

RECOMMENDATION SUBMISSION AND RESPONSE FORM

2020 Discipline and Accountability #9

DISCUSSED BY SCPRC	
RECEIVED BY SPD	02/08/2021
RETURNED TO SCPRC	

APPROVED AND IMPLEMENTED		PENDING FURTHER REVIEW
APPROVED AND PENDING		SPD UNABLE TO IMPLEMENT
PARTIAL IMPLEMENTATION	X	DENIED

SCPRC RECOMMENDATION

1. Adopt a zero-tolerance policy for the offenses below (i.e., to protect the public and maintain the integrity of the department, a sustained finding will result in termination of employment).
 - i. Lying during an administrative or criminal investigation.
 - ii. Lying in police report (e.g., where there is a clear discrepancy between the body camera footage or a citizen’s cell phone video and what the officer alleged in the police report).
 - iii. Lying by omission (e.g., the suspect fell and tripped, when in fact the officer pushed the suspect causing the latter to fall.)
 - iv. Colleague officer’s corroboration of a lead officer’s (or other officer’s) deceit by omission.
 - v. Use of prohibited carotid restraint hold (or similar hold that cuts off blood or oxygen to a person’s head).
 - Current SPD Policy on carotid restraint holds is set forth in General Order 580.02, as revised on 9-17-2020.
 - Section F, “Prohibited Uses of Force” at subsection 1.a, permits use of the carotid hold “if the officer reasonably believes there to be an imminent threat of serious bodily injury or death.”
 - Section G, “Force Options,” at subsection 5.a(4), permits use of control holds (NOTE: a carotid hold is a control hold).
 - Section H, “Use of Personal Body Weapons,” permits peace officers to use arms, legs, etc., as an impact weapon to deliver a strike to a subject.

Basis for the recommendation includes, but is not limited to, the following:

 - SPD’s use of the carotid restraint appears to be contrary to A.B. 1196, approved by the Governor on September 30, 2020, which prohibits carotid restraint without exception. Penal Code section 7286.5, subdivision (a), specifically states that: “[a] law enforcement agency shall not authorize the use of a carotid restraint or choke hold by any peace officer employed by that agency.” (Gov. Code, § 7286.5, emphasis added.) The statute further provides:
 - Carotid restraint means a vascular neck restraint or any similar restraint, hold, or other defensive tactic in which pressure is applied to the sides of a person’s neck that involves a substantial risk of restricting blood flow and may render the person unconscious in order to subdue or control the person. (Pen. Code, § 7286.5, subd. (b)(1).)
 - Choke hold means any defensive tactic or force option in which direct pressure is applied to a person’s trachea or windpipe. (Pen. Code, § 7286.5, subd. (b)(2).)
 - Sacramento City Council Resolution 2020-00772 dated June 30, 2020.
 - CA Attorney General Review of SPD Report and Recommendations, Phase II, 2020, page 31.
 - Civil Service Board Rules 12.2 and 12.3.
- vi. Improper Use of city equipment (i.e., use of data terminal to access civilian addresses for personal reasons, or use of city equipment to communicate hate speech or discriminatory comments.)

Basis for the above recommendation includes, but is not limited to, the following:

 - G.O. 410.09, “Use of Communication Equipment”
 - Rule 12.2(s) Unauthorized possession or use of City or public property
- vii. Refusal to take drug test as ordered by a superior with just cause.

Basis for the above recommendation includes, but is not limited to, the following:

 - Rule 12.2(p): Willful disobedience of a lawful rule, order, or direction.
- viii. Sustained finding of racial animus, including hate crimes.

Basis for the above recommendation includes, but is not limited to, the following:

- Rule 12.2 (w): Any conduct rationally related to employment which impairs, disrupts, or causes discredit to the employee’s employment or the public service.

ix. Criminal conviction.

Basis for the above recommendation includes, but is not limited to, the following:

- Rule 12.2 (m) conviction of a felony or misdemeanor that adversely affects employee’s ability to perform duties of the position
- Rule 12.2 (w): Any conduct rationally related to employment which impairs, disrupts, or causes discredit to the employee’s employment or the public service.

SCPRC RECOMMENDATION RATIONALE

C. DISCIPLINE: The Commission understands that some of these recommendations are already in practice at SPD. Nonetheless, the Commission recommends that SPD explicitly incorporate these items into its General Orders.

SPD RESPONSE

Sacramento City Council Meeting (Item #2) on 06/01/2021, presented by Deputy Chief Lester:

- 2:30 PM City Council (Special Meeting): <https://sacramento.granicus.com/player/clip/4964>
 - Minute Marker: 53:16
- Staff Report: https://sacramento.granicus.com/MetaViewer.php?view_id=21&meta_id=631887
 - Page 8

SPD values integrity and does not tolerate employee misconduct. All allegations are investigated by the Internal Affairs Division (IAD), with oversight from OPSA. Personnel investigations, regardless of allegation, subject an employee to significant discipline up to and including termination.

As such, the following situations would necessitate the corresponding misconduct investigation:

- Any form of lying (dishonesty).
- Use of the carotid control hold (force).
- Inappropriate use of personal body weapons (force).
- Improper use of city equipment (conduct unbecoming).
- Refusal to participate in drug testing (insubordination).
- Participating in hate speech or crimes (discrimination).
- Conviction of any criminal offense (conduct unbecoming).

Additionally, SPD is required by law, to provide this information to the District Attorney’s Office per Brady v. Maryland (1963).

Next, SPD conducts criminal investigations involving department employees and submits cases to the District Attorney’s Office for prosecution. After criminal cases are adjudicated, an IAD investigation is conducted to further hold employees accountable to the high standards of the SPD.

At this time, SPD cannot immediately terminate employment upon the sustained finding of an allegation of misconduct. Officers are afforded due process by law. Additionally, a modification to applicable policies is subject to contractual negotiations with applicable labor groups.

OTHER CITY DEPARTMENTS

N/A

APPENDIX

As of January 1, 2022, Senate Bill 2 was enacted and authorizes the California Commission on Peace Officer Standards and Training to decertify peace officers.

- https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB2