

Chapter 10 - Personnel

Evaluation of Employees

1002.1 PURPOSE AND SCOPE

The Department's employee performance evaluation system is designed to record work performance for both the Department and the employee, providing recognition for good work and developing a guide for improvement.

1002.2 POLICY

Employee performance evaluations will be written based on job related factors specific to the position occupied by the employee without regard to sex, race, color, or creed. Each evaluation will cover a specific period and should be based on performance during that period. The employee's immediate supervisor will complete each evaluation. Other supervisors directly familiar with the employee's performance during the rating period should be consulted by the immediate supervisor for their input.

All sworn and non-sworn supervisory personnel shall be sent to a POST approved supervisory course that includes training on the completion of performance evaluations within one year of the supervisory appointment.

Each supervisor should discuss the tasks of the position, standards of performance expected, and the evaluation rating criteria with each employee at the beginning of the rating period. Failure to meet established performance standards is justification for an unsatisfactory rating. Rating factors that are not observed are assumed to be performed at a standard level.

1002.3 EVALUATION FREQUENCY

Employees are evaluated based on the following chart:

Position	Probationary Evaluations At:	Evaluated Yearly	Length of Probation
Probationary Sworn Employees	3, 6 months completed by academy; 9, 12, 18 months		18 Months
Lateral Probationary Sworn Employees	12, 18 months		
Non-Probationary Sworn Employees		X	
Probationary Non-Sworn Employees	3, 6, 9, & 11 months		1 Year
Non-Probationary, Non-sworn Employees		X	

1002.3.1 RESERVE OFFICER EVALUATIONS

Reserve officer evaluations are covered under the Reserve Officers Policy.

Evaluation of Employees

1002.3.2 RESERVE OFFICER EVALUATIONS

Reserve officer evaluations are covered under Policy Manual § 350.

1002.4 FULL TIME PROBATIONARY PERSONNEL

Non-sworn personnel are on probation for 12 months before being eligible for certification as permanent employees. An evaluation is completed monthly for all full-time non-sworn personnel during the probationary period.

Sworn personnel are on probation for 18 months before being eligible for certification as permanent employees. Probationary officers are evaluated daily, weekly and monthly during the probationary period.

1002.5 FULL-TIME PERMANENT STATUS PERSONNEL

Permanent employees are subject to three types of performance evaluations:

Regular - A Performance Appraisal Report (PAR) shall be completed once each year by the employee's immediate supervisor on the anniversary of the employee's date of hire except for employees who have been promoted in which case an Employee Performance Evaluation shall be completed on the anniversary of the employee's date of last promotion.

Transfer - If an employee is transferred from one assignment to another in the middle of an evaluation period and more than three months have transpired since the transfer, then an evaluation shall be completed by the current supervisor with input from the previous supervisor.

Special - A special evaluation may be completed any time the rater and the rater's supervisor feel one is necessary due to employee performance that is deemed less than standard. Generally, the special evaluation will be the tool used to demonstrate those areas of performance deemed less than standard when follow-up action is planned (action plan, remedial training, retraining, etc.). The evaluation form and the attached documentation shall be submitted as one package.

1002.5.1 RATINGS

When completing the Employee Performance Evaluation, the rater will place a check mark in the column that best describes the employee's performance. The definition of each rating category is as follows:

Outstanding - Exemplary performance far exceeding performance standards.

Exceeds Expectations - Performance which exceeds the level normally expected.

Meets Expectations - Generally meets the expectations on all performance standards.

Below Expectations- Falls short of normal expectations. Requires remedial action.

Unsatisfactory - Unacceptable performance which must receive immediate attention.

Comments and examples are required for all rating factors.

Evaluation of Employees

1002.6 EVALUATION INTERVIEW

When the supervisor has completed the preliminary evaluation, arrangements shall be made for a private discussion of the evaluation with the employee. The supervisor should discuss the results of the just completed rating period and clarify any questions the employee may have. If the employee has valid and reasonable protests of any of the ratings, the supervisor may make appropriate changes to the evaluation. Areas needing improvement and goals for reaching the expected level of performance should be identified and discussed. The supervisor should also provide relevant counseling regarding advancement, specialty positions and training opportunities.

The supervisor will sign and date the final evaluation and forward the document up his / her chain of command for review. The supervisor will forward the evaluation to the employee for a signature after receiving a signature from the Chief of Police.

1002.7 EVALUATION DISTRIBUTION

A copy of the performance evaluation shall be maintained in the employee's personnel file in the office of Personnel and Training for the tenure of the employee's employment. A copy will be given to the employee and the original will be forwarded to City Human Resources.

Promotional Transfer Policy

1004.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for promotions and for making special assignments within the Milpitas Police Department.

1004.1.1 GENERAL REQUIREMENTS

The following conditions will be used in evaluating employees for promotion and transfer:

- (a) Present a professional, neat appearance.
- (b) Maintain a physical condition which aids in their performance.
- (c) Demonstrate the following traits:
 - 1. Emotional stability and maturity
 - 2. Stress tolerance
 - 3. Sound judgment and decision-making
 - 4. Personal integrity and ethical conduct
 - 5. Leadership
 - 6. Initiative
 - 7. Adaptability and flexibility
 - 8. Ability to conform to organizational goals and objectives in a positive manner.

1004.2 POLICY

The Milpitas Police Department determines assignments and promotions in a non-discriminatory manner based upon job-related factors and candidate skills and qualifications. Assignments and promotions are made by the Chief of Police.

1004.2 SWORN NON-SUPERVISORY SELECTION PROCESS

The following positions are considered transfers or ancillary assignments and are not considered promotions:

- (a) Special Investigations Unit
- (b) Detective
- (c) Motor Officer
- (d) Major Accident Investigation Team
- (e) Field Training Officer
- (f) School Resource Officer

Promotional Transfer Policy

- (g) D.A.R.E. Officer
- (h) SWAT
- (i) Field Evidence Technician
- (j) Mobile Field Force
- (k) Hostage Negotiation Team
- (l) K-9
- (m) Tactical Dispatchers

1004.2.1 DESIRABLE QUALIFICATIONS

The following qualifications apply to consideration for transfer:

- (a) Three years experience
- (b) Off probation
- (c) Has shown an expressed interest in the position applied for
- (d) Education, training and demonstrated abilities in related areas; such as, enforcement activities, investigative techniques, report writing, public relations, etc.
- (e) Complete any training required by POST or law

1004.4 SELECTION PROCESS

The following criteria apply to transfers or ancillary assignments.

- (a) Routine and scheduled openings for transfers or ancillary assignments will be announced (Per MOU Section 2.02) at least four weeks in advance in writing so that eligible candidates have the opportunity to submit a request for such specialty assignment.
- (b) Employees interested in the open positions must submit a memorandum of interest to the appropriate Division Commander, via his or her chain of command.
- (c) Applicants will be interviewed for open positions.
- (d) Appointments will be made by the Chief of Police.

The policy and procedures for all positions may be waived for temporary assignments, emergency situations or for training.

1004.5 PROMOTIONAL SPECIFICATIONS

Specifications for promotional opportunities are on file with Personnel and Training.

Grievance Procedure

1006.1 PURPOSE AND SCOPE

It is the policy of this department that all grievances be handled quickly and fairly without discrimination against employees who file a grievance whether or not there is a basis for the grievance. Our Department's philosophy is to promote a free verbal communication between employees and supervisors.

The grievance definitions and procedure are also contained in the Milpitas Police Officer's Association M.O.U. Section 8.00

Anti-Retaliation

1008.1 PURPOSE AND SCOPE

This policy prohibits retaliation against members who identify workplace issues, such as fraud, waste, abuse of authority, gross mismanagement or any inappropriate conduct or practices, including violations that may pose a threat to the health, safety or well-being of members.

This policy does not prohibit actions taken for nondiscriminatory or non-retaliatory reasons, such as discipline for cause.

These guidelines are intended to supplement and not limit members' access to other applicable remedies. Nothing in this policy shall diminish the rights or remedies of a member pursuant to any applicable federal law, provision of the U.S. Constitution, law, ordinance or memorandum of understanding.

1008.2 POLICY

The Milpitas Police Department has a zero tolerance for retaliation and is committed to taking reasonable steps to protect from retaliation members who, in good faith, engage in permitted behavior or who report or participate in the reporting or investigation of workplace issues. All complaints of retaliation will be taken seriously and will be promptly and appropriately investigated.

1008.3 RETALIATION PROHIBITED

No member may retaliate against any person for engaging in lawful or otherwise permitted behavior; for opposing a practice believed to be unlawful, unethical, discriminatory or retaliatory; for reporting or making a complaint under this policy; or for participating in any investigation related to a complaint under this or any other policy.

Retaliation includes any adverse action or conduct, including but not limited to:

- Refusing to hire or denying a promotion.
- Extending the probationary period.
- Unjustified reassignment of duties or change of work schedule.
- Real or implied threats or other forms of intimidation to dissuade the reporting of wrongdoing or filing of a complaint, or as a consequence of having reported or participated in protected activity.
- Taking unwarranted disciplinary action.
- Spreading rumors about the person filing the complaint or about the alleged wrongdoing.
- Shunning or unreasonably avoiding a person because he/she has engaged in protected activity.

Anti-Retaliation

1008.4 COMPLAINTS OF RETALIATION

Any member who feels he/she has been retaliated against in violation of this policy should promptly report the matter to any supervisor, command staff member, Chief of Police or the City Human Resources Director.

Members shall act in good faith, not engage in unwarranted reporting of trivial or minor deviations or transgressions, and make reasonable efforts to verify facts before making any complaint in order to avoid baseless allegations. Members shall not report or state an intention to report information or an allegation knowing it to be false, with willful or reckless disregard for the truth or falsity of the information or otherwise act in bad faith.

Investigations are generally more effective when the identity of the reporting member is known, thereby allowing investigators to obtain additional information from the reporting member. However, complaints may be made anonymously. All reasonable efforts shall be made to protect the reporting member's identity. However, confidential information may be disclosed to the extent required by law or to the degree necessary to conduct an adequate investigation and make a determination regarding a complaint. In some situations, the investigative process may not be complete unless the source of the information and a statement by the member is part of the investigative process.

1008.5 SUPERVISOR RESPONSIBILITIES

Supervisors are expected to remain familiar with this policy and ensure that members under their command are aware of its provisions.

The responsibilities of supervisors include, but are not limited to:

- (a) Ensuring complaints of retaliation are investigated as provided in the Personnel Complaints Policy.
- (b) Receiving all complaints in a fair and impartial manner.
- (c) Documenting the complaint and any steps taken to resolve the problem.
- (d) Acknowledging receipt of the complaint, notifying the Chief of Police via the chain of command and explaining to the member how the complaint will be handled.
- (e) Taking appropriate and reasonable steps to mitigate any further violations of this policy.
- (f) Monitoring the work environment to ensure that any member making a complaint is not subjected to further retaliation.
- (g) Periodic follow-up with the complainant to ensure that retaliation is not continuing.
- (h) Not interfering with or denying the right of a member to make any complaint.
- (i) Taking reasonable steps to accommodate requests for assignment or schedule changes made by a member who may be the target of retaliation if it would likely mitigate the potential for further violations of this policy.

Anti-Retaliation

1008.6 COMMAND STAFF RESPONSIBILITIES

The Chief of Police should communicate to all supervisors the prohibition against retaliation.

Command staff shall treat all complaints as serious matters and shall ensure that prompt actions take place, including but not limited to:

- (a) Communicating to all members the prohibition against retaliation.
- (b) The timely review of complaint investigations.
- (c) Remediation of any inappropriate conduct or condition and instituting measures to eliminate or minimize the likelihood of recurrence.
- (d) The timely communication of the outcome to the complainant.

1008.7 WHISTLE-BLOWING

California law protects members who (Labor Code § 1102.5; Government Code § 53296 et seq.):

- (a) Report a violation of a state or federal statute or regulation to a government or law enforcement agency, including the member's supervisor or any other member with the authority to investigate the reported violation.
- (b) Provide information or testify before a public body if the member has reasonable cause to believe a violation of law occurred.
- (c) Refuse to participate in an activity that would result in a violation of a state or federal statute or regulation.
- (d) File a complaint with a local agency about gross mismanagement or a significant waste of funds, abuse of authority, or a substantial and specific danger to public health or safety. Members shall exhaust all available administrative remedies prior to filing a formal complaint.
- (e) Are family members of a person who has engaged in any protected acts described above.

Members are encouraged to report any legal violations through the chain of command (Labor Code § 1102.5).

Members who believe they have been the subject of retaliation for engaging in such protected behaviors should promptly report it to a supervisor. Supervisors should refer the complaint to the Sergeant for investigation pursuant to the Personnel Complaints Policy.

1008.7.1 DISPLAY OF WHISTLE-BLOWER LAWS

The Department shall display a notice to members regarding their rights and responsibilities under the whistle-blower laws, including the whistle-blower hotline maintained by the Office of the Attorney General (Labor Code § 1102.8).

Anti-Retaliation

1008.8 RECORDS RETENTION AND RELEASE

The Records Supervisor shall ensure that documentation of investigations is maintained in accordance with the established records retention schedules.

1008.9 TRAINING

The policy should be reviewed with each new member.

All members should receive periodic refresher training on the requirements of this policy.

Reporting of Employee Convictions

1010.1 PURPOSE AND SCOPE

Convictions of certain offenses may restrict or prohibit an employee's ability to properly perform official duties. Therefore, all employees shall be required to promptly notify the Department of any past and current criminal convictions.

1010.2 DOMESTIC VIOLENCE CONVICTIONS, OUTSTANDING WARRANTS AND RESTRAINING ORDERS

California and federal law prohibit individuals convicted of, or having an outstanding warrant for, certain offenses and individuals subject to certain court orders from lawfully possessing a firearm. Such convictions and court orders often involve allegations of the use or attempted use of force or threatened use of a weapon on any individual in a domestic relationship (e.g., spouse, cohabitant, parent, child) (18 USC § 922; Penal Code § 29805).

All members are responsible for ensuring that they have not been disqualified from possessing a firearm by any such conviction or court order and shall promptly report any such conviction or court order to a supervisor, as provided in this policy.

1010.3 OTHER CRIMINAL CONVICTIONS AND COURT ORDERS

Government Code § 1029 prohibits any person convicted of a felony from being a peace officer in the State of California. This prohibition applies regardless of whether the guilt was established by way of a verdict, guilty or nolo contendere plea.

Convictions of certain violations of the Vehicle Code and other provisions of law may also place restrictions on an employee's ability to fully perform the duties of the job.

Outstanding warrants as provided in Penal Code § 29805 also place restrictions on a member's ability to possess a firearm.

Moreover, while legal restrictions may or may not be imposed by statute or by the courts upon conviction of any criminal offense, criminal conduct by members of this department may be inherently in conflict with law enforcement duties and the public trust.

1010.4 REPORTING PROCEDURE

All members of this department and all retired officers with an identification card issued by the Department shall promptly notify their immediate supervisor (or the Chief of Police in the case of retired officers) in writing of any past or current criminal arrest, outstanding warrant or conviction regardless of whether or not the matter is currently on appeal and regardless of the penalty or sentence, if any.

All members and all retired officers with an identification card issued by the Department shall further promptly notify their immediate supervisor (or the Chief of Police in the case of retired

Reporting of Employee Convictions

officers) in writing if the member or retiree becomes the subject of a domestic violence restraining order or similar court order or becomes the subject of an outstanding warrant.

Any member whose criminal conviction unduly restricts or prohibits that member from fully and properly performing his/her duties may be disciplined including, but not limited to, being placed on administrative leave, reassignment and/or termination. Any effort to remove such disqualification or restriction shall remain entirely the responsibility of the member on his/her own time and expense.

Any member failing to provide prompt written notice pursuant to this policy shall be subject to discipline.

1010.5 PROCEDURE FOR RELIEF

Pursuant to Penal Code § 29855, a peace officer may petition the court for permission to carry a firearm following a conviction under state law. Federal law, however, does not provide for any such similar judicial relief and the granting of a state court petition under Penal Code § 29855 will not relieve one of the restrictions imposed by federal law. Therefore, relief for any employee falling under the restrictions imposed by federal law may only be obtained by expungement of the conviction. Each employee shall seek relief from firearm restrictions on their own time and through their own resources.

Pursuant to Family Code § 6389(h), an individual may petition the court for an exemption to any restraining order, which would thereafter permit the individual to carry a firearm as a part of their employment. Relief from any domestic violence or other restriction shall also be pursued through the employee's own resources and on the employee's own time.

Pending satisfactory proof of relief from any legal restriction imposed on an employee's duties, the employee may be placed on administrative leave, reassigned or disciplined. The Department may, but is not required to return an employee to any assignment, reinstate any employee or reverse any pending or imposed discipline upon presentation of satisfactory proof of relief from any legal restriction set forth in this policy.

1010.5.1 NOTIFICATION REQUIREMENTS

The Administration Supervisor shall submit within 30 days of final disposition a notice to the Commission on Peace Officer Standards and Training (POST) of a felony conviction or Government Code § 1029 reason that disqualifies any current peace officer employed by this department or any former peace officer if this department was responsible for the investigation (11 CCR 1003).

The Administration Supervisor shall submit within 30 days a notice to POST of any appointment, termination, reinstatement, name change, or status change regarding any peace officer, reserve peace officer, public safety dispatcher, and records supervisor employed by this department (11 CCR 1003).

Drug- and Alcohol-Free Workplace

1012.1 PURPOSE AND SCOPE

The purpose of this policy is to establish clear and uniform guidelines regarding drugs and alcohol in the workplace.

1012.2 POLICY

It is the policy of this department to provide a drug- and alcohol-free workplace for all members.

1012.3 GENERAL GUIDELINES

Alcohol and drug use in the workplace or on department time can endanger the health and safety of department members and the public. Such use shall not be tolerated (41 USC § 8103).

No employee of the Police Department shall report to duty under the influence of an alcoholic beverage, illegal drug or narcotic. Under the influence of alcohol, for the purposes of this policy, means any presence of alcohol.

Employees that have consumed medication that would adversely affect their mental or physical abilities shall not report for duty.

Personnel shall notify the Watch Commander or the appropriate supervisor as soon as they are aware they will not be able to report to work. If the member is unable to make the notification, every effort should be made to have a representative contact the supervisor in a timely manner. If the member is adversely affected while on-duty, he/she shall be immediately removed and released from work.

1012.3.1 USE OF MEDICATIONS

Members should avoid taking any medications that will impair their ability to safely and completely perform their duties. Any member who is medically required or has a need to take any such medication shall report that need to his/her immediate supervisor prior to commencing any on-duty status.

No member shall be permitted to work or drive a vehicle owned or leased by the Department while taking any medication that has the potential to impair his/her abilities, without a written release from his/her physician.

1012.3.2 USE OF MARIJUANA

Possession of marijuana, including medical marijuana, or being under the influence of marijuana on- or off-duty is prohibited and may lead to disciplinary action.

1012.4 MEMBER RESPONSIBILITIES

Members shall report for work in an appropriate mental and physical condition. Members are prohibited from purchasing, manufacturing, distributing, dispensing, possessing or using controlled substances or alcohol on department premises or on department time (41 USC § 8103).

Drug- and Alcohol-Free Workplace

The lawful possession or use of prescribed medications or over-the-counter remedies is excluded from this prohibition.

Members who are authorized to consume alcohol as part of a special assignment shall not do so to the extent of impairing on-duty performance.

Members shall notify a supervisor immediately if they observe behavior or other evidence that they believe demonstrates that a fellow member poses a risk to the health and safety of the member or others due to drug or alcohol use.

Members are required to notify their immediate supervisors of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction (41 USC § 8103).

1012.5 EMPLOYEE ASSISTANCE PROGRAM

There may be available a voluntary employee assistance program to assist those who wish to seek help for alcohol and drug problems (41 USC § 8103). Insurance coverage that provides treatment for drug and alcohol abuse also may be available. Employees should contact the Department of Human Resources, their insurance providers or the employee assistance program for additional information. It is the responsibility of each employee to seek assistance before alcohol or drug problems lead to performance problems.

1012.6 WORK RESTRICTIONS

If a member informs a supervisor that he/she has consumed any alcohol, drug or medication that could interfere with a safe and efficient job performance, the member may be required to obtain clearance from his/her physician before continuing to work.

If the supervisor reasonably believes, based on objective facts, that a member is impaired by the consumption of alcohol or other drugs, the supervisor shall prevent the member from continuing work and shall ensure that he/she is safely transported away from the Department.

1012.7 REQUESTING SCREENING TESTS

The supervisor may request an employee to submit to a screening test under the following circumstances:

- (a) The supervisor reasonably believes, based upon objective facts, that the employee is under the influence of alcohol or drugs that are impairing his/her ability to perform duties safely and efficiently.
- (b) The employee discharges a firearm, other than by accident, in the performance of his/her duties.
- (c) During the performance of his/her duties, the employee drives a motor vehicle and becomes involved in an incident that results in bodily injury to him/herself or another person, or substantial damage to property.

Drug- and Alcohol-Free Workplace

1012.7.1 SUPERVISOR RESPONSIBILITY

The supervisor shall prepare a written record documenting the specific facts that led to the decision to request the test, and shall inform the employee in writing of the following:

- (a) The test will be given to detect either alcohol or drugs, or both.
- (b) The result of the test is not admissible in any criminal proceeding against the employee.
- (c) The employee may refuse the test, but refusal may result in dismissal or other disciplinary action.

1012.7.2 SCREENING TEST REFUSAL

An employee may be subject to disciplinary action if he/she:

- (a) Fails or refuses to submit to a screening test as requested.
- (b) After taking a screening test that indicates the presence of a controlled substance, fails to provide proof, within 72 hours after being requested, that he/she took the controlled substance as directed, pursuant to a current and lawful prescription issued in his/her name.
- (c) Violates any provisions of this policy.

1012.8 COMPLIANCE WITH THE DRUG-FREE WORKPLACE ACT

No later than 30 days following notice of any drug statute conviction for a violation occurring in the workplace involving a member, the Department will take appropriate disciplinary action, up to and including dismissal, and/or requiring the member to satisfactorily participate in a drug abuse assistance or rehabilitation program (41 USC § 8104).

1012.9 CONFIDENTIALITY

The Department recognizes the confidentiality and privacy due to its members. Disclosure of any information relating to substance abuse treatment, except on a need-to-know basis, shall only be with the express written consent of the member involved or pursuant to lawful process.

The written results of any screening tests and all documents generated by the employee assistance program are considered confidential medical records and shall be maintained separately from the employee's other personnel files.

Sick Leave

1014.1 PURPOSE AND SCOPE

Members of the Milpitas Police Department are provided with a sick leave benefit that gives them continued compensation during times of absence due to personal or family illness. This policy provides general guidance regarding the use and processing of sick leave. The accrual and terms of use of sick leave for eligible employees are detailed in the City personnel manual or applicable collective bargaining agreement.

This policy is not intended to cover all types of sick or other leaves. For example, employees may be entitled to additional paid or unpaid leave for certain family and medical reasons as provided for in the Family and Medical Leave Act (FMLA) (29 USC § 2601 et seq.) and the California Family Rights Act, and leave related to domestic violence, sexual assault, stalking or for organ or bone marrow donor procedures (29 CFR 825; Government Code § 12945.2; Labor Code § 230.1; Labor Code § 1510).

1014.2 EMPLOYEE RESPONSIBILITIES

Sick leave may be used for absences caused by illness, injury, diagnosis, care or treatment for existing health conditions, temporary disability (including pregnancy/maternity), or for medical, dental or vision exams or medical treatment of the member or the member's immediate family when it is not possible to schedule such appointments during non-working hours.

Sick leave is not considered vacation, and abuse of sick leave may result in discipline and/or denial of sick-leave benefits. Members on sick leave shall not engage in other employment or self-employment, or participate in any sport, hobby, recreational or other activity which may impede recovery from the injury or illness.

Upon return to work, members shall complete and submit a leave request describing the type of leave used and the specific amount of time taken.

1014.2.1 NOTIFICATION

Employees are encouraged to notify the Watch Commander or appropriate supervisor as soon as they are aware that they will not be able to report to work. At a minimum, employees shall make such notification no less than one hour before the start of their scheduled shift. If an employee is unable to contact the supervisor in the case of an emergency, every effort should be made to have a representative contact the supervisor (Labor Code § 246).

When the necessity for leave is foreseeable, such as an expected birth or planned medical treatment, the employee shall, whenever possible, provide the Department with no less than 30-days notice of the intent to take leave (Labor Code § 246).

1014.3 EXTENDED ILLNESS

Employees on extended absences shall, if possible, contact the Personnel and Training Sergeant at one week intervals to provide an update on their absence and expected date of return.

Sick Leave

Employees absent from duty due to personal illness in excess of three consecutive days may be required to furnish a statement from their health care provider supporting the use of sick leave and/or the ability to return to work.

Nothing in this section precludes a supervisor, with cause, from requiring a health care provider's statement if three or fewer sick days are taken.

1014.4 SUPERVISOR RESPONSIBILITY

Supervisors should monitor sick leave usage and regularly review the attendance of employees under their command to ensure that the use of sick leave is consistent with this policy. Supervisors should address sick-leave use in the employee's performance evaluation when it has negatively affected the employee's performance or ability to complete assigned duties, and when unusual amounts of sick leave by the employee has had a negative impact on department operations. When appropriate, supervisors should counsel employees regarding the excessive use of sick leave and should consider referring the employee to the Employee Assistance Program.

1014.5 REQUIRED NOTICES

The Human Resources Director shall ensure:

- (a) Written notice of the amount of paid sick leave available is provided to employees as provided in Labor Code § 246.
- (b) A poster is displayed in a conspicuous place for employees to review that contains information on paid sick leave as provided in Labor Code § 247.

Communicable Diseases

1016.1 PURPOSE AND SCOPE

This policy is intended to provide guidelines for department personnel to assist in minimizing the risk of contracting and/or spreading communicable diseases and to minimize the incidence of illness and injury. The policy will offer direction in achieving the following goals:

- (a) To manage the risks associated with blood borne pathogens (BBP), aerosol transmissible diseases, and other potentially infectious substances.
- (b) To assist department personnel in making decisions concerning the selection, use, maintenance, limitations, storage, and disposal of personal protective equipment (PPE).
- (c) To protect the privacy rights of all department personnel who may be exposed to or contract a communicable disease during the course of their duties.
- (d) To provide appropriate treatment and counseling should an employee be exposed to a communicable disease.

1016.2 PROCEDURES FOR EXPOSURE TO BLOOD, BODILY FLUIDS OR AEROSOL TRANSMISSIBLE DISEASES

All department personnel who are exposed to another person's blood, bodily fluids or an aerosol transmissible disease (e.g., during an altercation or while attending to any injured person) shall follow these procedures and guidelines.

Exposure to blood or other potentially infectious materials includes, but is not limited to, the contact of such substances with the eye, mouth, other mucous membranes, non-intact skin, needle sticks, human bites, cuts or abrasions or any exposure that otherwise qualifies under Health and Safety Code § 121060.1 or 8 CCR § 5193.

Exposure to an aerosol transmissible disease is any event in which all of the following have occurred (8 CCR 5199):

- (a) An employee has been exposed to an individual who is a case or a suspected case of a reportable aerosol transmissible disease, or to a work area or to equipment that is reasonably expected to contain aerosol transmissible pathogens associated with a reportable aerosol transmissible disease.
- (b) The exposure occurred without the benefit of applicable exposure controls required by this policy.
- (c) It reasonably appears from the circumstances of the exposure that transmission of disease is sufficiently likely to require medical evaluation.

Communicable Diseases

1016.2.1 EXPOSURE CONTROL OFFICER

The Chief of Police will assign a person as the Department's Exposure Control Officer. The ECO shall be responsible for the following:

- (a) The overall management of the bloodborne pathogen Exposure Control Plan (ECP).
- (b) Establishing written procedures and a training program related to aerosol transmissible diseases, as required by 8 CCR § 5199.
- (c) Working with management to develop and administer any additional related policies and practices necessary to support the effective implementation of this plan.
- (d) Remaining current on all legal requirements concerning bloodborne pathogens and other communicable diseases, as required by 8 CCR § 5193.
- (e) Acting as a liaison during OSHA inspections, conducting program audits to maintain an up-to-date ECP and ensuring exposure report forms are available and adequate for employees to properly report incidents of exposure.
- (f) Maintaining an up-to-date list of police personnel requiring training. Developing and implementing a training program, maintaining class rosters and quizzes, and periodically reviewing and updating the training program.
- (g) Reviewing and updating the ECP annually (on or before January 1 of each year).

Department supervisors are responsible for exposure control in their respective areas. They shall work directly with the ECO and any affected employees to ensure that the proper exposure control procedures are followed.

1016.2.2 UNIVERSAL PRECAUTIONS

All human blood and body fluids such as saliva, urine, semen, and vaginal secretions are to be treated as if they are known to be infectious. Where it is not possible to distinguish between body fluid types, all body fluids are to be assumed potentially infectious.

1016.2.3 PERSONAL PROTECTIVE EQUIPMENT

Personal protective equipment is the last line of defense against communicable disease. Therefore, the following equipment is provided for all personnel to assist in the protection against such exposures:

- Not less than two pair disposable latex or nitrile gloves.
- Safety glasses or goggles
- Rescue mask with a one-way valve
- Alcohol (or similar substance) to flush skin at emergency site. (Keeping several alcohol hand wipes in the car is recommended)

Communicable Diseases

The protective equipment is to be kept in each police vehicle; inspected at the start of each shift and replaced immediately upon returning to the station if used or damaged during the shift, or as otherwise needed.

1016.2.4 IMMUNIZATIONS

All department personnel who, in the line of duty, may be exposed to or have contact with a communicable disease shall be offered appropriate treatment immunization.

1016.2.5 WORK PRACTICES

All personnel shall use the appropriate barrier precautions to prevent skin and mucous membrane exposure whenever contact with blood or body fluid is anticipated.

Disposable gloves shall be worn on all medical emergency responses. Disposable gloves shall be worn before making physical contact with any patient and/or when handling items (e.g., evidence, transportation vehicle) soiled with blood or other body fluids. Should one's disposable gloves become contaminated with blood or other body fluids, the gloves shall be disposed of as contaminated waste. Care should be taken to avoid touching other items (e.g., pens, books, and personal items in general) while wearing the disposable gloves in a potentially contaminated environment.

All procedures involving blood or other potentially infectious materials shall be done in a way to minimize splashing, spraying, or otherwise generating droplets of those materials.

Eating, drinking, smoking, applying lip balm, and handling contact lenses shall be prohibited in areas where a potential for an exposure exists.

1016.3 DISPOSAL AND DECONTAMINATION

The following procedures will apply to the disposal and decontamination after responding to an event that involved contact with a person's blood or body fluids:

1016.3.1 USE OF WASTE CONTAINERS

Officers shall dispose of biohazard with the on-scene fire response vehicle, or at the attending clinic/hospital with their approval, or in an appropriately marked biohazard waste container at the station immediately upon arrival.

The biohazard waste container located at the station shall be leakproof, red in color or appropriately labeled with a biohazard warning and routinely emptied.

1016.3.2 DECONTAMINATION OF SKIN AND MUCOUS MEMBRANES

Personnel shall wash their hands immediately (on-scene if possible), or as soon as possible following the removal of potentially contaminated gloves. Antibacterial soap and warm water or an approved disinfectant shall be used to wash one's hands, paying particular attention to the fingernails.

If an employee's intact skin contacts someone else's blood or bodily fluids or other potentially infectious materials, the employee shall immediately wash the exposed part of his/her body

Communicable Diseases

with soap and warm water and/or an approved disinfectant, as soon as possible. If the skin becomes grossly contaminated, body washing shall be followed by an approved hospital strength disinfectant. If large areas of the employee's skin are contaminated, the employee shall shower as soon as possible, using warm water and soap and/or an approved disinfectant. Medical treatment should be obtained.

Contaminated non-intact skin (e.g., injured skin, open wound) shall be cleaned using an approved disinfectant and then dressed or bandaged as required. Medical treatment is required. The ECO must be notified immediately.

All hand, skin, and mucous membrane washing that takes place in the station shall be done in the designated cleaning or decontamination area. Cleaning shall not be done in the kitchen, bathrooms, or other locations not designated as the cleaning or decontamination area.

1016.3.3 SHARPS AND ITEMS THAT CUT OR PUNCTURE

All personnel shall avoid using or holding sharps (needles) unless needed to do so while assisting a paramedic, or collecting them for evidence. Unless required for evidentiary reasons related to evidence preservation, employees are not to recap sharps. If recapping is necessary, a one-handed method shall be employed to avoid a finger prick. Disposal, when practicable, shall be into a puncture proof biohazard container.

All sharps and items that cut or puncture (e.g., broken glass, razors, and knives) shall be treated cautiously to avoid cutting, stabbing, or puncturing one's self or any other person. In addition, if a sharp object contains known or suspected blood or other bodily fluids, that item is to be treated as a contaminated item. If the item is not evidence, touching it with the hands shall be avoided. Rather, use a device such as tongs, or a broom and a dustpan to cleanup debris. If the material must be hand held, protective gloves must be worn.

1016.3.4 DISPOSABLE PROTECTIVE EQUIPMENT

Contaminated disposable supplies (gloves, dressings, CPR mask) shall be transported with the patient or suspect in the ambulance or police vehicle. The waste material shall then be disposed of in a biohazard waste container at the hospital or police station. Disposable gloves are to be worn while placing the waste into the waste biohazard container, placing the gloves in with the waste when through.

1016.3.5 DECONTAMINATION OF PERSONAL PROTECTIVE EQUIPMENT

After using any reusable personal protective equipment, it shall be washed or disinfected and stored appropriately. If the personal protective equipment is non-reusable (e.g., disposable gloves), it shall be discarded in a biohazard waste container as described in Policy Manual § 1016.3.4.

Any personal protective equipment that becomes punctured, torn, or loses its integrity, shall be removed as soon as feasible. The employee shall wash up and replace the personal protective equipment if the job has not been terminated. If this situation resulted in a contaminated non-intact skin event, Policy Manual § 1016.3.2 shall be implemented.

Communicable Diseases

Contaminated reusable personal protective equipment that must be transported prior to cleaning it shall be placed into a biohazard waste bag and transported in the ambulance, paramedic truck or police vehicle. Gloves shall be worn while handling the biohazard waste bag and during placement into the biohazard waste container, and then included in with the waste.

1016.3.6 DECONTAMINATION OF NON-DISPOSABLE EQUIPMENT

Contaminated non-disposable equipment (e.g., flashlight, gun, baton, clothing, portable radio) shall be decontaminated as soon as possible. If it is to be transported, it shall be done by first placing it into a biohazard waste bag.

Grossly contaminated non-disposable equipment items shall be transported to a hospital, fire station, or police station for proper cleaning and disinfecting. Porous surfaces such as nylon bags and straps shall be brushed and scrubbed with a detergent and hot water, laundered and allowed to dry. Non-porous surfaces (e.g., plastic or metal) shall be brushed and scrubbed with detergent and hot water, sprayed with a bleach solution, rinsed, and allowed to dry. Delicate equipment (e.g., radios) should be brushed and scrubbed very carefully using a minimal amount of a type of germicide that is approved by Environmental Protection Agency (EPA) .

While cleaning equipment, pay close attention to handles, controls, portable radios, and corners (tight spots). Equipment cleaning shall not be done in the kitchen, bathrooms, or other areas not designated as the cleaning/decontamination area.

Contaminated equipment should be cleaned using an approved EPA germicide or a 1:100 solution of chlorine bleach (one-quarter-cup of bleach per one gallon of water) while wearing disposable gloves and goggles. Large particles of contaminants such as, vomit, feces, blood clots, etc. should first be removed (using a disposable towel or other means to prevent direct contact) and properly disposed of.

1016.3.7 DECONTAMINATION OF CLOTHING

Contaminated clothing such as uniforms and undergarments shall be removed as soon as feasible and rinsed in cold water to prevent the setting of bloodstains. If the clothing may be washed in soap and hot water, do so as soon as possible. If the clothing must be dry cleaned, place it into a biohazard waste bag and give it to the Exposure Control Officer. The ECO will secure a dry cleaner that is capable of cleaning contaminated clothing, and inform them of the potential contamination. This dry cleaning will be done at the Department's expense.

Contaminated leather boots shall be brushed and scrubbed with detergent and hot water. If the contaminant soaked through the boot, the boot shall be discarded.

1016.3.8 DECONTAMINATION OF VEHICLES

Contaminated vehicles and components such as the seats, radios, and doors shall be washed with soap and warm water and disinfected with an approved germicide as soon as feasible.

Communicable Diseases

1016.3.9 DECONTAMINATION OF STATION AND CLEANING AREA

The ECO shall designate a location at the station that will serve as the area for cleaning/decontamination. This area is to be used to keep equipment clean and sanitary and for the employees to wash any potential contamination from their bodies. This area is to be thoroughly cleaned after each use and to be maintained in a clean and sanitary order at all times between each use. The application of cosmetics, smoking cigarettes, consuming food and drink are prohibited in this designated area at all times.

1016.4 POST-EXPOSURE REPORTING AND FOLLOW-UP REQUIREMENTS

In actual or suspected exposure incidents, proper documentation and follow-up action must occur to limit potential liabilities and to ensure the best protection and care for the employee(s).

1016.4.1 EMPLOYEE RESPONSIBILITY TO REPORT EXPOSURE

To provide appropriate and timely treatment should exposure occur, all employees shall verbally report the exposure to their immediate supervisor and complete a written exposure report as soon as possible following the exposure or suspected exposure. That report shall be submitted to the employee's immediate supervisor. Additionally, employees should document in the exposure report whether they would like the person who was the source of the exposure to be tested for communicable diseases.

1016.4.2 SUPERVISOR REPORTING REQUIREMENTS

The supervisor on-duty shall investigate every exposure that occurs as soon as possible following the incident, while gathering the following information:

- (a) Name and social security number of the employee(s) exposed.
- (b) Date and time of incident.
- (c) Location of incident.
- (d) What potentially infectious materials were involved.
- (e) Source of material or person.
- (f) Current location of material or person.
- (g) Work being done during exposure.
- (h) How the incident occurred or was caused.
- (i) PPE in use at the time of the incident.
- (j) Actions taken post-event (e.g., clean-up, notifications).

The supervisor shall advise the employee of the laws and regulations concerning disclosure of the identity and infectious status of a source, and Policy § 1016.5, which addresses source testing.

If the ECO is unavailable to seek testing of the person who was the source of the exposure, it is the responsibility of the exposed employee's supervisor to ensure testing is sought (Policy § 1016.5).

Communicable Diseases

1016.4.3 MEDICAL CONSULTATION, EVALUATION AND TREATMENT

Any employee who was exposed or who suspects he/she was exposed to HIV or to hepatitis B or C should be seen by a physician or qualified health care provider as soon as possible. The doctor or qualified health care provider should be provided with the supervisor's report and the employee's medical records relevant to the visit and examination. The blood of the exposed employee shall be tested.

The health care professional will provide the ECO and/or the City's Risk Manager with a written opinion/evaluation of the exposed employee's medical condition. This opinion should only contain the following information:

- If a post-exposure treatment is indicated for the employee.
- If the employee received a post-exposure treatment.
- Confirmation that the employee received the evaluation results.
- Confirmation that the employee was informed of any medical condition resulting from the exposure incident and whether further treatment or evaluation will be required.
- Whether communicable disease testing from the source is warranted, and if so, which diseases should the testing include.

All other findings or diagnosis shall remain confidential and are not to be included in the written report.

1016.4.4 COUNSELING

The Department shall provide the exposed employee (and his/her family if necessary) the opportunity for counseling and consultation.

1016.4.5 CONFIDENTIALITY OF REPORTS

Most of the information involved in this process must remain confidential. The ECO shall ensure that all records and reports are kept in the strictest confidence.

The ECO shall be responsible for maintaining records containing the employee's treatment status and the results of examinations, medical testing and follow-up procedures.

The Risk Manager shall be responsible for maintaining the name and social security number of the employee and copies of any information provided to the consulting health care professional.

This information is confidential and shall not be disclosed to anyone without the employee's written consent (except as required by law). Test results from persons who may have been the source of an exposure are to be kept confidential as well.

1016.5 SOURCE TESTING

Testing for communicable diseases of a person who was the source of an exposure should be sought when it is desired by the exposed employee or when it is otherwise appropriate. There are five methods to obtain such testing. It is the responsibility of the ECO to ensure that the proper testing and reporting occur. These methods are:

Communicable Diseases

- (a) Obtaining voluntary consent from any person who may be the source of an exposure to cover testing for any communicable disease.
- (b) Filing a report with the county health officer when an employee is exposed to the bodily fluids of an arrestee. The county health officer may pursue testing for HIV or hepatitis B or C (Penal Code § 7510 et seq.).
- (c) Seeking consent for testing or applying for a court order for HIV, hepatitis B and hepatitis C testing (Health and Safety Code § 121060 et seq.).
- (d) Seeking a court order when the person who may be the source of an exposure will not consent to testing and the exposure does not fall under the statutory schemes for testing. This covers testing for any communicable disease as deemed appropriate by a health care professional and documented in the request for the court order.
- (e) Under certain circumstances, a court may issue a search warrant for the purpose of HIV testing an adult or juvenile when an employee of the Milpitas Police Department qualifies as a crime victim (Penal Code § 1524.1).

1016.5.1 EXPOSURE FROM A NON-ARRESTEE

Upon notification of an employee's exposure to a person who was not arrested, the ECO should attempt to determine if the person who was the source of the exposure will voluntarily consent to testing. If consent is indicated, the following steps should be taken:

- (a) A licensed health care provider should notify the person to be tested of the exposure and make a good faith effort to obtain voluntary informed consent from the person or his/her authorized legal representative to perform a test for HIV, hepatitis B, hepatitis C and other communicable diseases the health care provider deems appropriate.
- (b) The voluntary informed consent obtained by the health care provider must be in writing and include consent for three specimens of blood for testing. The ECO should document the consent as a supplement to the Exposure Control Report.
- (c) The results of the tests should be made available to the source and the exposed employee.

If consent is not obtained, the ECO should promptly consult with City Attorney and consider requesting that a court order be sought for appropriate testing.

1016.5.2 EXPOSURE FROM AN ARRESTEE

Upon notification of an exposure to an employee by a person who was arrested, the ECO should take the following steps:

- (a) Comply with the statutory scheme of Health and Safety Code § 121060. This includes seeking consent from the person who was the source of the exposure and seeking a court order if consent is not given.

Communicable Diseases

- (b) Take reasonable steps to immediately contact the County Health Officer and provide preliminary information regarding the circumstances of the exposure and the status of the involved individuals to determine whether the County Health Officer will order testing (Penal Code § 7510).
- (c) In all cases, comply with the reporting and testing scheme of Penal Code § 7510 et seq. This includes completing a State Department of Health Services Form CDPH 8479 and submitting it to the County Health Officer with a copy of the Exposure Control Report by the end of the employee's shift. If submission by the end of the shift is not practicable, it must occur as soon as possible but no later than two days after the incident. The exposed employee's name should not appear on this form.
- (d) Remain in contact with the County Health Officer to determine whether testing of the arrestee will occur and whether the testing satisfies the medical needs of the employee.
- (e) The results of the tests should be made available to the donor and the exposed employee.

Since there is potential for overlap between the two statutory schemes, the ECO is responsible for coordinating the testing with the County Health Officer to prevent unnecessary or duplicate testing.

In the rare event that the exposed employee is not covered by either statutory scheme, the ECO should seek consent or a court order in the same manner as for a non-arrestee.

Personnel Complaints

1020.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of the Milpitas Police Department. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

1020.2 POLICY

The Milpitas Police Department takes seriously all complaints regarding the service provided by the Department and the conduct of its members.

The Department will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state and local law, municipal and county rules and the requirements of any collective bargaining agreements.

It is also the policy of this department to ensure that the community can report misconduct without concern for reprisal or retaliation.

1020.3 PERSONNEL COMPLAINTS

Personnel complaints include any allegation of misconduct or improper job performance that, if true, would constitute a violation of department policy or of federal, state or local law, policy or rule. Personnel complaints may be generated internally or by the public.

Inquiries about conduct or performance that, if true, would not violate department policy or federal, state or local law, policy or rule may be handled informally by a supervisor and shall not be considered a personnel complaint. Such inquiries generally include clarification regarding policy, procedures or the response to specific incidents by the Department.

1020.3.1 COMPLAINT CLASSIFICATIONS

Personnel complaints shall be classified in one of the following categories:

Informal - A matter in which the Watch Commander is satisfied that appropriate action has been taken by a supervisor of rank greater than the accused member.

Formal - A matter in which a supervisor determines that further action is warranted. Such complaints may be investigated by a supervisor of rank greater than the accused member or referred to the Sergeant, depending on the seriousness and complexity of the investigation.

Incomplete - A matter in which the complaining party either refuses to cooperate or becomes unavailable after diligent follow-up investigation. At the discretion of the assigned supervisor or the Sergeant, such matters may be further investigated depending on the seriousness of the complaint and the availability of sufficient information.

Personnel Complaints

1020.3.2 SOURCES OF COMPLAINTS

The following applies to the source of complaints:

- (a) Individuals from the public may make complaints in any form, including in writing, by email, in person or by telephone.
- (b) Any department member becoming aware of alleged misconduct shall immediately notify a supervisor.
- (c) Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct that, if true, could result in disciplinary action.
- (d) Anonymous and third-party complaints should be accepted and investigated to the extent that sufficient information is provided.
- (e) Tort claims and lawsuits may generate a personnel complaint.

1020.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

1020.4.1 COMPLAINT FORMS

Personnel complaint forms will be maintained in a clearly visible location in the public area of the police facility and be accessible through the department website. Forms may also be available at other City facilities.

Personnel complaint forms in languages other than English may also be provided, as determined necessary or practicable.

1020.4.2 ACCEPTANCE

All complaints will be courteously accepted by any department member and promptly given to the appropriate supervisor. Although written complaints are preferred, a complaint may also be filed orally, either in person or by telephone. Such complaints will be directed to a supervisor. If a supervisor is not immediately available to take an oral complaint, the receiving member shall obtain contact information sufficient for the supervisor to contact the complainant. The supervisor, upon contact with the complainant, shall complete and submit a complaint form as appropriate.

Although not required, complainants should be encouraged to file complaints in person so that proper identification, signatures, photographs or physical evidence may be obtained as necessary.

A complainant shall be provided with a copy of his/her statement at the time it is filed with the Department (Penal Code § 832.7).

1020.4.3 AVAILABILITY OF WRITTEN PROCEDURES

The Department shall make available to the public a written description of the investigation procedures for complaints (Penal Code § 832.5).

1020.5 DOCUMENTATION

Supervisors shall ensure that all formal and informal complaints are documented on a complaint form. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

Personnel Complaints

All complaints and inquiries should also be documented in a log that records and tracks complaints. The log shall include the nature of the complaint and the actions taken to address the complaint. On an annual basis, the Department should audit the log and send an audit report to the Chief of Police or the authorized designee.

1020.6 ADMINISTRATIVE INVESTIGATIONS

Allegations of misconduct will be administratively investigated as follows

1020.6.1 SUPERVISOR RESPONSIBILITIES

In general, the primary responsibility for the investigation of a personnel complaint shall rest with the member's immediate supervisor, unless the supervisor is the complainant, or the supervisor is the ultimate decision-maker regarding disciplinary action or has any personal involvement regarding the alleged misconduct. The Chief of Police or the authorized designee may direct that another supervisor investigate any complaint.

A supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation.

The responsibilities of supervisors include but are not limited to:

- (a) Ensuring that upon receiving or initiating any formal complaint, a complaint form is completed.
 - 1. The original complaint form will be directed to the Watch Commander of the accused member, via the chain of command, who will take appropriate action and/or determine who will have responsibility for the investigation.
 - 2. In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant is at issue, a supervisor shall orally report the matter to the member's Division Captain or the Chief of Police, who will initiate appropriate action.
- (b) Responding to all complainants in a courteous and professional manner.
- (c) Resolving those personnel complaints that can be resolved immediately.
 - 1. Follow-up contact with the complainant should be made within 24 hours of the Department receiving the complaint.
 - 2. If the matter is resolved and no further action is required, the supervisor will note the resolution on a complaint form and forward the form to the Watch Commander.
- (d) Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Watch Commander and the Chief of Police are notified via the chain of command as soon as practicable.
- (e) Promptly contacting the Department of Human Resources and the Watch Commander for direction regarding their roles in addressing a complaint that relates to sexual, racial, ethnic or other forms of prohibited harassment or discrimination.

Milpitas Police Department

Milpitas PD CA Policy Manual

Personnel Complaints

- (f) Forwarding unresolved personnel complaints to the Watch Commander, who will determine whether to contact the complainant or assign the complaint for investigation.
- (g) Informing the complainant of the investigator's name and the complaint number within three days after assignment.
- (h) Investigating a complaint as follows:
 - 1. Making reasonable efforts to obtain names, addresses and telephone numbers of witnesses.
 - 2. When appropriate, ensuring immediate medical attention is provided and photographs of alleged injuries and accessible uninjured areas are taken.
- (i) Ensuring that the procedural rights of the accused member are followed (Government Code § 3303 et seq.).
- (j) Ensuring interviews of the complainant are generally conducted during reasonable hours.

1020.6.2 ADMINISTRATIVE INVESTIGATION PROCEDURES

Whether conducted by a supervisor or a member of the Sergeant, the following applies to members covered by the Public Safety Officers Procedural Bill of Rights Act (POBR) (Government Code § 3303):

- (a) Interviews of an accused member shall be conducted during reasonable hours and preferably when the member is on-duty. If the member is off-duty, he/she shall be compensated.
- (b) Unless waived by the member, interviews of an accused member shall be at the Milpitas Police Department or other reasonable and appropriate place.
- (c) No more than two interviewers should ask questions of an accused member.
- (d) Prior to any interview, a member shall be informed of the nature of the investigation, the name, rank and command of the officer in charge of the investigation, the interviewing officers and all other persons to be present during the interview.
- (e) All interviews shall be for a reasonable period and the member's personal needs should be accommodated.
- (f) No member should be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers.
- (g) Any member refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to do so.
 - 1. A member should be given an order to answer questions in an administrative investigation that might incriminate the member in a criminal matter only after the member has been given a *Lybarger* advisement. Administrative investigators should consider the impact that compelling a statement from the member may have on any related criminal investigation and should take reasonable steps to avoid creating any foreseeable conflicts between the two related

Personnel Complaints

investigations. This may include conferring with the person in charge of the criminal investigation (e.g., discussion of processes, timing, implications).

2. No information or evidence administratively coerced from a member may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.
- (h) The interviewer should record all interviews of members and witnesses. The member may also record the interview. If the member has been previously interviewed, a copy of that recorded interview shall be provided to the member prior to any subsequent interview.
- (i) All members subjected to interviews that could result in discipline have the right to have an uninvolved representative present during the interview. However, in order to maintain the integrity of each individual's statement, involved members shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.
- (j) All members shall provide complete and truthful responses to questions posed during interviews.
- (k) No member may be requested or compelled to submit to a polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation (Government Code § 3307).

No investigation shall be undertaken against any officer solely because the officer has been placed on a prosecutor's *Brady* list or the name of the officer may otherwise be subject to disclosure pursuant to *Brady v. Maryland*. However, an investigation may be based on the underlying acts or omissions for which the officer has been placed on a *Brady* list or may otherwise be subject to disclosure pursuant to *Brady v. Maryland* (Government Code § 3305.5).

1020.6.3 ADMINISTRATIVE INVESTIGATION FORMAT

Formal investigations of personnel complaints shall be thorough, complete and essentially follow this format:

Introduction - Include the identity of the assigned investigators, the date and alleged violation..

Synopsis - Provide a brief summary of the facts giving rise to the investigation.

Summary - List the allegations separately, including applicable policy sections, with a brief summary of the evidence relevant to each allegation. A separate recommended finding should be provided for each allegation.

Investigation- Each allegation should be set forth with the details of the evidence applicable to each allegation provided, including comprehensive summaries of member and witness statements. Other evidence related to each allegation should also be detailed in this section.

Conclusion - A recommendation regarding further action or disposition should be provided.

Exhibits - A separate list of exhibits (e.g., recordings, photos, documents) should be attached to the report.

Personnel Complaints

1020.6.4 DISPOSITIONS

Each personnel complaint shall be classified with one of the following dispositions:

Unfounded - When the investigation discloses that the alleged acts did not occur or did not involve department members. Complaints that are determined to be frivolous will fall within the classification of unfounded (Penal Code § 832.8).

Exonerated - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.

Inconclusive - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.

Sustained - A final determination by an investigating agency, commission, board, hearing officer, or arbitrator, as applicable, following an investigation and opportunity for an administrative appeal pursuant to Government Code § 3304 and Government Code § 3304.5 that the actions of an officer were found to violate law or department policy (Penal Code § 832.8).

If an investigation discloses misconduct or improper job performance that was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations.

1020.6.5 COMPLETION OF INVESTIGATIONS

Every investigator or supervisor assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence in an effort to complete the investigation within one year from the date of discovery by an individual authorized to initiate an investigation (Government Code § 3304).

In the event that an investigation cannot be completed within one year of discovery, the assigned investigator or supervisor shall ensure that an extension or delay is warranted within the exceptions set forth in Government Code § 3304(d) or Government Code § 3508.1.

The assigned investigator or supervisor shall ensure that within 30 days of the final disposition of the complaint, the complainant is provided written notification of the disposition (Penal Code § 832.7(e)).

1020.7 ADMINISTRATIVE SEARCHES

Assigned lockers, storage spaces and other areas, including desks, offices and vehicles, may be searched as part of an administrative investigation upon a reasonable suspicion of misconduct.

Such areas may also be searched any time by a supervisor for non-investigative purposes, such as obtaining a needed report, radio or other document or equipment.

