy to direct growth to target infill areas within existing urban areas. These areas would have substantial existing development and major public facilities in place. A focused public investment strategy can fill the gaps where basic infrastructure needs upgrading. Utilizing tiered City services will enhance a focused public investment strategy. Tiering City services will help accomplish a goal of assuring a logical, economical sequence of growth moving outward from the urban core.

Establishing uniform development and impact fees that are based on the average cost of providing service to new development located within the City sphere of influence does not recognize that there are significant differences in actual costs based on the geographic location of the development. For example, certain Greenfield developments (i.e. SEGA) may require longer water and sewer lines, street extensions and other infrastructure improvements that will be very costly.

The software modeling employed by Economic & Planning Systems (EPS) in the 2035 General Plan update developed detailed metric analysis that measured the General Fund costs of infrastructure improvements, public service levels and standards (i.e. public safety, public works) for new developments. The metric analysis clearly demonstrated a causal relationship between project location, zoning standards (i.e. densification), and service standards to the overall project capital costs and ongoing operations and maintenance costs.

Policy Recommendation

Section 2: Study and Evaluation of Fee Structure

The City shall complete a comprehensive study of all of its planning and building related fees to address issues identified in this Act. The overarching goals of the study are to provide the legal justification to impose the fees and provide the nexus between the impact created by new development and the amount of the fee. There are key components that will factor into an objective measure of development and impact fees. They would include the following:

1. Applying the EPS methodological approach in applying metrics that measure public service levels and standards, in conjunction with;

2. Applying the Matrix Consulting Group Planning Division fee study methodology to set City development and impact fees based on a true measure of actual costs;
3. Establishing a more precise model to measure impact fees and costs that identifies the purpose of the fee, how the fee is to be used, the reasonable relationship that exists between the fee's use and the type of development, and the reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed;
4. Establishing a City policy that all building, development, impact and UGM fees should be studied and evaluated every five years;
5. Preparation of Capital Improvement Plan (CIP) in conjunction with the new fee structure that will assist the scheduling and implementation of services and improvements funded through impact fees; and
6. Development of a model that will measure the cost recovery time frame, including a detailed cost-benefit analysis, for property tax, sales tax and related revenues would, over time, offset initial development and impact fee reductions and greater City investment in infill areas.

The Council Subcommittee described in Article XVIII shall review, examine and make recommendations on all development related fees.

Policy Recommendation

Section 3: Fee Audits

The City shall adopt a policy that provides for an independent audit of all City development and impact fees to determine whether the specific fees exceed the amount reasonably necessary to cover the cost of the product or service provided. Audits should be performed every five years.

Policy Recommendation

Section 4: Tiered Fee Structure

Starting with Census Tracts in our urban core downtown and in older areas of our City, the tiered pricing would, in general, be lowest in the urban core and become progressively higher at the urban perimeter and into Greenfield developments in sphere of influence expansion areas. Some cities have implemented a three-tier structure where the designated tiers form concentric circles emanating from the City core. The Council Subcommittee described in Article XVIII shall review, examine and make recommendations on establishing a tiered fee structure.

ARTICLE XIV CITY FLEET MODIFICATIONS

Innovative infill developments in other cities include high density, mixed-use developments with narrower streets. Proposed similar projects in our City have been unable to move forward because our fleet trucks cannot properly maneuver on narrower streets. This is particularly true

with fire trucks. To be able to implement infill or any future development project in our City that utilizes narrower streets will require a policy change on our fleet purchase/lease program.

Policy Recommendation

The City should study and evaluate modification of its purchase/lease acquisition plans to include evaluation of selecting smaller vehicles that will function properly on narrower streets. The City should also consider the use of “bullhead” turn a rounds instead of cul-de-sacs to enable City vehicles to maneuver.

**ARTICLE XV
FINANCING INFILL DEVELOPMENT**

The termination of Redevelopment in California will create greater challenges to finance infill development. There are alternative financing models that are well established, and in some cases, seldom used, in California.

Section 1. Mello-Roos

The Mello-Roos Community Facilities Act of 1982 was created to provide an alternative method of financing infrastructure improvements and services. A Mello-Roos District can impose a special tax on real property owners within the Community Facilities District. This Act allows any city, county, school district, special district, or joint powers of authority to establish a Mello-Roos Community Facilities District that will allow for financing of public improvements and services. There are a wide array of potential public improvements including water and sewer, flood and storm protection, streets improvements, basic infrastructure, public safety protection, ambulance and paramedic services, schools, parks and open spaces, libraries, museums, and related cultural facilities. Facilities financed under this Act must have a useful life of at least five years.

If there are substantial public improvement costs, a Mello-Roos District can use public financing through the sale of bonds for the purpose of financing public improvements described above. Real property owners are assessed the special tax and those taxes are paid through the annual property tax bills from the County Assessor. Per Proposition 13, the Special Tax cannot directly be based on the value of the property. Special Taxes are based on a more elaborate mathematical model that factors in property characteristics including lot size, improvement square footage, etc. The methodology for determining each properties Special Tax assessment is defined at the time of formation of the CFD.

The special taxes will stay in effect until the principal and interest on the bonds are paid off. In no case, however, shall the time exceed 40 years.

A Mello-Roos District cannot be formed without a two-thirds vote of residents living within the proposed boundaries. If there are fewer than 12 residents, it will require a two-thirds vote of the property owners.

Policy Recommendation

Formation by a vote of residents instead of property owners is significant. In impacted urban areas like Lowell-Jefferson in downtown, about 95% of the residents are renters. A well-organized campaign by a community organization can successfully form a Mello-Roos District and compel property owners to join and be required to pay a Special Tax to improve the neighborhood. Landlords who do not want to invest in their neighborhoods will probably end up selling and new investors will purchase their properties. . The Infill Development Finance Task Force described in Article XVII shall review, examine and make policy recommendations regarding this issue.

One of the unintended consequences of establishing a Mello-Roos District in neighborhoods like Lowell-Jefferson will be the gentrification of many current residents. A major renovation in both public facilities and private property improvements will elevate the value of rents and homes in the area. Those residents who do not financially qualify or cannot afford higher rents will be forced to leave and find affordable housing in other older neighborhoods in our City.

Section 2. Infrastructure Financing District

The Infrastructure Financing District Act was created by California statute in 1990. The primary purpose was to offer a finance large-scale improvement projects in undeveloped and infill areas. This Act gives cities and counties the authority to create Infrastructure Financing Districts (IFD). An IFD can issue bonds similar to redevelopment tax allocation bonds.

IFD's can divert property tax increment created in IFD's for up to 30 years to finance eligible projects. An IFD may receive tax increment from properties within the district. IFD tax increment includes property taxes collected net of the base year and those taxes allocated to school districts, community college districts, county boards of education and counties. Approved uses of tax increment include a pay as you go basis; repayment of IFD revenue bonds; additional security for assessment or special tax bonds; to reimburse a city or county for the costs of completing a qualified public facility; and to make advances to an Integrated Finance District.

There are procedural requirements similar to forming other financing districts (i.e. CFD). There are three steps: 1) adoption of a resolution of intention to establish and IFD; 2) sending notices to each landowner and affected taxing entities in the IFD; and 3) preparation of a financing plan that contains a description of the district, the proposed public improvements, the financing mechanisms expected to be used, and any intention to incur debt.

The legal requirements for formation of an IFD are as follows:

1. District formation requires a two-thirds vote approval by IFD landowners
2. Issuance of IFD bonds require a two-thirds vote approval by IFD landowners
3. IFD appropriation limits are established by a simple majority vote of landowners.

Formation of an IFD also requires consultation with affected taxing entities. Every taxing entity that will be affected must approve the creation of the IFD or the new district cannot receive its share of the property tax increases. These entities include cities, counties, and special districts.

Other general provisions of an IFD include:

1. Financing projects must provide benefits to an area larger than the IFD
2. Financing projects must have a useful life of at least 15 years or longer
3. Property in an IFD does not have to be blighted as required on Redevelopment projects
4. IFD's cannot overlap existing Redevelopment Project areas. This provision will have to be re-examined in view of the passage of AB26xx and wind down of Redevelopment projects.

IFD's have a broad base of activities to fund including purchase, construction, expansion rehabilitation, Seismic Retrofit or improvement of streets and highways; ramps and bridges; transit facilities; parking facilities; water and sewer projects, solid waste facilities; flood control; child care facilities; parks; recreational facilities; libraries and residential dwelling units. There are conditions on constructing new residential units that require the IFD to replace any affordable housing removed within four years and any new residential units built must include at least 20% affordable housing.

There are conditions that allow an IFD to purchase facilities. Those conditions include that any facility must have a useful life of at least 15 years; they provide a significant impact on the community; and they are not physically located within the IFD boundaries.

There are also restrictions for using IFD financing. All projects must be capital improvements. On going maintenance, service and repairs and any operating costs cannot be financed by an IFD. The major challenge for the formation of an IFD is the two thirds property owner vote and the agreement with other taxing entities. To date, there has only been one IFD formed in Carlsbad, California, in 1999.

SB 214: UPDATE ON IFD

California Senate Bill 214 provides a much needed update for IFD. This re-write of the original law removes barriers in the creation of an IFD including the following: 1) removes the two thirds vote requirement associated with forming an IFD; 2) removes the two thirds vote requirement for issuing IFD related bonds; 3) extends the life from 30 years to 40 years, thereby increasing the bonding capacity; and 4) removes the prohibition against an IFD including any

portion of a redevelopment project area. The Governor has vetoed this bill and the City will have to follow to see if a modified future version emerges.

Policy Recommendation

An IFD would be one potential solution to finance an aging downtown infrastructure. Cost estimates range between \$70 to \$100 million to complete infrastructure upgrades to our downtown core. The challenge for downtown is to get two thirds of the property owners to support formation of an IFD. It is also possible to combine Federal grant funding to a more limited IFD. This would reduce the amount of funds needing for bond financing. The provisions of SB214 would provide an easier path to formation. The City should study and evaluate the use of IFD financing to address its aging infrastructure problem downtown and other older neighborhoods needing infrastructure upgrades. The Infill Development Finance Task Force described in Article XVII shall review, examine and make policy recommendations regarding this issue.

Section 3. Business Improvement Districts

Business Improvement Districts (BID's) are special assessment districts that are formed by property owners/business owners within the defined district boundaries. Property/business owners are assessed annually to fund improvements and activities to promote economic revitalization and maintenance. The State of California law regulates business assessment districts and allows for flexible formulas to determine assessment levels. The assessment levels can be determined be either revenue based or impact based. The revenues generated from the assessments pays for improvements in the defined boundaries of the business district including graffiti removal, street and sidewalk cleaning, landscape maintenance, marketing and other services. There are several successful business assessment districts in California.

Policy Recommendation

A few years ago, downtown Fresno property/business owners successfully formed a Property Based Assessment District (PBID). Based on the success of the Downtown PBID, the City should study and evaluate the formation of similar PBID districts in other older commercial areas (i.e. Kings Canyon Merchants Association).

**ARTICLE XVI
GREENFIELD DEVELOPMENT COSTS TO THE CITY**

The actual costs to the City for Greenfield developments have been debated for some time. The building industry position is that new housing does pay its way for cities. Some city officials and planning consultants maintain that new housing projects in Greenfield areas are a fiscal drain on cities and do not pay for themselves. Finding a conclusive answer to this question will have a direct bearing on future infill development in our City.

The current 2035 General Plan updates as well as the 2025 General Plan passed in 2002 were and are predicated on a balance of new Greenfield development and infill development. The ambitious infill goals of the 2025 General Plan have not been fulfilled. This is primarily explained by the absence of a business model that provides the financial incentives for infill development.

Measuring Development and Economic Costs for Infill and Greenfield Projects

As discussed in Article XIII, EPS developed a fiscal impact model designed to test how City policies, service standards, growth patterns, and socio-economic changes affect the City's General Fund costs and revenues over time. Is this study, however, not weighing in other salient issues that will affect long term City costs and revenues? Although the study clearly identified factors (i.e. density, spatial, economy of scale) reducing City costs, anecdotal evidence would suggest a different outcome if other issues are considered.

For example, a 10-year-old, 3,000 square foot home built by builder XX on an 8,000 square foot lot in Northeast Fresno would have a value of approximately \$300,000. The identical home by the same builder, same age, on the same size lot in the Lowell-Jefferson downtown area would have a value of approximately \$150,000. The property tax assessment for the Northeast home would be approximately \$3,000 and the property value for the home in the downtown area would be approximately \$1,500. Does the home in Northeast Fresno utilize a higher proportion of City services to justify the higher property tax assessment? Police and fire are two of the most expensive City services. For the period January 1, 2012 through April 30, 2012, crime statistics were compared between the Dominion in Northeast Fresno and the Fulton-Lowell area in downtown Fresno. During that four-month period, there was one reported crime in the Dominion and 55 reported crimes in the Fulton-Lowell neighborhood.

This is only one isolated example but it clearly shows the disproportionate use of certain City services based on a comparison of different geographical areas of our City. A thorough evaluation of revenue generated by geographical areas of our City versus consumption of City services by geographical area will refine true cost numbers. Part of the answer is that properties in Southeast and Southwest Fresno under perform and do not currently pay their fair share of City services utilized. A successful, citywide, infill development program will help close the gap in property values over time.

Although the EPS fiscal evaluation model provides objective measures of City General Fund costs and revenues over time, it does not factor a comprehensive analysis of interrelated economic benefits derived both in the short term and the long term from new residential development in Greenfield areas. In a publication titled "The Economic Benefits of Housing in California" August 2010, prepared by the Center for Strategic Economic Research, the costs and benefits of new housing construction is examined. Information discussed in this Article is based on that publication.

This study used an IMPLAN input-output model for a comprehensive analysis of interrelated economic impacts for new housing construction. New housing construction produces economic impacts in communities that include direct, indirect, and induced benefits. Below is a brief description of economic impacts:

Direct Benefits: This is economic activity directly exclusively related to new housing construction. This would include employment of people in many construction trades and expenditures made by construction firms.

Indirect Benefits: This refers to ancillary economic activity resulting from connected businesses, suppliers of goods and services, and provision for operating inputs. Examples include wholesale trade where builders purchase materials like lumber, roofing, electric, and plumbing materials. Other examples are freight services that deliver materials to the wholesaler and construction site and other professions that contribute to the process including engineering, architectural and legal services.

Induced Benefits: This refers to measuring consumption expenditures of direct, indirect and induced impact of each additional direct job or dollar of output related to new housing construction in our community.

There is a multiplier effect that quantifies the incremental indirect and induced impact of each additional job or dollar of output related to new housing construction in our community.

The IMPLAN model of measuring the full range of interrelated economic benefits from new residential construction in Greenfield areas should be evaluated by the City together with EPS fiscal data from our 2035 General Plan update and other mitigating economic issues to arrive at the true costs and benefits to the City.

Modifying the Community Facilities District Financing Model

The City established the “City of Fresno Special Tax Financing Law” to allow for the formation of, or annexation into, a Community Facility District (CFD) to provide financing for the maintenance and servicing of public infrastructure within new developments. Fresno Municipal Code Section 8-1-303 (e) defines services for special tax districts that include public works related maintenance items (i.e. streets, walkways, medians, street lights, etc.). For all new residential and commercial developments (primarily in Greenfield areas) there is a nexus established between the public works related capital and maintenance costs and the fess assessed to the property owners through their property tax bills. This financing model is designed to give communities like Fresno a better way to make new development pay for its impact.

FMV Section 8-1-303 (e) (5) provides that a CFD can maintain health and safety services including, without limitation police, fire, traffic signal control and recreational services. (I do not know of any CFD’s that extend services beyond landscape maintenance, lighting, streets,

sidewalks, etc.) Expanding coverage on CFD's to full City services would make the case that new development is paying for itself and is not being subsidized by the City or other areas of the City. All development related fees and impact fees including UGM Fees are paid at the start of the project to cover the geographic area and citywide impact of capital infrastructure and facilities costs.

Policy Recommendation

The City should study and evaluate a modified CFD model utilizing an EPS type and other available industry software modeling can measure the costs of all City related services in a CFD to establish objective fee structures with periodic updates to reflect inflationary adjustments to maintain a long-term nexus over the life of the project. The Ad Hoc Council Subcommittee described in Article XVIII shall review, examine and make policy recommendations regarding this issue.

Pursuant to AB1600, the City cannot require new developments to pay for existing municipal deficiencies. The City can, however, require new developments to provide an acceptable level of service. The key component in deciding where to draw the line for new developments obligation to pay for public facilities will be the how much the City raises the acceptable service levels. Consequently, the impact fees imposed must bear a reasonable relationship to the actual cost of providing the public services demanded by the new development on which the fee is imposed.

The counter argument to developing a CFD that assesses property owners the full cost of all City services is that citizens living in the newer, more affluent areas of our City would be entitled to a higher level of service than citizens living in older neighborhoods because they cannot afford to pay for the costs of all City services. An example of this comparison would be the Old Fig Garden County Island that the Fresno County Sheriff's Department contracts out for. Residents of Old Fig Garden pay for a higher level of public safety service and receive a higher level of service than most City residents.

ARTICLE XVII INFILL DEVELOPMENT FINANCE TASK FORCE

A team of infill development professionals shall be assembled to further examine and refine proposed financing options and financial incentives outlined in this Act as well as a thorough examination of any other financial options available for infill developments.

The team of statewide professionals shall be comprised of experts in infill development. This team of professionals should represent the disciplines directly involved in creating infill development including developers, professional planners, architects and/or engineers and finance professionals. The City Manager and City Attorney or their assigned representatives shall attend all scheduled meetings and serve in an advisory capacity. The City Manager shall

select other appropriate staff members to participate on this Task Force. The Mayor shall select members of the Task Force, in consultation with the Ad Hoc Council Subcommittee, and serve as the Chair.

The Infill Development Finance Task Force shall report back to the Council their findings and recommendations to coincide with the presentation of the draft 2035 General Plan update. Any policy recommendations that are approved and adopted by the Council will be integrated into the Development Code, the 2035 General Plan Master Environmental Impact report, and the 2035 General Plan.

ARTICLE XVIII AD HOC COUNCIL SUBCOMMITTEE ON INFILL DEVELOPMENT

An Ad Hoc Council Subcommittee on Infill Development shall be formed to focus on the following elements of this Act: 1) review, examine and make recommendations on all development related fees; 2) review, examine, and make recommendations on the plan check/permitting process; 3) review, examine, and make recommendations on the legal review process related to planning and development issues and 4) review, examine and make recommendations on CFD financing for future development projects. The overarching goal of this Subcommittee is to make the City more business friendly and to change the culture at City Hall to be more in synch with the private sector.

The Subcommittee shall be composed of three Council members approved by a majority vote of the Council. Upon approval of this Act, an agenda item will be posted on the following week's Council agenda to select the three Council members. The three Council members shall elect a Chair by a majority vote. The City Manager and City Attorney or their assigned representatives shall attend all scheduled meetings and serve in an advisory capacity. The City Manager shall select other appropriate staff members to participate on this Task Force. This Ad Hoc Subcommittee shall work directly with the private sector industry organizations (i.e. Building Association Industry, Fresno Association of Realtors, Fresno Chamber of Commerce, etc.) related to the issues being examined and will interview industry experts (i.e. builders, planners, financiers, etc.) to better understand the issues and formulate policy/fee recommendations. The Subcommittee shall also examine related peer cities policies and fee schedules in an effort to develop best practices.

The Subcommittee will present its findings and recommendations to the Council at a regularly scheduled Council meeting. Based on those recommendations and subsequent Council debate, appropriate modifications, including policies and/or fee schedules will be adopted based on a majority vote of the Council. Any policy recommendations that are approved and adopted by the Council will be integrated into the Development Code and/or Master Fee Schedule, the 2035 General Plan Master Environmental Impact report, and the 2035 General Plan.

**ARTICLE XIX
EFFECTIVE DATE**

This Act shall take effect (date of Council approval).

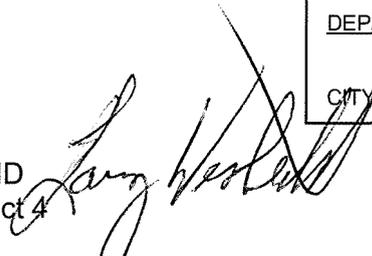
AGENDA ITEM NO. 3B
COUNCIL MEETING 11/1/12
APPROVED BY _____

DEPARTMENT DIRECTOR _____

CITY MANAGER _____

October 25, 2012

FROM: LARRY WESTERLUND
Councilmember, District 4



SUBJECT: RESOLUTION ESTABLISHING THE PUBLIC SAFETY MEDIATION PROGRAM AND AMENDING THE OFFICE OF INDEPENDENT REVIEW TO BE THE PRINCIPAL ADMINISTRATOR FOR THE PUBLIC SAFETY MEDIATION PROGRAM

RECOMMENDATION

Recommend that the City Council approve a resolution establishing the Public Safety Mediation Program and amending the Office of Independent Review to be the principal administrator for the Public Safety Mediation Program.

EXECUTIVE SUMMARY

Citizen complaints regarding police officers in the City of Fresno are currently handled primarily through an Internal Affairs investigation. These investigations are expensive, take considerable time and only produce a letter to the complainant. Survey after survey around the country indicates both citizens and police alike find little satisfaction in the current process. The Public Safety Mediation Program is an alternative complaint-handling process based upon the idea that people are more likely to achieve better resolution to conflicts through constructive dialogue that increases mutual understanding. Dozens of cities around the country have adopted Public Safety Mediation Programs and are finding significantly higher levels of satisfaction from both citizens and police participants. The attached presentation sets forth the program details.

Key points include:

- Improves police relations with the community one case at a time
- Each party has a chance to be heard and understood
- Each party has a chance to hear the other's perspective and why particular actions were taken
- Complainant can achieve some level of closure
- Resolves disputes much more quickly
- Allows for real dialogue rather than merely receiving a letter in the mail
- Community complainants can regain confidence in police services
- Both parties can give the other feedback on how to avoid similar incidents in the future
- Both parties exercise direct control over resolution of the complaint rather than having it decided by others
- The agency can resolve the complaint outside the disciplinary process
- Saves money on investigations
- Supervisors spend more time on the street

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Presented to City Council
Date 10/25/12
Disposition Continued 1 week

October 25, 2012

Key terms include:

- Mediation is a voluntary process
- There is no right to mediation
- Even if a complaint is eligible for mediation, any party can decline to allow the complaint to be resolved through the mediation for any reason
- No party shall be required to state the reason for declining to participate
- Statements made during mediation cannot be used against a police officer in a civil lawsuit
- A decision to mediate a matter or not to mediate a matter cannot be considered during disciplinary proceedings
- The complaint will be dismissed upon the completion of the mediation session
- The Internal Affairs case will be “dismissed through mediation”
- The Police Department Command Staff (Internal Affairs), the Office of Independent Review and the officer must all agree that a particular complaint is eligible for mediation
- Even if a complaint is eligible under written department policy for mediation, the Chief of Police has the authority to decide for any reason that a case should not be assigned for mediation
- Mediation will be completed in a targeted 30 days from receipt of the complaint
- After the mediation, the Internal Affairs case is closed; however, officers who agree to mediate but fail to participate in the mediation may be barred from future mediations

Attachments:

Exhibit A — Presentation Slides

Exhibit B — Resolutions

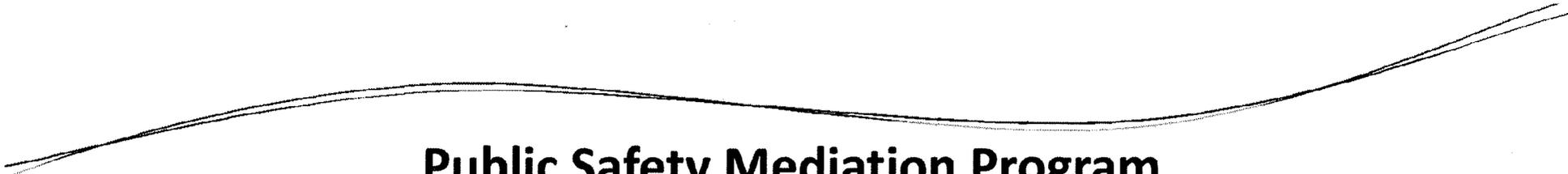
Exhibit C — Additional documentation from other mediation programs



Public Safety Mediation Program

October 2012

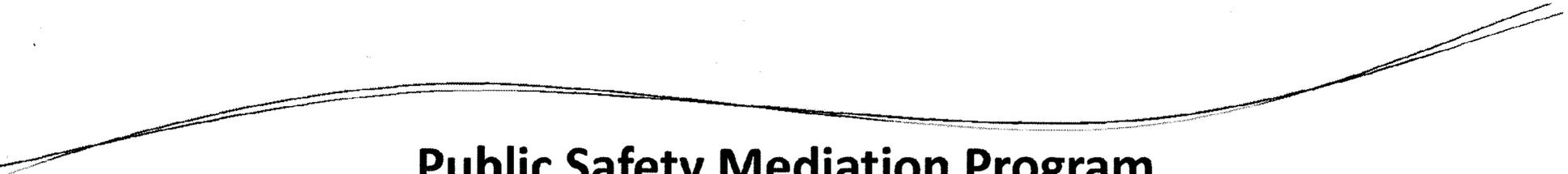
Councilmember Larry Westerlund



Public Safety Mediation Program

What is Public Safety Mediation?

- **It is an alternative complaint-handling process based upon idea that people are more likely to achieve better resolution to conflicts through constructive dialogue that increases mutual understanding.**
- **Police complaints are excellent candidates for mediation because most complaints are based upon misunderstandings.**
- **Example of Mr. Smith being pulled over in D4.**



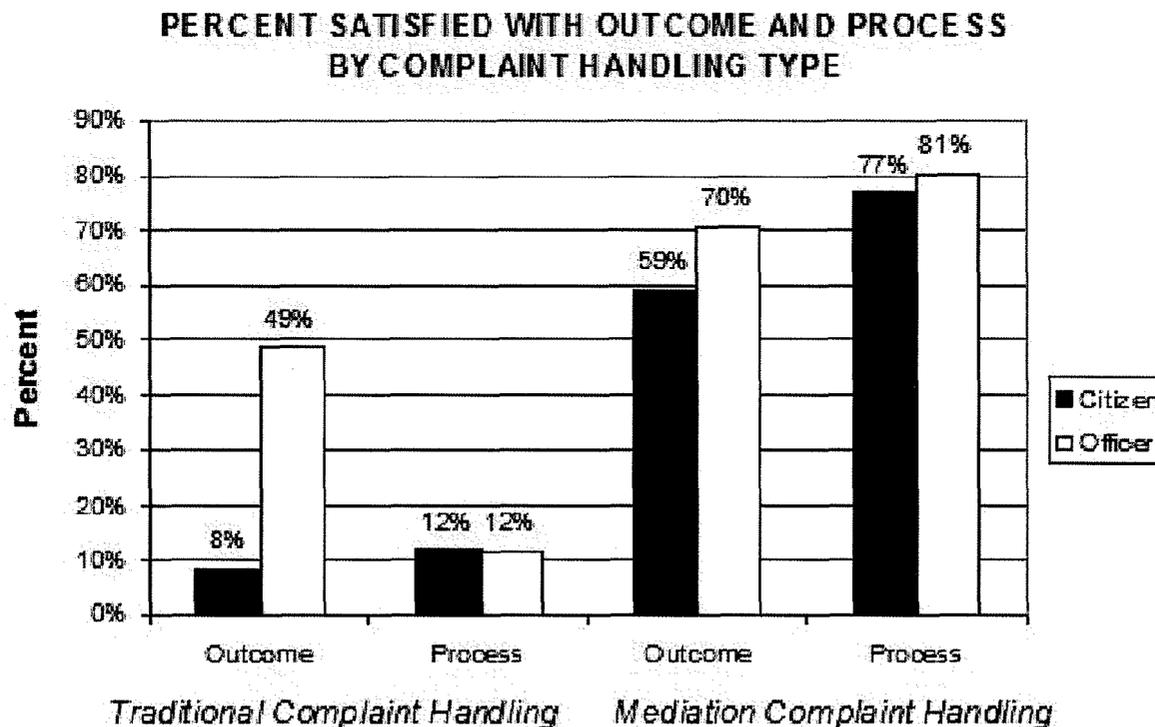
Public Safety Mediation Program

Selected Mediation Programs in cities across the country:

- **Denver Police and Sheriff's Department**
- **Pasadena Police Department**
- **New York City Police Department**
- **San Francisco Police Department**
- **Washington, D.C. Metropolitan Police Department**
- **Seattle Police Department**
- **Minneapolis Police Department**
- **Portland Police Department**

Public Safety Mediation Program

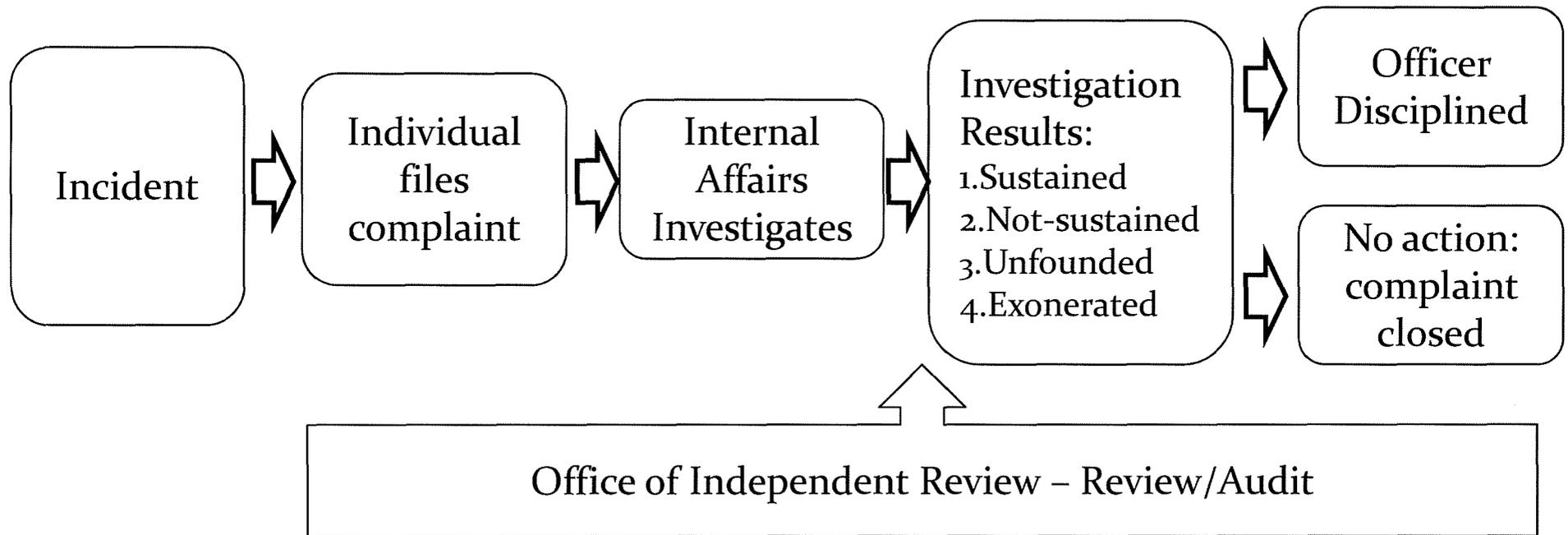
Studies indicate Mediation Complaint Handling lead to a much higher level of satisfaction for both the Citizen and the Officer



