

OFFICE OF THE CITY CLERK

CITY OF OAKLAND



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October 3, 2006

Oakland City Council  
Oakland, California

President De La Fuente and Members of the City Council:

Attached please find a follow-up report from the Community Policing Advisory Board to the City Council.

Sincerely,

A handwritten signature in cursive script that reads "Deborah A. Edgerly".

Deborah A. Edgerly  
City Administrator

CITY OF OAKLAND  
COMMUNITY POLICING ADVISORY BOARD

**TO** Mayor Jerry Brown, the City Council, the Public Safety Committee, City Administrator Deborah Edgerly, and Police Chief Wayne Tucker  
**FROM** The Community Policing Advisory Board  
**DATE** October 3, 2006  
**SUBJECT** Follow-up report to the City Council on PSO deployment to patrol duty

**SUMMARY**

Earlier this year the Oakland Police Department (OPD) made significant deployment changes that pose a threat to the viability of community policing today, and to its sustainability in the future. The Community Policing Advisory Board (CPAB) advocates tackling the pressing need for more patrol officers without damaging the character and structure of community policing. The CPAB submitted recommendations to the Public Safety Committee on June 13, 2006. This report describes progress since June, and offers four new recommendations:

- Reaffirm the principles of Resolution 79235
- End the patrol deployment before January 31, 2007
- Convene a small working group to discuss remaining issues
- Clarify the intent of Measure Y

**FISCAL IMPACT**

none

**BACKGROUND**

Earlier this year OPD made significant deployment changes, in particular redefining community policing to include regular 911 patrol duty, and moving the Problem Solving Officers (PSOs) out of the Bureau of Field Operations into the Strategic Area Command. These changes pose a threat to the viability of community policing today, and to its sustainability in the future. The CPAB submitted a report to the Public Safety Committee on June 13, 2006 describing the problems and recommending changes to prevent the demise of community policing (see Appendix A). The Committee directed the CPAB, Measure Y Oversight Committee (MYOC) and OPD to confer and attempt to resolve their differences. Those attempts were not successful and the CPAB delivered its original report to City Council on July 18 with a recommendation that patrol duty for PSOs end on September 23 when the graduates of the 156<sup>th</sup> Police Academy complete field training.

On September 16, Chief Tucker and the City Administrator sponsored a retreat that included members of OPD staff, the CPAB, and the MYOC. The retreat was a successful social and educational event. It was a good opportunity for communication among the three groups. It provided some information about the legal issues related to Measure Y and Resolution 72727, and was undoubtedly helpful for participants who were new to community policing. Due to the size, format, and time constraints, the meeting was not able to address the issues raised in the CPAB's June and July reports.

## KEY ISSUES AND IMPACTS

Some of our original recommendations have been affected by recent developments. The following is a status report on the 10 recommendations we made in June.

### **1. Immediately eliminate PSO assignments to patrol**

OPD rejected this recommendation. As a compromise, the CPAB offered to delay this recommendation until the next academy finishes field training, approximately September 23<sup>rd</sup>. OPD proposes ending the patrol duty on January 31, 2007.

### **2. Reinstate previous community policing staffing level - 18 PSOs and 2 PSO Sergeants**

OPD rejected this recommendation.

### **3. As academies graduate, all new sworn positions should go to patrol until the sworn count reaches 720**

OPD rejected this recommendation.

### **4. PSOs and PSO Sergeants must work full time in Community Policing.**

OPD rejected this recommendation.

### **5. Pull Community Policing out of the Strategic Area Command and put it back in the Neighborhood Services Division.**

OPD rejected this recommendation.

### **6. Set aside the 2005 and 2006 Measure Y PSO funds, and put them in a separate account. Hold these funds, and shift them to the end of the Measure Y time period. Give the voters the 10 years of Community Policing officers they voted for. Make those years 2007 – 2016 instead of 2005 – 2014.**

Managing Measure Y funds falls under the purview of the Measure Y Oversight Committee, and the CPAB refers this item to them.