Lockers and storage spaces may only be administratively searched in the member's presence, with the member's consent, with a valid search warrant or where the member has been given reasonable notice that the search will take place (Government Code § 3309).

Personnel Complaints

1020.7.1 DISCLOSURE OF FINANCIAL INFORMATION

An employee may be compelled to disclose personal financial information under the following circumstances (Government Code § 3308):

- (a) Pursuant to a state law or proper legal process
- (b) Information exists that tends to indicate a conflict of interest with official duties
- (c) If the employee is assigned to or being considered for a special assignment with a potential for bribes or other improper inducements

1020.8 ADMINISTRATIVE LEAVE

When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Department, the Chief of Police or the authorized designee may temporarily assign an accused employee to administrative leave. Any employee placed on administrative leave:

- (a) May be required to relinquish any department badge, identification, assigned weapons and any other department equipment.
- (b) Shall be required to continue to comply with all policies and lawful orders of a supervisor.
- (c) May be temporarily reassigned to a different shift, generally a normal business-hours shift, during the investigation. The employee may be required to remain available for contact at all times during such shift, and will report as ordered.

1020.9 CRIMINAL INVESTIGATION

Where a member is accused of potential criminal conduct, a separate supervisor or investigator shall be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

The Chief of Police shall be notified as soon as practicable when a member is accused of criminal conduct. The Chief of Police may request a criminal investigation by an outside law enforcement agency.

A member accused of criminal conduct shall be advised of his/her constitutional rights (Government Code § 3303(h)). The member should not be administratively ordered to provide any information in the criminal investigation.

No information or evidence administratively coerced from a member may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.

The Milpitas Police Department may release information concerning the arrest or detention of any member, including an officer, that has not led to a conviction. No disciplinary action should be taken until an independent administrative investigation is conducted.

Personnel Complaints

1020.10 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES

Upon completion of a formal investigation, an investigation report should be forwarded to the Chief of Police through the chain of command. Each level of command should review the report and include his/her comments in writing before forwarding the report. The Chief of Police may accept or modify any classification or recommendation for disciplinary action.

1020.10.1 DIVISION CAPTAIN RESPONSIBILITIES

Upon receipt of any completed personnel investigation, the Division Captain of the involved member shall review the entire investigative file, the member's personnel file and any other relevant materials.

The Division Captain may make recommendations regarding the disposition of any allegations and the amount of discipline, if any, to be imposed.

Prior to forwarding recommendations to the Chief of Police, the Division Captain may return the entire investigation to the assigned investigator or supervisor for further investigation or action.

When forwarding any written recommendation to the Chief of Police, the Division Captain shall include all relevant materials supporting the recommendation. Actual copies of a member's existing personnel file need not be provided and may be incorporated by reference.

1020.10.2 CHIEF OF POLICE RESPONSIBILITIES

Upon receipt of any written recommendation for disciplinary action, the Chief of Police shall review the recommendation and all accompanying materials. The Chief of Police may modify any recommendation and/or may return the file to the Division Captain for further investigation or action.

Once the Chief of Police is satisfied that no further investigation or action is required by staff, the Chief of Police shall determine the amount of discipline, if any, that should be imposed. In the event disciplinary action is proposed, the Chief of Police shall provide the member with a pre-disciplinary procedural due process hearing (*Skelly*) by providing written notice of the charges, proposed action and reasons for the proposed action. Written notice shall be provided within one year from the date of discovery of the misconduct (Government Code § 3304(d)). The Chief of Police shall also provide the member with:

- (a) Access to all of the materials considered by the Chief of Police in recommending the proposed discipline.
- (b) An opportunity to respond orally or in writing to the Chief of Police within five days of receiving the notice.
 - 1. Upon a showing of good cause by the member, the Chief of Police may grant a reasonable extension of time for the member to respond.
 - 2. If the member elects to respond orally, the presentation may be recorded by the Department. Upon request, the member shall be provided with a copy of the recording.

Personnel Complaints

Once the member has completed his/her response or if the member has elected to waive any such response, the Chief of Police shall consider all information received in regard to the recommended discipline. The Chief of Police shall render a timely written decision to the member and specify the grounds and reasons for discipline and the effective date of the discipline. Once the Chief of Police has issued a written decision, the discipline shall become effective.

1020.10.3 NOTICE OF FINAL DISPOSITION TO THE COMPLAINANT

The Chief of Police or the authorized designee shall ensure that the complainant is notified of the disposition (i.e., sustained, not sustained, exonerated, unfounded) of the complaint (Penal Code § 832.7(f)).

1020.10.4 NOTICE REQUIREMENTS

The disposition of any civilian's complaint shall be released to the complaining party within 30 days of the final disposition. This release shall not include what discipline, if any, was imposed (Penal Code § 832.7(f)).

1020.11 PRE-DISCIPLINE EMPLOYEE RESPONSE

The pre-discipline process is intended to provide the accused employee with an opportunity to present a written or oral response to the Chief of Police after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline. The employee shall consider the following:

- (a) The response is not intended to be an adversarial or formal hearing.
- (b) Although the employee may be represented by an uninvolved representative or legal counsel, the response is not designed to accommodate the presentation of testimony or witnesses.
- (c) The employee may suggest that further investigation could be conducted or the employee may offer any additional information or mitigating factors for the Chief of Police to consider.
- (d) In the event that the Chief of Police elects to cause further investigation to be conducted, the employee shall be provided with the results prior to the imposition of any discipline.
- (e) The employee may thereafter have the opportunity to further respond orally or in writing to the Chief of Police on the limited issues of information raised in any subsequent materials.

1020.12 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE

In the event that a member tenders a written resignation or notice of retirement prior to the imposition of discipline, it shall be noted in the file. The tender of a resignation or retirement by itself shall not serve as grounds for the termination of any pending investigation or discipline.

Personnel Complaints

1020.13 POST-DISCIPLINE APPEAL RIGHTS

Non-probationary employees have the right to appeal a suspension without pay, punitive transfer, demotion, reduction in pay or step, or termination from employment. The employee has the right to appeal using the procedures established by any collective bargaining agreement, Memorandum of Understanding and/or personnel rules.

In the event of punitive action against an employee covered by the POBR, the appeal process shall be in compliance with Government Code § 3304 and Government Code § 3304.5.

During any administrative appeal, evidence that an officer has been placed on a *Brady* list or is otherwise subject to *Brady* restrictions may not be introduced unless the underlying allegations of misconduct have been independently established. Thereafter, such *Brady* evidence shall be limited to determining the appropriateness of the penalty (Government Code § 3305.5).

1020.14 PROBATIONARY EMPLOYEES AND OTHER MEMBERS

At-will and probationary employees and those members other than non-probationary employees may be released from employment for non-disciplinary reasons (e.g., failure to meet standards) without adherence to the procedures set forth in this policy or any right to appeal. However, any probationary officer subjected to an investigation into allegations of misconduct shall be entitled to those procedural rights, as applicable, set forth in the POBR (Government Code § 3303; Government Code § 3304).

At-will, probationary employees and those other than non-probationary employees subjected to discipline or termination as a result of allegations of misconduct shall not be deemed to have acquired a property interest in their position, but shall be given the opportunity to appear before the Chief of Police or authorized designee for a non-evidentiary hearing for the sole purpose of attempting to clear their name or liberty interest. There shall be no further opportunity for appeal beyond the liberty interest hearing and the decision of the Chief of Police shall be final.

1020.15 RETENTION OF PERSONNEL INVESTIGATION FILES

All personnel complaints shall be maintained in accordance with the established records retention schedule and as described in the Personnel Records Policy.

Seat Belts

1022.1 PURPOSE AND SCOPE

This policy establishes guidelines for the use of seat belts and child restraints. This policy will apply to all members operating or riding in department vehicles (Vehicle Code § 27315.5).

1022.1.1 DEFINITIONS

Definitions related to this policy include:

Child restraint system - An infant or child passenger restraint system that meets Federal Motor Vehicle Safety Standards (FMVSS) and Regulations set forth in 49 CFR 571.213.

1022.2 POLICY

It is the policy of the Milpitas Police Department that members use safety and child restraint systems to reduce the possibility of death or injury in a motor vehicle collision.

1022.3 WEARING OF SAFETY RESTRAINTS

All members shall wear properly adjusted safety restraints when operating or riding in a seat equipped with restraints, in any vehicle owned, leased or rented by this department while on- or off-duty, or in any privately owned vehicle while on-duty. The member driving such a vehicle shall ensure that all other occupants, including non-members, are also properly restrained.

Exceptions to the requirement to wear safety restraints may be made only in exceptional situations where, due to unusual circumstances, wearing a seat belt would endanger the member or the public. Members must be prepared to justify any deviation from this requirement.

1022.4 TRANSPORTING CHILDREN

Children under the age of 8 shall be transported in compliance with California's child restraint system requirements (Vehicle Code § 27360; Vehicle Code § 27363).

Rear seat passengers in a cage-equipped vehicle may have reduced clearance, which requires careful seating and positioning of seat belts. Due to this reduced clearance, and if permitted by law, children and any child restraint system may be secured in the front seat of such vehicles provided this positioning meets federal safety standards and the vehicle and child restraint system manufacturer's design and use recommendations. In the event that a child is transported in the front seat of a vehicle, the seat should be pushed back as far as possible and the passenger-side airbag should be deactivated. If this is not possible, members should arrange alternate transportation when feasible. A child shall not be transported in a rear-facing child restraint system in the front seat in a vehicle that is equipped with an active frontal passenger airbag (Vehicle Code § 27363).

Seat Belts

1022.5 TRANSPORTING SUSPECTS, PRISONERS OR ARRESTEES

Suspects, prisoners and arrestees should be in a seated position and secured in the rear seat of any department vehicle with a prisoner restraint system or, when a prisoner restraint system is not available, by seat belts provided by the vehicle manufacturer. The prisoner restraint system is not intended to be a substitute for handcuffs or other appendage restraints.

Prisoners in leg restraints shall be transported in accordance with the Handcuffing and Restraints Policy.

1022.6 INOPERABLE SEAT BELTS

Department vehicles shall not be operated when the seat belt in the driver's position is inoperable. Persons shall not be transported in a seat in which the seat belt is inoperable.

Department vehicle seat belts shall not be modified, removed, deactivated or altered in any way, except by the vehicle maintenance and repair staff, who shall do so only with the express authorization of the Chief of Police.

Members who discover an inoperable restraint system shall report the defect to the appropriate supervisor. Prompt action will be taken to replace or repair the system.

1022.7 VEHICLES MANUFACTURED WITHOUT SEAT BELTS

Vehicles manufactured and certified for use without seat belts or other restraint systems are subject to the manufacturer's operator requirements for safe use.

1022.8 VEHICLE AIRBAGS

In all vehicles equipped with airbag restraint systems, the system will not be tampered with or deactivated, except when transporting children as written elsewhere in this policy. All equipment installed in vehicles equipped with airbags will be installed as per the vehicle manufacturer specifications to avoid the danger of interfering with the effective deployment of the airbag device.

Personnel Files

1026.1 PURPOSE AND SCOPE

This section governs the maintenance, retention and access to peace officer personnel files in accordance with established law. It is the policy of this department to maintain the confidentiality of peace officer personnel records pursuant to Penal Code § 832.7.

1026.2 PERSONNEL FILES DEFINED

Pursuant to Penal Code § 832.8, peace officer personnel records shall include any file maintained under an individual officer's name relating to:

- (a) Personal data, including marital status, family members, educational and employment history, or similar information.
- (b) Medical history including medical leave of absence forms, fitness for duty examinations, workers compensation records, medical releases and all other records which reveal an employee's past, current or anticipated future medical conditions.
- (c) Election of employee benefits.
- (d) Employee advancement, appraisal, or discipline.
- (e) Complaints, or investigations of complaints, concerning an event or transaction in which the officer participated, or which the officer perceived, and pertaining to the manner in which the officer performed official duties.
- (f) Any other information the disclosure of which would constitute an unwarranted invasion of personal privacy.

1026.3 EMPLOYEE RECORD LOCATIONS

Employee records will generally be maintained in any of the following:

Personnel File - That file (Blue Binder) which is maintained by the Personnel & Training Unit as a permanent record of a sworn officer's employment with this department.

PAR Note Database - Any written comment, excluding actual performance evaluations, made by a supervisor concerning the conduct of an employee of this department for the purpose of completing timely performance evaluations.

Training File - Green binder which documents the training records of an employee.

Internal Affairs Files - Those files that contain complaints of employee misconduct and all materials relating to the investigation into such allegations, regardless of disposition.

Medical File - Yellow binder which is maintained separately that exclusively contains material relating to an employee's medical history.

Personnel Files

1026.4 CONFIDENTIALITY OF ALL PERSONNEL FILES

Pursuant to Penal Code § 832.7, all of the above-defined personnel records shall be deemed confidential and shall not be subject to disclosure except pursuant to the discovery procedures set forth in Evidence Code § 1043, et seq. or in accordance with applicable federal discovery laws. Nothing in this section is intended to preclude review of personnel files by the City Manager, City Attorney or other attorneys or representatives of the City in connection with official business.

1026.5 REQUESTS FOR DISCLOSURE

Only written requests for the disclosure of any information contained in any peace officer personnel record will be considered. Since the format of such requests may be strictly governed by law with specific responses required, all such requests shall be promptly brought to the attention of the Watch Commander, the Custodian of Records or other person charged with the maintenance of such records.

Upon receipt of any such request, the responsible person shall notify the affected employee(s) as soon as practicable that such a request has been made (Evidence Code § 1043(a)).

The responsible person shall further ensure that an appropriate response to the request is made in a timely manner, consistent with applicable law. In many cases, this will require assistance of approved and available legal counsel.

All requests for disclosure, which result in access to an employee's personnel file(s), shall be logged in the corresponding file.

1026.5.1 RELEASE OF CONFIDENTIAL INFORMATION

Except as provided by this policy or pursuant to lawful process, no information contained in any confidential peace officer personnel file shall be disclosed to any unauthorized person(s) without the expressed prior consent of the involved officer or written authorization of the Chief of Police or his or her designee.

Any person who maliciously, and with the intent to obstruct justice or the due administration of the laws, publishes, disseminates, or otherwise discloses the residence address or telephone number of any member of this department may be guilty of a misdemeanor (Penal Code § 146e).

Pursuant to Penal Code § 832.7(e), the disposition of any citizen's complaint shall be released to the complaining party within 30 days of the final disposition. This release shall be limited to the disposition and shall not include what discipline, if any was imposed.

The Department may also release any factual information concerning a disciplinary investigation if the officer who is the subject of the investigation (or the officer's representative) publicly makes a statement which is published in the media and which the officer (or representative) knew to be false. The disclosure of such information, if any, shall be limited to facts that refute any such false statement (Penal Code § 832.7(d)).

Personnel Files

1026.6 EMPLOYEE ACCESS TO OWN FILE

Any employee may request access to his/her own personnel file(s) during the normal business hours of the individual(s) responsible for maintaining such file(s). Any employee seeking the removal of any item from his/her personnel file shall file a written request to the Chief of Police through the chain of command. The Department shall thereafter remove any such item if appropriate or within 30 days provide the employee with a written explanation why the contested item will not be removed (Government Code 3306.5). If the contested item is not removed from the file, the employee's request and the department's written response shall be retained with the contested item in the employee's personnel file.

Employees may be restricted from accessing files containing any of the following information:

- (a) Ongoing Internal affairs investigations to the extent that it could jeopardize or compromise the investigation pending final disposition or notice to the employee of the intent to discipline.
- (b) Confidential portions of Internal Affairs files which have not been sustained against the employee

1026.7 TYPES OF PERSONNEL FILES

Peace officer personnel files can be located in any of the following places:

1026.7.1 DEPARTMENT FILE

The Department file should contain, but is not limited to, the following:

- (a) Performance evaluation reports regularly completed by appropriate supervisor(s) and signed by the affected employee shall be permanently maintained
- (b) Commendations shall be retained in the employee's department file, with a copy provided to the involved employee(s)
- (c) Personnel Action Reports reflecting assignments, promotions and other changes in the employee's employment status

1026.7.2 INTERNAL AFFAIRS FILE

Internal affairs files shall be maintained under the exclusive control of the Personnel & Training Sergeant in conjunction with the office of the Chief of Police. Access to these files may only be approved by the Chief of Police or the supervisor of the Technical Services Division Commander. These files shall contain:

- (a) The complete investigation of all formal complaints of employee misconduct, regardless of disposition
 1. Each investigation file shall be sequentially numbered within a calendar year (e.g., yy-001, yy-002).
 2. Each investigation file arising out of a formal citizen's complaint or a complaint involving a discriminatory harassment or hostile work environment shall be

Milpitas Police Department

Milpitas PD CA Policy Manual

Personnel Files

maintained no less than five years (Penal Code § 832.5(b)). Investigation files arising out of other internally generated complaints shall be maintained no less than two years (Government Code § 34090).

- (b) Investigations that result in other than a sustained finding shall be maintained for the minimum statutory period but may not be used by the Department to adversely affect an employee's career (Penal Code § 832.5 (c)).

1026.7.3 TRAINING FILES

An individual training file shall be maintained by Personnel and Training for each employee. Training files will contain records of all training (original or photocopies of available certificates, transcripts, diplomas and other documentation) and education.

- (a) It shall be the responsibility of the involved employee to provide the Personnel and Training Sergeant or immediate supervisor with evidence of completed training/education in a timely manner
- (b) The Personnel and Training Sergeant shall ensure that copies of such training records are placed in the employee's Training File
- (c) Records of all training (original or photocopies of available certificates, transcripts, diplomas and other documentation) and education
 - 1. It shall be the responsibility of the involved employee to provide the training officer or immediate supervisor with evidence of completed training/education in a timely manner.
 - 2. The training officer or supervisor shall ensure that copies of such training records are placed in the employee's training file.

