

# TRAINING



# BULLETIN

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*“Department Training Bulletins shall be used to advise members of current police techniques and procedures and shall constitute official policy.”*

## DEPARTMENTAL DISCIPLINE POLICY

The purpose of this Training Bulletin is to set forth Departmental policy and procedures for the determination and implementation of the discipline process to ensure fair and consistent discipline. The Departmental discipline policy is value-driven and positively reinforces organizational rules, regulations, policies and procedures. It is consistent and lawful in its application to all members and employees.

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## **OAKLAND POLICE DEPARTMENT**

### **Mission Statement**

The Mission of the Oakland Police Department is to provide the people of Oakland an environment where they can live, work, play, and thrive free from crime and the fear of crime

### **Vision for Oakland and the Oakland Police Department**

- The Oakland Police Department provides high quality services in a Community-driven and customer – friendly manner
- The Oakland Police Department is trusted, respected, and valued by those it serves
- The Oakland Community and the Oakland Police Department work together to solve Community and neighborhood concerns and issues
- The Oakland Police Department is an effective organization, providing a supportive and positive work environment for its employees

### **Values of the Oakland Police Department**

#### **In dealing with our Community and customers, we:**

- Recognize that we are here to serve the needs of the Community
- Strive to provide the best service possible, in a professional and positive manner
- Operate with ethics, honesty, and integrity
- Treat our customers with respect, dignity, and fairness
- Are responsive to the changing needs of our Community and individuals we serve

#### **In dealing with each other, we:**

- Treat each other with respect based on mutual trust and common purpose
- Do the right things, ethically, and honesty
- Communicate openly and positively about plans and decisions
- Set priorities to ensure services are delivered to the Community by personnel who are properly trained, equipped, and supported
- Are accountable for the quality of our work and the quality of the service the Department provides
- Are innovative and creative, acknowledging mistakes will be made from which we will learn
- Go beyond basic duties to help others and improve our Community
- Take responsibility for developing and training each other and ourselves



## **THE LAW ENFORCEMENT CODE OF ETHICS**

"As a Law Enforcement Officer, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all men to liberty, equality and justice.

I will keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held as long as I am true to the ethics of the police service. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession ... law enforcement."



## **INTRODUCTION**

When properly implemented and executed, the Departmental Discipline Policy strengthens the organizational rules, regulations, policies and procedures. The policy protects the rights and privileges of all members and employees through consistent and lawful application.

### **Dissemination of Rules, Regulations, and Standards of Conduct**

Members and employees shall be provided with written directives that communicate Departmental standards of performance and professional conduct. This information shall be reinforced through entry-level orientation, Recruit Academy presentations, and in-service training for tenured personnel.

### **Documentation and File Development**

Documentation of member or employee performance in the areas of attendance, use of time, teamwork, cooperation, customer service, accountability, adaptability, and problem solving is essential to the effective application of discipline. Supervisors shall maintain documentation on each of their subordinates. Entries shall include any incident that comes to the supervisor's attention, which illustrates improper behavior or instances of exemplary performance. Supervisory Notes File (SNF) entries shall be made in chronological order by date and time, and initialed by the supervisor preparing the entry. A SNF entry documenting improper behavior shall include a statement of the supervisory corrective action taken and, if appropriate, the subject's reaction.

### **Non-Disciplinary Action**

Not all performance deficiencies or Class II violations will result in an internal investigation. Performance deficiencies and Class II violations may be addressed through non-disciplinary corrective action if all of the following criteria are met:

- The misconduct is discovered during the normal course of supervision, an investigation of other alleged misconduct, or an incident review or assessment; and
- The conduct does not indicate a pattern of misconduct, as confirmed by the member's primary supervisor and a review of the member's disciplinary history no further than five years; and
- The conduct is not a failure to accept or refer a complaint.

If all of the above criteria are met, the alleged performance deficiency or Class II violation may be addressed with counseling and/or training, instruction or admonishment, or documented in a Letter of Discussion or a Performance Deficiency Notice and entered in the subject's Supervisory Notes File.



## PART I

### GLOSSARY OF TERMS

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## GLOSSARY OF TERMS

A. Adjudicated Investigation

An investigation is considered adjudicated when a decision has been rendered through arbitration or the Civil Service Board on an appeal of an internal investigation.