### **7. Perform a thorough, formal audit of OPD's use of Measure Y funds to ensure that expenditures comply with the requirements of the legislation.**

As with #6, we refer this to the Measure Y Oversight Committee.

### **8. Remove the gag order and reestablish the cooperative relationship between the community and the police department.**

This issue is resolved. The chief assures us that there are no restrictions regarding staff discussions with the community. The CPAB has seen no evidence of restrictions on communications since its June report.

### **9. Ask the City Attorney for a formal ruling on the use of Measure Y funds. In particular determine whether one patrol shift per week, or other routine assignments to patrol, is a legal use of those funds.**

The City Attorney delivered a formal opinion on June 27, 2006 (see Appendix B). Three conclusions are most relevant. First, Measure Y does allow PSOs from performing patrol duty. Second, if a PSO performs any duties not related to his or her assigned community policing beat, those duties cannot be paid for with Measure Y funds. Third, Resolution 79235 (Resolution 72727 revised) prohibits routine assignment of PSOs to patrol duty.

OPD and the City Administrator's office have announced the no Measure Y funds will be used to pay for patrol duty.

**10. Discuss changes that will affect the function and operation of Community Policing with the CPAB before they are implemented as required by 72727.**

This issue is resolved. The department assures the CPAB that it will initiate required discussions in the future.

## **RECOMMENDATIONS**

We have 4 new recommendations.

**1. Reaffirm the principles of Resolution 79235**

PSOs have repeatedly been assigned to non-PSO duties. From 1997 through 2001 PSOs were often assigned to SDUs. In 2002, all PSOs were reassigned to patrol. In the fall of 2005, the first four Measure Y PSOs were reassigned to patrol rotations shortly after their arrival. Since the spring of 2006, all PSOs have been assigned to patrol one shift per week.

Oakland citizens have clearly expressed their desire for community policing. They elected a council that adopted community policing as city policy in Resolution 72727 in 1996. They elected a council that reconfirmed that policy in Resolution 79235 in 2005. And they voted to tax themselves by passing Measure Y in 2004, not to increase the number of patrol officers, but to increase the number of community policing officers.

We ask that City Council and OPD reaffirm its commitment to community policing and assure the citizens of Oakland that it does not view routine assignments to patrol as a legitimate PSO activity, and that it will not use this type of deployment in the future.

**2. End the patrol deployment before January 31, 2007**

The CPAB is very mindful of the staffing difficulties OPD is facing. Recommendations #2 and #3 from our June report were designed to give the chief more people for his most pressing need – patrol. The CPAB is still unclear why the chief did not accept those recommendations, and believes they deserve serious consideration.

The CPAB recommends ending the patrol assignment before January 31, 2007. Two promising dates are September 23<sup>rd</sup> when the 156<sup>th</sup> academy leaves field training, and November 24<sup>th</sup> when the 157<sup>th</sup> academy leaves field training.

**3. Convene a small working group to discuss remaining issues**

The CPAB will sponsor a small working group with representatives from OPD, CPAB, and if appropriate, MYOC. This group will work to resolve any remaining issues identified in the June 13, 2006 report to the Public Safety Committee.

**4. Clarify the intent of Measure Y**

As its authors have stated, the intent of Measure Y was to add 43 community policing officers to the force in order to fully staff all 57 community policing beats. The community policing program that Measure Y expands is the one defined by Resolution 72727, but text of Measure Y never explicitly refers to 72727.

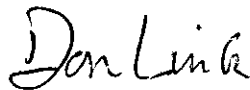
The situation is complicated by the City Attorney’s June 27 opinion, in effect creating two different classes of community policing officers: the Measure Y funded PSOs and the 14 PSO positions funded by the General Purpose Fund, each with slightly different duty descriptions. This situation is potentially detrimental for the city, for OPD’s chain of command, and for OPD’s unity of command structure.

