



# **OFFICE OF INDEPENDENT REVIEW**

**REPORT FOR THE PERIOD OF OCTOBER 1, 2017  
TO DECEMBER 31, 2017**

**John A. Gliatta  
Independent Reviewer**

**Maira Aguilar  
Community Coordinator**

## **ABOUT THE OFFICE OF INDEPENDENT REVIEW**

The Office of Independent Review (OIR) was significantly changed when Lee Brand was elected as Mayor for the City of Fresno. Mayor Brand amended the position of Independent Reviewer (IR) to a full time position requiring local residency. Although the mentioned changes were implemented, the foundation of the OIR was not changed. The OIR will work to strengthen community trust in the Fresno Police Department (FPD) by providing a neutral, third-party review of police policies, procedures, strategies, and Internal Affairs (IA) investigations. The OIR operates independently of the FPD and will provide City leaders and the public with an objective analysis of policing data, actions, and outcomes.

The OIR analyzes complaints filed by citizens and those initiated by FPD IA to ensure they have been investigated fairly and thoroughly. Periodically, the OIR will provide an objective analysis of individual units within the FPD to ensure compliance with policy and procedure, best practices, and the law. This includes recommendations and findings to increase thoroughness, quality, and accuracy of each police unit reviewed.

The work of the OIR is guided by the following principles: Independence; Fairness, Integrity, and Honesty; Transparency; Participation of Stakeholders, both internally and externally; Acceptance, Cooperation, and Access; Obedience to Legal Constraints.

In addition, a Citizens' Public Safety Advisory Board, hereafter referred to as the Board, was created by Mayor Brand to enhance trust, accountability, transparency, and promote higher standards of services in the FPD. This will increase public confidence in the FPD and work to strengthen and ensure the application of equal protection under the law for all citizens in the City of Fresno. It is Mayor Brand's belief more trust and public confidence in the FPD will establish a foundation that allows our police department to be safer and more effective in the performance of their duties. There are many in the City of Fresno who also share this belief.

The Board is comprised of nine individuals appointed by the Mayor. The Board members represent the diversity of the community. In addition, there are five non-voting members serving the Board in an advisory capacity. The Board will advise the IR in helping to define, assess and further develop Community Based Policing citywide. The Board will also monitor and develop performance metrics to measure effectiveness of Community Based Policing.

Additionally in November, Community Coordinator Maira Aguilar became part of the OIR. Per Mayor Brand's vision, she will be instrumental in meeting with community groups and residents of Fresno to build, enhance, and establish trust between the community and the FPD.

## OIR REPORT FORMAT

The OIR was vacated shortly after the end of the first quarter of 2017 and remained vacant until late August 2017. Therefore the first and second quarter reports for 2017 were not prepared. However, specific questions from citizens regarding complaints during those periods were addressed by the present IR. As mentioned in the third quarter report, the following changes have been implemented and will continue for all future reports:

- Definitions for the terms used have been amended to achieve uniformity with the definition of terms used in California Legislative documents and the FPD.
- Officers will be referred to as “O” in lieu of “S” which was used previously.
- The charts are grouped by incident type and cases appear in order of case number.
- The incident type charts will list all cases which were pending, assigned, or closed during the review period, and where applicable a Year to Date (YTD) chart will be listed.
- All cases in which the FPD IA determined the officer(s) was Exonerated, Unfounded, or Not Sustained will be reviewed by the OIR. The finding reached by the OIR will also be listed. If IA and the OIR have not reached the same decision the OIR explanation will appear following the chart. Cases in which IA deemed officer(s) Sustained will not be reviewed a second time by the OIR.
- All Informal Complaint cases which are not investigated by IA will also be reviewed.
- Cases will not be reviewed by the OIR until IA has completed their investigation and the case is classified as closed by IA, thus allowing for all information to be reviewed.
- In the event the OIR proposes a recommendation or corrective action, it will appear directly following the chart summarizing the cases within the specific incident type.
- Recommendations or corrective actions which are not directly related to a charted incident type will appear at the end of the report prior to the summary.
- Additional changes are anticipated but due to the limitations of the IA software program the changes may not appear until the first quarter 2018 report.
- Activities of the Board and Community Coordinator will appear before the summary.
- The report will be released to Mayor Lee Brand, City Manager Wilma Quan-Schecter, Chief Assistant City Attorney Francine M. Kanne, and Chief Jerry Dyer, prior to finalization. This will allow the respective parties an opportunity to respond to recommendations and/or findings, and those responses may be included in the final report. However, their reviews and responses will not alter the recommendations or corrective actions made by the OIR. Responses will appear following the summary.
- If the FPD did implement policy or procedure changes in response to the OIR's recommendations listed in the previous quarterly report, the changes will be addressed in the section titled “Status of OIR Recommendations.”

## STATUS OF OIR RECOMMENDATIONS

In the third quarter report two recommendations were made following the review of the IA investigations closed during the review period. At the time the report was released Chief Dyer had indicated immediate corrective actions were being implemented. To assure the public of the compliance by the FPD, the recommendations made by the OIR and the respective reprints of the actual FPD policy/procedure changes appear below.

**Recommendation 1:** In an attempt to reduce physical injury to prisoners and claims for those injuries it is recommended FPD Policy 901 be amended to mandate the securing of prisoners with a seat belt while the vehicle is in motion. Also, in view of the fact the patrol vehicles are not equipped with audio/video recorders the activation of a body camera should be considered when a prisoner attempts to self-inflict injury while being transported. Although the video will not be recording the prisoner, the audio will document the cause of injury and reduce, if not eliminate, future allegations by those being transported.

### POLICY 1022.2 - WEARING OF SAFETY RESTRAINTS

All persons occupying the rear seat of a police unit, *to include prisoners*, shall wear available safety restraints unless physical conditions would prevent such from being applied.

The second portion of the above OIR recommendation will be addressed in this fourth quarter report in the Unreasonable Force review section.

**Recommendation 2:** Some may consider the best practice cited by the defense firm to be overly cautious. However, at a minimum the OIR is recommending FPD institute mandatory annual pursuit training and incorporate a tracking mechanism to ensure each and every officer comply with the annual requirement; and document each officer is aware and comprehends the guidelines of the department pursuit policy. The tracking mechanism should have an alert system to identify the officers approaching the one year point who have not complied with the mandate.