1026.7.4 MEDICAL FILE

A medical file shall be maintained separately from all other files and shall contain all documents relating to the employee's medical condition and history, including but not limited to the following:

- (a) Materials relating to medical leaves of absence.
- (b) Documents relating to workers compensation claims or receipt of short or long term disability benefits.
- (c) Fitness for duty examinations, psychological and physical examinations, follow-up inquiries and related documents.
- (d) Medical release forms, doctor's slips and attendance records which reveal an employee's medical condition.
- (e) Any other documents or material which reveals the employee's medical history or medical condition, including past, present, or future anticipated mental, psychological, or physical limitations.

Milpitas Police Department

Milpitas PD CA Policy Manual

Personnel Files

1026.8 PURGING OF FILES

Formal citizen complaints and all related files not pending litigation or other ongoing legal proceedings may be purged no sooner than five years from the underlying complaint date (Penal Code § 832.5) upon approval of the Chief of Police.

All other disciplinary files and investigations of non-citizen initiated complaints not pending litigation or other ongoing legal proceedings may be purged no sooner than five years from the underlying complaint date upon approval of the Chief of Police.

Employee Commendations

1030.1 PURPOSE AND SCOPE

The Milpitas Police Department Commendation and Awards Program has been established to honor Department employees for exceptional or meritorious conduct and to honor civilians who have assisted our department. It is the purpose of this policy to describe the procedure whereby such acts or actions are duly recognized by the Department.

1030.2 WHO MAY MAKE COMMENDATIONS

It is the duty of every employee of supervisory rank to report to their Division Commander any act(s) worthy of commendation involving other employees of the Department. The Chief of Police may approve awards and commendations upon recommendation of any citizen or employee of the police department, and / or upon recommendation of the Commendations and Awards Review Committee.

1030.3 INDIVIDUAL COMMENDATIONS

COMMITTEE:

A Commendations and Awards Review Committee (Committee) consisting of four members from line positions and chaired by a Division Commander (Chair) shall meet as needed to evaluate reports submitted by the Chief of Police through the procedure outlined below. The Committee will be selected by the Chair. The Committee shall review all appropriate information as submitted and shall investigate whether there may be other officers involved in the act(s) or activity(ies) who are deserving of recognition. The Committee shall provide a report and recommendation on appropriate award(s) to the Bureau Captain within 30 days of receipt of the reports. The Bureau Captain shall forward a recommendation to the Chief of Police for final approval.

PROCESS

- (a) The Commendation Report form (form) shall be completed by the supervisor to initiate a review by the Committee. A separate form shall be completed for each individual employee involved in the act or activity to be commended. The form shall be accompanied by a narrative account (account) of the act(s) or activity(ies) to be considered by the Committee. The narrative account should include all the information necessary for the Committee to determine what commendation or award (if any) is appropriate under the circumstances. The account should not contain any recommendation as to award(s) or commendation(s) appropriate for the documented act(s) or activity(ies). The form and account should be accompanied by any supporting documentation, such as crime reports, letters from citizens, reports of co-workers, etc., deemed appropriate for the Committee to review in its determinations as to the appropriate commendation or award.

Milpitas Police Department

Milpitas PD CA Policy Manual

Employee Commendations

- (b) The employee's Division Commander shall read each form and account submitted by a supervisor under his/her command. Upon the approval of the Division Commander, the entire package will be forwarded to the Bureau Captain for review. On approval, the Bureau Captain shall submit the entire package to the Chief of Police. The Committee shall prepare a recommendation for each form submitted and submit the form(s) to the Chief of Police for final approval of the commendation or award appropriate for each employee.
- (c) After final approval, the package will be forwarded to the Personnel Sergeant for processing. The Personnel Sergeant will be responsible for any necessary presentation arrangements, notification letters to the employees, or other ceremonies deemed necessary or appropriate by the Chief of Police.

1030.3.1 AWARD CATEGORIES

- (a) Medal of Valor: For outstanding performance and bravery above and beyond the call of duty.
- (b) Police Medal: For outstanding performance and bravery in the line of duty.
- (c) Chief's Letter of Commendation: A Chief's letter of commendation shall accompany the presentation of any Medal. The Chief's Commendation may also be given as a sole award for outstanding performance in the line of duty. The Chief's Commendation shall be a presentation style letter mounted on a plaque suitable for wall mounting.
- (d) Purple Heart Medal: For "serious bodily injuries" received in the line of duty. This medal can be presented in conjunction with any of the above listed awards.
- (e) Life Saving Medal: For extraordinary efforts to protect or preserve human life not otherwise recognized under this program.
- (f) Distinguished Service Medal: For outstanding service to the community or the department which reflects credit upon law enforcement in its highest tradition.
- (g) Department Commendation: The Department Commendation may be awarded to individuals who engage in a program or operation that exemplifies extraordinary quality of service to the department or community. This award will be made at the discretion of the Chief on the recommendation of the employee's Bureau Captain. The Chief may utilize the Committee as appropriate in processing this award.

1030.3.2 PRESENTATIONS

The award(s) will be presented to the recipient(s) by the Chief of Police at a special awards ceremony as deemed appropriate by the Chief of Police. The Personnel Sergeant shall be responsible for all necessary arrangements.

It shall be the responsibility of the Personnel Sergeant to arrange for any photographs or video documentation of the presentation(s).

Milpitas Police Department

Milpitas PD CA Policy Manual

Employee Commendations

1030.4 PEER RECOGNITION

Whenever an employee of this department observes actions of a fellow employee which are worthy of recognition, but that do not necessarily merit an award, may submit a Peer Recognition Form to their supervisor. This form will be routed through the employee's chain of command to the Division Commander for review. The Commander will notify the Bureau Captain and provide a copy of the form to the recognized employee and a copy will be placed in the employee's personnel file.

1030.5 CIVILIAN AWARD

It will be the responsibility of supervisors to report to their Division Commander acts by citizens who assist the Department in our efforts to preserve law and order and are deemed worthy of commendation.

Fitness for Duty

1032.1 PURPOSE AND SCOPE

All officers are required to be free from any physical, emotional, or mental condition which might adversely affect the exercise of peace officer powers. The purpose of this policy is to ensure that all officers of this department remain fit for duty and able to perform their job functions (Government Code § 1031).

1032.2 EMPLOYEE RESPONSIBILITIES

- (a) It shall be the responsibility of each member of this department to maintain good physical condition sufficient to safely and properly perform essential duties of their position.
- (b) Each member of this department shall perform his/her respective duties without physical, emotional, and/or mental constraints.
- (c) During working hours, all employees are required to be alert, attentive, and capable of performing his/her assigned responsibilities.
- (d) Any employee who feels unable to perform his/her duties shall promptly notify a supervisor. In the event that an employee believes that another employee is unable to perform his/her duties, such observations and/or belief shall be promptly reported to a supervisor.

1032.3 SUPERVISOR RESPONSIBILITIES

- (a) A supervisor observing an employee, or receiving a report of an employee who is perceived to be, unable to safely perform his/her duties due to a physical or mental condition shall take prompt and appropriate action in an effort to resolve the situation.
- (b) Whenever feasible, the supervisor should attempt to ascertain the reason or source of the problem and in all cases a preliminary evaluation should be made in an effort to determine the level of inability of the employee to perform his/her duties.
- (c) In the event the employee appears to be in need of immediate medical or psychiatric treatment, all reasonable efforts should be made to provide such care.
- (d) In conjunction with the Watch Commander or employee's available Division Captain, a determination should be made whether or not the employee should be temporarily relieved from his/her duties.
- (e) The Chief of Police shall be promptly notified in the event that any employee is relieved from duty.

Fitness for Duty

1032.4 NON-WORK RELATED CONDITIONS

Any employee suffering from a non-work related condition which warrants a temporary relief from duty may be required to use sick leave or other paid time off (PTO) in order to obtain medical treatment or other reasonable rest period.

1032.5 WORK RELATED CONDITIONS

Any employee suffering from a work related condition which warrants a temporary relief from duty shall be required to comply with personnel rules and guidelines for processing such claims.

Upon the recommendation of the Watch Commander or unit supervisor and concurrence of a Division Captain, any employee whose actions or use of force in an official capacity result in death or serious injury to another may be temporarily removed from regularly assigned duties and/or placed on paid administrative leave for the wellbeing of the employee and until such time as the following may be completed:

- (a) A preliminary determination that the employee's conduct appears to be in compliance with policy and, if appropriate.
- (b) The employee has had the opportunity to receive necessary counseling and/or psychological clearance to return to full duty.

1032.6 PHYSICAL AND PSYCHOLOGICAL EXAMINATIONS

- (a) Whenever circumstances reasonably indicate that an employee is unfit for duty, the Chief of Police may serve that employee with a written order to undergo a physical and/or psychological examination in cooperation with Department of Human Resources to determine the level of the employee's fitness for duty. The order shall indicate the date, time and place for the examination.
- (b) The examining physician or therapist will provide the Department with a report indicating that the employee is either fit for duty or, if not, listing any functional limitations which limit the employee's ability to perform job duties. If the employee places his/her condition at issue in any subsequent or related administrative action/grievance, the examining physician or therapist may be required to disclose any and all information which is relevant to such proceeding (Civil Code § 56.10(c)(8)).
- (c) In order to facilitate the examination of any employee, the Department will provide all appropriate documents and available information to assist in the evaluation and/or treatment.
- (d) All reports and evaluations submitted by the treating physician or therapist shall be part of the employee's confidential personnel file.
- (e) Any employee ordered to receive a fitness for duty examination shall comply with the terms of the order and cooperate fully with the examining physician or therapist regarding any clinical interview, tests administered or other procedures as directed.

Fitness for Duty

Any failure to comply with such an order and any failure to cooperate with the examining physician or therapist may be deemed insubordination and shall be subject to discipline up to and including termination.

- (f) Once an employee has been deemed fit for duty by the examining physician or therapist, the employee will be notified to resume his/her duties.

1032.7 APPEALS

An employee who is separated from paid employment or receives a reduction in salary resulting from a fitness for duty examination shall be entitled to an administrative appeal as outlined in the Personnel Complaints Policy.

Payroll Records

1036.1 PURPOSE AND SCOPE

This policy provides the guidelines for completing and submitting payroll records of department members who are eligible for the payment of wages.

1036.2 POLICY

The Milpitas Police Department maintains timely and accurate payroll records.

1036.3 RESPONSIBILITIES

Members are responsible for the accurate completion and timely submission of their payroll records for the payment of wages.

Supervisors are responsible for approving the payroll records for those under their commands.

1036.4 TIME REQUIREMENTS

Members who are eligible for the payment of wages are paid on a scheduled, periodic basis, generally on the same day or date each period, with certain exceptions, such as holidays. Payroll records shall be completed and submitted to Administration as established by the City payroll procedures.

1036.5 RECORDS

The Administration Division Captain shall ensure that accurate and timely payroll records are maintained as required by 29 CFR 516.2 for a minimum of three years (29 CFR 516.5).

Overtime Compensation Requests

1038.1 PURPOSE AND SCOPE

It is the policy of the Department to compensate non-exempt salaried employees who work authorized overtime either by payment of wages as agreed and in effect through the Memorandum of Understanding (MOU), or by the allowance of accrual of compensatory time off. In order to qualify for either, the employee must complete and submit a Request for Overtime Payment as soon as practical after overtime is worked.

1038.1.1 DEPARTMENT POLICY

Because of the nature of police work, and the specific needs of the Department, a degree of flexibility concerning overtime policies must be maintained.

Non-exempt employees are not authorized to volunteer work time to the Department. All requests to work overtime shall be approved in advance by a supervisor. If circumstances do not permit prior approval, then approval shall be sought as soon as practical during the overtime shift and in no case later than the end of shift in which the overtime is worked.

The individual employee may request compensatory time in lieu of receiving overtime payment.

1038.2 REQUEST FOR OVERTIME COMPENSATION

Employees shall submit all overtime compensation requests to their immediate supervisors as soon as practicable for verification and forwarding to the Administration Division.

Failure to submit a request for overtime compensation in a timely manner may result in discipline.

1038.2.1 SUPERVISORS RESPONSIBILITY

The supervisor who verifies the overtime earned shall verify that the overtime was worked before approving the request.

After the entry has been made on the employee's time card, the overtime payment request form is forwarded to the employee's Division Captain for final approval.

Outside Employment

1040.1 PURPOSE AND SCOPE

In order to avoid actual or perceived conflicts of interest for departmental employees engaging in outside employment, all employees shall obtain written approval from the Chief of Police prior to engaging in any outside employment. Approval of outside employment shall be at the discretion of the Chief of Police in accordance with the provisions of this policy; MOU Section 7.00 and City of Milpitas S.O.P 13-1.

1040.1.1 DEFINITIONS

Outside Employment - Any member of this department who receives wages, compensation or other consideration of value from another employer, organization or individual not affiliated directly with this department for services, product(s) or benefits rendered. For purposes of this section, the definition of outside employment includes those employees who are self-employed and not affiliated directly with this department for services, product(s) or benefits rendered.

1040.2 OBTAINING APPROVAL

No member of this department may engage in any outside employment without first obtaining prior written approval of the Chief of Police. Failure to obtain prior written approval for outside employment or engaging in outside employment prohibited by this policy may lead to disciplinary action.

In order to obtain approval for outside employment, the employee must complete an Outside Employment Application which shall be submitted to the employee's immediate supervisor. The application will then be forwarded through the chain of command to the Chief of Police for consideration.

Upon approval, Personnel & Training will process the application and, the employee will be provided with a copy of the approved permit. Unless otherwise indicated in writing on the approved permit, a permit will be valid through the end of the calendar year in which the permit is approved. Any employee seeking to renew a permit shall submit a new Outside Employment Application in a timely manner.

Other employment work permits shall be kept in the employee's personnel file and maintained according to Personnel Rules Section 11.00.

Any employee seeking approval of outside employment, whose request has been denied, shall be provided with a written reason for the denial of the application at the time of the denial (Penal Code § 70(e)(3)).

Outside Employment

1040.2.1 APPEAL OF DENIAL OF OUTSIDE EMPLOYMENT

If an employee's Outside Employment Application is denied or withdrawn by the Department, the employee may file a written notice of appeal to the Chief of Police within ten days of the date of denial.

If the employee's appeal is denied, the employee may appeal the decision to the City Manager whose decision shall be final.

1040.2.2 REVOCATION/SUSPENSION OF OUTSIDE EMPLOYMENT PERMITS

Any outside employment permit may be revoked or suspended under the following circumstances:

- (a) Should an employee's performance at this department decline to a point where it is evaluated by a supervisor as needing improvement to reach an overall level of competency, the Chief of Police may, at his or her discretion, revoke any previously approved outside employment permit(s). That revocation will stand until the employee's performance has been reestablished at a satisfactory level and his/her supervisor recommends reinstatement of the outside employment permit
- (b) Suspension or revocation of a previously approved outside employment permit may be included as a term or condition of sustained discipline
- (c) If, at any time during the term of a valid outside employment permit, an employee's conduct or outside employment conflicts with the provisions of department policy, the permit may be suspended or revoked
- (d) When an employee is unable to perform at a full duty capacity due to an injury or other condition, any previously approved outside employment permit may be subject to similar restrictions as those applicable to the employee's full time duties until the employee has returned to a full duty status

1040.3 PROHIBITED OUTSIDE EMPLOYMENT

Consistent with the provisions of Government Code § 1126, the Department expressly reserves the right to deny any Outside Employment Application submitted by an employee seeking to engage in any activity which:

- (a) Involves the employee's use of department time, facilities, equipment or supplies, the use of the Department badge, uniform, prestige or influence for private gain or advantage.
- (b) Involves the employee's receipt or acceptance of any money or other consideration from anyone other than this department for the performance of an act which the employee, if not performing such act, would be required or expected to render in the regular course or hours of employment or as a part of the employee's duties as a member of this department.

Outside Employment

- (c) Involves the performance of an act in other than the employee's capacity as a member of this department that may later be subject directly or indirectly to the control, inspection, review, audit or enforcement of any other employee of this department.
- (d) Involves time demands that would render performance of the employee's duties for this department less efficient.

1040.4 DEPARTMENT RESOURCES

Employees are prohibited from using any department equipment or resources in the course of or for the benefit of any outside employment. This shall include the prohibition of access to official records or databases of this department or other agencies through the use of the employee's position with this department.

1040.4.1 REVIEW OF FINANCIAL RECORDS

Employees approved for outside employment expressly agree that their personal financial records may be requested and reviewed/audited for potential conflict of interest (Government Code § 3308; Government Code § 1126). Prior to providing written approval for an outside employment position, the Department may request that an employee provide his/her personal financial records for review/audit in order to determine whether a conflict of interest exists. Failure of the employee to provide the requested personal financial records could result in denial of the off-duty work permit. If, after approving a request for an outside employment position, the Department becomes concerned that a conflict of interest exists based on a financial reason, the Department may request that the employee provide his/her personal financial records for review/audit. If the employee elects not to provide the requested records, his/her off-duty work permit may be revoked pursuant to the Revocation/Suspension of Outside Employment Permits section of this policy.

1040.5 CHANGES IN OUTSIDE EMPLOYMENT STATUS

If an employee terminates his or her outside employment during the period of a valid permit, the employee shall promptly submit written notification of such termination through the chain of command. Any subsequent request for renewal or continued outside employment must thereafter be processed and approved through normal procedures set forth in this policy.

Employees shall also promptly submit in writing to the Chief of Police any material changes in outside employment including any change in the number of hours, type of duties, or demands of any approved outside employment. Employees who are uncertain whether a change in outside employment is material are advised to report the change.

1040.6 OUTSIDE EMPLOYMENT WHILE ON DISABILITY

Department members engaged in outside employment who are placed on disability leave or modified/light-duty shall inform their immediate supervisor in writing within five days whether or not they intend to continue to engage in such outside employment while on such leave or light-duty status. The immediate supervisor shall review the duties of the outside employment along

Outside Employment

with any related doctor's orders, and make a recommendation to the Chief of Police whether such outside employment should continue.

In the event the Chief of Police determines that the outside employment should be discontinued or if the employee fails to promptly notify his/her supervisor of his/her intentions regarding their work permit, a notice of revocation of the member's permit will be forwarded to the involved employee, and a copy attached to the original work permit.