B. Approved Internal Investigation

An internal investigation that has been processed, completed (investigated with a recommended finding), reviewed, and has been reviewed and signed by the Chief of Police or the IAD Commander, when designated by the COP. Approved internal investigations shall be considered "Closed."

C. Classifications of Complaints

Complaints against Departmental personnel shall be categorized as Class I or Class II offenses.

1. Class I offenses are the most serious allegations of misconduct and, if sustained, shall result in disciplinary action up to and including termination and may serve as the basis for criminal prosecution.

The Class I offenses include but are not limited to:

- a. Use of excessive, unnecessary and/or unlawful force;
- b. Fabrication or destruction of evidence, including the planting of inculpatory evidence;
- c. Untruthfulness, including perjury;
- d. Knowingly and intentionally filing a false police report, including the intentional omission of pertinent information or facts;
- e. Insubordination;
- f. Commission of a felony or serious misdemeanor;
- g. Bias or harassment, actions of a retaliatory nature, or failure to take reasonable steps to prevent retaliation;
- h. Solicitation or acceptance of gifts or gratuities as specified in the *Manual of Rules*;
- i. Use of position for personal gain;
- j. Knowingly or should have reasonably known that he/she made a false arrest or illegal detention;
- k. Failure to report others who commit any Class I offense or a Class II offense that indicates a pattern of misconduct or threatens the rights of private persons and/or the well-being and reputation of Department personnel and/or the Department;
- l. Failure of a supervisor/manager to detect a pattern of misconduct;
- m. Failure of a supervisor/manager to properly supervise, and/or take corrective action for misconduct that he/she knew or reasonably should have known about;
- n. Failure to properly identify self, including refusing to provide name, deliberate concealment of a badge or name plate;
- o. Knowingly and intentionally obstructing the Internal Affairs investigation process in any manner; and
- p. Driving under the influence

2. Class II offenses shall include all minor misconduct offenses.



D. Complaint Findings

Each allegation in an internal investigation shall be resolved by making one of the following findings:

1. Unfounded: The investigation disclosed sufficient evidence to determine that the alleged conduct did not occur. This finding shall also apply when individuals named in the complaint were not involved in the alleged act.
2. Exonerated: The investigation disclosed sufficient evidence to determine that the alleged conduct did occur, but was in accordance with law and with all Oakland Police Department rules, regulations, or policies.
3. Not Sustained: The investigation did not disclose sufficient evidence to determine whether or not the alleged conduct occurred.
4. Sustained: The investigation disclosed sufficient evidence to determine that the alleged conduct did occur and was in violation of law and/or Oakland Police Department rules, regulations, or policies.

E. Completed Internal Investigation

An IAD internal investigation or division level investigation which has been concluded with a recommended finding, reviewed by the IAD Commander, and is ready for a discipline recommendation, if needed;

F. Discipline

Discipline is any of the following acts when they are intended to correct or punish misconduct:

1. Counseling and/or Training;
2. Written Reprimand;
3. Salary Reduction;
4. Fine;
5. Suspension;
6. Demotion; and
7. Termination.

G. Government Code (G.C.) Section 3304 (For purposes of imposing discipline)

1. The "3304" start date begins on the date that the Department (a person authorized to initiate an investigation) becomes aware of any act, omission, or other allegation of misconduct.
2. The "3304" end date occurs 364 days after the "3304" start date as defined above unless tolled under the exceptions enumerated in G.C. Section 3304.

Note: Pursuant to G.C. Section 3304 (d), no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct and the subject is notified of any proposed disciplinary action.



H. Internal Investigation

Any administrative investigation conducted by the IAD or at the division-level with respect to a complaint of misconduct or procedure made by, or received from, any person. Supervisory counseling, training, instruction, or admonishment conducted in the normal course of duty does not constitute an internal investigation.

I. Preponderance of Evidence

The standard of proof in internal investigations is “preponderance of evidence” rather than the criminal standard of “beyond a reasonable doubt”. Preponderance of the evidence has been described as a “slight tipping of the scales of justice” or “more than 50 percent” or “more likely than not.”