## *Roll Call Training Bulletin*

Bulletin # 17-11

October 2, 2017

JERRY DYER  
Chief of Police

### Vehicle Pursuits

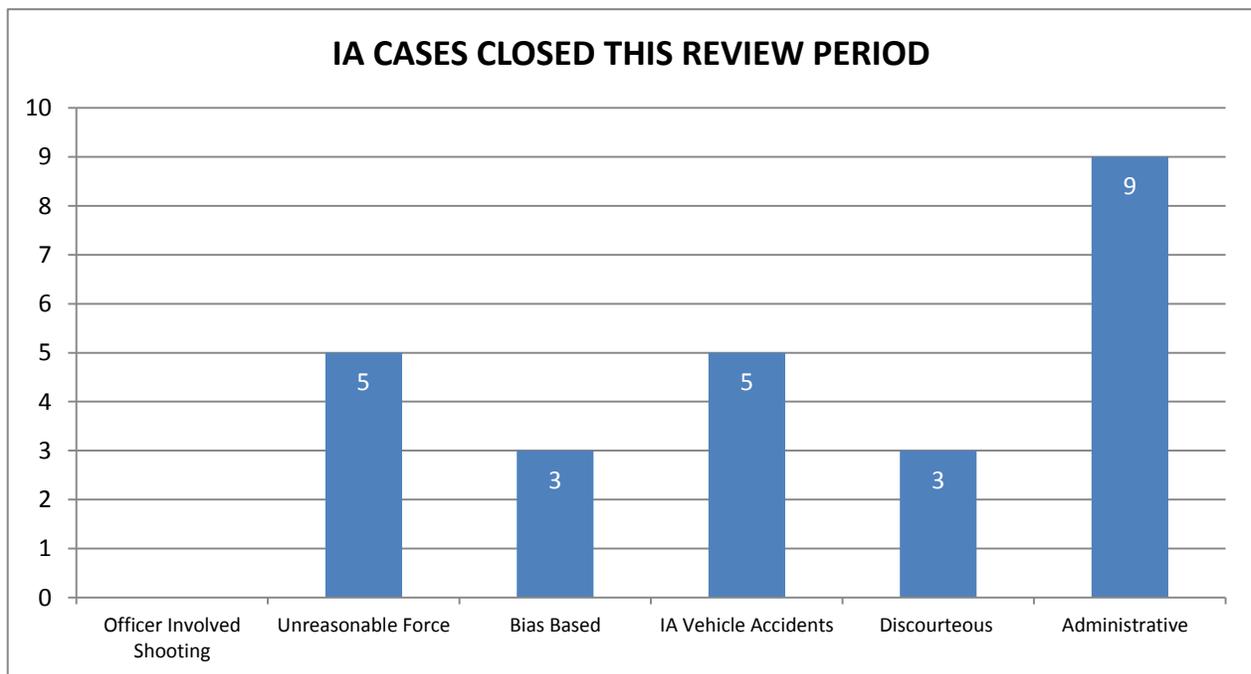
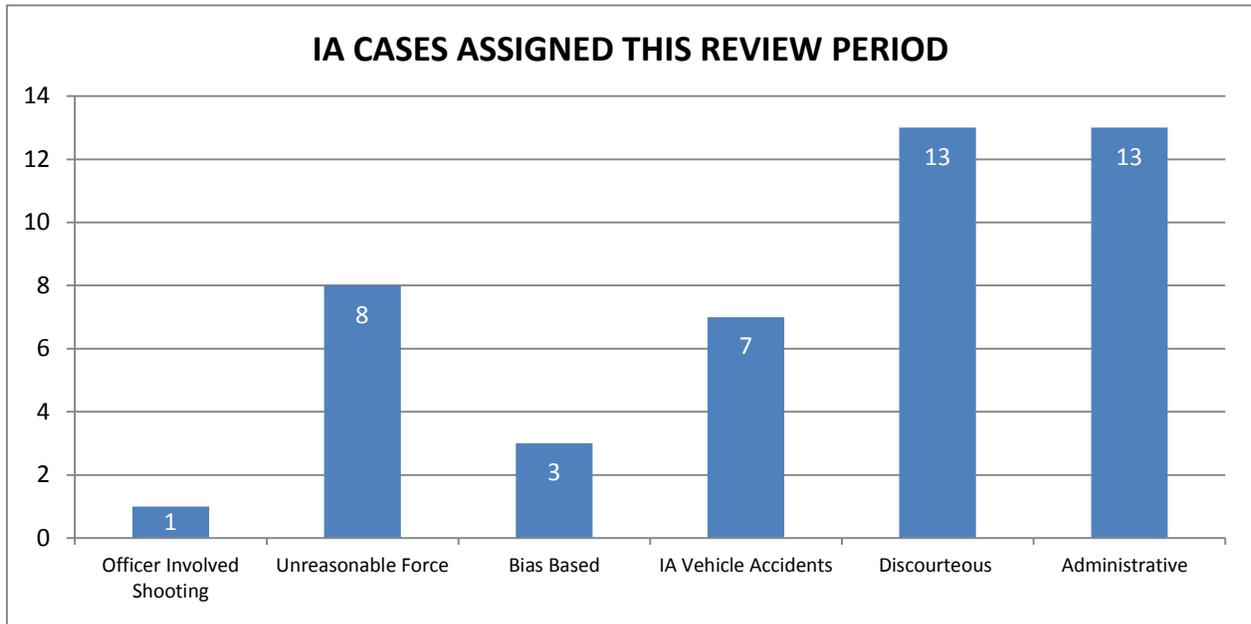
A public agency employing peace officers that adopts and disseminates a written policy on, and provides regular and periodic training on an annual basis for, vehicular pursuits is immune from liability for civil damages for personal injury to or death of any person or damage to property resulting from the collision of a vehicle being operated by an actual or suspected violator of the law who is being pursued in a motor vehicle by a peace officer employed by the public entity.

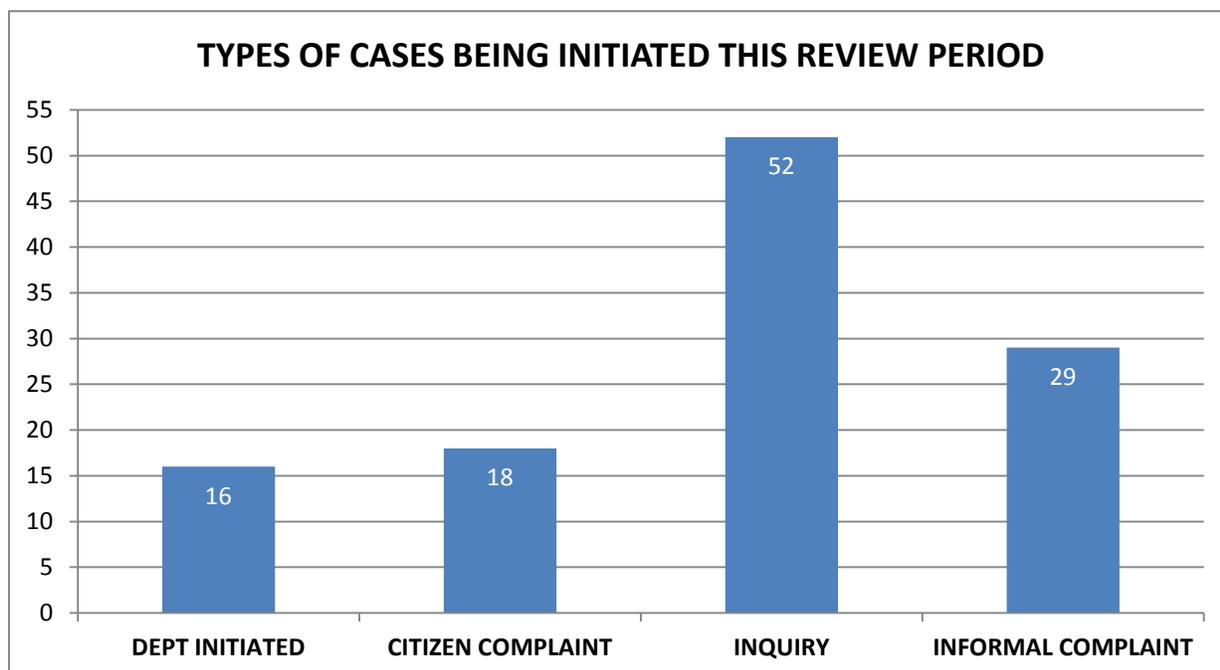
This RCTB is being distributed to comply with required annual training related to vehicle pursuits.