We recommend that council pass clarifying legislation specifying that Measure Y was adding officers to the community policing program defined in 72727 and its subsequent amendments. This will prevent the undesirable possibility of two parallel, conflicting community policing programs in Oakland.

**SUSTAINABLE OPPORTUNITIES**

none

Respectfully submitted,



Don Link, Chair



Colleen Brown, Vice Chair

**CITY OF OAKLAND**  
**COMMUNITY POLICING ADVISORY BOARD**

**TO:** Mayor Jerry Brown, the City Council, the Public Safety Committee, City Administrator Deborah Edgerly, and Police Chief Wayne Tucker  
**FROM** The Community Policing Advisory Board  
**DATE** June 13, 2006  
**SUBJECT** Supplemental Report to the City Council on the State of Community Policing in Oakland during the first half of 2006

**SUMMARY**

The Oakland Police Department has once again reassigned community policing staff to patrol and other non-community policing duties. What is different this time is the attempt to disguise this redeployment as an enhancement of community policing and, in effect, to redefine community policing to include activities specifically disallowed by legislation implementing Oakland's community policing system. The CPAB condemns these efforts and recommends that OPD level with the public about the need for Patrol Officers to meet its calls for service responsibilities. This can and should be done without changing the character and structure of community policing, and the CPAB lays out a plan that would meet OPD's patrol needs without drastically changing community policing in the process.

**FISCAL IMPACT**

None

**BACKGROUND**

In his "Vision and Plan of Action to Reduce and Improve Accountability" delivered in March of this year, Police Chief Tucker summed up the problem community policing has faced in Oakland since its inception in the mid-1990s:

The Department has tried unsuccessfully for over a decade to implement community policing citywide. Over the years, chronic staffing shortages have forced the Department to continually redeploy community policing officers to patrol duties to address crime hot-spots. (page 4)

Each time a situation requiring additional staffing has arisen, OPD has reached into its pool of community policing staff to meet those needs. It happened in the reorganization of 2002 when all community policing officers were returned to patrol and every patrol officer was redefined as a "community policing officer." That experiment lasted about 6 months until it became apparent that the change was in name only and not backed up by the resources necessary to make it a reality. Only a few patrol officers in the city embraced the new conception of duty, and they had to resort to some ingenious acrobatics to make it work in practice.

In late 2003, patrol management returned to time-of-day watch command and PSOs were appointed to perform community policing duties and assigned to a new Neighborhood Services Division. The addition of Crime Reduction teams for tactical support led to significant improvements in the effectiveness of community policing at dealing with hot spots and emerging crime trends.

The city's hiring freeze and failure to authorize police academies created a predicted staffing crisis in 2005. Late that year, OPD began assigning PSOs to rotating patrol duty and CRTs to sideshow and violent hot spot suppression. A rise in armed robberies, murders, and gang killings led to significant structural changes in Oakland's community policing delivery system.

The Beat Health unit was dissolved in late 2005 and Beat Health duties were transferred to the PSOs. Finally, the Neighborhood Services Division was taken out of the Bureau of Field Operations, assigned to a new commander known for his tactical skills and expertise, and reorganized into the Strategic Area Command – a highly mobile division that concentrates on identified hot spots and emerging crime trends citywide.

Today, OPD's community policing resources answer to a command that also includes special operations, the SWAT team, traffic, ABAT, special events, etc., and are deployed in a coordinated fashion to achieve this command's goals of tactical deployment in real time to suppress violence and disrupt emerging crime trends.