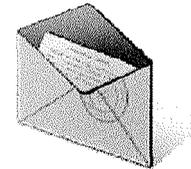
Denver Office of Independent Monitor: 126 Mediated case over three years
Proctor, Rosenthal, Clemmons

PUBLIC SAFETY MEDIATION PROGRAM

Current Police Complaint Process

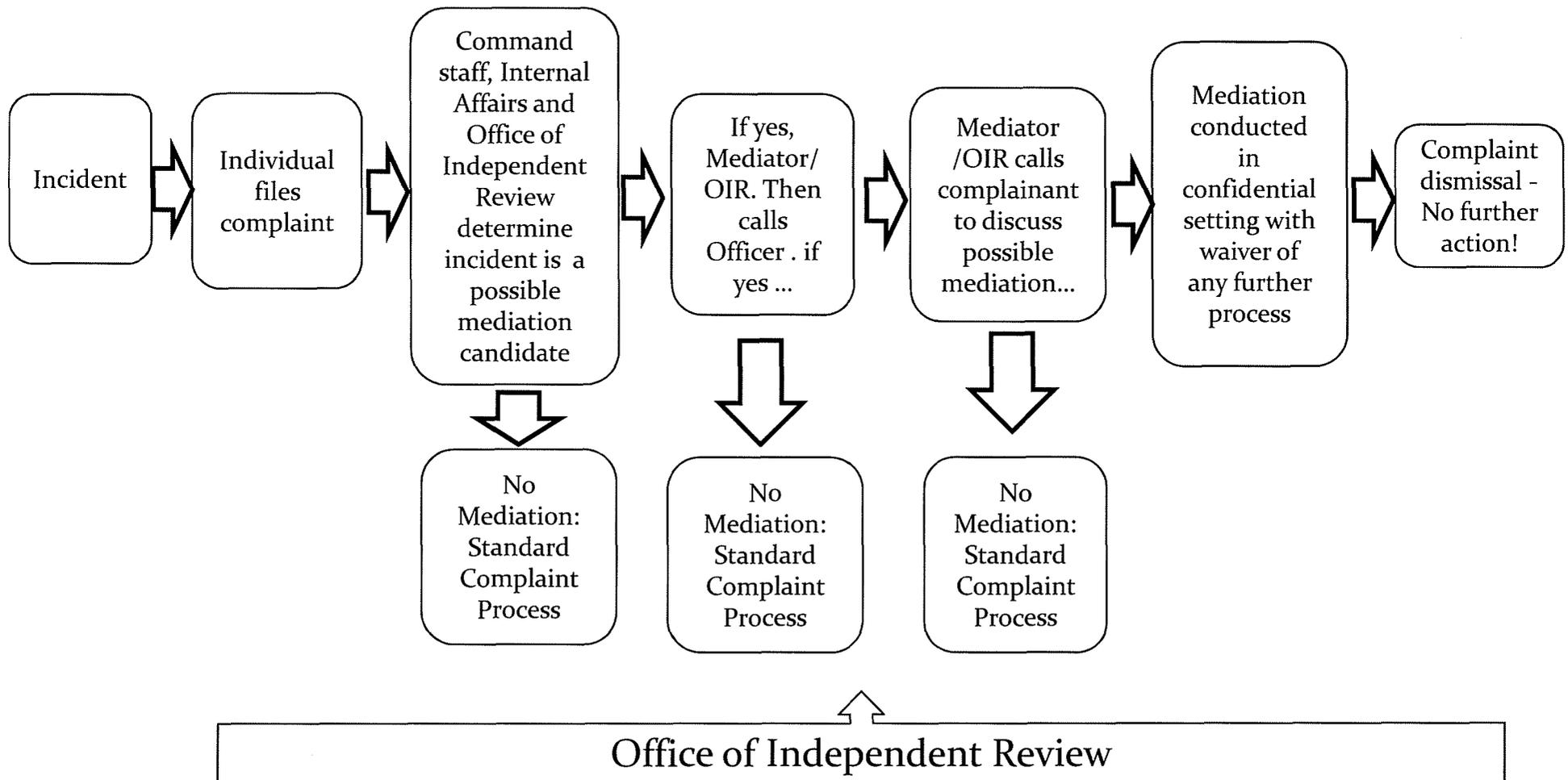


➤ Either way all the complainant get is a letter!



PUBLIC SAFETY MEDIATION PROGRAM

Public Safety Mediation Process



PUBLIC SAFETY MEDIATION PROGRAM

Benefits to Mediation versus Standard Complaint Process

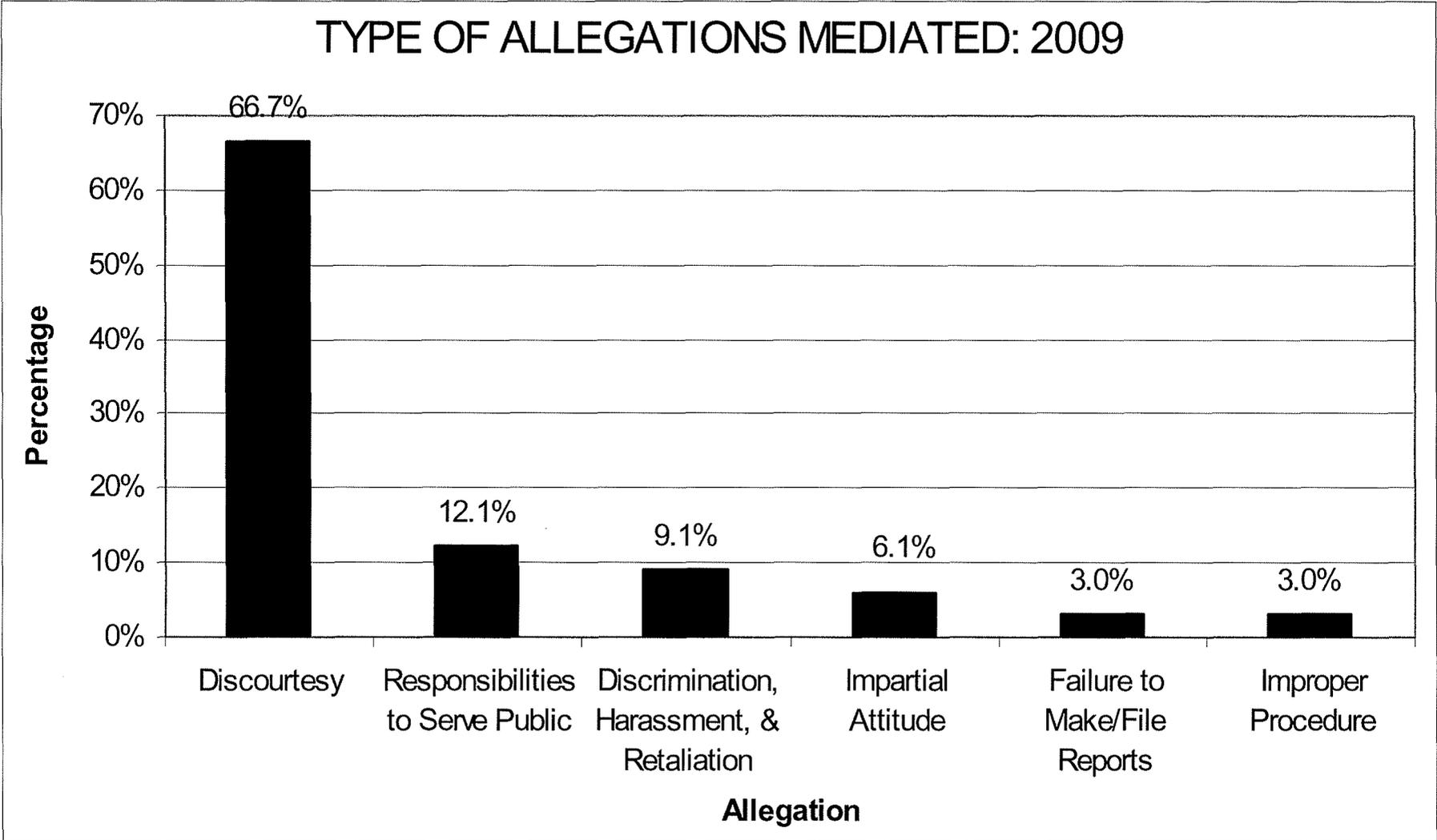
- Improves Police relations with the community one case at a time
 - Each party has a chance to be heard and understood
 - Each party has a chance to hear the other's perspective and why particular actions were taken
 - Complaint can achieve some level of closure
 - Resolves disputes much more quickly
 - Allows for real dialogue rather than merely receiving a letter in the mail.
- Community complainants can regain confidence in police services.
- Both parties can give the other feedback on how to avoid similar incidents in the future.
- Both parties exercise direct control over resolution of the complaint rather than having it decided by others.
- The agency can resolve the complaint outside the disciplinary process
- Saves money on investigations
- Supervisors spend more time on the street

PUBLIC SAFETY MEDIATION PROGRAM

Benefits to Mediation versus Standard Complaint Process

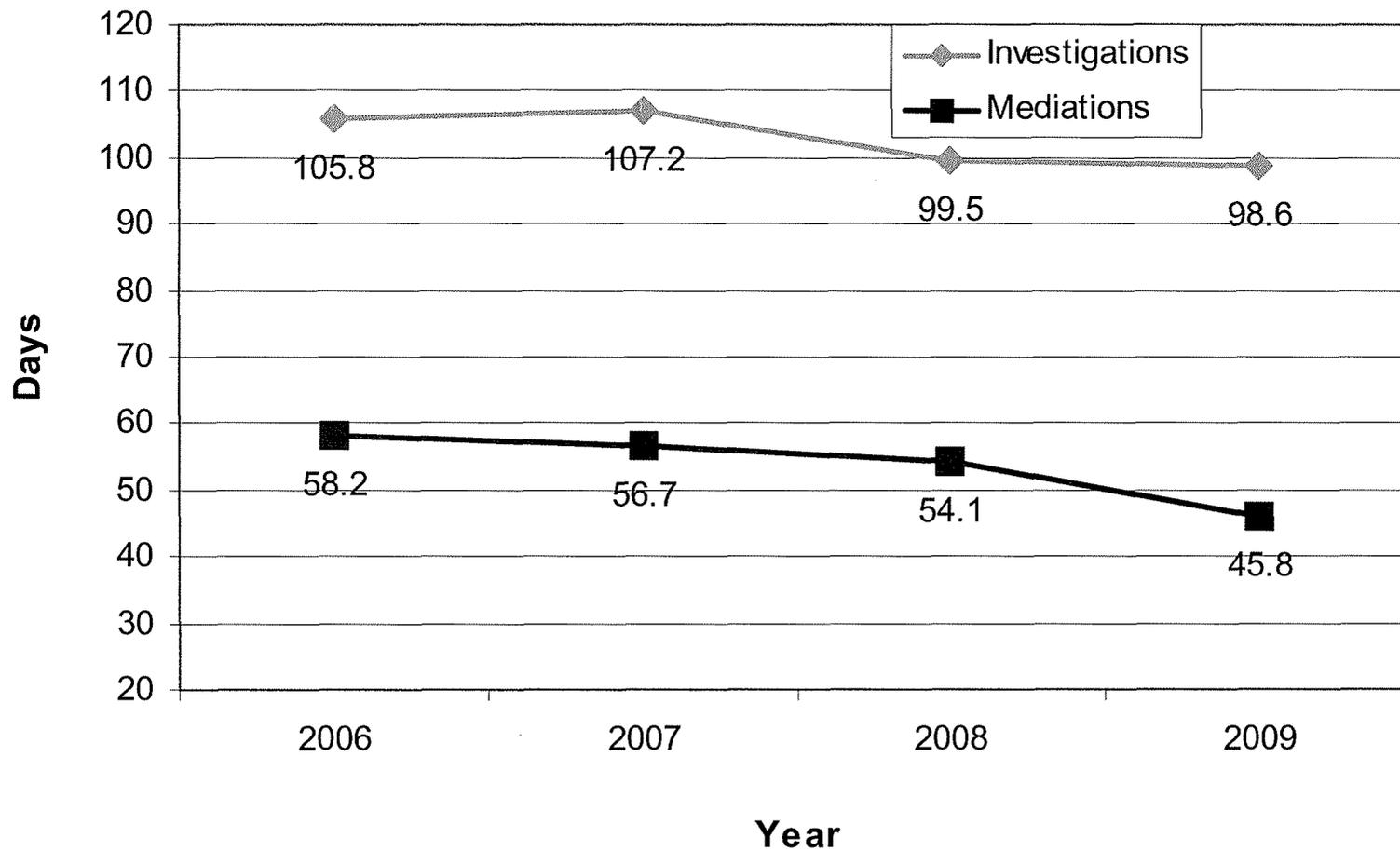
- Particularly beneficial in resolving complaints of police racial bias.
 - Agency insists on conducting formal investigations because of the serious nature of the allegations
 - Investigation rarely result in sustained findings because the allegations are nearly impossible to prove without an outside factual basis since the complaints are many times are based upon interpreted words, attitudes and action by an officer
 - Historically, in these cases, both parties have been dissatisfied with the resolution of these complaints
 - Complainants believe that the agency covered up the officers' racism in a questionable investigation, and officers are generally offended being labeled a racist
 - Mediation allows both sides to address this allegation directly with the aid of a professional mediator
 - The discussion can increase both parties sensitivity and understanding of each other

Types and Percentages of Allegations Mediated: Denver, 2009



Case Processing Time by Case Type: Denver, 2006 – 2009

AVERAGE CASE PROCESSING DAYS BY CASE TYPE AND YEAR: 2006 - 2009



Denver Chart for Satisfaction with Mediation Compared to Traditional Complaint Handling

MEDIATION SATISFACTION RATES (7-16-2009)

CITIZEN COMPLAINT SURVEY				CITIZEN MEDIATION SURVEY			
<i>Complainants' satisfaction with:</i>	<u>Dissatisfied</u>	<u>Neutral</u>	<u>Satisfied</u>	<i>Complainants' satisfaction with:</i>	<u>Dissatisfied</u>	<u>Neutral</u>	<u>Satisfied</u>
Complaint Handling Process	74.5%	13.8%	11.7%	Mediation process	8.7%	14.5%	76.8%
Outcome of Complaint	86.2%	5.8%	8.0%	Outcome of mediation	18.4%	22.3%	59.2%
OFFICER COMPLAINT SURVEY				OFFICER MEDIATION SURVEY			
<i>Officers' satisfaction with:</i>	<u>Dissatisfied</u>	<u>Neutral</u>	<u>Satisfied</u>	<i>Officers' satisfaction with:</i>	<u>Dissatisfied</u>	<u>Neutral</u>	<u>Satisfied</u>
Complaint Handling Process	63.7%	24.7%	11.6%	Mediation process	6.0%	15.1%	78.9%
Outcome of Complaint	34.8%	16.6%	48.6%	Outcome of mediation	5.5%	25.2%	69.3%

PUBLIC SAFETY MEDIATION PROGRAM

Key Terms for the City of Fresno Mediation Program

- **Mediation is a voluntary process**
 - **There is no right to mediation**
 - **Even if a complaint is eligible for mediation, any party can decline to allow the complaint to be resolved through the mediation for any reason.**
 - **No party shall be required to state the reason for declining to participate.**
- **Statements made during mediation cannot be used against a police officer in a civil lawsuit.**
- **A decision to mediate a matter or not to mediate a matter cannot be considered during disciplining proceedings.**
- **The complaint will be dismissed upon the completion of the mediation session.**
 - **The internal affairs case will be “dismissed through mediation”**

PUBLIC SAFETY MEDIATION PROGRAM

Key Terms for the City of Fresno Mediation Program

- **The Police Department Command staff (Internal Affairs) and the Office of Independent Review and the officer must all agree that a particular complaint is eligible for mediation.**
- **Even if a complaint is eligible under written department policy for mediation, the Chief of Police has the authority to decide for any reason that a case should not be assigned for mediation.**
- **Mediation will be completed a targeted 30 days from receipt of the complaint!**
- **After the mediation, the internal affairs case is closed, however, officers who agree to mediate but fail to participate in the mediation may be barred from future mediations.**