The above bulletin was entered in PowerDMS, which automatically disseminates, collects signatures on, and tracks the department's important policies and procedures.

## REVIEW OF INTERNAL AFFAIRS INVESTIGATIONS

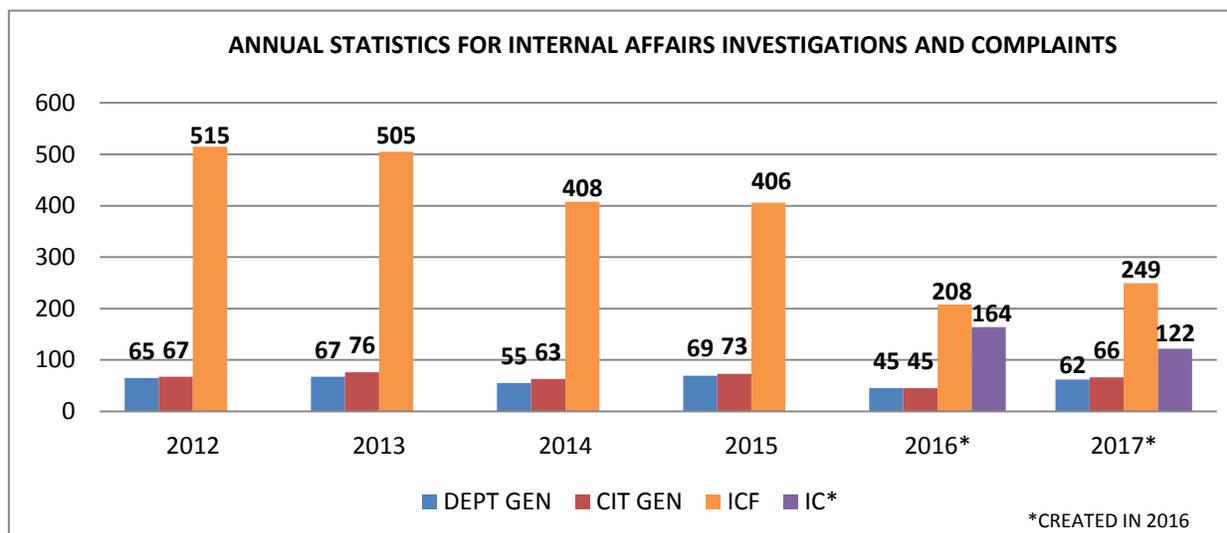
The following charts list the number and types of IA cases assigned and closed during the fourth quarter of 2017. For classification purposes Discourteous Treatment also includes cases in which the officer was accused of conduct unbecoming of a police officer. The classification of Administrative Matters includes officers accused of violating policies or procedures which do not involve responding to a call for service or interacting with the public.





**Inquiry:** An inquiry involves a question about the policy or procedures of the FPD. Inquiries may be documented via an Inquiry Complaint Form (ICF).

**Informal Complaint:** A matter which can be handled at a supervisor level within a district/division and is not reasonably likely to result in disciplinary measures. Generally, complaints handled via this process include minor allegations or general violations. A finding of sustained, not sustained, unfounded or exonerated is required.



It should be noted the combined number of complaints for the past two years is lower than any other two year period since 2012.

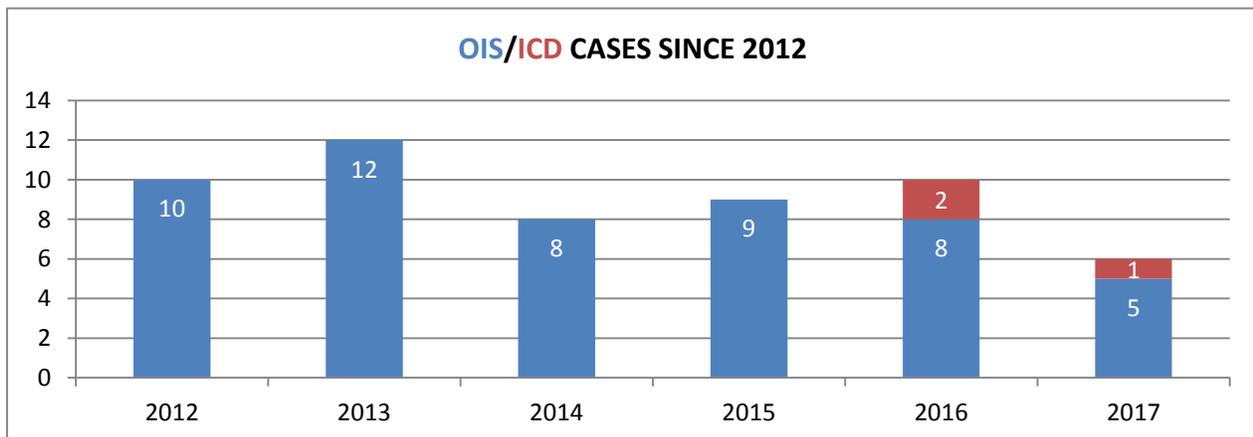
## EXPLANATION OF TERMS AND ABBREVIATIONS

<b>UNF</b>	<b>UNFOUNDED:</b> THE INVESTIGATION CLEARLY ESTABLISHED THE ALLEGATION WAS NOT TRUE. COMPLAINTS WHICH ARE DETERMINED TO BE FRIVOLOUS WILL FALL WITHIN THE CLASSIFICATION OF UNFOUNDED [PENAL CODE §832.5(C)].
<b>EX</b>	<b>EXONERATED:</b> THE INVESTIGATION CLEARLY ESTABLISHED THE ACTIONS OF THE PERSONNEL WHICH FORMED THE BASIS OF THE COMPLAINT DID NOT VIOLATE THE LAW OR FPD POLICY
<b>NS</b>	<b>NOT SUSTAINED:</b> THE INVESTIGATION FAILED TO DISCLOSE SUFFICIENT EVIDENCE TO CLEARLY PROVE OR DISPROVE THE ALLEGATION WITHIN THE COMPLAINT
<b>SUS</b>	<b>SUSTAINED:</b> THE INVESTIGATION DISCLOSED SUFFICIENT EVIDENCE TO PROVE THE TRUTH OF THE ALLEGATION IN THE COMPLAINT BY THE PREPONDERANCE OF THE EVIDENCE.
<b>P</b>	<b>PENDING:</b> THE INVESTIGATION HAS NOT BEEN COMPLETED
<b>O</b>	<b>OFFICER:</b> IF FOLLOWED BY A 1, 2, 3, ETC., INDICATES MORE THAN ONE OFFICER WAS BEING INVESTIGATED
<b>RAI</b>	<b>REQUESTED ADDITIONAL INFORMATION</b> WAS MADE BY OIR BEFORE A DECISION COULD BE MADE
<b>NR</b>	<b>NOT REVIEWED:</b> OIR DID NOT REVIEW THE CASE DUE TO FPD FINDING OF SUSTAINED
<b>CP</b>	<b>COMPLAINING PARTY:</b> THE PERSON WHO FILED THE COMPLAINT
<b>DATE ASSIGNED IS THE DATE THE CASE WAS ASSIGNED TO AN IA INVESTIGATOR, NOT THE ACTUAL DATE OF OCCURRENCE</b>	