J. Serious Misdemeanor

Any misdemeanor crime that, if convicted, could preclude active law enforcement personnel, or a member or employee from continuing to successfully complete their responsibilities.

Examples include those crimes that involve violence, intimidation, sexual offenses, theft, dishonesty, possession of drugs, and violations of California Penal Code Sections 29805 and 29805(a), “Unlawful Possession of a Firearm,” and those crimes where bias is a motivating factor.





## PART II

### DEPARTMENTAL DISCIPLINE POLICY

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**A. DISCIPLINE PROCESS FOR INTERNAL INVESTIGATIONS**

The Department has no greater responsibility than to ensure that our members and employees perform their duties prudently and appropriately. Many assume police accountability merely relates to how the Department evaluates personnel and holds them accountable for their acts or omissions. However, accountability is much more complex because the members and employees are ultimately held accountable to the Oakland community.

When allegations of misconduct arise, we owe a solemn duty to the general public and accused personnel to investigate these allegations thoroughly, accurately and expeditiously. In cases where allegations of misconduct result in sustained findings, disciplinary action is a managerial tool to modify inappropriate or unacceptable behavior.

Although members and employees generally view disciplinary action as punishment, supervisors, commanders, and managers must encourage subordinates to view such action as a means of acknowledging and correcting performance deficiencies. It is important that supervisors, commanders, and managers not lose sight of the positive attributes of a subordinate's performance.

The Department's disciplinary process values progressive discipline and incorporates a series of checks and balances to ensure fair, timely and defensible outcomes. For internal investigations resulting in a sustained finding the following steps outline the discipline process:

1. The Chief of Police reviews the Pre-Discipline Report (TF-3340) and determines the appropriate discipline.  
  
The Assistant Chief of Police reviews the Pre-Discipline Report – Preventable Class 2 Vehicle Collisions Report (TF-3340-1) and determines the appropriate discipline.
2. The IAD Commander shall initiate the Skelly process upon provisional approval of the discipline recommendation of a suspension or higher by the Chief of Police, (Part G, 1).
3. The Chief of Police reviews the Skelly officer's recommendation and either accepts or rejects the recommendation. The City Administrator must approve any suspension longer than ten (10) days, demotion or termination.
4. The IAD Commander shall prepare a letter advising the member or employee of the conditions of the approved discipline with a copy provided to the subject. Service shall be documented on a copy of the letter and retained in the IAD investigative case file.

**B. CLASSIFICATION OF OFFENSES**

Class I offenses represent the most serious allegations of member and employee misconduct. The commission of a Class I offense may result in termination from the Department and/or serve as the basis for criminal prosecution.

The overwhelming majority of members and employees do not violate these standards. However, there are no circumstances where these acts of misconduct will be encouraged or permitted.

Class I and II offenses are enumerated in the Glossary of Terms (Pages 2-4).

Sustained findings shall result in corrective action consistent with the progressive discipline process.



### C. **PROGRESSIVE DISCIPLINE**

Progressive discipline is a process for dealing with behavior which fails to meet established and communicated performance standards. The primary purpose of progressive discipline is to assist members and employees to overcome behavioral problems and satisfy performance expectations. The goal of progressive discipline is to improve workforce performance, which in turn improves Departmental operations.

For progressive discipline to be effective, it must be consistent and properly administered. When administered fairly and progressively, optimum results are achieved; it is imperative that a progression of disciplinary steps be followed. When misconduct or poor performance is observed or documented but not appropriately addressed, the concept of progressive discipline is severely undermined.

For example, if a member or employee had been five minutes late for work on four occasions and upon the fifth tardiness discipline is formally administered, the corrective action taken in the first four instances should have been documented. Similarly, if the subject had received a series of routine admonitions with no progression to a higher level of discipline, the seriousness of the misconduct may not be impressed upon the member/employee.<sup>1</sup> In cases involving punitive action, the discipline must carry an admonishment that future acts of misconduct may result in a more severe level of discipline.

There will be instances where a member or employee is unwilling to correct or improve his/her performance. In such cases, progressive discipline will enable the Department to fairly, and with substantial documentation terminate the individual from employment.