PUBLIC SAFETY MEDIATION PROGRAM

Officer concerns versus the truth about mediation

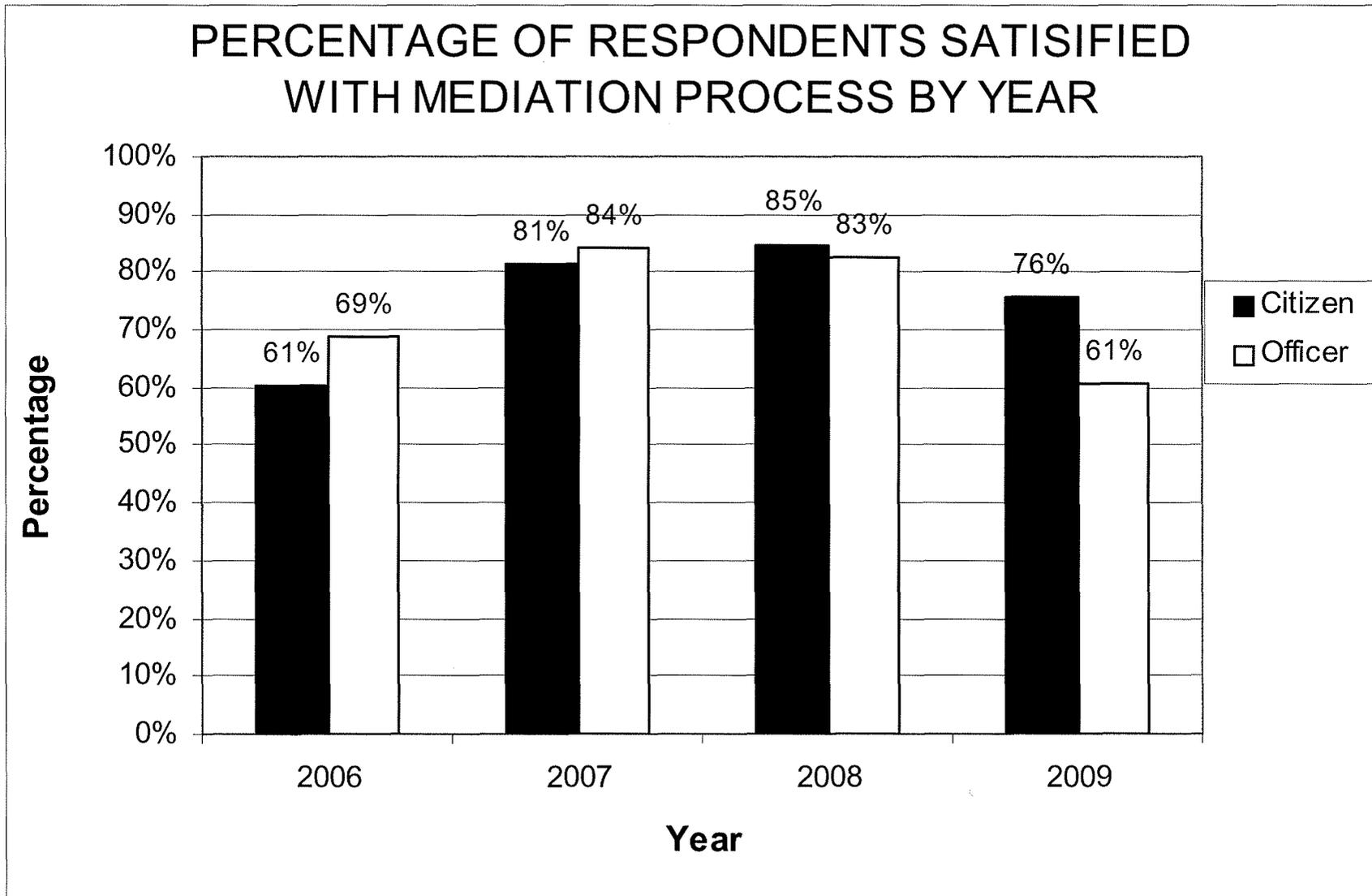
Officer Concern

- Officers would be compelled to apologize even if they have done nothing wrong.
- Mediation would not do any good because complainants would be too unpleasant or unreasonable for mediation to succeed
- Mediation would do nothing more than provide complainants with the opportunity to verbally attack officers.
- If officers speak freely, their words will be twisted and/or used against them in civil or criminal proceedings

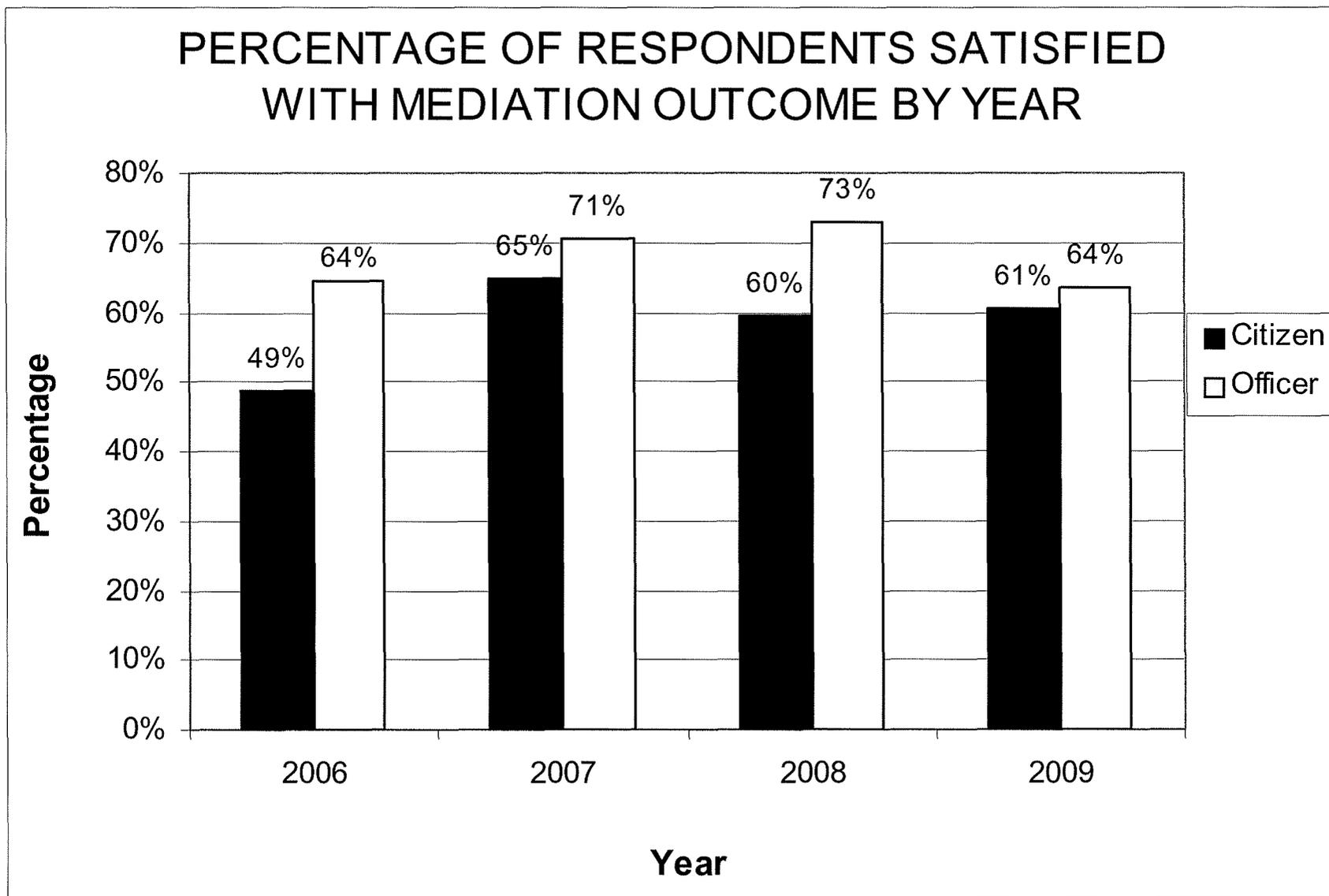
Truth

- People are not required to say or do anything they do not want to do, although many choose to apologize.
- Officers often have already seen complainants at their worst during the initial incident that generated the complaint.
- Professional mediators are trained to prevent this type of communication.
- The content of a mediation session is subject to a legally binding confidentially agreement .

Citizen and Police Satisfaction with the Mediation Process: Denver, 2006 - 2009



Citizen and Police Satisfaction with the Mediation Outcome: Denver, 2006 - 2009





Public Safety Mediation Program

Objective of Mediation:

- **Resolution of the conflict in a fair and respectful manner**
- **Allow the parties to better understand each other's perspective**
- **Afford an opportunity to improve public safety**

Cornerstone criteria for complaints eligible for the Mediation Program:

- **A complaint may be considered for mediation if the incident resulted from a failure to communicate or a lack of communication such that the allegation would be resolved better through mediation than through the formal disciplinary process.**

Community-Public Safety Mediation Program

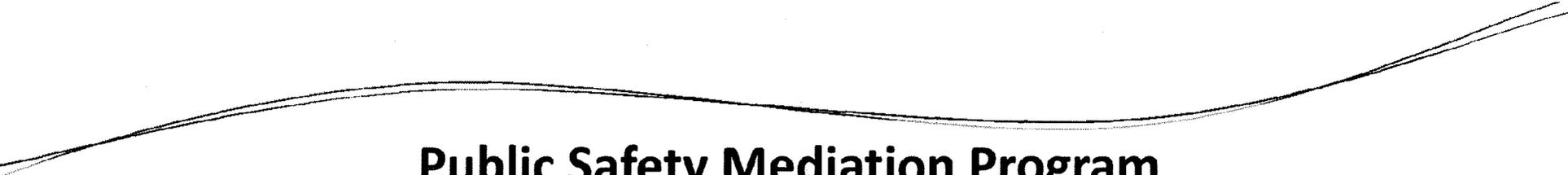
Complaints not eligible for the Mediation Program:

- **1. An incident that involves serious abuse or misuse of authority or unethical behavior**
- **2. An incident that results in an actual serious and adverse impact on officer or public safety or to the professionalism of the Department**
- **3. Any incident that constitutes a willful and wanton disregard of Department values**
- **4. Any incident where the officer is being investigated by a law enforcement agency**

PUBLIC SAFETY MEDIATION PROGRAM

Successful mediation program

- The City will contract with professional mediators.
- Mediators will have special training in handling complainant/police mediations
- Continuous quality control through the use of survey of both parties
- OIR staff to observe mediations regularly
- Command Staff, IA and OIR to meet monthly to review status of mediations
- Annual report to Mayor/Council on results of mediation program



Public Safety Mediation Program

City Cost Savings:

- **A simple Internal Affairs investigation costs at least \$1000.00**
- **An average Mediation costs less than \$500.00**
- **Police supervisors will be able to spend more time in the field**
- **Savings had through better resolutions of citizens' complaints and less lawsuits**
- **District Four set aside \$25,000 to pay for the start up costs and first year of mediations**
 - **Possible grant from the Fresno Regional Foundation**



Public Safety Medication Program

Questions?

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RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF
FRESNO, CALIFORNIA, ESTABLISHING THE PUBLIC
SAFETY MEDIATION PROGRAM

WHEREAS, citizen complaints against peace officers in the City of Fresno are currently investigated by the Police Department's Internal Affairs Unit with the outcome of the investigation provided to the complainant is in the form of a letter indicating the complaint against the involved officer was sustained, not-sustained, unfounded and exonerated and;

WHEREAS, this traditional form of investigation known as an Internal Affairs Investigation process takes the Department, on average over a period of ninety (90) days from commencement to conclusion and averages over \$1,000 per complaint, an increased burden on the Department's staff, time and resources, and a period of uncertainty regarding any disciplinary action against the involved officer;

WHEREAS, the creation of a voluntary Public Safety Mediation Program will operate as an alternative form of resolution to the traditional complaint-handling process based upon the idea individuals are likely to achieve resolution of through constructive dialogue and increased mutual understanding;

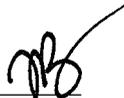
WHEREAS, various cities across the country have created similar mediation programs including Denver, New York, Seattle, Portland and San Francisco which most if not all report high levels of satisfaction by both the involved citizen and officer(s) who participated in the mediation program;

Date Adopted:

Date Approved:

Effective Date:

City Attorney Approval:



WHEREAS, the creation of a voluntary Public Safety Mediation Program will result in a more timely and prompt resolution of citizen complaints, increased citizen confidence and potentially thousands of dollars in savings in staff time from having to forego a traditional and lengthy Internal Affairs Investigation;

WHEREAS the Public Safety Mediation Program will seek to achieve the following goals: improve police relations with the community, provide police employees and community members an opportunity to come together and explain their perspectives to one another, provide citizens with an opportunity for dialogue and to affirm confidence in the Department's investigation of citizen complaints, resolve citizen complaints in a timely and financially efficient manner, and to allow the parties to exercise direct control over the resolution of these complaints thereby providing the parties with a feeling of empowerment and closure;

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Fresno establishes the Public Safety Mediation Program consistent with the terms and conditions set forth below and finds the value of resolving selected citizen complaints, in a timely and prompt manner through a Public Safety Mediation Program is in the best interests of the complainant, the involved officer, the Department and the City of Fresno.

The key terms and conditions shall be part of the Public Safety Mediation Program as follows:

- The Public Safety Mediation Program is a completely voluntary program. There is no right to mediate but is available when the Police Department's command staff and the Office of Independent Review ("OIR") have determined it to be eligible and only after the involved officer(s), first, and then the citizen(s), second, has/have agree(d) to participate in the mediation program;

- The Public Safety Mediation Program will not be available for the following types of complaints: (1) an incident that involves serious abuse, misuse of authority or unethical behavior; (2) an incident that results in actual serious impact on the officer or public safety or to the professionalism of the Department; (3) any incident that constitutes a willful and wanton disregard of the Department's values; and (4) any incident where the involved officer(s) themselves is/are being investigated by any law enforcement agency.
- The mediation will be conducted in a confidential, fair and respectful setting, guided by a professional and impartial mediator who is trained in facilitation and negotiation of citizen complaints involving various aspects of law enforcement;
- Mediation will be conducted only after the execution of a legally binding confidentiality agreement by the parties and will result in a prompt dismissal of the complaint and the closure of the Department's file against the involved officer(s) without any further investigation;
- The Public Safety Mediation program will be administered by the OIR who will conduct quality control and provide an annual report to the Mayor and the City Council;
- The OIR and the Police Department will establish policy and guidelines for implementation of the Public Safety Mediation Program consistent with the above terms and conditions.

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2012.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2012
Mayor Approval/No Return: _____, 2012
Mayor Veto: _____, 2012
Council Override Vote: _____, 2012

YVONNE SPENCE, CMC
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY: _____
Tamara Bogosian, Senior Deputy [10/23/12]

TB:sn [60044sn/RESO] 10/23/12

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO,
CALIFORNIA, AMENDING RESOLUTION NO. 2009-66
DESIGNATING THE OFFICE OF INDEPENDENT REVIEW TO ACT
AS THE PRINCIPAL ADMINISTRATOR OF THE PUBLIC SAFETY
MEDIATION PROGRAM

WHEREAS, the CITY OF FRESNO has established a Public Safety Mediation Program (“Mediation Program”) for the fair, just and timely resolution of citizen complaints made against peace officers employed by the Fresno Police Department; and

WHEREAS, the Mediation Program will be used as a voluntary alternative to the formal complaint process (traditional Internal Affairs investigation) which will be made available to those officers and complainants involved in less serious incidents and for which the Chief of Police and/or his designee and the Office of Independent Review determines meet the requisite criteria for the Mediation Program; and

WHEREAS, on March 24, 2009, Council adopted Resolution No. 2009-66 establishing the Office of Independent Review (“OIR”) which incorporated the “Policy Proposal for the OIR” (Exhibit “A”) and set forth the Role and Responsibilities of the Independent Police Auditor (“IPA”) as well as the Limitations of the OIR; and

WHEREAS, Council desires to amend Resolution No. 2009-66 to allow for the IPA to act as the principal administrator of the Mediation Program for the resolution of citizen complaints in a manner that is consistent with his/her role as the OIR and the key terms set forth in Resolution No. _____.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

SECTION 1. PURPOSE.