## OFFICER INVOLVED SHOOTINGS AND IN CUSTODY DEATHS

IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
17-0040	4/15/2017	P			OFFICER FIRED ONE ROUND FOLLOWING A TRAFFIC STOP AND FOOT PURSUIT-DECEASED
17-0050	5/10/2017	P			O1 & O2 ARRESTED SUSPECT WHO WAS LATER PRONOUNCED DECEASED
17-0057	6/7/2017	P			O1 & O2 OIS; SUSPECT - DECEASED
17-0076	7/23/2017	P			O1, O2, & O3 FIRED AT SUSPECT FOLLOWING A PURSUIT AND STOP-Non Fatal
17-0121	12/7/2017	P			O SHOT SUSPECT WHO FLED AND PRODUCED A HANDGUN DURING THE FOOT PURSUIT-Non Fatal

During the review period there was one Officer Involved Shooting (OIS) case initiated and no OIS cases were closed. Therefore, no OIS cases were reviewed by the IR for this report; however an analysis was conducted for the last six years. Although the ultimate goal is zero, in 2017 the FPD had the lowest number of OIS/ICDs during the last six years. The OIR was afforded access to the crime scene of the latest OIS and included in the briefing provided to Chief Dyer immediately after the shooting. This is the first time the OIR was included in an OIS briefing at the scene, which is another example of the positive changes being implemented by Mayor Brand and Chief Dyer.



UNREASONABLE FORCE					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
17-0079*	8/1/2017	10/27/2017	EX	EX/SUS*	CP ALLEGED O1 & O2 USED UNREASONABLE FORCE
17-0080	8/1/2017	10/20/2017	EX	EX	CP ALLEGED O USED UNREASONABLE FORCE
17-0082	8/2/2017	10/20/2017	UNF	UNF	CP ALLEGED O1 & O2 USED UNREASONABLE FORCE AND FALSIFIED REPORT
17-0089	8/15/2017	10/10/2017	NOT AN IA CASE	CONCUR, ICF CASE	CP ALLEGED AN UNKNOWN O USED UNREASONABLE FORCE IN 2013
17-0091	8/18/2017	P			CP ALLEGED O USED UNREASONABLE FORCE
17-0097	9/12/2017	12/14/2017	EX	EX	CP ALLEGED O1 & O2 USED UNREASONABLE FORCE
17-0098	9/13/2017	P			CP ALLEGED O1 & O2 USED UNREASONABLE FORCE
17-0100*	9/26/2017	12/21/2017	EX/UNF	EX/UNF	CP ALLEGED O OF UNREASONABLE FORCE AND ASSAULT
17-0103	10/6/2017	P			CP ALLEGED O1 AND O2 USED UNREASONABLE FORCE DURING THE ARREST
17-0108	10/16/2017	P			CP ALLEGED O USED UNREASONABLE FORCE
17-0114	10/27/2017	P			CP ALLEGED O USED UNREASONABLE FORCE
17-0118	11/15/2017	P			CP ALLEGED O INJURED WRIST WITH HANDCUFFS
17-0130	12/19/2017	P			CP ALLEGED UNREASONABLE FORCE

\*SEE FOLLOWING PARAGRAPHS

During the review period there were five new Unreasonable Force cases opened, five cases were closed, and one case was reclassified as an ICF matter. IA determined the officer(s) were within department policy in each of the five closed cases. The closed and reclassified cases were then reviewed by the OIR, and although the OIR was in agreement with every IA finding, one case review resulted in an additional finding and a recommendation. An additional recommendation is also being made regarding an allegation of an unfounded incident during the transportation of a prisoner.

The first case, 17-0079\*, involved two officers who were attempting to place a subject/CP under arrest for an outstanding felony warrant. When encountered by officers the CP was walking his dog but attempted to hide when he saw the officers. Once the warrant was confirmed the officers displayed consideration and elected to contact a family member to pick up the dog instead of calling the Society for the Prevention of Cruelty to Animals. While one officer was on the phone giving directions to the CP's brother the CP jumped up and began to run to avoid being arrested. The officers engaged in a brief foot pursuit and quickly caught up to the CP. As one officer grabbed the CP his hand became entangled with the CP's jacket resulting in the officer dislocating his thumb. The entire incident was recorded on the officer's body camera and clearly showed only necessary force was used to take the CP into custody. The officers remained calm and professional during the entire arrest.

However, the CP claimed his head was hurting following the arrest but he refused to provide specifics. The officers followed department policy and requested a Sergeant and medical personnel respond to document the claim by the CP. The CP refused medical attention and refused to cooperate with the Sergeant, however the Sergeant did complete a department's Use of Force form. A third officer was requested to the scene to transport the CP to the FPD for processing and booking into the Fresno County Jail. While en route to the FPD the CP made allegations to the transporting officer the arresting officer had kicked him in the head several times after the officer took him to the ground. Because of the allegations the transporting officer had photographs taken of the CP when they arrived at the FPD. However, the officer did not notify the Sergeant or another supervisor of the specific allegations. Additionally the officer did not notify the arresting officers of the allegations and lastly, the officer did not document the allegations when he completed his portion of the police report. The CP submitted an official complaint form on May 25, 2017, alleging he was kicked in the head by the arresting officer. The arrest occurred on March 2, 2017, more than two months before the complaint was made.

The two FPD policies which are applicable in this matter appear below:

**POLICY 341.2 - CONDUCT WHICH MAY RESULT IN DISCIPLINE**

The following list of causes for disciplinary action constitutes a portion of the disciplinary standards of this Department. This list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for specific action or inaction that is detrimental to the Department (*only the applicable cause is listed below*):

341.2.2 CONDUCT

(f) Failure of any member to report activities on their own part or the part of any other member where such activities may result in criminal prosecution or discipline under this policy;

**POLICY 1020.2.2 - SOURCE OF COMPLAINTS**

(a) A Department member made aware of alleged misconduct shall immediately notify a supervisor.

It was apparent the transporting officer was not attempting to conceal the allegations made by the CP, as the officer did have photographs taken upon arriving at the FPD. However, the fact the officer failed to notify a supervisor, failed to notify the officers who made the arrest, and failed to document the specific allegation in his report creates the appearance of being less than transparent to the general public. If the above steps were taken by the transporting officer this could have been a text book example of transparency and full disclosure. The FPD policies stated above are in place and are intended to avoid issues such as this; however, as a result of this oversight the following recommendation is being made:

**Recommendation 1:** It is recommended the FPD stress the importance of full documentation of any and all complaints, regardless if it is known at the time the allegations is without merit. As previously referenced, the FPD has the applicable policies in place to satisfy this issue; therefore the solution may be to emphasize this to newly sworn officers during orientation.