The Chief of Police has the discretion to impose any level of discipline he/she deems appropriate to achieve the goals of the discipline policy.

### D. **LEVELS OF DISCIPLINARY ACTION**

Notice of the proposed discipline must be provided to the subject member or employee within one year of the discovery of the violation, unless qualified exemptions exist.<sup>2</sup>

#### 1. **Counseling and/or Training**

At this level, the subject member or employee is advised in clear terms of the breach of conduct or procedure. Steps to remedy the problem shall be outlined and communicated both orally and in writing. For example, participating in the Recruit Academy vehicle operations course for a subject member or employee who has a poor driving record. The member or employee is admonished that he/she must immediately correct his/her deficiencies. The admonishment shall include language that similar violations in the future could result in more severe discipline. (Exemplar: TB V-T.2, Appendix IV – 11.14)

Informal corrective action provided by supervisors for observed conduct is deemed non-disciplinary and is not considered in progressive discipline for a sustained finding.

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<sup>1</sup> *Government Code Section 3303* Punitive action is defined as any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for the purpose of punishment.

<sup>2</sup> *Government Code Section 3304(d)* Provides no punitive action nor denial of promotion on grounds other than merit shall be undertaken for any act, omission, or allegation of misconduct if the investigation is not completed within one year of discovery by a person authorized to investigate, and the public safety officer is notified of the proposed disciplinary action within that year.



2. **Written Reprimand**

A written reprimand is a formal correspondence from the Chief of Police, Assistant Chief of Police or Deputy Chief of Police to the subject member or employee. It describes the conduct that resulted in disciplinary action and clearly admonishes the subject that a future violation or continued unacceptable performance will result in a more serious form of Departmental discipline. It is imperative that signature ready correspondence be presented to the reprimanding authority. (Exemplar: TB V-T.2, Appendix IV - 11.11) A copy of this correspondence shall be placed in the subject's personnel file.

3. **Fine**

This form of discipline imposes a monetary obligation on the member or employee. Fines are equated hourly to suspensions but do not impact seniority. The amount of the fine is calculated using the member or employee's pay rate and is based on an eight hour work day. A fine may be levied in lieu of a suspension, but equal in value.

4. **Salary Reduction**

This form of discipline reduces a member or employees' hourly pay rate without impacting seniority. A salary reduction may be one or more salary steps down to the minimum salary of the member's or employee's class and may be used in place of a suspension. Salary reductions shall result in a percentage reduction of the hourly rate (first step) or a pay step reduction and the term (duration) of the reduction. A salary reduction may be levied in lieu of a suspension, but equal in value.

5. **Suspension**

This form of discipline suspends a member's or employees' pay and Departmental seniority for the term of the suspension. Furthermore, a member's peace officer powers are suspended during this period.

Suspensions from duty up to ten (10) days must be approved by the Chief of Police or his/her designee. Suspensions that exceed 10 days are approved by the City Administrator, upon the recommendation of the Chief of Police. It is imperative that signature ready correspondence be presented to the suspending authority. (Exemplar: TB V-T.2, Appendix IV - 11.2-3 & 8-9)

6. **Demotion**

A reduction in rank is administered by the City Administrator, upon the recommendation of the Chief of Police when a sustained finding for an offense compromises or prevents the member or employee from functioning in a supervisory capacity. (Exemplar: TB V-T.2, Appendix IV – 11.12 & 13)

7. **Termination of Employment**

This level of discipline is administered by the City Administrator, upon the recommendation of the Chief of Police. As with suspensions and written reprimands, it is imperative that signature ready correspondence be presented to the terminating authority. (Exemplar: TB V-T.2, Appendix IV – 11.4 & 10)



## E. **PRE-DISCIPLINE REPORT**

### 1. **Consistency of Discipline**

Nothing erodes the effectiveness of the disciplinary process more than real or perceived inequities and unfair treatment. Consistency and fairness in the application of discipline is essential to avoid allegations of favoritism or intolerance.

A discipline determination for internal investigations is decided by the Chief of Police or designee with input from the chain of command of the subject member/employee.

A discipline determination of counseling and/or training or a written reprimand may be decided by a Deputy Chief of Police for minor misconduct discovered at the division level.