## **KEY ISSUES AND IMPACTS**

Community Policing in Oakland is in serious trouble. We assumed that the difficulties caused by the budget freeze of 2002 and subsequent flurry of reorganizations would begin to subside with the passage of Measure Y. But a year and half after the voters raised their taxes to shore up Community Policing, we find it has all but disappeared. Consider recent developments:

- The arrival of the first 4 Measure Y officers was announced with much fanfare last September. But most of last fall, PSOs were put on rotations through patrol, pulling them out of their beats for weeks at a time. This spring, all 4 Measure Y PSOs were reassigned to the patrol division for two months.
- Although 25 officers are listed on the roster as PSOs, several do not perform PSO duties. 3 are on medical leave, 1 is on administrative leave, and 1 is working in Internal Affairs. That leaves 20 who are actually available to perform Community Policing duties.
- Those 20 PSOs perform Community Policing duties only part time. They work 1 shift per week on patrol. They become walking officers for the last half of each non-patrol shift, but often in hot spots outside their beat, and with no input from the local NCPC. Beat Health was dismantled. Beat Health duties were shifted to the PSOs, who are required to turn in at least 1 Beat Health project per month. PSOs provide security at the Oakland Coliseum. PSOs work from 6:00 PM to 2:00 AM on Saturdays to be available to respond to the sideshow.
- Oakland citizens expect 25 PSOs to deliver 1000 hours per week of Community Policing work. With reassignments and the part-time nature of the positions, we are getting 320 hours per week at best – that's about 8 PSOs. When PSOs handle Beat Health, Coliseum and sideshow duties, we get even less.
- The Neighborhood Services Division has been dissolved and Community Policing personnel moved to the Strategic Area Command. This is a tactical division that reacts to emergencies and hot spots throughout the city. It is not geographically focused. It does not work closely with the community. It does not concentrate on long term problem solving. Strategic Area Command is an unsuitable home for Community Policing.
- The CRTs, the teams that provide tactical enforcement for PSO projects, are regularly pulled out of their PSAs for extended periods.

Recent deployment practices in OPD do not comply with the Community Policing legislation:

- Resolution 72727 (paragraph 7.2) states that PSOs “... shall not be routinely reassigned to 911 patrol or other non-Community Policing duties.” The current deployment does not comply with 72727.
- Section 3 of Measure Y requires that Measure Y funds be used for officers performing particular types of duties in particular geographic areas – “... each Community Policing beat shall have at least one neighborhood officer assigned solely to serve the residents of that beat...” With Measure Y officers regularly performing duties outside the scope of their assigned position and outside their beat, the current deployment does not comply with Measure Y spending restrictions.

Some practices in OPD make us wonder whether the department intends to deliver real Community Policing as approved by the voters and council, or merely a facsimile that creates the appearance of Community Policing without delivering its core services.

- The partnership between the police and the community is at the core of Community Policing. Yet PSOs currently get their marching orders solely from the command staff in SAC. They are reassigned to patrol duty by the command staff. They are told to walk in particular hot spots identified by the command staff. They are assigned projects by the command staff. The community has disappeared from the equation.
- All 6 PSA Lieutenant positions are filled. But each Lieutenant has significant responsibilities outside Community Policing. For example, one manages the Eastmont station, one manages ABAT, and one manages SWAT. The Lieutenants have little time left over for their PSOs or Community Policing.
- OPD command staff has closely examined the text of 72727 and Measure Y looking for loopholes that will allow them to redefine Community Policing and deploy PSOs to duties completely unrelated to Community Policing. Today, as in years past, the department treats the PSOs as a pool of officers it can reassign at will to the crisis of the moment.
- We have learned that OPD command staff has issued a gag order to officers prohibiting them from speaking freely with the community. In the past, the officers have had an open and constructive dialogue with the community about their deployments and the resources they could dedicate to Community Policing activities. Now officers refuse to discuss these issues and refer all questions to the Lieutenants. There is a conscious effort to conceal the fact that PSOs are unable to respond to community priorities. This game of hide and seek is antithetical to the Community Policing partnership, and has led to anger, mistrust and confusion among community members and OPD officers. OPD should recognize and address the low morale of officers and citizens.
- Resolution 72727 paragraph 5.7 states “... the Oakland Police Department will discuss with the [Community Policing Advisory] Board before implementing policy, operational or organizational changes that will affect the functioning and operation of Community Policing...” The CPAB learned of the CRT reassignments after the fact. The CPAB learned of the PSO assignments to patrol after the fact. The CPAB learned of the dissolution of the Neighborhood Services Division and relocation of Community Policing to SAC after the fact. The CPAB learned of most of the troubling developments described in this report after the fact.