Another Unreasonable Force case was Exonerated and Unfounded by IA, 17-0100\*, and reviewed by the OIR. The CP alleged the officer used unreasonable force during an arrest and also alleged the officer assaulted the CP while the CP was in the patrol vehicle. The investigation conducted by IA, and the review by the OIR, determined both allegations were without merit thus the findings by IA were correct. Although the officer did not violate policy, this is the second allegation filed in the last several months of improper actions occurring while the CP was in a patrol vehicle. In both cases the allegations were proven to be without merit but required a full IA investigation to exonerate the officers. As with the use of body cameras, allegations can be quickly dismissed if the encounter is documented electronically. Therefore the following recommendation is being made in regards to prisoner transport.

**Recommendation 2:** It is recommended prisoner transports are, at minimum, audio recorded in order to dispute allegations of improper handling of arrestees. The costs of outfitting all patrol cars may make this financial improbable however the use of existing body cameras may be a temporary solution until funding is secured. The use of body cameras for this purpose will not capture video of the prisoner but the audio can document the officer(s) and CP's actions during the transport. In both instances where the CPs alleged improper treatment the demeanors of the CPs when arrested were indications allegations were possible. Therefore, based on the level of cooperation displayed by the subject, the recommendation can be implemented at the officers' discretion on when to activate the recording devices.

BIAS BASED					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
17-0033	3/28/2017	P			O1 IS UNCOMFORTABLE WITH CONVERSATIONS WITH FELLOW OFFICER, O2
17-0087	8/15/2017	10/20/2017	UNF	UNF	CP ALLEGED RACIAL BIAS
17-0088	8/15/2017	10/5/2017	UNF	UNF	CP ALLEGED RACIAL BIAS BY O1 AND O2 REGARDING A TRAFFIC STOP
17-0105	10/6/2017	12/28/2017	UNF	UNF	EMP ALLEGED GENDER DISCRIMINATION
17-0117	11/15/2017	P			CP ALLEGED TRAFFIC STOP WAS BASED ON RACE
17-0129	12/19/2017	P			CP ALLEGED THEY WERE ESCORTED OUT OF THE FRESNO FAIR DUE TO RACE

DISCOURTEOUS TREATMENT OR CONDUCT UNBECOMING OF A POLICE OFFICER					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
17-0063	6/21/2017	11/10/2017	UNF	UNF	CP ALLEGED O1, O2, O3, AND O4 MISPLACED/LOST MONEY FROM HER PURSE
17-0067	7/13/2017	P			DEPT ALLEGED O ATTEMPTED CONCEAL POOR WORK BY MISLABELING BODY CAMERA VIDEO AS A TEST AND WAS DISCOURTEOUS TO CITIZEN
17-0068	7/13/2017	12/28/2017	SUS	NR	DEPT ALLEGED O RECORDED CONVERSATION WITHOUT 3RD PARTY CONSENT
17-0092	8/30/2017	11/17/2017	UNF	UNF	DEPT ALLEGED OFFICER FAILED TO OBEY ALL LAWS
17-0094	9/12/2017	11/30/2017	SUS O1 & O2; UNF O3	SUS O1 & O2; UNF O3	CP ALLEGED O1, O2 & O3 MISPLACED CASH AND BANK CARD SUBSEQUENT TO HIS ARREST
17-0095	9/12/2017	P			CP ALLEGED O1 & O2 USED PROFANITY AND WERE DISCOURTEOUS
17-0102	9/27/2017	P			DEPT ALLEGED O WAS CITED FOR MISDEMEANOR DOM VIOLENCE
17-0106	10/6/2017	P			CP ALLEGED O IS ABUSING AUTHORITY
17-0110	10/20/2017	P			CP ALLEGED O1 AND O2 DID NOT HAVE PC TO STOP HIM WHICH RESULTED IN AN ARREST
17-0113	10/27/2017	P			CP ALLEGED OFF DUTY O ASSAULTED HER
17-0120	11/22/2017	P			CP ALLEGED AN OFF-DUTY O ASSAULTED HIM
17-0122	12/12/2017	P			CP ALLEGED O CONDUCTED AN ILLEGAL SEARCH
17-0126	12/19/2017	P			O ALLEGED SUPV WAS DISCOURTEOUS
17-0127	12/19/2017	P			CP ALLEGED CALL TAKER WAS RUDE & CONDESCENDING
17-0132	12/19/2017	P			CP ALLEGED O FAILED TO PROPERLY HANDLE CALL
17-0135	12/20/2017	P			CP ALLEGED O PREPARED A MISLEADING REPORT
17-0136	12/22/2017	P			CP ALLEGED O MISCOUNTED SEIZED CURRENCY

IA VEHICLE ACCIDENTS					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
17-0035	3/28/2017	11/17/2017	SUS	NR	DEPT ALLEGED O FAILED TO OPERATE THE VEHICLE PROPERLY WHILE DRIVING CODE 3, RESULTING IN AN AT-FAULT ACCIDENT
17-0058	6/8/2017	P			DEPT ALLEGED O WAS INVOLVED IN AN OUT OF POLICY COLLISION

IA VEHICLE ACCIDENTS					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
17-0059	6/12/2017	10/20/2017	SUS	NR	DEPT ALLEGED O WAS DRIVING IN NEGLIGENT MANNER WHICH RESULTED IN A PREVENTABLE ACCIDENT
17--0060	6/16/2017	11/13/2017	SUS	NR	DEPT ALLEGED O CAUSED AND AT FAULT ACCIDENT
17-0070	7/13/2017	11/10/2017	SUS	NR	DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
17-0075	7/9/2017	10/23/2017	SUS	NR	DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
17-0083	8/4/2017	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
17-0099	9/13/2017	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
17-0107	10/12/2017	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
17-0116	11/9/2017	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
17-0125	12/19/2017	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
17-0131	12/19/2017	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
17-0133	12/19/2017	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT
17-0134	12/19/2017	P			DEPT ALLEGED O INVOLVED IN AT FAULT ACCIDENT

ADMINISTRATIVE OR PERFORMANCE MATTERS					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
15-0086	8/12/2015	P			DEPT ALLEGED O1 FAILED TO USE DISCRETION & O2 FAILED TO SUPERVISE
16-0010	2/26/2016	P			DEPT ALLEGED O1 FAILED TO PREPARE PURSUIT CRITIQUE & O2 AND O3 INVOLVED IN OUT OF POLICY PURSUIT
17-0010	1/25/2017	10/10/2017	SUS	NR	DEPT ALLEGED O USED POOR DECISION MAKING AND DISCRETION WHEN CONTACTING CP
17-0016	2/1/2017	10/19/2017	SUS	NR	DEPT ALLEGED O DELAYED PERFORMING AND/OR CARRYING OUT PROPER ORDERS WITHOUT A REASONABLE AND BONAFIDE EXCUSE
17-0017	2/7/2017	11/10/2017	SUS	NR	DEPT ALLEGED O FAILED TO PROPERLY CATEGORIZE BODY CAMERA VIDEO AND ATTEMPTED TO CONCEAL POOR PERFORMANCE/WORK