### 2. **Pre-Discipline Report (PDR) (TF-3340) and Pre-Discipline Report – Preventable Class 2 Vehicle Collisions (PDR-901) (TF-3340-1)**

Since the chain of command is more familiar with the conduct of subordinate personnel, they can provide the Chief of Police or designee (for PDR), or Assistant Chief of Police (for PDR-901) with input regarding any mitigating and/or aggravating circumstances that are germane and a discipline recommendation to ensure a better informed decision is made in determining the appropriate discipline.

**NOTE:** The Chief of Police maintains the authority to bypass the chain of command and impose discipline without a Pre-Discipline Report.

Upon approval of a sustained finding in an internal investigation, unless the Chief has waived the process, the IAD shall provide a printed copy of the subject's five (5) year disciplinary history, his/her two most recent performance evaluations, the Complaint Investigation Report (CIR) and the Report of Investigation (ROI) for the current case. The documents shall be forwarded to the respective bureau deputy chief or the Assistant Chief of Police for units under the Office of Chief of Police.

The immediate supervisor, unless otherwise directed, shall prepare the appropriate PDR for each sustained case or PDR-901 for a preventable Class 2 vehicle collision in accordance with the instructions provided on the form.

- The PDR and the documents provided by the IAD shall be forwarded for review and endorsement\* through the chain of command to the Chief of Police. The Chief of Police or designee shall utilize the PDR in determining the appropriate discipline.
- The PDR-901 and the documents provided by the IAD shall be forwarded for review and endorsement\* through the division commander/manager to the Assistant Chief of Police. The Assistant Chief of Police or designee shall utilize the PDR-901 in determining the appropriate discipline.

\* An endorsement must include an affirmative statement that the data contained in the PDR/PDR-901 is complete and accurate and the review of the investigative case file has/has not identified relevant mitigating and aggravating factors that will facilitate the Chief of Police, Assistant Chief of Police, or their designee in making an appropriate discipline determination.



The PDR, including the final discipline determination, shall be returned to the IAD who shall prepare and track service of the appropriate discipline letters to City and Department personnel, as required.

F. **DISCIPLINE MATRIX (TB V-T APPENDIX)**

Discipline is intended to be positive, progressive, exemplary, corrective, and, in some cases, punitive. The objective of the Discipline Matrix is to ensure fair and consistent implementation of discipline within the Oakland Police Department. In addition, the Discipline Matrix, associated policies and resulting disciplinary decisions shall reflect contemporary industry standards for progressive discipline. This directive reinforces the Department's core values. Discipline that is fair and consistent ensures Departmental accountability, improves trust, corrects behavior and instills confidence in the Department and in the community.

The level of discipline must reflect the seriousness of the offense and be minimally sufficient to correct behavior. Supervisors must make every effort to correct behavior through counseling, retraining and non-disciplinary corrective action.

1. **Policy/Procedures**

The Department's disciplinary process endorses progressive discipline and incorporates a series of checks and balances to ensure fair, timely and defensible outcomes. To that end, discipline shall be administered in a systematic and equitable manner to all personnel of the Oakland Police Department. The Chief of Police shall retain the right to impose any level of discipline he/she deems appropriate for the offense(s) and to establish a Departmental discipline policy that is consistent with his/her professional philosophy and standards.

The Matrix was created to:

- a. Provide a **guideline** for disciplinary recommendations and serve as notice to the Department of possible discipline ranges for sustained findings of *Manual of Rules (MOR)* violations;
- b. Provide recommended penalties for Class I and II offenses as defined in Departmental General Order M-3 - *Complaint Investigations Against Personnel or Procedures*;
- c. Further the goal of correcting behavior by affording a member/employee corrective action strategies;
- d. Reflect existing Departmental and industry discipline standards and values;
- e. Contribute to Department morale by providing consistency and predictability in the disciplinary process regardless of rank or position; and
- f. Deter misconduct.

The Matrix includes:

- a. Types of misconduct, sorted by *MOR* section;
- b. Class of offense; and



- c. Penalty ranges for first, second, and third sustained allegations of *MOR* violations.