Criteria for revoking the outside employment permit include, but are not limited to, the following:

- (a) The outside employment is medically detrimental to the total recovery of the disabled member, as indicated by the City's professional medical advisors.
- (b) The outside employment performed requires the same or similar physical ability, as would be required of an on-duty member.
- (c) The employee's failure to make timely notice of their intentions to their supervisor.

When the disabled member returns to full duty with the Milpitas Police Department, a request (in writing) may be made to the Chief of Police to restore the permit.

Occupational Disease and Work-Related Injury Reporting

1042.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance regarding the timely reporting of occupational diseases, mental health issues, and work-related injuries.

1042.1.1 DEFINITIONS

Definitions related to this policy include:

Occupational disease or work-related injury - An injury, disease, or mental health issue arising out of employment (Labor Code § 3208; Labor Code § 3208.3; Labor Code § 3212 et seq.).

1042.2 POLICY

The Milpitas Police Department will address occupational diseases and work-related injuries appropriately, and will comply with applicable state workers' compensation requirements (Labor Code § 3200 et seq.).

1042.2.1 EMPLOYEE'S RESPONSIBILITY

Any employee sustaining any work-related injury or illness, as well as any employee who is involved in any accident while on duty shall report such injury, illness or accident as soon as practicable, but within 24 hours, to his/her supervisor, and shall seek medical care when appropriate (8 CCR 14300.35).

Any employee observing or learning of a potentially hazardous condition is to promptly report the condition to his/her immediate supervisor.

Any employee sustaining a work-related injury or illness that requires relief from duty is required to be examined/treated by a doctor.

Any employee sustaining a work-related injury or illness that requires relief from duty is also required to comply with departmental policies and directives relating to the duty to periodically call in during absences, as well as the duty to notify the Department of any change in condition or anticipated duration of the absence.

When appropriate, an employee being treated for an on-duty injury should inform the attending physician that a modified duty assignment may be available at the Department. Limited-service duty may be available for the employees whose injuries prevent resumption of regular duties.

An injured employee or employee who has suffered a work-related illness shall report as soon as practical to his/her immediate supervisor the medical findings concerning the injury and the extent and duration of any work restrictions if they are known. In addition, such employees are required to promptly submit all medical releases, whether partial or full releases, to their supervisor.

Occupational Disease and Work-Related Injury Reporting

1042.2.2 SUPERVISOR'S RESPONSIBILITY

A supervisor learning of any work-related injury, illness or accident shall promptly prepare the appropriate forms needed to report the incident. Updated copies of forms with instructions for completion provided by Risk Management are kept in the Sergeant's office.

For work-related accidents, injuries or illness not requiring professional medical care, a Supervisor's Report of Injury form shall be completed in triplicate. All copies of the completed form shall be forwarded to the supervisor's Division Captain, through the chain of command.

When an accident, injury, or illness is reported initially on the Supervisor's Report of Injury form and the employee subsequently requires professional medical care, the State of California Employer's Report of Occupational Injury or Illness form shall then be completed. The injured employee shall also sign the form in the appropriate location.

Every injured employee must be provided with an Employee's Claim for Workers' Compensation Benefits Form (DWC-1) within 24 hours, regardless of the nature of illness or injury.

Copies of any reports documenting the accident or injury should be forwarded to the Division Captain as soon as they are completed.

1042.2.3 DIVISION CAPTAIN RESPONSIBILITY

The Division Captain receiving a report of a work-related accident or injury should review the report for accuracy and determine what additional action should be taken. The report shall then be forwarded to the Chief of Police.

1042.2.4 CHIEF OF POLICE RESPONSIBILITY

The Chief of Police shall review and forward copies of the report to the Department of Human Resources. Any copies of the report and any related documents retained by the Department shall be filed in the employee's confidential medical file and not in the employee's personnel file (see Policy Manual § 1026).

1042.3 INJURY NOT REQUIRING MEDICAL ATTENTION

Those injuries and illnesses not requiring medical attention shall be recorded on a Supervisor's Report of Injury form. This form shall be completed and signed by a supervisor.

This form shall be signed by the affected employee, indicating that he/she desired no medical attention at the time of the report. By signing this form, the employee will not preclude his/her ability to seek medical attention later.

1042.4 SETTLEMENT OF INJURY CLAIMS

Occasionally, an employee's work-related injury results from the negligent or wrongful acts of another, for which the employee, the City, and/or other insurers are entitled to recover civilly. To ensure that the City's interests are protected and that the employee has the benefit of the City's experience in these matters, the following procedure is to be followed:

Milpitas Police Department

Milpitas PD CA Policy Manual

Occupational Disease and Work-Related Injury Reporting

1042.4.1 EMPLOYEE TO REPORT INITIAL CONTACTS

When a member sustains an occupational disease or work-related injury that is caused by another person and is subsequently contacted by that person, his/her agent, insurance company or attorney and offered a settlement, the member shall take no action other than to submit a written report of this contact to his/her supervisor as soon as possible.

1042.4.2 NO SETTLEMENT WITHOUT PRIOR APPROVAL

No less than 10 days prior to accepting and finalizing the settlement of any third-party claim arising out of or related to an occupational disease or work-related injury, the member shall provide the Chief of Police with written notice of the proposed terms of such settlement. In no case shall the member accept a settlement without first providing written notice to the Chief of Police. The purpose of such notice is to permit the City to determine whether the offered settlement will affect any claim the City may have regarding payment for damage to equipment or reimbursement for wages against the person who caused the disease or injury, and to protect the City's right of subrogation, while ensuring that the member's right to receive compensation is not affected.

Personal Appearance Standards

1044.1 PURPOSE AND SCOPE

In order to project uniformity and neutrality toward the public and other members of the department, employees shall maintain their personal hygiene and appearance to project a professional image appropriate for this department and for their assignment.

1044.2 GROOMING STANDARDS

Unless otherwise stated and because deviations from these standards could present officer safety issues, the following appearance standards shall apply to all employees, except those whose current assignment would deem them not appropriate. The Chief of Police may grant additional exemptions after receipt of a written application in the form of a memorandum requesting an exemption.

Personnel will not be permitted to perform duties with an unkempt, unclean, or disheveled appearance. "Contemporary Standards" are defined as those represented by the community at large, i.e. generally demonstrated by the majority of the public. Therefore, extreme personal grooming will not be allowed.

Supervisors are responsible for ensuring the maintenance of proper grooming and appearance standards.

1044.2.1 HAIR

Hairstyles of all members shall be neat in appearance and consistent with contemporary standards. For male sworn members, hair must not extend below the top edge of the uniform collar while assuming a normal stance.

1044.2.2 MUSTACHES

A short and neatly trimmed mustache may be worn. Mustaches shall not extend below the corners of the mouth or beyond the natural hairline of the upper lip. Mustaches shall not connect with sideburns.

1044.2.3 SIDEBURNS

Sideburns shall not extend below the bottom of the ear and shall be trimmed and neat.

1044.2.4 FACIAL HAIR

Facial hair other than sideburns, mustaches and eyebrows shall not be worn, unless authorized by the Chief of Police or his or her designee. Non-sworn male personnel may wear a neatly trimmed beard.

Personal Appearance Standards

1044.2.5 JEWELRY

For the purpose of this policy, jewelry refers to rings, earrings, necklaces, bracelets, wristwatches, and tie tacks or tie bars. Jewelry shall present a professional image and may not create a safety concern for the department member or others. Jewelry that depicts racial, sexual, discriminatory, gang-related, or obscene language is not allowed.

- (a) Necklaces shall not be visible above the shirt collar.
- (b) Earrings shall be small and worn only in or on the earlobe.
- (c) One ring or ring set may be worn on each hand of the department member. No rings should be of the type that would cut or pose an unreasonable safety risk to the member or others during a physical altercation, if the member is assigned to a position where that may occur.
- (d) One small bracelet, including a bracelet identifying a medical condition, may be worn on one arm.
- (e) Wristwatches shall be conservative and present a professional image.
- (f) Tie tacks or tie bars worn with civilian attire shall be conservative and present a professional image.

1044.2.6 MAKEUP AND FRAGRANCES

Makeup shall be worn in good taste and in accordance with contemporary standards. Perfume and fragrances may be used but only in moderation.

1044.2.7 PIERCINGS

While on duty, all uniformed female personnel, sworn and non-sworn, may only wear one set of stud-type or small hoop earrings with only one earring per ear. Earrings may only be worn in the earlobes. Stud earrings shall be plain and no more than 1/2 inch in diameter, while hoops may be no larger than inch. The piercing and wearing of associated jewelry in all other visible parts of the body is prohibited. Exceptions may be made for all dispatchers when working in the Communications Center.

While on duty in the Communications Center, dispatchers may wear more than one set of earrings per ear. Piercings of the nose, lips, and tongue are permitted, as long as the piercings are not considered offensive. Piercings will be subject to a determination by the Chief of Police or his or her designee as to whether or not they are considered offensive. The Chief of Police or his or her designee shall have the authority to determine the appropriate required uniform or attire for any event or circumstance where a member of the Communications Center could be recognized as a member of the department or an employee of the city.

While on duty, all sworn male personnel will not wear any visible type of jewelry designed for display through the act of body piercing.

While on duty, non-uniformed sworn female personnel, may wear two sets of earrings per ear. Earrings may only be worn in the earlobes. The earrings shall be no more than one 1/2 inch in

Personal Appearance Standards

diameter and extend no further than one inch from the bottom of the ear. Earring styles and colors should not be excessive or offensive.

1044.2.8 CLOTHING

Clothing shall be cleaned on a regular basis, pressed, and worn in a neat and orderly manner while on duty. Civilian attire shall consist of contemporary business styles.

1044.2.9 FOOTWEAR

Footwear Shall be maintained with sound heels and soles and shall be cleaned and polished when reporting for duty. In order to accommodate the work station exercise equipment, personnel in the Communications Center may wear athletic footwear that is consistent with the uniform attire.

1044.3 TATTOOS

While on duty all members may display tattoos according to the following provisions:

- (a) Tattoos applied to the hands, head, face, ear or neck may not be displayed except for a tattoo of a wedding band on the ring finger, or permanent make-up such as eye liner. Personnel with tattoos on the hand prior to this policy being implemented will be grandfathered in so long as the tattoo is deemed appropriate. Grandfathered tattoos shall be documented in the employees personnel file to ensure no further tattooing of the hand occurs.
- (b) Tattoos of objectionable content may not be displayed. Such objectionable content includes, but is not limited to:
 - 1. Racism
 - 2. Sexism or sexually suggestive or explicit words or symbols
 - 3. Obscenity or profanity
 - 4. Drug related
 - 5. Initials acronyms or numbers that represent criminal or historically oppressive organizations such as AB, KKK, SS, MM, BFF, HA, 666, or any street gang names, numbers, and/or symbols
 - 6. Undermining City or Department values or reflecting poorly upon the professional image of the Police Department
 - 7. Displaying contempt for the United States, rule of law, or advocating the commission of a crime or supporting those who commit crimes
 - 8. Vulgar or inappropriate language or images
 - 9. Language or images considered demeaning to any protected class such as race or sex
 - 10. Nudity or sexual language or images
 - 11. Images depicting the Milpitas Police Department patch, badge, or insignia directly associated to the Milpitas Police Department

Personal Appearance Standards

- (c) Any member who wishes to display visible tattoos must have their tattoos evaluated by the Chief of Police or authorized designee to ensure compliance with the above-listed limitations prior to their display. Members wishing to display visible tattoos shall submit a memorandum of request to the Chief of Police which includes photographs and a written description of the tattoo. The description shall include the meaning of the tattoos. If approved, the member will be allowed to display their tattoos while on duty. A copy of the memorandum will be maintained in the member's personnel file.
- (d) Any member who obtains a new visible tattoo after this approval will be required to submit a subsequent memorandum for approval.
- (e) The Chief of Police or authorized designee shall have the authority to determine the appropriate required uniform or attire for any event or circumstance where any member could be recognized as an employee of the city or member of the department.

1044.4 BODY PIERCING OR ALTERATION

Body piercing or alteration to any area of the body visible in any authorized uniform or attire that is a deviation from normal anatomical features and which is not medically required is prohibited. Such body alteration includes, but is not limited to:

- (a) Tongue splitting or piercing (See exceptions for piercings for dispatchers above).
- (b) The complete or transdermal implantation of any material other than hair replacement.
- (c) Abnormal shaping of the ears, eyes, nose or teeth
- (d) Branding or scarification.

1044.5 EXEMPTIONS

When deemed operationally necessary, sworn Department personnel in undercover assignments may wear beards, display tattoos, scarifications, brands, or jewelry otherwise prohibited by this order with approval from the Chief of Police.

Exemptions may be granted for articles of faith that are a required part of a recognized religious organization or exemptions may be granted for tattoos, scarifications, or brands already in existence on the date of this order. Employees requesting an exception shall submit an application in the form of a memorandum to the Chief of Police. The final authority for granting any exemption will rest with the office of the Chief of Police or an appointed designee. No exemption will be granted for any unauthorized tattoos, scarifications or brands considered inappropriate, unprofessional or offensive as outlined in this order. Members who seek cultural (e.g., culturally protected hairstyles) or other exemptions to this policy that are protected by law should generally be accommodated (Government Code § 12926). A member with an exemption may be ineligible for an assignment if the individual accommodation presents a security or safety risk. The Chief of Police should be advised any time a request for such an accommodation is denied or when a member with a cultural or other exemption is denied an assignment based on a safety or security risk.

Uniform Regulations

1046.1 PURPOSE AND SCOPE

The uniform policy of the Milpitas Police Department is established to ensure that uniformed officers will be readily identifiable to the public through the proper use and wearing of department uniforms. Employees should also refer to the following associated Policy Manual sections:

Section 700 - Department Owned and Personal Property

Section 1024 - Body Armor

Section 1044 - Personal Appearance Standards

The Uniform and Equipment Specifications are periodically updated by the Chief of Police or his/her designee. The Policy Manual should be consulted regarding authorized equipment and uniform specifications.

The Milpitas Police Department will provide uniforms/uniform allowance for all employees required to wear them in the manner, quantity and frequency agreed upon in the respective employee group's collective bargaining agreement.

1046.2 WEARING AND CONDITION OF UNIFORM AND EQUIPMENT

Police employees wear the uniform to be identified as the law enforcement authority in society. The uniform also serves an equally important purpose to identify the wearer as a source of assistance in an emergency, crisis or other time of need.

- (a) Uniform and equipment shall be maintained in a serviceable condition and shall be ready at all times for immediate use. Uniforms shall be neat, clean, and appear professionally pressed.
- (b) All peace officers of this department shall possess and maintain at all times, a serviceable uniform and the necessary equipment to perform uniformed field duty.
- (c) Personnel shall wear only the uniform specified for their rank and assignment.
- (d) The uniform is to be worn in compliance with the specifications set forth in the department's uniform specifications that are maintained separately from this policy.
- (e) All supervisors will perform periodic inspections of their personnel to ensure conformance to these regulations.
- (f) Civilian attire shall not be worn in combination with any distinguishable part of the uniform.
- (g) Uniforms are only to be worn while on duty, while in transit to or from work, for court, or at other official department functions or events.
- (h) If the uniform is worn while in transit, an outer garment shall be worn over the uniform shirt so as not to bring attention to the employee while he/she is off-duty.

Milpitas Police Department

Milpitas PD CA Policy Manual

Uniform Regulations

- (i) Employees are not to purchase or drink alcoholic beverages while wearing any part of the department uniform, including the uniform pants.
- (j) Mirrored sunglasses will not be worn with any Department uniform.
- (k) Visible jewelry, other than those items listed below, shall not be worn with the uniform unless specifically authorized by the Chief of Police or the authorized designee.
 - 1. Wrist watch
 - 2. Wedding ring(s), class ring, or other ring of tasteful design. A maximum of one ring/set may be worn on each hand
 - 3. Medical alert bracelet

1046.2.1 DEPARTMENT ISSUED IDENTIFICATION

The Department issues each employee an official department identification card bearing the employee's name, identifying information and photo likeness. All employees shall be in possession of their department issued identification card at all times while on duty or when carrying a concealed weapon.

- (a) Whenever on duty or acting in an official capacity representing the department, employees shall display their department issued identification in a courteous manner to any person upon request and as soon as practical.
- (b) Officers working specialized assignments may be excused from the possession and display requirements when directed by their Division Captain.

1046.3 UNIFORM CLASSES

1046.3.1 CLASS A UNIFORM

The Class A uniform is to be worn on special occasions such as funerals, graduations, ceremonies, or as directed. The Class A uniform is required for all sworn personnel. The Class A uniform includes the standard issue uniform with:

- (a) Long sleeve shirt with tie
- (b) Polished shoes
- (c) Dress Jacket
- (d) Cap

Boots with pointed toes are not permitted.

1046.3.2 CLASS B UNIFORM

All officers will possess and maintain a serviceable Class B uniform at all times.

The Class B uniform will consist of the same garments and equipment as the Class A uniform with the following exceptions:

Uniform Regulations

- (a) The long or short sleeve shirt may be worn with the collar open. No tie is required
- (b) A white, navy blue or black crew neck t-shirt must be worn with the uniform
- (c) All shirt buttons must remain buttoned except for the last button at the neck
- (d) Shoes for the Class B uniform may be as described in the Class A uniform
- (e) Approved all black unpolished shoes may be worn
- (f) Boots with pointed toes are not permitted

1046.3.3 CLASS C UNIFORM

The Class C uniform has been established to allow field personnel an alternate uniform. The Class C uniform consists of a two-piece Tactical Dress Uniform (TDU) that can be worn during inclement weather, special details, or by prior approval of the Watch Commander.

The Uniforms Specification Section will provide specifications for this uniform.

1046.3.4 SPECIALIZED UNIT UNIFORMS

The Chief of Police may authorize special uniforms to be worn by officers in specialized units such as Canine Team, SWAT, Bicycle Patrol, Motor Officers and other specialized assignments.

1046.3.5 FOUL WEATHER GEAR

The Uniform and Equipment Specifications lists the authorized uniform jacket and rain gear.