ADMINISTRATIVE OR PERFORMANCE MATTERS					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
17-0037	3/31/2017	P			DEPT ALLEGED OFFICER LOST PROPERTY USED FOR K-9 TRAINING
17-0043	4/21/2017	10/4/2017	SUS	NR	DEPT ALLEGED O LEFT WORKPLACE WITHOUT APPROVAL AND FAILED TO SUBMIT OVERTIME/TIME OFF REQUEST
17-0049	5/5/2107	10/10/2017	SUS	NR	DEPT ALLEGED O FAILED TO COMPLETE AND SUBMIT REPORTS IN A TIMELY MANNER
17-0051	5/11/2017	P			DEPT ALLEGED O USED DEPT VEH FOR PERS BUSINESS AND FALSE OR MISLEADING STATEMENTS TO SUPERVISOR
17-0062	6/21/2017	P			DEPT ALLEGED OFFICER WAS DISCOURTEOUS AND INSUBORDINATE TO A SUPERVISOR
17-0063	6/21/2017	P			CP ALLEGED O1, O2, O3, & O4 STOLE MONEY FROM HER PURSE
17-0064	6/28/2017	P			CP ALLEGED HER ESTRANGED HUSBAND, O1, COMMITTED DOMESTIC VIOLENCE
17-0066	7/6/2017	11/01.2017	SUS	NR	DEPT ALLEGED O LACKED DISCRETION WHEN O CONDUCTED A TRAFFIC STOP WHILE OFF DUTY IN PERS VEH
17-0071	7/14/2017	P			DEPT ALLEGED O FAILED TO RESTRAIN PRISONER ALLOWING AN ESCAPE
17-0074	8/28/2017	P			DEPT ALLEGED O ATTENDED TRAINING WITHOUT APPROVAL
17-0078	8/1/2017	P			CP ALLEGED O1 & O2 USED ILLEGAL FIREWORKS WHILE CELEBRATING 4TH OF JULY
17-0083	8/24/2017	P			DEPT ALLEGED O FAILED TO DRIVE WITH DUE REGARD AND LEFT THE SCENE OF AN ACCIDENT WHILE EN ROUTE TO A PRIORITY CALL
17-0084	8/15/2017	P			DEPT ALLEGED OVERTIME/TIME OFF REQUESTS WERE NOT SUBMITTED PROPERLY
17-0085	8/15/2017	P			DEPT ALLEGED O ENGAGED IN DANGEROUS HORSEPLAY BY POINTING WEAPON AT OFFICER
17-0086	8/15/2017	P			CP ALLEGED O1, O2, & O3 LOST PROPERTY OF SUSPECT
17-0090	8/15/2017	11/17/2017	SUS	NR	CP ALLEGED MONEY WAS LOST FROM HIS WALLET
17-0093	9/7/2017	P			DEPT ALLEGED O FAILED TO SECURE A PRISONER
17-0096	9/12/2017	P			DEPT ALLEGED O WAS INSUBORDINATE

ADMINISTRATIVE OR PERFORMANCE MATTERS					
IA CASE NUMBER	DATE ASSIGNED	DATE COMPLETED	FPD FINDING	OIR FINDING	SUMMARY
17-0101	9/26/2017	P			DEPT ALLEGED COMM EMP DELAYED PERFORMING DUTIES DUE TO BEING ON PERS CELL PHONE
17-0104	10/6/2017	P			DEPT ALLEGED O HAD TIME OFF THAT WAS UNACCOUNTED FOR IN SYSTEM
17-0109	10/20/2017	12/21/2017	EX	EX	DEPT ALLEGED EMP ACCESSED SENSITIVE INVESTIGATIVE FILE WITHOUT AUTHORIZATION
17-0111	10/26/2017	P			DEPT ALLEGED O DID NOT COMPLETE REPORT PROPERLY RESULTING IN COSTS FOR CITIZENS
17-0112	10/26/2017	P			DEPT ALLEGED O MISPLACED FPD PROPERTY
17-0115	11/2/2017	P			O IGNORED SEVERAL DEPT FINANCIAL EMAILS
17-0119	11/15/2017	P			DEPT ALLEGED O1, O2, &3 DID NOT PREPARE WRITTEN TACTICAL PLAN & FAILED TO CARRY LESS THAN LETHAL
17-0123	12/12/2017	12/19/2017	CANCELED	CANCELED	DEPT ALLEGED O MISPLACED/LOST FPD PROPERTY
17-0124	12/12/2017	P			DEPT ALLEGED EMP FAILED TO PERFORM DUTIES
17-0128	12/19/2017	P			CP ALLEGED O1 & O2 MISPLACED HIS WALLET
17-0137	12/30/2017	P			DEPT ALLEGED O LOST PRISONER PROPERTY

IC CASES CLOSED DURING THE FOURTH QUARTER OF 2018				
IC CASE NUMBER	DATE RECEIVED	DATE COMPLETED	ALLEGATION(S)/FORCE TYPE - FPD FINDINGS	OIR FINDING
17-0092	09/28/17	10/10/17	UNREASONABLE FORCE - UNF PRISONER PROP - MISPLACED - UNF	UNF UNF
17-0093	08/09/17	10/11/17	BODY CAMERA ISSUES - NS DISCOURTEOUS - NS BODY CAMERA ISSUES - NS	NS NS NS
17-0094	08/21/17	10/11/17	GENERAL RESPONSIBILITIES - NS	NS
17-0095	09/02/17	10/11/17	DISCOURTEOUS - UNF DISCOURTEOUS - UNF	UNF
17-0096	09/17/17	10/11/17	GENERAL RESPONSIBILITIES - EX	EX
17-0097	09/19/17	10/11/17	GENERAL CALL HANDLING - EX	EX