## 2. Assessing Penalty Ranges

The Matrix penalty ranges represent guidelines that the supervisor making a discipline recommendation shall use to determine the appropriate level of discipline and ensure consistency and fairness.

Generally, discipline is directed at modifying behavior. A penalty reflects the totality of the circumstances (including mitigation and aggravation) for each member/employee, including the individual's past history, rather than resting solely on a single sustained complaint or incident. Counseling and/or Training and other forms of corrective action must be considered as part of any discipline.

The Disciplinary Matrix is based on the assumption that there is a single misdeed at issue and that the misdeed is the member/employee's first adverse action. Multiple acts of misconduct may occur during a continuing event, contiguous or related events, or may be entirely independent of each other. When multiple acts of misconduct occur, the Disciplinary Matrix shall be used to determine which single act warrants the highest penalty. The penalty range for the most severe charge shall be used, and other acts of misconduct are considered as aggravating circumstances that may increase the penalty up to and including termination.

Each misconduct case involves a variety of factors which makes it unique; therefore, discipline penalties may be different in different cases. The nature of the misconduct and aggravating or mitigating factors shall determine the final penalty rather than simply the number of sustained violations cited in the internal investigation.

The Chief of Police (PDR), Assistant Chief of Police (PDR-901), or designee (either) shall use the PDR/PDR-901 as a tool to review the case. The nature of the misconduct, historical discipline for like offenses, as well as aggravating and mitigating factors, are considered to arrive at a discipline determination.

In all cases, the Chief of Police retains full discretion to impose any level of discipline, which he/she deems appropriate to achieve the goals of the discipline policy.

The supervisor making the recommendation shall follow the steps outlined below when making discipline recommendations:

- a. Identify the most serious sustained charge and find the appropriate rule violation in the first column of the Matrix entitled "Type of Offense" and confirm the *MOR* section.
- b. Determine whether the current violation is a first, second or third violation of the same *MOR* section and Class type, and select the appropriate column. Depending upon the timing, frequency, nature and severity of the violations, a fourth offense of the same *Manual of Rules* violation may result in termination.

If any prior incident is over five (5) years old, from the date of incident for the current sustained finding, it may not be considered to move the current violation into the second or third column in the Matrix.

Example 1: The first sustained finding from a separate incident is for *MOR* Section 314.39-2 (Performance of Duty – Search and Seizure – Class II) and the



subsequent sustained finding, within the reckoning period, is for *MOR* Section 314.39-2 (Performance of Duty – Search and Seizure – Class II). The second incident resulting in a sustained finding would raise the penalty recommendation to the “Offense 2” column.

Example 2: The first sustained finding is for *MOR* Section 314.28-1 (Notification – Criminal -Class I) and the subsequent sustained finding, within the reckoning period, is for *MOR* Section 314.39-2 (Performance of Duty - Care of Property-Class II). The second incident resulting in a sustained finding would not raise the penalty to the “Offense 2” column because it is not the same *MOR* section and Class type.

- c. Identify the discipline range within the appropriate column or identify the appropriate discipline base upon the nature of the misconduct and historical discipline for like offenses.

Consider the member/employee’s disciplinary history. The Chief of Police shall consider the relationship/similarity between current and prior incidents, as well as actual discipline (if any) imposed from prior violations when determining discipline. The Chief of Police shall consider the current incident and any prior discipline imposed within the past five (5) years when determining whether to aggravate the current penalty within the established penalty range.

- d. Depending upon the nature and severity of the violation, consider demotion (D) for any violation with a recommended discipline of above a 15-day suspension (S15).
- e. A thirty (30) day suspension is generally the maximum time period for a suspension, and over 30 days merits consideration of termination.
- f. After considering all mitigating and aggravating factors and the member/employee’s history, the Chief of Police or designee shall determine and document the appropriate level of discipline for the current violation on the PDR. When a level of discipline is selected outside the established penalty range, specific justification for doing so shall be documented on the PDR.

### 3. **Mitigating and Aggravating Factors**

In general, recommended discipline must fall within the discipline range outlined in the Matrix. However, mitigating and aggravating factors may require the Assistant Chief of Police, Chief of Police, or their designee to determine discipline that falls outside the established penalty range. In each instance in which discipline departs from the penalty range, each and every aggravating or mitigating factor underlying the recommendation shall be specifically identified in writing.

Mitigating circumstances may be used to reduce the penalty to corrective action (non-disciplinary). Aggravating circumstances may increase a penalty to termination, for misconduct where termination is not included in the penalty range.

The following mitigating factors shall be considered when determining a penalty:

- The misconduct was not willful or deliberate;
- The misconduct was not premeditated;
- The misconduct did not result in serious injury or harm;
- The misconduct involved minor negligence or recklessness;





- The member/employee had a secondary and/or minor role in the misconduct;
- Based upon length of service, experience, policy directives, and the inherent nature of the act, the member/employee may not have reasonably understood the consequences of his/her actions;
- Commendations received by the member/employee;
- The member/employee was forthright and truthful during the investigation;
- The member/employee accepts responsibility for his/her actions;
- The member/employee is remorseful; or
- The member/employee reported the harm caused and/or independently initiated steps to mitigate the harm caused in a timely manner.

The following aggravating factors shall be considered when determining a penalty:

- The misconduct was willful and deliberate;
- The misconduct involved gross negligence or recklessness;
- The misconduct was premeditated;
- The member/employee had a primary and/or leadership role in the misconduct;
- Based upon length of service, experience, policy directives, inherent nature of the act, the member/employee knew or should have known that his/her actions were inappropriate;
- The member/employee was not forthright and truthful during the investigation.
- Serious consequences occurred or may have occurred from the misconduct;
- The misconduct was committed with malicious intent or for personal gain;
- The misconduct resulted in serious injury; or
- Multiple sustained findings from one incident.

Additional factors include but are not limited to the following:

- Threat posed to integrity of Department;
- Degree of culpability;
- Prior discipline history;
- Severity of the misconduct including multiple violations;
- Departmental training and standards;
- Professional standards, training, policies, and practices;
- Service to the citizens of Oakland;
- Dedication to the Department; and
- Other relevant factors.

#### 4. **Reckoning Period/Statute of Limitations**

In accordance with applicable Memoranda of Understanding, the Matrix incorporates a five (5)-year reckoning period (statute of limitations) for penalties. The five (5) year reckoning period is calculated from the date of the incident for the current sustained finding. This refers to the time period after which a sustained finding and subsequent discipline shall no longer be considered in determining discipline.

#### 5. **Appeals/Grievances**

In addition to the Matrix, penalties are subject to the provisions of the Charter of the City of Oakland, the rules of the Civil Service Board, the City's Administrative Instructions, and the City Administrator. Members/employees may appeal penalties as provided in the Rules and Regulations of the Civil Service Board and/or applicable Memoranda of Understanding.



Agreements to accept penalties to be held in abeyance or be served concurrently shall require a waiver of the grievance process as outlined in the Memorandum of Understanding with the Oakland Police Officers' Association.

**G. DUE PROCESS REQUIREMENTS**

**1. The Skelly Hearing**

Training Bulletin V-T.4, DUE PROCESS HEARINGS, sets out in detail Department policy and procedure regarding Skelly hearings<sup>3</sup>. The Chief of Police directs a Skelly "due process" hearing to be held when he/she has provisionally approved discipline higher than a written reprimand. Skelly rights do not apply to members and employees on probation or to those who have been reassigned due to an inability to achieve Departmental performance standards.

See TB V-T.4, for additional information on this topic.

**2. The Liberty Interest (Lubey) Hearing**

An at-will member or probationary employee has no property interest in employment. However, such a member/employee suffers a deprivation of a liberty interest if the member/employee is discharged for reasons that impose stigma or that are likely to limit future employment opportunities. *Holmes v. Hallinan* (1998) 68 Cal.App.4<sup>th</sup> 1523. For that reason, a probationary member/employee who is terminated for reasons that could result in such consequences is entitled to a post-termination "name-clearing" hearing. *Lubey v. City and County of San Francisco* (1979) 98 Cal.App.3d 340. *Lubey* hearings are conducted in the same way as *Skelly* hearings.

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<sup>3</sup> See *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, 215, 124 (California Supreme Court ruled that the employee (Skelly) had a property interest in continued employment and could not be deprived of his job without due process.