The role and responsibilities of the OIR are expressly expanded for the limited purpose of designating the OIR to act as the principal administrator of the Mediation Program for the resolution of those specific citizen complaints which have been selected for mediation through the voluntary Mediation Program.

///

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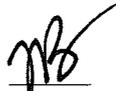
///

Date Adopted:

Date Approved:

Effective Date:

City Attorney Approval:



Resolution Amending 2009-66

OIR Principal Administrator Public Safety
Mediation Program

Resolution No.

///

SECTION 2. Except as otherwise amended in this Resolution, Resolution No. 2009-66 remains in full force and effect.

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2012.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2012
Mayor Approval/No Return: _____, 2012
Mayor Veto: _____, 2012
Council Override Vote: _____, 2012

YVONNE SPENCE, CMC
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY: _____
TAMARA BOGOSIAN
Senior Deputy City Attorney

TB:sn [59997snReso] 10/10/12



RESOLUTION NO. 2009-66

A RESOLUTION OF THE COUNCIL OF THE CITY OF
FRESNO, CALIFORNIA, ESTABLISHING THE OFFICE
OF INDEPENDENT REVIEW

WHEREAS, police officers are entrusted with an enormous amount of power and authority - the authority to deprive someone of his or her personal freedom based on an officer's sworn testimony and the authority to take someone's life under a given set of circumstances if the officer believes their life, or the life of another, is in jeopardy;

WHEREAS, members of the public who trust their police department are far more likely to report criminal activity and cooperate during police investigations;

WHEREAS, the importance and public benefit associated with this trust cannot be overstated;

WHEREAS, a lack of community trust can adversely impact community confidence in the Police Department and City Government that can result in unfavorable legal settlements and jury awards;

WHEREAS, the concept of an independent police auditor (IPA) has been studied and debated in Fresno for over ten years;

WHEREAS, previous proposals were based upon other IPA models in place in other cities;

WHEREAS, the current Policy Proposal for the Office of Independent Review, dated March 20, 2009 attached as Exhibit A, has been prepared specifically to address the needs and opportunities within the City of Fresno;

WHEREAS, the current proposal has been crafted with the understanding that our Fresno police officers are highly trained, capable people who strive to serve the

Adopted 3/24/09
Approved 3/31/09
Effective 3/31/09

2009-66c



public every day with professionalism *and* that the tremendous power and authority invested in them, along with the often harmful and life threatening situations in which we ask them to work, warrants some measure of independent review to protect our officers and to enhance the public's trust;

WHEREAS, the proposal was founded on the key principles of independence; fairness, integrity and honesty; transparency; participation of stakeholders; acceptance, cooperation and access; and obedience to legal constraints;

WHEREAS, by establishing an Office of Independent Review (OIR), the Mayor and City Council acknowledge that there are possible conflicts between transparency and mitigating potential financial risk to the City;

WHEREAS, the Fresno City Charter empowers the City Manager to oversee daily City administrative operations and the City Manager will delegate authority to the OIR sufficient to fulfill all their noted duties;

WHEREAS, the OIR will be responsible for auditing investigations, reviewing inquiry and complaint logs, identifying and monitoring trends and serving as a resource for both the Police Department and community;

WHEREAS, the City Manager and Police Chief will ensure adequate remedial responses are undertaken to address operational deficiencies noted by the OIR;

WHEREAS, the OIR shall produce an annual report which will provide transparent and accurate information about the overall performance of the department while protecting the confidentiality of the individual members of the police department and the public;



WHEREAS, the OIR will not conduct its own independent investigations of citizen complaints or allegations of employee misconduct and will be subject to all confidentiality and privacy laws;

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Fresno establishes the Office of Independent Review consistent with Exhibit A and finds that the value of enhanced openness and transparency is a higher policy priority than the potential incremental financial risk associated with the OIR.

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the 24th day of March, 2009.

AYES : Borgeas, Brand, Caprioglio, Xiong, Sterling
NOES : Dages, Perea
ABSENT : None
ABSTAIN : None

Mayor Approval: March 31, 2009
Mayor Approval/No Return: N/A, 2009
Mayor Veto: N/A, 2009
Council Override Veto: N/A, 2009

REBECCA E. KLISCH
City Clerk

BY: Rebecca E. Klisch
~~Deputy~~

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY: [Signature]
JAMES C. SANCHEZ
City Attorney

JCS:skl[48546skl/RESO/jcs] 3/20/09; 11:20

March 25, 2009

Council Adoption: 3/24/09

Mayor Approval:

Mayor Veto:

Override Request:



TO: MAYOR ASHLEY SWEARENGIN

RECEIVED

FROM: REBECCA E. KLISCH, CMC
City Clerk

REC 2009 APR -1 AM 8:09

CITY CLERK, FRESNO CA

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 3/24/09, Council adopted the attached Resolution No. 2009-66 entitled **Establishing an Office of Independent Review**, Item No. **9:30 A.M. – A-1**, by the following vote:

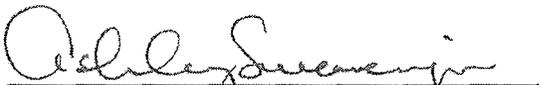
Ayes	:	Borgeas, Brand, Caprioglio, Xiong, Sterling
Noes	:	Dages, Perea,
Absent	:	None
Abstain	:	None

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before April 6, 2009. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10th day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

APPROVED:

VETOED for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)


Ashley Swearingin, Mayor

Date: 3/31/09

COUNCIL OVERRIDE ACTION:

Date: _____

Ayes	:
Noes	:
Absent	:
Abstain	:



Exhibit A



MAYOR ASHLEY SWEARENGIN

POLICY PROPOSAL
for the
OFFICE OF INDEPENDENT REVIEW

March 20, 2009



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ATTACHMENTS

1. Independent Police Auditor Study Commission Committee Roster
(June 17, 2003)
2. National Association for Civilian Oversight of Law Enforcement
NACOLE CODE OF ETHICS
3. Frequently Asked Questions (FAQs) About the OIA

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MAYOR ASHLEY SWEARENGIN

**POLICY PROPOSAL
for the
OFFICE OF INDEPENDENT REVIEW**

Protecting our Officers and Safeguarding the Public's Trust in Law Enforcement

"Police officers are entrusted with an enormous amount of power and authority - the authority to deprive someone of his or her personal freedom based on an officer's sworn testimony and the authority to take someone's life under a given set of circumstances if the officer believes their life, or the life of another, is in jeopardy. Members of the public who trust their police department are far more likely to report criminal activity and cooperate during police investigations. An independent police auditor (IPA) will increase and help to safeguard the level of public trust between the Fresno Police Department and the community. The importance of this trust cannot be overstated."

--Jerry Dyer, Chief of Police
City of Fresno

Introduction

The concept of an independent police auditor (IPA) has been studied and debated in Fresno for over ten years. As a new police chief in 2001, Chief Dyer sought the adoption of an IPA as a mechanism to secure and enhance the public's trust in the Fresno Police Department. In 2003, the Independent Police Auditor Study Commission was charged by Mayor Autry with exploring the various known models of IPAs and making a recommendation on its structure in the City of Fresno. The Study Commission was comprised of 16 members and included representatives of the Fresno Police Officers Association, Fresno Neighborhood Watch Association, Greater Fresno Area Chamber of Commerce, Human Relations Commission, Fresno West Coalition for Economic Development, Central California Criminal Justice Committee, One by One Leadership and other community members (*see attached roster*). In most of his budget proposals to the City Council beginning in 2002, Mayor Autry recommended the adoption of an IPA. Despite the extended evaluation and public debate, there has yet to be agreement on adopting an IPA in Fresno.



Unfortunately, the debate has been polarized and largely unproductive. Community advocates in favor of establishing an IPA have, at times, overstated their case, and a small minority of voices has even demonized our law enforcement personnel. Meanwhile, opponents have resisted the IPA despite the importance of safeguarding the public's trust in law enforcement.

This policy proposal has been crafted with the understanding that our Fresno police officers are highly trained, capable people who strive to serve the public every day with professionalism *and* that the tremendous power and authority invested in them, along with the often harmful and life threatening situations in which we ask them to work, warrants some measure of independent review to **protect our officers** and to **enhance the public's trust**.

With passage of this proposal, Fresno will join the ranks of all of the other cities in California with some form of independent review, including: Los Angeles, San Diego, Sacramento, Long Beach, Berkeley, Claremont, Davis, National City, Novato, Oakland, Richmond, Riverside, San Francisco, San Jose, Santa Cruz and Sausalito. Nationally, we will join the ranks of such cities as: Tucson, Denver, New Haven, Miami, Orlando, Honolulu, Boise, Chicago, Indianapolis, Iowa City, Baltimore, Detroit, Minneapolis, Kansas City, Omaha, Las Vegas, Albuquerque, New York, Syracuse, Cincinnati, Eugene, Portland, Philadelphia, Pittsburgh, Knoxville, Memphis, Austin, Houston, Salt Lake City, Seattle, Washington D.C., and many others.

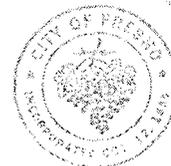
The following pages detail the function, responsibilities, limitations, and procedures of an **Office of Independent Review (OIR)**. Much research and thought has been put into this policy proposal with the intention of moving our City beyond a decade of debate and analysis to the adoption of a responsible and well constructed approach to an Office of Independent Review (OIR).

We are grateful for the input we have received thus far from Fresno City Councilmembers, the Fresno City Attorney's Office, law enforcement officials from other cities with IPAs or other civilian oversight, professors of criminology, the Fresno Police Officers Association, community leaders, and the public at large.

Key Principles

As a result of our work thus far, we have identified some key principles and concepts that would form the foundation of a successful Office of Independent Review and reflect our own philosophy and values:

Independence - Independence is essential to the Office of Independent Review's role. The Independent Reviewer (IR) must exercise independent judgment, free of any real or perceived bending to the wishes of any stakeholders. Inherent in the concept is the benefit to the City and the community of "a fresh set of eyes and ears." True independence requires a partnership between the IR and the City administration. Independence is demonstrated by the impartiality of the IR's analysis and conclusions. It is affirmed by the open, accepting reception such work will receive by the City's elected and appointed officials. In other words, independence is not a function of to whom the IR reports; it is proven in how City government receives the IR's work product.



Fairness, Integrity and Honesty - The IR must be impartial in word and deed, process and results. Even the appearance of partiality can undermine the IR's work and credibility. The IR must be candid with stakeholders and participants. A lack of honesty will impair an IR's ability to function.

Transparency - The IR must provide an additional level of transparency for the Police Department. Therefore, the IR's own work product must be available to the community, to the extent permitted by law.

Participation of Stakeholders - The IR must welcome the participation of all internal and external stakeholders. Both internal and external stakeholders must have access to the IR and the ability to offer input or seek assistance. A process that excludes any stakeholders is flawed and inherently lacking in fairness.

Acceptance, Cooperation and Access - The City's administrators and managers must embrace the concept of the IR's independence. This encompasses permitting the role a degree of freedom to inquire and a willingness to evaluate the IR's work product with an open mind. In order to gain the maximum possible benefit from an Independent Reviewer, the City and its staff will cooperate with the IR and provide the access necessary for the job to be well performed.

Obedience to Legal Constraints - The IR must obey all relevant laws and respect the rights of all stakeholders.

Guiding Concepts

More Than Just the "Avoidance of a Negative"- The role of the IR can and should be an "affirmative positive" for all the stakeholders. The IR we envision will offer the opportunity to improve the quality of service to all stakeholders and increase their level of satisfaction. As well, the IR will enhance communication between stakeholder groups and offer the chance for better mutual understanding.

Implementation of the OIR - This document represents an important milestone on the path to the creation of the OIR, but it is not, nor could it be, a comprehensive articulation of all the parameters. The implementation of the OIR may be further refined as it is implemented as a result of changes in organizational and community needs.

Importance of the Selection Process - There is no substitute for a careful, circumspect selection process. As s/he will be provided access to highly confidential materials and to the City's senior decision makers, the IR must be deserving of a profound level of trust. Overly complicated or constraining rules on the IR are neither a substitute for picking the right person nor an adequate protection from picking the wrong one.



Appointing and Managing the Independent Reviewer

Determining who will appoint and manage the IR has been the most difficult issue to resolve in the past and one of the biggest challenges to gaining agreement on adopting an auditor. A variety of models have been evaluated over the years, and each has their strengths and weaknesses. We have concluded that there is no perfect, “off the shelf” model given our strong mayor form of government and unique elements of the city charter. Therefore, while we have taken into account general “best practices,” ultimately we are presenting an approach that best serves Fresno.

It is critical that the IR be independent and non-political. In the past, discussions about independence have been framed entirely in the IR’s reporting structure. However, as we continued to explore the alternatives, we came to recognize that independence is less about those structural reporting issues than it is about appropriate empowering authorization from the City’s elected and appointed officials.

In order to provide the IR with the necessary access to City records, comply with State personnel laws and the Peace Officers Bill of Rights, and report findings to his/her appointing authority, there are only two alternatives for the IR to report: the City Manager or the City Attorney. In response to some Councilmember and stakeholder concerns, we attempted to formulate a structure whereby the IR reported to the City Attorney. However, after thorough consultation with knowledgeable experts, we are now satisfied that such a structure would represent a compromise of some of our core principles and is unworkable. As the City Attorney has verified, having an IR report to him would pose a serious conflict of interest. The City Attorney has an attorney-client relationship with the Police Department; this would substantially impair his ability to appropriately supervise the IR.

Therefore, the IR will report to the City Manager. This is the most common reporting structure for IRs. Because the Chief of Police and his department also report to the City Manager, this (a) ensures departmental cooperation, (b) ensures access to records and department employees while ensuring confidentiality, and (c) reinforces the City’s unity of command structure. We recognize the gravity of stakeholder concerns in the past about the IR reporting to the City Manager and will create a mechanism wherein conflicts between an IR and a City Manager are resolved.

Additionally, and in keeping with our key principles, IRs will be hired with the participation of the Mayor, the City Council, the Chief of Police and community stakeholders. The City Manager shall form an advisory panel including: the Chief of Police, the Fresno Police Officers Association President, three representative community members, the City Council President and the Mayor of the City of Fresno. In the event that a City Manager chooses to terminate an IR, the termination would be conducted consistent with the City Charter and personnel laws.

Role and Responsibilities of the IR

The duties of the Office of the Independent Review (OIR) include:

- **Audit Investigations Conducted by Internal Affairs (IA)** – A primary function of the OIR will be to audit personnel investigations. The OIR will mandatorily audit the following investigations:



- Use of force investigations (including officer involved shootings);
- Investigations of in-custody deaths;
- Collisions during pursuits that result in serious injury or death; and
- Complaints involving alleged bias relating to gender, race, ethnicity, religion, age, sexual orientation or disability.

The investigations subject to discretionary audit will include those involving:

- All other collisions during pursuits;
- Claims of retaliation for filing complaints against police officers; and
- Any other complaints.

These discretionary audits may be conducted on the OIR's own initiative, as a result of citizen requests or requests submitted by the Chief of Police, division commander, or officers.

In mandatory audits, the OIR may choose to be involved in the investigation process as an *observer* (not an additional investigator) from the initial callout until the investigation is completed. Once the investigation is completed, it will be audited by the OIR.