IC CASES CLOSED DURING THE FOURTH QUARTER OF 2018				
IC CASE NUMBER	DATE RECEIVED	DATE COMPLETED	ALLEGATION(S)/FORCE TYPE - FPD FINDINGS	OIR FINDING
17-0098	09/27/17	10/11/17	REPORT PREPARATION - UNF REPORT PREPARATION - UNF	UNF UNF
17-0099	09/27/17	10/11/17	DISCOURTEOUS - SUSTAINED PERFORMANCE - SUSTAINED	SUS SUS
17-0100	10/04/17	10/11/17	GENERAL RESPONSIBILITIES - UNF	UNF
17-0101	08/08/17	10/17/17	RACIAL/BIAS BASED PROFILING - UNF	UNF
17-0102	10/10/17	10/25/17	CLETS ISSUES - UNF	UNF
17-0103	09/12/17	10/31/17	PRISONER PROP - MISPLACED - UNF	UNF
17-0104	10/05/17	10/31/17	DEPT PROPERTY - LOST - SUSTAINED	SUS
17-0105	10/05/17	10/31/17	GENERAL RESPONSIBILITIES - UNF	UNF
17-0106	10/17/17	10/31/17	GENERAL CALL HANDLING - EX	EX
17-0107	09/21/17	11/10/17	GENERAL RESPONSIBILITIES - EX GENERAL RESPONSIBILITIES - EX	EX EX
17-0108	10/02/17	11/10/17	PERFORMANCE - SUSTAINED	SUS
17-0109	10/02/17	11/10/17	DISCOURTEOUS - EX DISCOURTEOUS - EX	EX EX
17-0110	10/08/17	11/10/17	GENERAL CALL HANDLING - UNF GENERAL CALL HANDLING - UNF	UNF UNF
17-0111	10/17/17	11/29/17	GENERAL CALL HANDLING - UNF	UNF
17-0112	10/31/17	11/29/17	PERFORMANCE - SUSTAINED	SUS
17-0113	10/20/17	12/12/17	DISCRIMINATION - UNF PRISONER PROP - MISPLACED - UNF DISCRIMINATION - UNF PRISONER PROP - MISPLACED - UNF	UNF UNF UNF UNF
17-0114	11/22/17	12/12/17	NON-FPD COMPLAINT - UNF	UNF
17-0115	11/06/17	12/12/17	DISCOURTEOUS - EX	EX
17-0116	10/14/17	12/22/17	DEPT PROPERTY - LOST - SUSTAINED	SUS
17-0117	10/17/17	12/22/17	GENERAL RESPONSIBILITIES - UNF	UNF
17-0118	10/29/17	12/22/17	GENERAL CALL HANDLING - UNF GENERAL CALL HANDLING - UNF	UNF UNF
17-0119	12/06/17	12/22/17	INVESTIGATION HANDLING - UNF INVESTIGATION HANDLING - UNF INVESTIGATION HANDLING - UNF INVESTIGATION HANDLING - UNF	UNF UNF UNF UNF
17-0120	12/11/17	12/22/17	INFORMATION RELEASED - UNF	UNF
17-0121	12/19/17	12/22/17	VEHICLE OPERATIONS - NS	NS
17-0122	12/20/17	12/22/17	DEPT PROPERTY - LOST - NS	NS

The OIR did review each of the preceding cases in which IA determined the allegations against the officer(s) were Unfounded, Exonerated, or Not Sustained. This included reviewing each of the 31 Informal Complaint cases which were closed this quarter to ensure the matters were handled at the appropriate level. In all cases reviewed it was determined the IA findings were justified and the OIR concurred on all findings and issued two recommendations.

Below are the levels of discipline for 2017 for the officers and employees who were found to be performing outside of the department's policies and procedures.

<b>DISCIPLINE ISSUED</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
<b>TERMINATIONS</b>	<b>8</b>	<b>5</b>	<b>3</b>	<b>5</b>	<b>7</b>	<b>3</b>
<b>RESIGNED IN LIEU OF</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>1</b>
<b>RETIRED</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>DEMOTION</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>SUSPENDED</b>	<b>11</b>	<b>15</b>	<b>14</b>	<b>13</b>	<b>16</b>	<b>19</b>
<b>PAYMENT IN LIEU OF</b>	<b>2</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>FINES</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>
<b>LETTERS OF REPRIMAND</b>	<b>23</b>	<b>11</b>	<b>7</b>	<b>11</b>	<b>9</b>	<b>9</b>
<b>TOTAL</b>	<b>48</b>	<b>32</b>	<b>26</b>	<b>30</b>	<b>32</b>	<b>32</b>

### **MATTERS NOT ASSOCIATED WITH IA INVESTIGATIONS**

When Mayor Brand decided to make changes to the OIR one of the changes was to make the OIR more accessible to residents and community groups in the City of Fresno. To fulfill his vision the position of Community Coordinator was created within the OIR. Although the Community Coordinator, Maira Aguilar, has only been onboard for a short period of time she has been busy reaching out to many groups in the city, coordinating meetings, and responding to questions or complaints being fielded by the OIR. She will also ensure this report, and future reports, are compliant with the Americans with Disabilities Act, which is another first for the OIR.

If a community group presents a concern or complaint and the OIR determines the subject matter may be of interest to others outside of the group itself the OIR response will appear following the review of the IA investigations. This is another effort to ensure transparency to all of the residents in the City of Fresno.

The OIR encourages and welcomes all requests for public speaking or questions on how a resident or group can address a concern or complaint. The contact information for the OIR will appear at the end of this report and can also be found on the OIR website.

During a recent community outreach meeting questions and concerns were raised regarding the activities of the FPD in regards to enforcement of the new city ordinance addressing unlawful camping. One community group member specifically asked what determines if the homeless individual is arrested or simply told he/she must relocate. To ascertain the guidelines the FPD officers are operating within the OIR Community Coordinator, Maira Aguilar, and I met with Captain Burke Farrah, who oversees the team of officers assigned to enforce the new city ordinance, The Unhealthy and Hazardous Camping Act 2017 (FMC §10-1702). In order to better understand the police actions it is imperative to become familiar with the details of the ordinance. The information provided by Captain Farrah will follow the excerpts from the ordinance which appears below.

### **PURPOSE**

The streets and public areas within the city should be readily accessible and available to residents and the public at large. The use of these areas for camping purposes or storage of personal property interferes with the rights of others to use the areas for which they were intended. Such activity can constitute a public health and safety hazard which adversely impacts neighborhoods and commercial areas. Camping on private property without the consent of the owner, proper sanitary measures and for other than a minimal duration adversely affects private property rights as well as public health, safety, and welfare of the city. The purpose of this article is to maintain streets, parks and other public and private areas within the city in a clean, sanitary and accessible condition and to adequately protect the health, safety and public welfare of the community, while recognizing that, subject to reasonable conditions, camping and camp facilities associated with special events can be beneficial to the cultural and educational climate in the city. Nothing in this article is intended to interfere with otherwise lawful and ordinary uses of public or private property.

### **DEFINITIONS**

Unless the particular provisions or the context otherwise requires, the definitions contained in this section shall govern the construction, meaning, and application of words and phrases used in this article.

(a) “Camp” means to utilize camp facilities and/or paraphernalia, including but not limited to laying down of bedding for the purpose of temporarily or permanently sleeping or living at that location. An activity shall constitute camping when it reasonably appears, in light of all the circumstances, the participants in conducting these activities are in fact using the area as a sleeping or living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaging;

(b) “Camp facilities” include, but are not limited to, tents, huts, lean to’s, tarps, cardboard boxes or structures, vehicles, vehicle camping outfits, or temporary shelter.

(c) “Camp paraphernalia” includes, but is not limited to, materials intended to be used as beds or bedding, blankets, bedrolls, tarpaulins, cots, beds, sleeping bags, hammocks or cooking facilities and similar equipment.

(d) “City Manager” means the City Manager or designee.

(e) “Establish” means setting up or moving equipment, supplies or materials on to public or private property to camp or operate camp facilities.

(f) “Maintain” means keeping or permitting equipment, supplies or materials to remain on public or private property in order to camp or operate camp facilities.

(g) “Operate” means participating or assisting in establishing or maintaining a camp or camp facility.

(h) “Private property” means all private property including, but not limited to, streets, sidewalk, alleys, and improved or unimproved land.