1046.4 INSIGNIA AND PATCHES

- (a) **Shoulder Patches** - The authorized shoulder patch supplied by the Department shall be machine stitched to the sleeves of all uniform shirts and jackets, three-quarters of an inch below the shoulder seam of the shirt and be bisected by the crease in the sleeve.
- (b) **Service stripes, stars, etc.** - Service stripes and other indicators for length of service may be worn on long sleeved shirts and jackets. They are to be machine stitched onto the uniform. The bottom of the service stripe shall be sewn the width of one and one-half inches above the cuff seam with the rear of the service stripes sewn on the dress of the sleeve. The stripes are to be worn on the left sleeve only.
- (c) **The regulation nameplate, or an authorized sewn on cloth nameplate, shall be worn at all times while in uniform.** The nameplate shall display the employee's first and last name. If an employee's first and last names are too long to fit on the nameplate, then the initial of the first name will accompany the last name. If the employee desires other than the legal first name, the employee must receive approval from the Chief of Police. The nameplate shall be worn and placed above the right pocket located in the middle, bisected by the pressed shirt seam, with equal distance from both sides of the nameplate to the outer edge of the pocket.

Milpitas Police Department

Milpitas PD CA Policy Manual

Uniform Regulations

- (d) When a jacket is worn, the nameplate or an authorized sewn on cloth nameplate shall be affixed to the jacket in the same manner as the uniform.
- (e) Assignment Insignias - Assignment insignias, (SWAT, FTO, etc.) may be worn as designated by the Chief of Police.
- (f) Flag Pin - A flag pin may be worn, centered above the nameplate.
- (g) Badge - The department issued badge, or an authorized sewn on cloth replica, must be worn and visible at all times while in uniform.
- (h) Rank Insignia - The designated insignia indicating the employee's rank must be worn at all times while in uniform. The Chief of Police may authorize exceptions.

1046.4.1 MOURNING BADGE

Uniformed employees shall wear a black mourning band across the uniform badge whenever a law enforcement officer is killed in the line of duty. The following mourning periods will be observed:

- (a) An officer of this department - From the time of death until midnight on the 14th day after the death.
- (b) An officer from this or an adjacent county - From the time of death until midnight on the day of the funeral.
- (c) Funeral attendee - While attending the funeral of an out of region fallen officer.
- (d) National Peace Officers Memorial Day (May 15th) - From 0001 hours until 2359 hours.
- (e) As directed by the Chief of Police.

1046.5 CIVILIAN ATTIRE

There are assignments within the Department that do not require the wearing of a uniform because recognition and authority are not essential to their function. There are also assignments in which the wearing of civilian attire is necessary.

- (a) All employees shall wear clothing that fits properly, is clean and free of stains, and not damaged or excessively worn.
- (b) All male administrative, investigative and support personnel who elect to wear civilian clothing to work shall wear button style shirts with a collar, tie, slacks and dress coat that are moderate in style.
- (c) All female administrative, investigative, and support personnel who elect to wear civilian clothes to work shall wear dresses, slacks, shirts, blouses, or suits which are moderate in style.
- (d) The following items shall not be worn on duty:
 - 1. T-shirt alone
 - 2. Open toed sandals or thongs

Milpitas Police Department

Milpitas PD CA Policy Manual

Uniform Regulations

3. Swimsuit, tube tops, or halter-tops
 4. Spandex type pants or see-through clothing
 5. Distasteful printed slogans, buttons or pins
- (e) Variations from this order are allowed at the discretion of the Chief of Police or designee when the employee's assignment or current task is not conducive to the wearing of such clothing.
- (f) No item of civilian attire may be worn on duty that would adversely affect the reputation of the Milpitas Police Department or the morale of the employees.

1046.6 POLITICAL ACTIVITIES, ENDORSEMENTS, AND ADVERTISEMENTS

Unless specifically authorized by the Chief of Police, Milpitas Police Department employees may not wear any part of the uniform, be photographed wearing any part of the uniform, utilize a department badge, patch or other official insignia, or cause to be posted, published, or displayed, the image of another employee, or identify himself/herself as an employee of the Milpitas Police Department to do any of the following (Government Code §§ 3206 and 3302):

- (a) Endorse, support, oppose, or contradict any political campaign or initiative.
- (b) Endorse, support, oppose, or contradict any social issue, cause, or religion.
- (c) Endorse, support, or oppose, any product, service, company or other commercial entity.
- (d) Appear in any commercial, social, or non-profit publication, or any motion picture, film, video, public broadcast, or any website.

1046.7 OPTIONAL EQUIPMENT - MAINTENANCE, AND REPLACEMENT

- (a) Safety equipment shall be issued and replaced pursuant to provisions of MOU between the City of Milpitas and Milpitas Police Officer's Association.
- (b) Maintenance of optional items shall be the financial responsibility of the purchasing employee. For example, repairs due to normal wear and tear.
- (c) Replacement of items listed in this order as optional shall be done as follows:
 1. When the item is no longer functional because of normal wear and tear, the employee bears the full cost of replacement.
 2. When the item is no longer functional because of damage in the course of the employee's duties, it shall be replaced following the procedures for the replacement of damaged personal property (see the Department Owned and Personal Property Policy).

Uniform Regulations

1046.8 UNAUTHORIZED UNIFORMS, EQUIPMENT AND ACCESSORIES

Milpitas Police Department employees may not wear any uniform item, accessory or attachment unless specifically authorized in the Uniform and Equipment Specifications or by the Chief of Police or designee.

Milpitas Police Department employees may not use or carry any safety item, tool or other piece of equipment unless specifically authorized in the Uniform and Equipment Specifications or by the Chief of Police or designee.

Uniform Specifications

1047.1 PURPOSE AND SCOPE

The uniform specifications of the Milpitas Police Department is established to ensure consistency in wearing of the uniform.

1047.2 DRESS JACKET

The dress jacket, also known as an Ike Jacket, shall be purchased upon completion of probation. The following specifications shall be met for dress jackets:

- (a) Material: All wool serge, metcalf 386, 18 oz., navy blue.
- (b) Style: Peak lapel jacket with cost sleeves, regulation collar and shoulder straps. Front to be fastened with a Talon zipper from bottom of jacket vertically to base of lapels. Golf pleats on each side seam extending from shoulder seam to bottom of jacket vertically to base of lapels. Golf pleats on each side seam extending from shoulder seam to bottom jacket.
 - 1. Adjustment straps with two buttons at side seams.
 - 2. Stitched down belt in back.
 - 3. Bottom of jacket made with turn up.
 - 4. No separate waistband. Jacket to be worn straight down and not with a blouse effect.
- (c) Lapels: To be peaked with no buttonholes in lapel.
- (d) Sleeves: Plain, no cuffs, or buttons with one-half inch width mohair stripe (Rice #63). Stripe to be 3" from bottom of sleeve and extend halfway around sleeves from seam to seam and set into seam at both sides.
- (e) Linings: Jacket to be fully lined with good quality to match material and the front shall be fully quilted.
- (f) Length of Jacket: To be tailored to fit the individual for whom it is made. Back of the jacket to extend below the belt line to the top edge of the hip pockets.
- (g) Pockets: Two breast pockets to be patch pocket style, with center box pleat and three point flaps with button and buttonhole. Small snaps to outer points of flap.
- (h) Buttons: All buttons to be silver "P" to be placed on the pocket, shoulder and adjustment straps.
- (i) Badge Holder: To be placed above center of left breast pocket, so that lower point of badge comes to upper edge of pocket.
- (j) Military Commendations: Service ribbons are to be placed on the left Ike jacket pocket flap. Combat infantryman's badge may be placed above the police badge.

Uniform Specifications

1047.3 DUTY JACKET

The duty jacket(s) approved for duty use shall be:

- (a) Black Blauer (Model 6120) waterproof jacket.
- (b) Fechheimer Thinsulate 3M Ultra Duty Jacket, thermal insulated, navy blue.

1047.3.1 LIGHTWEIGHT DUTY JACKET

The lightweight jacket approved for duty use shall be:

- (a) Fabric: 100% Nylon Oxford weave, 200 denier warp and filling.
- (b) Color: Navy blue.

1047.4 TROUSERS

Trousers shall meet the following specifications:

- (a) Material: To be an all-wool serge, Metcalf 386, 16 or 18 oz., navy blue, or an option of Stillwater #791-326 (50% wool and 50% Dacron or lightweight wash and wear trousers, 14 oz. 100% Dacron Polyester).
- (b) To be made with either one or two watch, two side, two hip, and two club pockets. Waistband to be two inches wide and to have seven tunnel loops. Trousers to be plain bottom, no cuff, and to be made with leather strap front and back. The hip pockets shall have no flaps on them. To have mohair stripe medium blue 1/2" width (Rice #63) to extend on bottom of pant on each outer leg seam.
- (c) For the rank of Lieutenant and above, the uniform stripe will be gold. The specifications are Rice's gold stripe, article 7100, 1/2 inch, color 96.

1047.5 REGULAR DUTY UNIFORM SHIRT

Regular duty uniform shirts shall meet the following specifications:

- (a) All wool serge, 14 oz., long sleeve, navy blue. S.J.P.D. specifications. or All wool, long or short sleeve, navy blue, L.A.P.D. specifications. or Polyester, long or short sleeve, navy blue, L.A.P.D. specifications.
- (b) Buttons are to be of good quality black bone. The two buttons that secure the shoulder strap shall also be of good quality black bone.
- (c) Epaulets should be the same material as shirt, single stitched around edges. Center of straps to run to top of shoulder and fastened by a cross-stitching. All straps to start from sleeve seam and to run within 1/2" of collar band.
- (d) Badge Holder should be the same material as shirt, attached to shirt over center of left pocket. Badge holder to be fitted with two metal eye lets of a brass color.
- (e) The Officer-of-the Year ribbon may be worn on the uniform shirt centered 1/8" above the name bar.

Uniform Specifications

- (f) T-shirts worn under uniform shirts may be solid white, black or navy blue. Black turtlenecks, no logos on the collar, are permitted.

1047.6 CLASS A DRESS UNIFORM SHIRT

The Class A Dress shirt shall be:

- (a) All wool serge, 14 oz., long sleeve, navy blue. S.J.P.D. specifications. or All wool, long sleeve, navy blue, L.A.P.D. specifications. or Polyester, long sleeve, navy blue, L.A.P.D. specifications.
- (b) The Class A uniform shirt shall be worn anytime an officer wears his Dress Uniform.

1047.7 NECKWEAR

A plain black tie of the break-away type. A black tie will always be worn with a dress jacket.

1047.7.1 TIE CLASP

The tie clasp shall be a restraining clip or chain with silver as its primary color. Any appendage to the clip or chain shall be of such nature as to reflect good taste in its display.

- (a) Military necktie holders may be used by actual veterans of the service making use of the device. As with ribbons, our normal color restrictions are waived for this purpose.
- (b) This exception is provided for the exclusive purpose of recognizing officers who have served on an active duty status only.

1047.8 SOCKS

Socks shall be black when worn with low quarter shoes.

1047.9 UNIFORM HEAD-WEAR

The approved Milpitas Police head-wear and specifications are listed in theses subsections

1047.9.1 CAP

Caps shall be navy blue in color, serge in material.

- (a) Material: Shall be of London Shrunk. Metcalf 386-l8, all wool police blue serge, 18 ounce obtained from cloth bearing Kaumangraph stamp placed by the mill showing the genuineness of the material.
- (b) Shall be round with cane or cardboard rim.
- (c) Chin strap to be silver expandable with silver "P" buttons.
- (d) Cap Piece (shield): To be issued by the Department.

1047.9.2 BASEBALL CAP

The approved baseball cap is black with a gray seven point star embroidered on the front. The star will have "police" at the top of the star and the rank (i.e. Officer, Sergeant, etc) on the lower

Milpitas Police Department

Milpitas PD CA Policy Manual

Uniform Specifications

half of the star in black. "Milpitas California" will be placed between the "police" and rank. The officer's badge number will be in black and at the center of the seven point star. The background of the seven point star for Lieutenants and Commanders will be gold with black lettering.

Two baseball cap options are available at Embroid Me, 51 Wright Brothers Ave., Suite G, Livermore, CA 94551 (925)245-9070.

- (a) "nu-fit" baseball cap (fitted)
- (b) "KC" baseball cap (adjustable)

Baseball Caps are approved for use as follows:

- (a) with TDU's, for Mobile Field Force, SWAT (SWAT insignia), K-9 officers, or inclement weather (upon Watch Commander approval).
- (b) Traffic Officers, for extended traffic control or extended collision investigations.

1047.9.3 WATCH CAP

The approved watch cap is optional head-wear to be used primarily for warmth. It shall consist of the following specifications:

- Blauer #160 fleece-lined skull cap
- Blauer #160B warm, fleece-lined skull cap
- Black in color, with "POLICE" embroidered on the front edge of the cap. The embroidery is silver for Officer and Sergeant ranks, and gold for Lieutenant rank and above.
- No other items (pins, patches, etc) are authorized to be worn on the cap.
- Shall be purchased and maintained by the officer

The watch cap is approved for use as follows:

- On duty only
- During cold or inclement weather
- For special purposes/events, with supervisor approval
- By Mobile Field Force
- By SWAT

1047.10 SHOULDER PATCH

Description and workmanship to be in accordance with approved design, and to be issued by the Department.

Milpitas Police Department

Milpitas PD CA Policy Manual

Uniform Specifications

1047.11 LEATHER EQUIPMENT

- (a) Uniform Belt: (for use with trousers) - basket-weave black leather, no less than 1-1/2" in width, with chrome buckle and center piece.
- (b) Duty Belt: and all leather equipment carried on the belt must be of black basket-weave design, with chrome buckle and snaps. Velcro belts and equipment are also authorized.
- (c) Nylon Equipment: Nylon duty belt and accessories are approved for duty use as optional equipment. Nylon and leather duty belt equipment are not to be mixed together. The following lists the specifications; brand name "Bianchi" Ranger Sam Browne System, color black, material - nylon fabric. Items to include duty belt #6200, holsters (#4000, #6000 or #6001), handcuff case #6400, baton holder #6404, cartridge case #6403, mag pouch #6402, key holder #6405, belt keeper #6404, mace holder #6407, flashlight holder #6409, speed loader pouch #6401.
- (d) 4. Duty belt suspenders are approved for duty use. The suspenders may be of either leather or nylon, must be black in color and shall have a "breakaway" snap design. (Galls brand, model NP429 was tested and approved).
- (e) The back support panel is approved for duty use. The support panel is designed to be used in conjunction with a regular duty belt. (Tactical Design Labs brand was tested and approved).

1047.12 SERGEANT'S UNIFORM

The Sergeant's uniform shall be the same as the police officers except for the following:

- (a) Chevrons: Three bar chevrons to be placed on each sleeve with 1/2" space between top-most portion of black border of top bar of chevron and bottom of blue border of shoulder patch. Top portion of black background of chevron may be trimmed. If necessary, to permit above spacing. Chevrons to be sewed on garment with appropriate thread not cross-stitched.
- (b) Silver Sergeant collar chevrons may be worn in lieu of the arm chevrons.
- (c) Cap Piece: (Shield): Department issue.

1047.13 LIEUTENANT'S UNIFORM

The Lieutenant's Uniform shall be the same as the police officers except for the following:

- (a) Lieutenant's Chin Strap: Chin strap to be metal adjustable type gold with filigree 1/2" wide and 11-1/2" long, from tip to tip, with gold "P" buttons on each side of strap.
- (b) Cap Piece (shield): Department issue.
- (c) Insignia of Rank: One gold color bar about 1" length and 3/8" in width to be placed on shoulder strap of jacket 3/4" from, and parallel to shoulder seam of garment. Insignia

Uniform Specifications

for shirt to be placed on each side of collar 3/4" from, and parallel to collar flap front and midway between top and bottom of collar flap. Bars to be 3/4" in length and 5/16" in width.

- (d) Trouser and Sleeve Stripes: Shall be gold and the specifications are Rice's gold stripe, Article 7100, 1/2 inch, color 96, and on jacket only 1/2" gold stripe spaced the same as on the police officer's jacket.
- (e) Uniform belt to be same as Captain.

1047.14 COMMANDER'S UNIFORM

The Commander's uniform shall be the same specifications as that of police officer except for the following:

- (a) Commander's Chin Strap: Chin strap to be metal adjustable type gold with filigree 1/2" wide and 11-1/2" long, from tip to tip, with gold "P" buttons on each side of strap.
- (b) Cap Piece (shield): Department issue.
- (c) Insignia of Rank: One gold oak leaf to be placed on shoulder strap of jacket 3/4" from, and parallel to shoulder seam of garment. Insignia for shirt to be placed on each side of collar as designated by U.S. military specifications.
- (d) Trouser and Sleeve Stripes: Shall be gold and the specifications are Rice's gold stripe, Article 7100, 1/2 inch, color 96, and on jacket only 1/2" gold stripe spaced the same as on the police officer's jacket.
- (e) Uniform belt to be same as Captain.
- (f) Uniform cap to be same as Captain.

1047.15 CAPTAIN'S UNIFORM

The Captain's uniform shall be the same as the Lieutenants except for the following:

- (a) Insignia of Rank: For dress jacket, two gold color bars on each shoulder to be placed approximately 1" from shoulder seam. Two gold color bars on both collar flaps of shirt 3/4" from, and parallel to, collar flap front and midway between top and bottom of collar flap. Bars to be 3/4" in length and 5/16" in width.
- (b) Sleeve and Trouser Stripes: Same as for Lieutenants.
- (c) Cap Piece (shield): Department issue.
- (d) Uniform Belt: Basket weave black leather with gold buckle and center piece. Black basket weave velcro may be worn.
- (e) Uniform Cap: Lancaster #1960 brand, Navy wool, U.S. Army General type, gold braid and "scrambled egg" insignia on visor.