As a result of conducting each audit, the OIR will prepare an audit report. The reports will focus on evaluating the investigation's adequacy and thoroughness, as well as the quality and accuracy of the investigation report

The OIR will attempt to resolve any concerns about an investigation at the lowest level, starting with the investigating sergeant and thereafter up the chain of command. Ultimately, if merited, the OIR may discuss concerns with the Chief of Police, and then the City Manager. In any event, every OIR audit will result in an audit report. Audit reports will be forwarded to the City Manager and City Attorney and shall be written in a manner as to ensure compliance with all personnel and confidentiality laws.

- **Review Inquiry and Complaint Logs** - The OIR will review the Police Department inquiry forms and complaint logs approximately monthly to identify unresolved inquiries and any trends in allegations that may require follow up or further action. The OIR will review these inquiries to determine whether any should have been investigated as a complaint of misconduct rather than addressed as an inquiry. The Police Department will follow up as appropriate. The OIR will work with Internal Affairs to identify areas that may be appropriate for data collection based on regular review of the inquiry and complaint logs.
- **Identify and Monitor Trends** – The OIR will have access to and monitor the Fresno Police Department's "Early Alert" system, as well as demographic data on traffic stops and other incidents, to identify and monitor trends along with specific responses for remedial actions to address these trends.
- **Serve as a Community Resource** – Community members want to be assured that the process is thorough, fair and without bias. The OIR will make presentations to community groups, professional organizations, neighborhood associations, the media, schools, and participants in the Citizen's Police Academy to educate the community and to solicit suggestions on strengthening the partnership between the community and the Police



Department. The OIR will provide information to community members about its role and the process by which complaints are received and investigated. Constituents may initiate contact with the OIR that can be informal inquiries concerning police policies, questions about the complaint process, or community members who want to share their opinions or concerns, but do not necessarily want to file a formal complaint.

The OIR will have blank Complaint and Commendation forms available and can receive completed forms from community members for forwarding to the Police Department's Internal Affairs unit. The OIR will maintain brochures, pamphlets and other materials to assist citizens seeking information concerning the complaint process, as well as how to commend Police Department employees.

- **Serve as a Resource for Police Officers and Managers** - The OIR shall also serve as a resource for police officers and managers for consultation regarding recommendations for changes to policies. Any recommendations for policy changes will be justified based on an analysis of internal trends and data, and community and professional standards, including procedures used in police departments of similar size and demographic parameters. In addition, the OIR will make presentations to newly hired police officers during their final stages of orientation to provide them with information about residents' perspectives of law enforcement and insight into the most common types of constituent complaints.
- **Produce an Annual Report** – The OIR will produce an annual report that will be transmitted, through the City Manager, to the Mayor, City Council, Chief of Police and public. The annual report shall be posted on the City's website and shall be made available to members of the public in multiple languages. The annual report will include information on the number and types of complaints by category; the number of complaints sustained; the number of complaints that are unfounded, not sustained and exonerated; the number of complaints where the complainant failed to cooperate in the investigation; an analysis of trends and patterns, along with remedial actions taken such as policy changes, training enhancement, and equipment modifications made in response to trends. The report will provide transparent and accurate information about the overall performance of the department while protecting the confidentiality of the individual members of the police department and the public.

In addition, during the first two years, the IR will produce interim reports at the six month mark.

Limitations on the OIR

- **No Unauthorized OIR Investigations** – While the OIR will have the authority to review all personnel investigations, **it will not conduct its own independent investigations of citizen complaints or allegations of employee misconduct.**

Complaints from community members that are received by the OIR will be forwarded to the Police Department's Internal Affairs unit and will be guided through the process according to existing Police Department protocol. The Internal Affairs unit will perform the investigation. Internal Affairs will send the complainant a confirmation letter or will make direct contact acknowledging receipt of the complaint and will give a brief description of the investigative process. In those instances where an investigation is initiated, complainants will be provided



with a Citizen's Complaint Receipt by Internal Affairs that includes the case number assigned to the complainant, the date the complaint was taken and the name of the assigned investigating Sergeant.

- **Ensuring Confidentiality** - We understand that respecting and ensuring the privacy and confidentiality of police officers and their personnel records is of the utmost importance. The IR will have delegated authority from the City Manager to undertake his or her duties. The IR will conduct himself or herself in a manner consistent with all relevant laws and confidentiality practices. Personnel matters are generally classified confidential. In such matters, neither the City Manager nor the OIR would be allowed to disclose any information to any individual or entity not authorized by policy or law, including disciplinary actions resulting from complaints.
- **Communication Protocol** - The OIR will not make public comments revealing or based upon the content of confidential personnel materials without the authorization of the City Manager. This restriction does not prevent the OIR from reporting any concerns to the City Manager, the Chief of Police or the City Attorney. In the interests of enhancing public understanding, the City Manager may authorize the OIR to report on specific incidents with personal identifiers removed, as long as confidentiality laws are not violated.
- **No Attorney-Client Privilege** – The OIR will not have an attorney-client relationship with any of the stakeholders, including the City, the Police Department, City Employees, or Complainants.

Staffing the Office of Independent Review

To fulfill the roles and responsibilities outlined above, it is recommended that the Office of the IR be staffed with three full time employees: (1) the Independent Reviewer, (2) a Community Outreach Specialist, and (3) an administrative assistant.

Councilmembers have raised concerns in the past about the potential for the OIR to grow as staff is assigned additional tasks never intended when the program was created. This, of course, would result in increasing costs for taxpayers. **Therefore, the total staffing for the Office of Independent Review will not exceed three full-time employees for a four-year period following its inception.** After the initial four years, staffing levels for the OIR would be evaluated by the City Manager. Changes to the staffing levels would require Council approval.

Complete job descriptions will be developed for each position. The following paragraphs are an overview of the types of skills required to fill the positions.

- **Independent Reviewer (IR)** - The IR will be responsible for reviewing investigations, reviewing inquiry and complaint logs, identifying and monitoring trends in the Police Department and serving as a resource for police officers and managers (see "Role and Responsibilities of the IR" above). We recommend that the IR be a licensed attorney and may be either a City employee or an independent contractor. The job skills required for the IR shall include experience and knowledge of police procedures, personnel issues, penal codes, relevant case law and court decisions, and the procedural protections provided to officers pursuant to the Peace Officer's Bill of Rights.



The IR must be a person who is fair and impartial, possessing analytical skills to comprehend complex investigations. S/he must be a person of extreme integrity who understands the importance of confidentiality and has the demonstrated ability to navigate complex investigations in a fair and unbiased manner. S/he must be willing to adhere to a code of ethics, such as that prescribed by the National Association for Civilian Oversight of Law Enforcement (*see attached*) and should not be influenced or coerced. The City should require the IR to disclose relationships which might create a conflict of interest and, in particular, relationships and communication between the IR, elected officials, and any internal or external stakeholders, which would call into question conflicts, influence or attempts to corrupt the process.

- **Community Outreach Specialist (COS)** - The Community Outreach Specialist will work at the direction of the IR and will be responsible for informing and educating members of the community about the existence of the OIR and the process by which complaints are received and investigated. The Community Outreach Specialist will make presentations to community groups, professional organizations, neighborhood associations, the media, schools, participants in the Citizen's Police Academy and other groups and will also solicit suggestions on strengthening the partnership between the community and the Police Department. The Community Outreach Specialist will also be responsible for providing customer service to constituents as they access the OIR with questions or concerns. S/he will also be responsible for producing the annual report at the direction of the IR. The Community Outreach Specialist must have a demonstrated ability to work well with a wide diversity of groups with differing viewpoints and backgrounds.
- **Administrative Assistant** - The Administrative Assistant will work at the direction of the IR to support the administrative needs of the office, the COS and the IR. The assistant must have a demonstrated ability to work well with the public and the necessary office skills to process and organize a variety of documents in a professional setting. The Administrative Assistant shall be a person of extreme integrity who understands the importance of confidentiality.

Budget

The creation of the Office of the Independent Review within the City Manager's Office will require additional funding allocated to the City Manager's Office. A realistic assessment of the total cost for the Office of the Independent Review is expected to be approximately \$285,000 in Year One allocated as follows:

<u>Personnel Costs</u>	<u>Salary</u>	<u>Benefits</u>
Independent Reviewer	\$115,000	\$ 25,000
Community Outreach Specialist (start 1/1/10)	\$ 35,000	\$ 10,000
Administrative Assistant	\$ 39,000	\$ 11,000
Total Personnel Costs		\$235,000



Non-Personnel Costs

Rent (off site) (start 1/1/10)	\$ 13,500	
Operations & Maintenance	\$ 20,000	
Annual Report	\$ 4,000	
Public Confidence Survey	\$ 12,500	
Total Non-Personnel Costs		\$ 50,000
TOTAL FOR YEAR ONE		<u>\$285,000</u>

The total budget for Years 2-4 will not exceed \$360,000 per year.

Ensuring Revenue Neutrality - To ensure this proposal is revenue neutral, the following reductions will be made:

Elimination of City Stewards Program	\$100,000
Elimination of Communications Outreach/City Publicist	\$120,000
Reduction in Cost of Customer Satisfaction Surveys	\$ 40,000
Elimination of Non Profit Grant Writing Program*	\$100,000

**The Mayor's Office is working with the program manager to identify other sources of funding to backfill the elimination of City general funds.*

Office Location

The Office of the Independent Review will require an off-site office to accommodate constituents who may not be willing to go directly to a police facility for information, to ask questions, or to file a complaint.

Expected Outcomes/Measures of Success

It is difficult to find comprehensive, quantitative data to validate the effectiveness of independent audits of law enforcement. However, we have sought guidance and input from experts on quantitative measures of success of OIRs. In response, we have routinely heard this argument: ***"It is just common sense that getting good, independent feedback allows you to deal with problems early on and it will always reduce risks and liabilities in the long run."***

That is, in fact, what the Los Angeles Sheriff Department experienced according to Merrick Bobb, the former police monitor for the LASD and founding director of the Police Assessment Resource Center: In the 2003 St. Louis University Public Law Review, Merrick reports: ***"During the past ten years of outside, independent monitoring and reporting, the total docket of excessive force cases on file against the LASD has dropped from a high of 381 cases in fiscal year 1992-1993 to a low of 70 cases in fiscal year 1998-99. The amounts paid out in settlements and judgments of excessive force cases dropped from a high of \$17 million in fiscal year 1995-1996 to a low of \$1.62 million in fiscal year 1997-1998."***



We believe it is extremely important to adopt specific and realistic performance metrics for the Office of Independent Review and will do so before the office commences operation. Baseline measurements will be established to be compared against measurements collected on an annual basis to determine the effectiveness of the office. The measurements will include, but are not limited to:

- Number of use of force occurrences (including officer involved shootings);
- Number of in custody deaths;
- Number of collisions during pursuits that result in serious injury or death;
- Number of complaints involving gender, race, ethnicity, religion, age, sexual orientation of disability;
- Total dollar amount paid out each year by the City resulting from civil suits filed against the City for police misconduct cases; and
- Public satisfaction with the Fresno Police Department.

Evaluation of the Office of Independent Review

A thorough, independent evaluation of the OIR will be conducted at the end of its 4th year of operation to determine whether the office has met its objectives and to ensure it has not strayed from its original intent and purpose. The results of the evaluation should be reviewed in open session of the City Council. The City Council will vote to continue or not to continue the operations of the OIR based on review of the objective performance measures, including stakeholder satisfaction. In addition, a public review will be held at the 2 year mark to consider refinements to the program if necessary.

Conclusion

Establishing an independent police auditor has been a politically volatile subject in Fresno for too long. As stated above, this policy proposal was developed with the understanding that Fresno police officers are highly trained, capable people who strive to serve the public every day with professionalism and that because of the tremendous power and authority invested in law enforcement, independent audits of investigations to protect our officers and maintain the public's trust is warranted.

This policy proposal for establishing the Office of Independent Review is not being made with the unrealistic expectation that constituent complaints will cease to exist or even decrease because of independent audits in the short- or mid-term. There will always be complaints and, in fact, an increase in initial complaints is expected due to the establishment of the Office of Independent Review. The primary role of the OIR is to ensure that complaints are thoroughly and appropriately investigated and that the community has trust in the process. If administered correctly, the Independent Reviewer for the City of Fresno will help protect our officers by enhancing policies, procedures, and training for the Fresno Police Department and strengthen police-community relations.



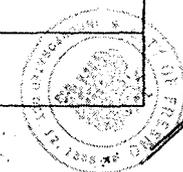
ATTACHMENT 1

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INDEPENDENT POLICE AUDITOR STUDY COMMISSION COMMITTEE ROSTER

June 17, 2003

NAME	ORGANIZATION	TITLE	PHONE	CELL/PAGER	E-MAIL
Dennis Beck	City Attorney Office	Deputy City Attorney	621-7542		Dennis.Beck@fresno.gov
Rod Brisendine	Fresno Police Officers Association	Second Vice President			Rodney.Brisendine@fresno.gov
Joe Callahan	Fresno Police Department	Lieutenant	621-2731	P: 773-3051	Joseph.Callahan@fresno.gov
Jeaneen Cervantes	City Manager's Office	Senior Secretary	621-7770		Jeaneen.Cervantes@fresno.gov
Roz Clark	Fresno Neighborhood Watch Association		222-0124	C: 281-3645	RozClark@yahoo.com
Jerry Dyer	Fresno Police Department	Chief of Police	621-2000		Jerry.Dyer@fresno.gov
Paula Farris	Greater Fresno Area Chamber of Commerce	Vice Chairperson	438-2040		Pfarris@Panagraph.com
Gail Gaston	Human Relations Commission	Chairperson	325-0540	C: 681-3140	gdemvote@aol.com
Jerry Haynes	Community Services Division	Assistant Director	621-2910	C: 907-0323 Fax: 498-1588	Jerry.Haynes@fresno.gov
Keith Kelley	Fresno West Coalition for Economic Development	Executive Director	485-1273 255-4200	C: 217-0496	Keithkelly@fwced.org
Sara Mirhadi	Democratic Community		325-1610	C: 960-4429	Saramirhad@aol.com
Joel Murillo	LEADER for Education, Employment and Justice	Chair	268-7227	Fax: 268-9299	NONE
Mike Oliver	Fresno Police Officers Association	President	442-3762	P: 764-0252	Mike.Oliver@fresno.gov
Debbie Reyes	Central California Criminal Justice Committee		485-7884		Reyesdm@pacbell.net
H. Spees	One by One Leadership	Chief Executive Officer	233-2000 ext. 111	Gloria ext. 110	Gloria@onebyoneleadership.com
Lemarr Treadwell	West Fresno School District	Teacher	485-2272	C: 281-4757	Ltreadwell@attbi.com



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ATTACHMENT 2

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NACOLE CODE OF ETHICS

Preamble

Civilian oversight practitioners have a unique role as public servants overseeing law enforcement agencies. The community, government, and law enforcement have entrusted them to conduct their work in a professional, fair and impartial manner. They earn this trust through a firm commitment to the public good, the mission of their agency, and to the ethical and professional standards described herein.

The standards in the Code are intended to be of general application. It is recognized, however, that the practice of civilian oversight varies among jurisdictions and agencies, and additional standards may be necessary. The spirit of these ethical and professional standards should guide the civilian oversight practitioner in adapting to individual circumstances, and in promoting public trust, integrity and transparency.

Personal Integrity

Demonstrate the highest standards of personal integrity, commitment, truthfulness, and fortitude in order to inspire trust among your stakeholders, and to set an example for others. Avoid conflicts of interest. Conduct yourself in a fair and impartial manner and recuse yourself or personnel within your agency when significant conflict of interest arises. Do not accept gifts, gratuities or favors that could compromise your impartiality and independence.

Independent and Thorough Oversight

Conduct investigations, audits, evaluations and reviews with diligence, an open and questioning mind, integrity, objectivity and fairness, in a timely manner. Rigorously test the accuracy and reliability of information from all sources. Present the facts and findings without regard to personal beliefs or concern for personal, professional or political consequences.