(i) “Public property” means all public property including, but not limited to, streets, sidewalks, alleys, improved or unimproved land and parks.

### **PROHIBITED ACTS**

(a) It is unlawful and a public nuisance for any person to camp, occupy camp facilities, or use camp paraphernalia in the following areas:

(1) Any public property; or

(2) Any private property.

(i) It is not intended by this section to prohibit overnight camping on private residential property by friends 4 of 8 or family of the property owner, so long as the owner consents and that overnight camping on the front of the property is limited to not more than two consecutive nights.

(ii) Nothing in this article is intended to prohibit or make unlawful, activities of an owner of private property or other lawful user of private property that are normally associated with and incidental to the lawful and authorized use of private property for residential or other purposes; and provided further, nothing is intended to prohibit or make unlawful, activities of a property owner or other lawful user if such activities are expressly authorized by this Code or other laws and regulations.

(iii) Nothing in this article is intended to prohibit or make unlawful the mere possession of or transportation of camp facilities or camp paraphernalia on public or private property, except as provided in this article.

(iv) The City Manager may issue a temporary permit to allow camping on public or private property in connection with a special event.

(b) It is unlawful and a public nuisance for any person to wash one’s body or belongings in a fountain.

(c) It is unlawful and a public nuisance to urinate or defecate in public.

## **VIOLATION**

(a) A violation of this article is a misdemeanor, with fines of up to \$1,000 per violation, or as set forth in the Master Fee Schedule, plus payment for the City's actual costs of transporting and storing property of the violator. In addition to the remedies set forth in Penal Code section 370, et seq., the City Attorney may institute civil actions to abate a public nuisance under this article.

(b) An individual charged with violation of this article, in lieu of being taken to jail may, at the election of the citing police officer and with the consent of the individual, be taken to a facility providing social services related to mental health, housing, and/or substance abuse treatment.

## **CAPTAIN BURKE FARRAH NORTHWEST POLICING DISTRICT**

Captain Farrah advised the Homeless Task Force consists of five officers, one from each policing district. Each officer volunteered for the assignment and has proven the reason for volunteering was their desire to help the homeless population within the city of Fresno. Captain Farrah and the officers recognize many of the homeless individuals are in their situation not by choice, but due to a drug dependency or mental issues caused by chemical imbalances. Some of the same individuals also become crime victims at the hands of other homeless individuals. Reported crimes have included, drug dealing, sexual assault, physical assault, and robbery.

Contrary to what a segment of the public believes, the primary mission of the task force officers is to connect the individuals with the available social services to ultimately change their status of being homeless. The secondary mission is to enforce the Unhealthy and Hazardous Camping Ordinance. The unauthorized camps are a magnet for rats and cockroaches, not to mention the sanitation problems. If officers discover signs of camping, such as bedrolls, stoves, or make-shift bathrooms, the ordinance is enforced. Any property the individuals are unable to transport with them is kept free of charge for 60 to 90 days. All trash that is left behind after the individuals relocate is picked up by sanitation crews. Captain Farrah estimates the crews pick up approximately one ton of trash a day from the illegal campsites. On an average day the officers visit 10 encampments but have visited as many as 25 encampments in one day.

All officers assigned to the task force are outfitted with body cameras. Although many of the contacts have been without resistance, one individual did threaten to kill the officer and his family. The suspect was a three striker and eventually arrested. Thus the implementation of the cameras is a necessity.

Captain Farrah stressed although the ordinance affords the officers the right to arrest those who fail to relocate after being informed they are in violation, the officers are told an arrest is the last resort. In fact, if an individual refuses to accept the assistance of one of the services, refuses to relocate, and is being transported to jail, the officers are told to turn around if the individual agrees to the offered assistance even if they have already reached the jail. It was apparent Captain Farrah and his officers are passionate about helping the homeless and not on a mission to solely arrest those in need of assistance.

The available resources the FPD utilizes when attempting to offer assistance to the homeless individuals include the following:

**Multi Agency Access Point (MAP)** - Officers provide their number to anyone they encounter that is in need of social services. Housing, chemical dependence and mental illness connections can all be made through this one stop shop. The main hub is currently located on the campus of the Poverello House at 412 F St.

**Homeless Engagement Resource Outreach (HERO) Team** - This is a mobile outreach team that can respond to locations for officers and citizens to begin the outreach engagement of subjects that are experiencing homelessness. They can provide transportation and other resources in the field.

**Fresno Rescue Mission, Community Care (FRM)** - The Fresno Rescue Mission is open 24 hrs. a day, 7 days a week for anyone needing emergency shelter and wrap around care. They are also a partner with the FPD and will be assisting with the homeless that are encountered by the officers and who are found to be in violation of the new municipal code. Should the subjects choose to accept help; the FRM will be available to respond to assist with the transportation of the subject and their property.

Below are the monthly totals for the activities of the task force for each month during the review period.

TASK FORCE ACTIONS	October	November	December
Subjects contacted	535	442	470
Felonies	9	7	1
Misdemeanors	79	36	27
Camping ordinance citations	2	2	0
Shopping cart violations	35	33	26
Infractions	0	2	0
Suspects booked at FCJ for warrants and/or open charges	16	14	12
Citations issued for warrants or other violations	94	35	20
Encampments visited/cleaned	296	311	334
Field Interrogations	0	0	0
Incidents with property booked at H St	18	34	23
Vehicles Towed	3	2	2
<b>Disposition of subjects contacted</b>			
Moved on	490	409	455
Fresno Rescue Mission	4	16	2
Fresno County Jail (FCJ)	5	17	13

The one category in the preceding table which may generate questions is the number of bookings into the Fresno County Jail. Captain Farrah advised only one person was arrested for violating the ordinance, and this was after days of warnings. All valuables were secured for safekeeping before the camp was cleaned up and he was released from jail within a few hours. The other arrests were for a variety of reasons, to include outstanding warrants.

The below photos reflect some of the work being done by the FPD Homeless Task Force during the review period in response to complaints. The photos on the left depict the conditions found when the officers arrived on scene and the photos on the right are after the clean-up was conducted by the task force and the City of Fresno Sanitation Department.



**Summary:** The intent of the quarterly reports is to ensure the residents of Fresno there is a neutral review being conducted of the FPD's actions when a complaint is filed. In the third quarter report and this report two issues were identified and recommendations made. These recommendations should not be viewed as criticism of the FPD, but as suggestions on possible ways to improve the operations of the FPD. In view of quick responses to the first recommendations it is apparent the FPD shares the same desires as the Fresno residents to have trust and pride in their police department. It is also worth noting the FPD self-initiates many IA investigations when it is discovered an employee or officer may have violated a department policy or procedure.

The OIR will continue to review each and every IA investigation and make recommendations when necessary. Residents are once again reminded there is a process in place to review, and if warranted, initiate an investigation. Answers to questions regarding this process can be found on the OIR website (see link below) or by contacting the OIR directly at the following telephone number or email address:

<https://www.fresno.gov/citymanager/office-of-independent-review/>

Telephone: (559) 621-8617

Email: Maira.Aguilar@Fresno.gov

John A. Gliatta  
Independent Reviewer  
Office of Independent Review