Uniform Specifications

1047.16 SPECIAL DETAIL / INCLEMENT WEATHER UNIFORM

The Tactical Dress Uniform (TDU)-style uniform must be possessed by all sworn officers. It is approved for use by uniform personnel as an alternate to the regular duty uniform during inclement weather, special details, or by prior approval of the Watch Commander. The TDU's shall consist of the following specifications:

- (a) Blauer Streetgear #8703; L/S; S/S may be purchased as an option for the K9 unit and Commercial Enforcement; black in color.
- (b) Blauer Streetgear #8810; Sidepocket Trouser; black in color.
- (c) "MILPITAS POLICE" badge patch; silver w/black lettering; gold w/ black lettering.
- (d) Cloth name tag; black tag with silver/gold, all capitalized lettering (first initial, last name).
- (e) No service stripes on TDU shirt; rank insignias (gold) are to be placed on a Lieutenant's shirt collar. The Lieutenant's insignias should be cloth insignias sewn to the shirt collar. Sergeants will wear regular duty chevrons on their TDU sleeves.
- (f) No blousing of pant legs; exceptions will be made for the TAC team.

1047.17 BICYCLE JACKET

This jacket is the primary cover garment for bicycle officers. This jacket is manufactured by "Bratwear", Model J-PJZ1. The yoke and sleeves are royal blue and the bottom is navy blue. "Milpitas Police" is to be printed in white lettering on the back and "Police" is to be printed in white on the right yoke. When the jacket is ordered, patches supplied by the MPD can be shipped to the manufacturer and they will be added. A badge tab, sewn on the left, should be ordered. This model also has removable sleeves (which are approved for bicycle officers only to wear as a vest). Model J-PJZ12 (permanent sleeves) can be ordered to the same specifications. These items can be ordered directly from Bratwear at:

- BRATWEAR, 3914 Portland Avenue Tacoma, WA 98404; (253) 471-1901

1047.18 POLICE RECORDS UNIFORM SPECIFICATIONS

- (a) Shirts: Can be either long-sleeved (Elbeco, #P802-3) or short-sleeved (Elbeco #P812-3), shall be light blue in color, and made of 65% polyester and 35% cotton. The shirts shall have MPD patches on both sleeves.
- (b) Polo Shirts: 5.11 Tactical Series short sleeved Polo (Men's #41060 or Women's #31140). Must be Dark Navy in color (Model 724) and 100% Cotton knit. In the upper left chest area of the shirt, a seven point star shall be in gray embroider and "Milpitas Records" in gold embroider. The employees first initial and last name shall be in gray embroider under the seven point star.

Uniform Specifications

- (c) Pants: Shall be Navy blue in color and either pleated (Lady Edwards #8650-07, polyester/wool) or non-pleated (Lady Edwards #8750-07, polyester/wool, Felcheimer #38233 100% polyester, or Felcheimer #35289 100% wool) may be worn.
- (d) Skirts: Shall be Navy blue in color and either pleated (Lady Edwards #9680-07, polyester/wool) or non-pleated (Lady Edwards #9780-07, polyester/wool) may be worn.
- (e) Sweater: Manufactured by SFKM #5600, long-sleeved, button down style, Navy blue and of acrylic fabric, no patches. Manufactured by SFKM #5500, long sleeved, zippered style, Navy blue and acrylic fabric with no patches.
- (f) Shoes: Low heels, flats or pumps, black with a plain finish, no decoration.
- (g) Socks: Black
- (h) Belt: Black with silver buckle (may be a uniform belt).

1047.19 LOAD BEARING VEST

The approved load bearing vest is an alternative option to carrying equipment on a duty belt. It shall consist of the following specifications:

- Safariland Fremont TOC (Tactical Outer Carrier)
- Black in color
- Pin holes for issued police badge
- Embroidered first initial and last name on velcro strip
- Police velcro attachment on back
- Shall be purchased and maintained by the officer
- Duty pistol shall not be worn on the vest
- Shall not be removed when on-duty unless authorized by the Watch Commander. If done so without approval, the officer may be subject to discipline

1047.20 POLO SHIRTS

The approved polo shirts shall only be worn in conjunction with the use of the Load Bearing Vest.

The shirts shall consist of the following specifications:

- 5.11 Performance Polo shirt, short sleeve, dark navy #71049
- 5.11 Performance Polo shirt, long sleeve, dark navy #72049
- Shall have department issues patches on both sleeves.
- Shall only be worn in conjunction with the load bearing vest.
- Shall be purchased and maintained by the officer.

Uniform Specifications

1047.21 THIGH MOUNTED FIREARM HOLSTER

Thigh mounted firearm holsters are an approved option for use by officers.

- May be worn with the 5.11 Patrol duty Uniform and duty belt
- May be worn with the load bearing vest.
- Shall be purchased and maintained by the Officer.

Temporary Modified-Duty Assignments

1054.1 PURPOSE AND SCOPE

This policy establishes procedures for providing temporary modified-duty assignments. This policy is not intended to affect the rights or benefits of employees under federal or state law, City rules, current memorandums of understanding or collective bargaining agreements. For example, nothing in this policy affects the obligation of the Department to engage in a good faith, interactive process to consider reasonable accommodations for any employee with a temporary or permanent disability that is protected under federal or state law.

1054.2 POLICY

Subject to operational considerations, the Milpitas Police Department may identify temporary modified-duty assignments for employees who have an injury or medical condition resulting in temporary work limitations or restrictions. A temporary assignment allows the employee to work, while providing the Department with a productive employee during the temporary period.

1054.3 GENERAL CONSIDERATIONS

Priority consideration for temporary modified-duty assignments will be given to employees with work-related injuries or illnesses that are temporary in nature. Employees having disabilities covered under the Americans with Disabilities Act (ADA) or the California Fair Employment and Housing Act (Government Code § 12940 et seq.) shall be treated equally, without regard to any preference for a work-related injury.

No position in the Milpitas Police Department shall be created or maintained as a temporary modified-duty assignment.

Temporary modified-duty assignments are a management prerogative and not an employee right. The availability of temporary modified-duty assignments will be determined on a case-by-case basis, consistent with the operational needs of the Department. Temporary modified-duty assignments are subject to continuous reassessment, with consideration given to operational needs and the employee's ability to perform in a modified-duty assignment.

The Chief of Police or the authorized designee may restrict employees working in temporary modified-duty assignments from wearing a uniform, displaying a badge, carrying a firearm, operating an emergency vehicle, engaging in outside employment, or being otherwise limited in employing their peace officer powers.

Temporary modified-duty assignments shall generally not exceed a cumulative total of 90 days in any one-year period.

1054.4 PROCEDURE

Employees may request a temporary modified-duty assignment for short-term injuries or illnesses.

Temporary Modified-Duty Assignments

Employees seeking a temporary modified-duty assignment should submit a written request to their Division Captains or the authorized designees. The request should, as applicable, include a certification from the treating medical professional containing:

- (a) An assessment of the nature and probable duration of the illness or injury.
- (b) The prognosis for recovery.
- (c) The nature and scope of limitations and/or work restrictions.
- (d) A statement regarding any required workplace accommodations, mobility aids or medical devices.
- (e) A statement that the employee can safely perform the duties of the temporary modified-duty assignment.

The Division Captain will make a recommendation through the chain of command to the Chief of Police regarding temporary modified-duty assignments that may be available based on the needs of the Department and the limitations of the employee. The Chief of Police or the authorized designee shall confer with the Department of Human Resources or the City Attorney as appropriate.

Requests for a temporary modified-duty assignment of 20 hours or less per week may be approved and facilitated by the Watch Commander or Division Captain, with notice to the Chief of Police.

1054.5 ACCOUNTABILITY

Written notification of assignments, work schedules and any restrictions should be provided to employees assigned to temporary modified-duty assignments and their supervisors. Those assignments and schedules may be adjusted to accommodate department operations and the employee's medical appointments, as mutually agreed upon with the Division Captain.

1054.5.1 EMPLOYEE RESPONSIBILITIES

The responsibilities of employees assigned to temporary modified duty shall include, but not be limited to:

- (a) Communicating and coordinating any required medical and physical therapy appointments in advance with their supervisors.
- (b) Promptly notifying their supervisors of any change in restrictions or limitations after each appointment with their treating medical professionals.
- (c) Communicating a status update to their supervisors no less than once every 30 days while assigned to temporary modified duty.
- (d) Submitting a written status report to the Division Captain that contains a status update and anticipated date of return to full-duty when a temporary modified-duty assignment extends beyond 60 days.

Temporary Modified-Duty Assignments

1054.5.2 SUPERVISOR RESPONSIBILITIES

The employee's immediate supervisor shall monitor and manage the work schedule of those assigned to temporary modified duty.

The responsibilities of supervisors shall include, but not be limited to:

- (a) Periodically apprising the Division Captain of the status and performance of employees assigned to temporary modified duty.
- (b) Notifying the Division Captain and ensuring that the required documentation facilitating a return to full duty is received from the employee.
- (c) Ensuring that employees returning to full duty have completed any required training and certification.

1054.6 MEDICAL EXAMINATIONS

Prior to returning to full-duty status, employees shall be required to provide certification from their treating medical professionals stating that they are medically cleared to perform the essential functions of their jobs without restrictions or limitations.

The Department may require a fitness-for-duty examination prior to returning an employee to full-duty status, in accordance with the Fitness for Duty Policy.

1054.7 PREGNANCY

If an employee is temporarily unable to perform regular duties due to a pregnancy, childbirth, or a related medical condition, the employee will be treated the same as any other temporarily disabled employee (42 USC § 2000e(k)). A pregnant employee shall not be involuntarily transferred to a temporary modified-duty assignment. Nothing in this policy limits a pregnant employee's right to a temporary modified-duty assignment if required under Government Code § 12945. Upon requests, pregnant employees can be reassigned to temporary assignments that will not routinely expose the employee to potentially hazardous environments or activities.

1054.7.1 NOTIFICATION

Pregnant employees should notify their immediate supervisors as soon as practicable and provide a statement from their medical providers identifying any pregnancy-related job restrictions or limitations. If at any point during the pregnancy it becomes necessary for the employee to take a leave of absence, such leave shall be granted in accordance with the City's personnel rules and regulations regarding family and medical care leave.

1054.8 PROBATIONARY EMPLOYEES

Probationary employees who are assigned to a temporary modified-duty assignment shall have their probation extended by a period of time equal to their assignment to temporary modified duty.

Temporary Modified-Duty Assignments

1054.9 MAINTENANCE OF CERTIFICATION AND TRAINING

Employees assigned to temporary modified duty shall maintain all certification, training and qualifications appropriate to both their regular and temporary duties, provided that the certification, training or qualifications are not in conflict with any medical limitations or restrictions. Employees who are assigned to temporary modified duty shall inform their supervisors of any inability to maintain any certification, training or qualifications.

Employee Speech, Expression and Social Networking

1058.1 PURPOSE AND SCOPE

This policy is intended to address issues associated with employee use of social networking sites and to provide guidelines for the regulation and balancing of employee speech and expression with the needs of the Department.

Nothing in this policy is intended to prohibit or infringe upon any communication, speech or expression that is protected or privileged under law. This includes speech and expression protected under state or federal constitutions as well as labor or other applicable laws. For example, this policy does not limit an employee from speaking as a private citizen, including acting as an authorized member of a recognized bargaining unit or officer associations, about matters of public concern, such as misconduct or corruption.

Employees are encouraged to consult with their supervisor regarding any questions arising from the application or potential application of this policy.

1058.1.1 APPLICABILITY

This policy applies to all forms of communication including but not limited to film, video, print media, public or private speech, use of all internet services, including the World Wide Web, e-mail, file transfer, remote computer access, news services, social networking, social media, instant messaging, blogs, forums, video, and other file-sharing sites.

1058.2 POLICY

Public employees occupy a trusted position in the community, and thus, their statements have the potential to contravene the policies and performance of this department. Due to the nature of the work and influence associated with the law enforcement profession, it is necessary that employees of this department be subject to certain reasonable limitations on their speech and expression. To achieve its mission and efficiently provide service to the public, the Milpitas Police Department will carefully balance the individual employee's rights against the Department's needs and interests when exercising a reasonable degree of control over its employees' speech and expression.

1058.3 SAFETY

Employees should consider carefully the implications of their speech or any other form of expression when using the internet. Speech and expression that may negatively affect the safety of the Milpitas Police Department employees, such as posting personal information in a public forum, can result in compromising an employee's home address or family ties. Employees should therefore not disseminate or post any information on any forum or medium that could reasonably be anticipated to compromise the safety of any employee, an employee's family, or associates. Examples of the type of information that could reasonably be expected to compromise safety include:

Employee Speech, Expression and Social Networking

- Disclosing a photograph and name or address of an officer who is working undercover.
- Disclosing the address of a fellow officer.
- Otherwise disclosing where another officer can be located off-duty.

1058.4 PROHIBITED SPEECH, EXPRESSION AND CONDUCT

To meet the department's safety, performance and public-trust needs, the following are prohibited unless the speech is otherwise protected (for example, an employee speaking as a private citizen, including acting as an authorized member of a recognized bargaining unit or officer associations, on a matter of public concern):

- (a) Speech or expression made pursuant to an official duty that tends to compromise or damage the mission, function, reputation or professionalism of the Milpitas Police Department or its employees.
- (b) Speech or expression that, while not made pursuant to an official duty, is significantly linked to, or related to, the Milpitas Police Department and tends to compromise or damage the mission, function, reputation or professionalism of the Milpitas Police Department or its employees. Examples may include:
 1. Statements that indicate disregard for the law or the state or U.S. Constitution.
 2. Expression that demonstrates support for criminal activity.
 3. Participating in sexually explicit photographs or videos for compensation or distribution.
- (c) Speech or expression that could reasonably be foreseen as having a negative impact on the credibility of the employee as a witness. For example, posting statements or expressions to a website that glorify or endorse dishonesty, unlawful discrimination or illegal behavior.
- (d) Speech or expression of any form that could reasonably be foreseen as having a negative impact on the safety of the employees of the Department. For example, a statement on a blog that provides specific details as to how and when prisoner transportations are made could reasonably be foreseen as potentially jeopardizing employees by informing criminals of details that could facilitate an escape or attempted escape.
- (e) Speech or expression that is contrary to the canons of the Law Enforcement Code of Ethics as adopted by the Milpitas Police Department.
- (f) Use or disclosure, through whatever means, of any information, photograph, video or other recording obtained or accessible as a result of employment with the Department for financial or personal gain, or any disclosure of such materials without the express authorization of the Chief of Police or the authorized designee.

Milpitas Police Department

Milpitas PD CA Policy Manual

Employee Speech, Expression and Social Networking

- (g) Posting, transmitting or disseminating any photographs, video or audio recordings, likenesses or images of department logos, emblems, uniforms, badges, patches, marked vehicles, equipment or other material that specifically identifies the Milpitas Police Department on any personal or social networking or other website or web page, without the express authorization of the Chief of Police.
- (h) Accessing websites for non-authorized purposes, or use of any personal communication device, game device or media device, whether personally or department-owned, for personal purposes while on-duty, except in the following circumstances:
 - 1. When brief personal communication may be warranted by the circumstances (e.g., inform family of extended hours).
 - 2. During authorized breaks such usage should be limited as much as practicable to areas out of sight and sound of the public and shall not be disruptive to the work environment.

Employees must take reasonable and prompt action to remove any content, including content posted by others, that is in violation of this policy from any web page or website maintained by the employee (e.g., social or personal website).

1058.4.1 UNAUTHORIZED ENDORSEMENTS AND ADVERTISEMENTS

While employees are not restricted from engaging in the following activities as private citizens or as authorized members of a recognized bargaining unit or officer associations, employees may not represent the Milpitas Police Department or identify themselves in any way that could be reasonably perceived as representing the Milpitas Police Department in order to do any of the following, unless specifically authorized by the Chief of Police (Government Code § 3206; Government Code § 3302):

- (a) Endorse, support, oppose or contradict any political campaign or initiative.
- (b) Endorse, support, oppose or contradict any social issue, cause or religion.
- (c) Endorse, support or oppose any product, service, company or other commercial entity.
- (d) Appear in any commercial, social or nonprofit publication or any motion picture, film, video, public broadcast or on any website.

Additionally, when it can reasonably be construed that an employee, acting in his/her individual capacity or through an outside group or organization (e.g., bargaining group or officer associations), is affiliated with this department, the employee shall give a specific disclaiming statement that any such speech or expression is not representative of the Milpitas Police Department.

Employees retain their right to vote as they choose, to support candidates of their choice and to express their opinions as private citizens, including as authorized members of a recognized

Employee Speech, Expression and Social Networking

bargaining unit or officer associations, on political subjects and candidates at all times while off-duty.

However, employees may not use their official authority or influence to interfere with or affect the result of an election or a nomination for office. Employees are also prohibited from directly or indirectly using their official authority to coerce, command or advise another employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes (5 USC § 1502).

1058.5 PRIVACY EXPECTATION

Employees forfeit any expectation of privacy with regard to e-mails, texts or anything published or maintained through file-sharing, software, or any Internet site (e.g., Facebook, MySpace) that is accessed, transmitted, received or reviewed on any department technology system.

The Department reserves the right to access, audit and disclose for whatever reason any message, including attachments, and any information accessed, transmitted, received or reviewed over any technology that is issued or maintained by the Department. This includes the department e-mail system, computer network or any information placed into storage on any department system or device.

It also includes records of all key strokes or web-browsing history made at any department computer or over any department network.

The fact that access to a database, service or website requires a user name or password will not create an expectation of privacy if it is accessed through a department computer or network. However, the Department may not require an employee to disclose a personal user name or password or open a personal social website, except when access is reasonably believed to be relevant to the investigation of allegations of work related misconduct (Labor Code § 980).

1058.6 CONSIDERATIONS

In determining whether to grant authorization of any speech or conduct that is prohibited under this policy, the factors that the Chief of Police or authorized designee should consider include:

- (a) Whether the speech or conduct would negatively affect the efficiency of delivering public services.
- (b) Whether the speech or conduct would be contrary to the good order of the Department or the efficiency or morale of its members.
- (c) Whether the speech or conduct would reflect unfavorably upon the Department.
- (d) Whether the speech or conduct would negatively affect the member's appearance of impartiality in the performance of his/her duties.
- (e) Whether similar speech or conduct has been previously authorized.
- (f) Whether the speech or conduct may be protected and outweighs any interest of the Department.

Milpitas Police Department

Milpitas PD CA Policy Manual

Employee Speech, Expression and Social Networking

1058.7 TRAINING

Subject to available resources, the Department should provide training regarding employee speech and the use of social networking to all members of the Department.