Transparency and Confidentiality

Conduct oversight activities openly and transparently providing regular reports and analysis of your activities, and explanations of your procedures and practices to as wide an audience as possible. Maintain the confidentiality of information that cannot be disclosed and protect the security of confidential records.



Respectful and Unbiased Treatment

Treat all individuals with dignity and respect, and without preference or discrimination including but not limited to the following protected classes: age, ethnicity, culture, race, disability, gender, religion, sexual orientation, socioeconomic status or political beliefs.

Outreach and Relationships with Stakeholders

Disseminate information and conduct outreach activity in the communities that you serve. Pursue open, candid, and non-defensive dialog with your stakeholders. Educate and learn from the community.

Agency Self-examination and Commitment to Policy Review

Seek continuous improvement in the effectiveness of your oversight agency, the law enforcement agency it works with, and their relations with the communities they serve. Gauge your effectiveness through evaluation and analysis of your work product. Emphasize policy review aimed at substantive organizational reforms that advance law enforcement accountability and performance.

Professional Excellence

Seek professional development to ensure competence. Acquire the necessary knowledge and understanding of the policies, procedures, and practices of the law enforcement agency you oversee. Keep informed of current legal, professional and social issues that affect the community, the law enforcement agency, and your oversight agency.

Primary Obligation to the Community

At all times, place your obligation to the community, duty to uphold the law and to the goals and objectives of your agency above your personal self-interest.



ATTACHMENT 3

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Office of Independent Review

Frequently Asked Questions

What is an Office of Independent Review?

An Office of Independent Review (OIR) provides the City with a mechanism to strengthen community trust for the Police Department by allowing for a neutral, third-party review of police policies, procedures, strategies and internal investigations. An Office of Independent Review is staffed with highly skilled personnel with significant expertise in law enforcement best practices. The Office works independently of the Police Department chain of command to provide City policymakers and the public with objective analysis of policing data, actions and outcomes. The Office of Independent Review would also serve as a resource for police officers and managers, providing consultation on policing issues, department procedures and concerns relating to actions by officers.

Independent Reviews can be initiated in response to citizen inquiry or at the request of the Chief of Police, a Division Commander, or an officer. In addition, the OIR will automatically review:

- “Use of force” cases (including officer-involved shootings);
- Investigations of in-custody deaths;
- Collisions during pursuits that result in serious injury or death; and
- Complaints involving alleged bias relating to gender, race, ethnicity, religion, age, sexual orientation, or disability.

The IPA may also audit:

- All other collisions during pursuits;
- Claims of retaliation for filing complaints against officers; and
- Any other complaints.

OIR reports will be forwarded to the City Manager who is accountable to the Mayor of Fresno. Under the City Charter, the City Manager has full supervisory authority over the Chief of Police, including the ability to hire and fire. This reporting structure will ensure the independence of the OIR by insulating it from political influence.

In addition, the OIR will publish an Annual Report to the Community, summarizing results and findings during the previous year. The Annual Report will also include a yearly survey of public attitudes toward the Fresno Police Department and perceptions of the effectiveness of its strategies.

Why would an Office of Independent Review be beneficial for Fresno?

To be fully effective, police agencies require the highest level of public confidence and officer credibility throughout the community they serve. An Office of Independent Review will provide ongoing, independent feedback to the Chief of Police, Mayor, other city leaders, and the community to help address issues which may impact public support and cooperation.



The Fresno Police Department is a highly professional and nationally-accredited police agency with 849 sworn officer positions. Department personnel make over 600,000 citizen contacts each year. These range from responses to 911 calls and arrests of criminal suspects to traffic stops and special event patrols. Citizen inquiries or complaints arising from contacts with police are handled by the department's own Internal Affairs Division.

An Office of Independent Review provides for an impartial analysis of Internal Affairs investigations by a neutral third party. This will provide city leaders and citizens with an objective view of police policies, procedures, methods and strategies to enhance the credibility of the Police Department and its officers in the community. In doing so, an Office of Independent Review will help improve officer safety through increased public cooperation. In addition, the establishment of an OIR is likely to reduce liability resulting from legal claims and judgments in the long run as potential problems are identified and corrected early on.

Does this OIR proposal reflect a lack of trust in the Fresno Police Department or Fresno Police Officers?

Not in the least. The Fresno Police Department is widely viewed as a model police agency. It is a nationally accredited department, led by one of the most highly respected law enforcement officials in the country – Chief Jerry Dyer. Since 2001, Chief Dyer has embraced the concept of independent review as an essential tool for enhancing his department and helping to ensure trust and cooperation between his officers and the community.

Fresno Mayor Ashley Swearingin, like Chief Dyer, also supports independent review. An OIR will provide greater government transparency - one of Mayor Swearingin's core values – while ensuring the highest level of public safety for Fresno citizens and protection for our officers. Just as other public agencies utilize outside experts to help improve their methods and procedures, the Office of Independent Review will provide continuous, professional feedback to the Fresno Police Department. Currently, over 55% of the city's general fund budget is allocated to the Police Department – a total of nearly \$139 million annually. It is also the city's largest department and delivers the single most essential service to Fresno residents: protection of life and property. The establishment of an Office of Independent Review provides a reasonable and appropriate system of public accountability, given the size and scope of the department's responsibilities.

What is the role of an OIR?

The primary role of the Office of Independent Review is to analyze complaints filed by citizens with the Police Department Internal Affairs Division to ensure they have been investigated thoroughly and conducted fairly. The OIR may examine the records of investigations and talk with investigating officers. The OIR can not conduct a separate investigation and will not have subpoena authority. The findings of the OIR will be reported to the City Manager, who has supervisory authority over the Chief of Police.



The OIR will also monitor reporting trends to examine whether police policies are being fairly administered. In addition, the OIR will conduct public outreach, including an annual survey to determine public perceptions about the Police Department and its effectiveness. A report to the community will be published each year detailing the work of the OIR and other relevant data.

What authority will an OIR have over the Police Department?

The Office of Independent Review will not direct policy within the Police Department. The findings and recommendations of the OIR will be reported to the City Manager. Under the City's Charter, the City Manager has direct authority over the Chief of Police and is ultimately responsible for ensuring the effectiveness and professionalism of the Police Department.

Will Police Officer confidentiality be observed?

Yes, the Office of Independent Review will be bound by confidentiality statutes and the Peace Officer Bill of Rights.

Which other cities have similar independent review functions?

With passage of this proposal, Fresno will join the ranks of cities in California with some form of independent review, including: Los Angeles, San Diego, Sacramento, Long Beach, Berkeley, Claremont, Davis, National City, Novato, Oakland, Richmond, Riverside, San Francisco, San Jose, Santa Cruz and Sausalito. Nationally, we will join the ranks of such cities as: Tucson, Denver, New Haven, Miami, Orlando, Honolulu, Boise, Chicago, Indianapolis, Iowa City, Baltimore, Detroit, Minneapolis, Kansas City, Omaha, Las Vegas, Albuquerque, New York, Syracuse, Cincinnati, Eugene, Portland, Philadelphia, Pittsburgh, Knoxville, Memphis, Austin, Houston, Salt Lake City, Seattle, Washington D.C., and many others.

Who will select the City's Independent Reviewer?

The Independent Reviewer will be hired by the City Manager, based on direct input from the Mayor, Chief of Police, representatives from the City Council and Fresno Police Officers Association (FPOA) and three members of the community.

Is a change in the City Charter required to establish an OIR?

No. An Office of Independent Review, reporting to the City Manager, may be established without a modification to the City Charter. Other approaches, including those requiring the OIR to report to the Mayor or to the City Council, would require a lengthy and cumbersome process to amend the City Charter. However, even if a charter revision process was undertaken to enable OIR reporting directly to the City Council, the OIR could not legally disclose certain findings to the City Council without violating personnel and confidentiality statutes. Therefore, the City Manager approach is the only workable reporting structure for the OIR.

What will an Office of Independent Review cost?

A budget of \$285,000 will be required to establish an Office of Independent Review for the first year. In Years 2-4, the annual budget will not exceed \$360,000. **This budget**



includes salary and benefits for three full time personnel (Independent Reviewer, Community Outreach Specialist and Administrative Assistant) plus operational expenses. **No staffing expansion will be permitted for 4 years without City Council authorization.**

Where will the money for the OIR come from?

The establishment of an Office of Independent Review will be revenue-neutral, meaning that dollar-for-dollar reductions will be made in other budgeted areas within the City to fund OIR operations. In the 2009-2010 budget year, the following reductions will be made:

- Elimination of "City Stewards" program \$100,000
- Elimination of City Publicist \$120,000
- Elimination of Grant Writing program \$100,000
- Reduction in Customer Survey expenditures \$ 40,000

Wouldn't it cost less to hire an outside auditor on a case-by-case basis?

Hiring an outside auditor only "when needed" would cost more, not less. Each separate, independent investigation costs \$30,000 - \$50,000 on average and would be subject to inconsistencies in personnel, methodology and reporting. Other significant drawbacks to this approach include the complete elimination of community outreach and an inability to measure results from policy and procedure changes.

How will we know if the OIR is a success or failure?

The success or failure of the OIR will be measured in a number of ways including: results from public surveys on attitudes toward the Police Department, reductions in the number of complaints filed against the department, effectiveness of working relationship between the OIR and Police Department personnel, and reduction in costs for legal services, judgments, and settlements. The OIR position is subject to review and/or elimination by the Fresno City Council after 5 years.

Who Supports an Office of Independent Review?

Fresno Mayor Ashley Swearengin
Former Mayor Alan Autry
Fresno Police Chief Jerry Dyer
Fresno County Grand Jury
League of Women Voters
Fresno Business Council
The Fresno Bee
Fresno Chamber of Commerce
Building Industry Association of the San Joaquin Valley

Who Opposes an Independent Police Auditor?

Fresno Police Officers Association

May 15, 2012

M

Fresno, CA 93

Re: IA # 2012-

Dear M

A formal investigation into your complaint concerning the conduct of a member of this department has been completed. Following a thorough and objective investigation, we have determined that your complaint that an officer with this agency - - is unfounded. A finding of "unfounded" means the allegation of misconduct cannot be substantiated or the events alleged did not occur.

This department takes appropriate corrective action if and when it is determined that an employee has committed violations of department rules and regulations. However, pursuant to California Penal Code 832.7, I am unable to provide you with the specific details of corrective action taken or information gathered during the investigation.

If you have any questions or wish to discuss the matter further, you may contact Lt. Dennis Montejano, the commander of the Internal Affairs Bureau at (559) 621-2730.

Sincerely,

Robert A. Nevarez
Deputy Chief of Police
Professional Standards Division

RAN/se

August 1, 2012

M

Fresno, CA 9

Re: IA # 201

Dear M

A formal investigation into your complaint concerning the conduct of a member of this department has been completed. Following a thorough and objective investigation, we have determined that your complaint that an officer with this agency -- is exonerated. A finding of "exonerated" means the conduct in question occurred, but the actions of the member(s) were within department policy or were otherwise appropriate given the circumstances.

This department takes appropriate corrective action if and when it is determined that an employee has committed violations of department rules and regulations. However, pursuant to California Penal Code 832.7, I am unable to provide you with the specific details of corrective action taken or information gathered during the investigation.

Thank you for bringing this incident to our attention. We constantly endeavor to improve the performance of our employees. I apologize for any inconvenience this may have caused you and hope any further contacts you may have with employees of this department will prove to be more positive. If you have any questions or wish to discuss the matter further, you may contact Lt. Dennis Montejano, the commander of the Internal Affairs Bureau at (559) 621-2730.

Sincerely,

Robert A. Nevarez
Deputy Chief of Police
Professional Standards Division

RAN/se

January 5, 2012

M

Fresno, CA

Re: IA #

Dear

A formal investigation into your complaint concerning the conduct of a member of this department has been completed. Following a thorough and objective investigation, we have determined that your complaint that an officer with this agency - - is not sustained. A finding of "not sustained" means the investigation does not produce a preponderance of evidence. This finding is rendered when the evidence is as equally weighted toward proving the allegation as it is toward disproving the allegation.

This department takes appropriate corrective action if and when it is determined that an employee has committed violations of department rules and regulations. However, pursuant to California Penal Code 832.7, I am unable to provide you with the specific details of corrective action taken or information gathered during the investigation.

Thank you for bringing this incident to our attention. We constantly endeavor to improve the performance of our employees. I apologize for any inconvenience this may have caused you and hope any further contacts you may have with employees of this department will prove to be more positive. If you have any questions or wish to discuss the matter further, you may contact Lt. Dennis Montejano, the commander of the Internal Affairs Bureau at (559) 621-2730.

Sincerely,

Robert A. Nevarez
Deputy Chief of Police
Professional Standards Division

RAN/se

October 15, 2012

M

Fresno, CA 9

Re: IA # 2012-

Dear M

A formal investigation into your complaints concerning the conduct of a member of this department has been completed. Following a thorough and objective investigation, we have determined that your complaint that an officer with this agency ? is sustained. A finding of "sustained" means the allegation of misconduct occurred in whole or in part as alleged.

This department takes appropriate corrective action if and when it is determined that an employee has committed violations of department rules and regulations. However, pursuant to California Penal Code 832.7, I am unable to provide you with the specific details of corrective action taken or information gathered during the investigation.

Thank you for bringing this incident to our attention. We constantly endeavor to improve the performance of our employees. I apologize for any inconvenience this may have caused you and hope any further contacts you may have with employees of this department will prove to be more positive. If you have any questions or wish to discuss the matter further, you may contact Lt. Dennis Montejano, the commander of the Internal Affairs Bureau at (559) 621-2730.

Sincerely,

Robert A. Nevarez
Deputy Chief of Police
Professional Standards Division

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Mediating Citizen Complaints: The Denver Program

By Ajenai Clemmons, Ombudsman, and Richard Rosenthal, Independent Monitor, Office of the Independent Monitor, City and County of Denver, Colorado

There are several universal challenges that confront police internal affairs bureaus: handling complaints in a timely manner, resolving complaints in a way that provides some level of satisfaction to both officers and community members, capitalizing on the potential of the complaint process to improve police-community relations, and the unique difficulty of establishing the truth or falsity of misconduct allegations. The Denver Police Department (DPD) has found that the community-police mediation program is an efficient and effective way to address all of these challenges.

What Is Mediation?

Mediation is an alternative to the traditional complaint-handling process. It is usually a voluntary process that allows community members and officers to sit down face to face in a neutral and confidential setting to discuss their issues in a forum facilitated by a professional mediator. Serving as a safe opportunity for dialogue, mediation allows each party to be heard and to gain a better understanding of the other's perspective about an incident. Unlike a courtroom, in which one side prevails over the other and blame is assigned, mediation promotes mutual understanding and learning so that both parties can prevent similar situations in the future.

Historical Context

Mediation evolved out of a desire to look for alternatives to traditional methods of conflict resolution, in which parties approach each other as adversaries and appeal to some higher authority to resolve their dispute. The Denver Office of the Independent Monitor (OIM) offers mediation as an alternative to the traditional complaint-handling process because, when it comes to resolving complaints against the police, one size does not fit all. The OIM recognizes that not everyone who has a complaint against a police officer wants to see the officer disciplined. Some believe that taking an adversarial approach is not constructive or ultimately helpful to anyone; others simply want to understand why an officer took a particular action, to explain their own actions and perceptions, or to discuss how an incident affected them. Still others want to retain control over how the complaint is handled, rather than turning the complaint over to others for decisions and resolutions.

Mediation was developed as a way to give control over the conflict resolution process back to the parties directly involved. The trend toward using mediation to resolve disputes has been growing rapidly over the last 30 years in a range of areas, including employee grievances, divorce, small claims, land-use and resource issues, neighborhood disputes, and even in some criminal cases. The reasoning is that people are more likely to achieve a satisfying resolution (and possibly make peace with each other) through increased mutual understanding and cooperative problem solving than by approaching each other as enemies or seeking legal or administrative revenge for perceived wrongs.

Most police complaints are well suited for mediation. This is because most community-police conflicts are based on misunderstandings, which the DPD believes mediation can address better than discipline. Unfortunately, relatively few community-police mediation programs exist in the United States, and those that do exist traditionally handle only a small number of cases. A national study of community-police mediation programs in 2000 found that of more than 17,000 U.S. law enforcement agencies, there were only 100 oversight agencies, and just 16 of them had mediation programs. Thus, mediations accounted for a tiny fraction of complaint resolutions.¹

Denver Community-Police Mediation Program

Having noted the success of a city auditor-initiated mediation program in Portland, Oregon,² which documented increases in both complainant and police satisfaction with the complaint-handling process, the Denver OIM introduced community-police mediation in December 2005. Traditionally, the national average level of satisfaction in the United States with the complaint-handling process among both law enforcement agencies and civilians has remained extremely low. For example, in 2005, the OIM administered a survey evaluating perceptions and attitudes about the complaint-handling and disciplinary processes (before the creation of the OIM) to all police officers and community members who had filed a complaint within the previous three years. Almost three-quarters (74.5 percent) of community members reported dissatisfaction with the complaint process, and 63.5 percent of officers reported dissatisfaction. With mediation, dissatisfaction figures have plummeted to 10.7 percent and 3.7 percent, respectively. Table 1 represents comparisons between satisfaction levels with traditional complaint handling and the community-police mediation program for both process and outcome of complaint.

Table 1. Satisfaction rates for complaint (2005) and mediation (2007) surveys

	Complaint Survey Satisfaction Rate			Mediation Survey Satisfaction Rate		
	Dissatisfied	Neutral	Satisfied	Dissatisfied	Neutral	Satisfied
Community members						
Complaint-handling process	74.5%	13.8%	11.7%	10.7%	8.0%	81.3%
Outcome of complaint	66.2%	5.8%	8.0%	14.9%	20.3%	44.9%
Officers						
Complaint-handling process	63.7%	24.7%	11.6%	3.7%	12.2%	84.1%
Outcome of complaint	34.8%	16.8%	48.6%	4.5%	24.4%	70.7%

Benefits of Mediation

As the essence of community policing, mediation has the potential to, and often does, improve the relationship between complainants and officers one case at a time. Mediation helps prevent an unpleasant experience with one officer from resulting in a negative perception and attitude toward the officer's agency or even the entire law enforcement community. In addition, a successful mediation can extend the repaired relationship to the community member's family and friends, some of whom might have been adversely affected by the complainant's personal experience.

Mediation is particularly beneficial in resolving complaints of police racial bias. Many agencies insist on conducting formal investigations of all complaints of racial bias, because they do not want to be accused of failing to address adequately such serious allegations. Investigations into such complaints, however, rarely result in sustained findings because the allegations are usually impossible to prove without a factual basis. Rather, these complaints often come about not because the officer said or did something explicitly racist but because the complainant interpreted the officer's words, attitudes, or behavior as stemming from racist beliefs. Historically, in these cases, both parties have been dissatisfied with the resolution of these complaints. Complainants believe that the agency covered up officers' racism in a questionable investigation, and officers are generally offended that they have been labeled as racist.

The OIM has successfully mediated several racial-bias complaints by enabling both sides to address this allegation directly with the assistance of one or two professional mediators. Beyond the direct benefits of the mediation session, this discussion can increase officer sensitivity to and community member understanding of racial issues and perceptions. Mediation allows both sides to see each other as individuals, which contributes to better relations between police and community complainants, as well as the community.

There are in fact many benefits of mediation:

- Each party has an opportunity to be heard and understood.
- Each party has the chance to hear the other's perspective and why particular actions were taken.
- Each party can give the other feedback about how to avoid similar incidents in the future.
- Community complainants can regain confidence in police services.
- Both parties exercise direct control over the quick resolution of the complaint, rather than having it decided by others.
- The agency can resolve the complaint outside of the disciplinary process.

Putting the other party's behavior into perspective through mediation helps both parties understand each other's motivations and actions. This generally leads to healing, forgiveness, and closure. These learning experiences often result in smiles and handshakes by the end of the mediation session. Officers often walk away having shared valuable information about their agency's policies and procedures and having gained knowledge that will enable them to be more effective professionals. Community members feel that they have been taken seriously. Successful mediation yields a win-win outcome in which both sides feel good about the process. Of course, this is where real change happens.

Historical Obstacles to Mediation

Professor Sam Walker of the University of Nebraska at Omaha, an expert in civilian oversight of law enforcement agencies, identifies four main obstacles to mediation:

- Police officer and police union opposition
- Lack of understanding of mediation by both officers and community members
- Lack of resources for mediation programs
- Lack of incentives to participate for officers and complainants³

A major problem for many community-police mediation programs has been opposition from police officers and the unions that represent them. This is partly because many officers, like many members of the public, do not fully understand what mediation is, how it works, and the benefits that it offers. In the course of shaping Denver's new program, some of the more common concerns of officers were identified (see table 2).

Table 2. Officer concerns versus the truth about mediation	
Officer Concern	Truth
Officers would be compelled to apologize even if they had done nothing wrong.	People are not required to say or do anything they do not want to do, although many choose to apologize.
Mediation would not do any good because complainants would be too unpleasant or unreasonable for mediation to succeed.	Officers often have already seen complainants at their worst during the initial incident that generated the complaint.
Mediation would do nothing more than provide complainants with an opportunity to verbally attack officers.	Professional mediators are trained to prevent this type of communication.
If officers speak freely, their words will be twisted and/or used against them in civil or criminal proceedings.	The content of a mediation session is subject to a legally binding confidentiality agreement in most

Another challenge to successful community-police mediation programs is the lack of incentives for officers to participate. The DPD has made mediation an alternative to the traditional complaint process. As a meaningful incentive, the department has decided that officers who choose to mediate will not be subject to internal affairs investigation or disciplinary action. After the mediation, the internal affairs case is closed. However, officers who fail to mediate in good faith may be barred from future mediation offers. (In the Seattle, Washington, mediation program, it must be determined that an officer mediated in good faith *before* the

underlying internal affairs complaint
can be dismissed.)

To address the challenges of police resistance, the OIM engaged in significant outreach efforts to the DPD to educate officers about mediation, to address their concerns, to promote mediation as an option, and to encourage police command staff to do the same. The independent monitor visited every district station to discuss the program at roll call. The monitor also met with all Denver police organizations and unions to speak with officers about mediation. In 2006, the OIM continued its outreach efforts in person and through the aid of a training video on mediation that was presented to all officers during roll call. Thus far, 88 percent of officers given the option of mediation have accepted.

The high officer participation figure is not out of proportion with statistics in other cities. The OIM has found that officers often willingly mediate even when they believe they did nothing wrong. Their willingness is not necessarily motivated by a desire to escape discipline but rather as a service to complainants (as a tool of community policing) and as a way to clear up misunderstandings. It should be noted that the vast majority of community complaints do not result in the imposition of discipline, due to difficulty of proving the allegations. Furthermore, most community member-officer interactions are not observed by an objective witness, nor are they provable through objective evidence. Thus, many of the cases that are actually mediated would not otherwise result in the imposition of discipline against involved officers.

Another strategy to ensure the success of the mediation program and to increase police confidence in the process was the decision to contract with professional mediators. Community-police mediation can be unusually challenging. There is the potential for feelings to run deep on both sides, and it is important that the mediator have the skill and experience to make mediation constructive. The OIM contracted with a professional nonprofit mediation center, Community Mediation Concepts, which had previously provided a variety of mediation services for the City of Denver. A one-day training session for professional mediators was developed to provide them with the tools necessary to mediate these particularly sensitive cases.

How Cases Are Selected

Mediation is approved in cases where the OIM and the Internal Affairs Bureau (IAB) believe that it is likely to (1) result in greater complainant satisfaction, (2) result in improved officer conduct, and/or (3) contribute to improved community-police relations. The goals are to sensitize officers to community perspectives and concerns and provide opportunities for the public to learn more about police procedures and perspectives.

The OIM considers and encourages mediation in a wider range of cases than most community-police mediation programs. For example, in many jurisdictions, programs categorically exclude certain types of cases from mediation as a matter of policy. Ineligible allegations may include excessive force, racial discrimination, or disparate treatment. The OIM's philosophy, however, is that categorical exclusion of cases means losing valuable opportunities for community members and police to better understand each other's perspective, to explore how they might prevent similar problems in the future, and to reach a satisfying resolution.

The OIM recognizes the value in using mediation to address the issues underlying community-initiated complaints. For example, use-of-force complaints often result from a failure of communication and are usually difficult to sustain. Mediation is effective at facilitating communication; therefore, the OIM considers mediation appropriate in some use-of-force cases. Due to concerns regarding use-of-force issues, however, the DPD policy excludes use-of-force cases involving actual injury or the use of impact weapons from mediation without the consent of the chief of police, the manager of safety (who supervises the police and sheriff's departments), and the independent monitor.

Other jurisdictions exclude from mediation any officer who has received more than a certain number of complaints in a specific time period. The reasoning is that such officers may require aggressive corrective action. It remains an open question whether discipline is more likely than mediation to result in improved officer conduct. In fact, there is evidence to suggest that mediation may be more effective. Over the next few years, the OIM will compile statistics regarding complaint patterns to establish to what extent mediation is a factor in improving officer behavior.

Some complaints, due to the serious nature of the allegations, require full investigation and possibly disciplinary action. DPD policy will not allow significant issues of misconduct or corruption to disappear into the confidential process of mediation. Cases specifically excluded from consideration for mediation are those in which the allegations, if sustained, would result in such serious disciplinary actions as dismissal, demotion, or the substantial imposition of discipline (such as a suspension of more than a few days). A case will also be excluded from mediation if it appears clear, due to the nature of the people involved, that a mediation session would not be productive.

Mediation Process

Complaints are not eligible for mediation unless agreed upon by the OIM and the internal affairs command staff as an appropriate way to resolve them. After this determination is made, the OIM ombudsman calls complainants to discuss their options and determine if they would be willing to mediate. OIM policy requires that the ombudsman ensure that complainants understand that, if they agree to mediate, there will be no further investigation and complaints will be dismissed if officers agree to mediate and make themselves available for timely mediation, regardless of the outcome of the process.

If complainants accept the OIM's offer to mediate, the ombudsman contacts involved officers to see if they are willing to mediate. If the involved officers agree, complaints are removed from the normal complaint process, and the DPD takes no further action in terms of investigation or discipline. If the involved officers decline to mediate, complaints are returned to the normal internal affairs process. The mediation program is voluntary. Any stakeholder (which includes complainants, involved officers, DPD command staff, or the OIM) may decline a case to be mediated for any reason.

If the parties agree to mediate, the OIM contacts the mediation contractor to assign the case to a mediator who will then follow up with the parties to schedule the earliest possible date. The mediator schedules the most convenient date, time, and location for all parties. There are multiple locations throughout the Denver area where mediations can be conducted, including the OIM, libraries, and City Council offices. Mediations are regularly scheduled in the evenings and on weekends for added convenience. Because the OIM's objective is to handle complaints in a fair, respectful, and timely manner, it aims to have mediation completed within a few weeks of a complainant's agreement to mediate. From beginning to end, the median number of days OIM mediation cases have remained open is 30 (as of December 31, 2007). This timeliness is key for two reasons. First, having fresh memories of an incident engenders more constructive dialogue. Second, the quick resolution adds to both parties' satisfaction with the process.

To improve the likelihood of a successful mediation, the OIM provides information on the process so both parties know what to expect. Complainants and officers are provided a mediation brochure once they agree to mediate. Besides explaining the process, the brochure also lists suggestions for mediating constructively.

Additionally, the OIM furnishes a summary of the incident and allegations to the mediator before the mediation as background information about the dispute. The mediator can get additional information, if necessary, while contacting complainants and officers to schedule the session. A final confirmation notice is sent to all parties of the time, date, and location of the mediation. Before the session begins, the parties are required to sign a form providing consent to mediate, which includes a confidentiality agreement for their signature. Finally, the mediator establishes the ground rules before the session begins, so expectations are clear.

What Happens during Mediation?

At the beginning of mediation sessions, mediators introduce themselves and explain the process and ground rules (confidentiality, courtesy, and mutual respect). Complainants are then invited to describe their views of the incident. Officers also present their perspectives. From that point, dialogue begins, with mediators guiding participants along a constructive path and keeping everyone focused on the matters at hand. If the conversation becomes too tense, mediators may decide to meet separately with participants in a brief caucus. The process continues until both parties feel they have resolved the issue to their satisfaction. Most mediation sessions last 60–90 minutes. Officers generally mediate while on duty and in uniform.

On completion of the mediation, complainants, officers, and mediators are given exit surveys to permit effective evaluation of the mediation program. At that point, complaints are dismissed.

Continuous Quality Control

The OIM has implemented several mechanisms to ensure that the mediation program continues to provide satisfactory outcomes for both community members and officers. First, OIM staff members observed mediations regularly for the first nine months of the program to ensure that mediators met high expectations and that cases selected for mediation were appropriate. The OIM staff will continue to observe mediations on a periodic basis, particularly when new mediators are used or when the case involves unusual circumstances. Second, the OIM asks all participants and mediators to fill out surveys to evaluate the program to remove any ineffective elements. Finally, the OIM meets on a monthly basis with the internal affairs board and the mediation team to discuss which aspects of the program can be improved, how to best expand the program, and any other relevant issues.

Mediation across the United States

The OIM contacted civilian oversight programs across the United States to gather information about their mediation programs. The staff identified seven agencies currently operating community-police mediation programs that mediated 10 or more cases in 2007 (see table 3).

Table 3. Mediation Rates Per Capita for Selected Cities, 2007

Agency	Accountable Division	Number of Sworn Officers	Cases Mediated	Mediation Rate Per Capita
New York City Police Department	Civilian Complaint Review Board	36,000	100	2.78
Denver Police and Sheriffs Departments	Office of the Independent Monitor	2,196	59	26.87
San Francisco, California, Police Department	Office of Citizen Complaints	2,364	47	19.88
Washington, D.C., Metropolitan Police Department	Office of Police Complaints*	3,912	35	8.95
Seattle, Washington, Police Department	Office of Professional Accountability	1,233	24	19.46
Minneapolis, Minnesota, Police Department	Civilian Police Review Authority*	798	17	21.30
Portland, Oregon, Police Bureau	Independent Police Review Division	946	15	15.86

*Washington, D.C., and Minneapolis, Minnesota, have the only mandatory citizen-police mediation programs in the United States. In these programs, the agency can order the involved officers to mediate. However, if either party is dissatisfied after attempting to first resolve the complaint through mediation, then either party can request a formal investigation.

Conclusion

The benefits of a community-police mediation program so vastly outweigh the costs that every metropolitan police department should offer it as a service to its community and its own officers. Aside from the positive consequences inherent with this brand of conflict resolution, mediation serves to address effectively and efficiently challenges unique to public safety departments: the timeliness with which complaints are handled, the ability to resolve complaints in a satisfactory manner for all sides, the ability to convert complaints into opportunities to improve police-community relations, and the ability to identify a workable and sustainable system for handling allegations of racial bias. ■

Notes:

¹See Samuel Walker, Carol Archbold, and Leigh Herbst, *Mediating Citizen Complaints against Police Officers: A Guide for Police and Community Leaders* (Washington, D.C.: U.S. Department of Justice, Office of Community Oriented Policing Services, 2002),

<http://www.cops.usdoj.gov/ric/ResourceDetail.aspx?RID=134> (accessed June 10, 2008).

²See Independent Police Review Division, Office of the City Auditor [Portland, Oregon], *Annual Report, 2004*,

<http://www.portlandonline.com/shared/cfm/image.cfm?id=83579> (accessed June 26, 2008).

³Walker et al., *Mediating Citizen Complaints against Police Officers*.

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