## RECOMMENDATIONS



The CPAB ardently supports Community Policing. We have long been a tough-love ally of OPD, working closely with the department to further the goals of Community Policing. But we cannot support the current policies and direction with regards to community policing.

The city and department must be straightforward with the people of Oakland about Community Policing. Reviewing recent events, we are forced to conclude that the department is playing games with the deployments, the policies and the numbers. They are hanging the Community Policing moniker on enforcement activities that have nothing to do with Community Policing. The public is not interested in the illusion of Community Policing, and is quite frankly dismayed by the deception.

We recommend the following:

1. Immediately eliminate PSO assignments to patrol.
2. OPD has a severe staffing shortage. The city must make a difficult decision about how many PSOs it can support, and deploy that number of officers as real, full time PSOs with proper support and supervision. With current sworn staff below 700, we recommend dropping back to 18 PSOs and 2 PSO Sergeants.
3. As academies graduate, all new sworn positions should go to patrol until the sworn staff reaches 720 officers. Positions 721 through 727 should go to Community Policing bringing us to 24 PSOs and 3 Sergeants. Positions 728 through 739 should go to patrol. Positions 740 through 748 should go to Community Policing bringing us to 32 PSOs and 4 Sergeants. Positions 749 through 759 should go to patrol. Positions 760 through 768 should go to Community Policing bringing us to 40 PSOs and 5 Sergeants. Positions 769 through 802 can fill all remaining positions in the order the department deems best. To summarize:

<u>Sworn Count</u>	<u>New Positions</u>
694 – 720	Patrol
721 – 727	Community Policing (24 + 3)
728 – 739	Patrol
740 – 748	Community Policing (32 + 4)
749 – 759	Patrol
760 – 768	Community Policing (40 + 5)
769 – 802	both

4. PSOs and PSO Sergeants must work full time in Community Policing. As specified in Resolution 72727, they should not be assigned to Internal Affairs, tactical units, patrol or any other non-community policing duties. Their duties must conform to the principals of community policing:
  - Geographic focus – PSOs must work in their beats.
  - Community focus – PSOs must work with the community and become experts about the concerns of their assigned beat(s).
  - Problem solving – from Resolution 72727 paragraph 7.2, “Community Police Officers shall focus their efforts on problem-solving and quality of life improvement on their community policing beat.”

- NCPCs – from Resolution 72727 paragraph 7.5, “Community Police Officers assigned to each beat shall work with any assigned Neighborhood Council and Neighborhood Services Coordinator in that beat to carry out the objectives established by the Neighborhood Council.”
5. Pull Community Policing out of the Strategic Area Command and put it back in the Neighborhood Services Division under the Bureau of Field Operations where it belongs. Include the PSA Lieutenants, PSO Sergeants, PSOs, CRTs, NSCs, ABAT and foot patrols in this move.
  6. As we have demonstrated in this document, the citizens of Oakland have had no real Measure Y PSOs to date, and are unlikely to have any before the end of 2006. Set aside the 2005 and 2006 Measure Y PSO funds, and put them in a separate account. Hold these funds, and shift them to the end of the Measure Y time period. Give the voters the 10 years of Community Policing officers they voted for. Make those years 2007 – 2016 instead of 2005 – 2014.
  7. Perform a thorough, formal audit of OPD’s use of Measure Y funds to ensure that expenditures comply with the requirements of the legislation.
  8. Remove the gag order and reestablish the cooperative relationship between the community and the police department.
  9. Ask the City Attorney for a formal ruling on the use of Measure Y funds. In particular determine whether one patrol shift per week, or other routine assignments to patrol, is a legal use of those funds.
  10. Discuss changes that will affect the function and operation of Community Policing with the CPAB before they are implemented as required by 72727.

## **SUSTAINABLE OPPORTUNITIES**

### **Economic**

Delivering effective, sustained community policing services to Oakland’s neighborhoods will make them more desirable places to live and increase property values and therefore city revenues from transfer taxes collected from real estate sales.

### **Environmental**

There are no known environmental opportunities associated with this report

## **DISABILITY AND SENIOR CITIZEN ACCESS**

There are no known Americans with Disabilities Act or senior access issues associated with this report.

**Respectfully submitted**

Don Link, Chair

Colleen Brown, Vice Chair

**CITY OF OAKLAND**

**Office of the City Attorney**

**Legal Opinion**

**To: Councilmember Nancy Nadel  
Violence Prevention and Public Safety Oversight Committee  
Community Policing Advisory Board**

**Cc: Chief Wayne Tucker  
Anne Campbell Washington**

**From: Mark T. Morodomi, Supervising Deputy City Attorney**

**Date: June 27, 2006**

**RE: Use of Measure Y Proceeds for Police Officers Who Respond to Calls For Service**

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**I. Introduction**

The Oakland Police Department may have some officers funded by Measure Y (The Violence Prevention and Public Safety Act of 2004) respond to calls for service. Councilmember Nadel and the Violence Prevention and Public Safety Oversight Committee have asked the following question.

**II. Questions**

Can Measure Y funds be used for police officers to respond to calls for service?

**III. Summary Conclusion**

Yes. Measure Y does not include any language that prohibits the use of Measure Y revenue for officers who respond to calls for service. Rather, Measure Y expressly states that the funded officers must provide "basic availability of police response" in their assigned neighborhood.

Under the language of Section 3.1.a., in order to be a permissible use of Measure Y proceeds, the following elements must be met. First, the funded officer must be assigned "solely to serve the residents" of a specific beat. Second, the officer must "provide consistent contact and familiarity between residents and officers and continuity in problem solving and basic availability of police response in each neighborhood." (Emphasis added.) So long as a particular use of Measure Y proceeds meets these two tests, the use is permitted by Measure Y.

### Basic Availability of Police Response

Whether an officer who is funded by Measure Y proceeds can respond to calls for service, depends on the nature of the "calls for service." As we noted earlier, for purposes of this opinion, we assume that the officer is responding to a call for service on time funded by Measure Y. We also assume that the officer is responding to calls for service in his/her assigned "community policing" beat.

Based on these assumptions, the officer is not precluded from responding to calls for service. Measure Y specifically permits "basic availability of police response in each neighborhood." (Section 3.1.a.) Responding to calls for service in his/her assigned beat, meets the Measure Y test of "basic availability of police response." Having a local officer available to respond to calls by residents in a beat makes "police response" available to those residents.

We understand that some individuals have argued that Measure Y incorporates the limitations of City Council Resolution 72727.<sup>2</sup> Measure Y makes no reference to the resolution. In addition, nothing else in the ballot pamphlet (the ballot question, ballot title and summary, City Attorney's Impartial Analysis, City Auditor's Impartial Financial Analysis, or any of the arguments in favor or against) mentions Resolution 72727.

Only if a measure's language is ambiguous may a court look outside the four corners of the measure. (Board of Supervisors v. Lonegran, 27 Cal.3d 855, 866 (1980).) As discussed above, Measure Y, within its four corners, expressly permits funding for "basic availability of police response."

Even if a court looks beyond the four corners of the measure, it will look to the legislative history. Generally, the legislative history of a voter approved initiative is the ballot pamphlet.<sup>3</sup> (Id.; Amador Valley Joint Union High School District v. State Board of Equalization, 22 Cal. 3d. 208, 245-246 (1978); 2A Sutherland Statutory Construction §

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<sup>2</sup> Resolution 72727 states that community police officers "shall not be routinely reassigned to 911 patrol or other non-community policing duties." (Resolution 72727, Section 7.2.)

<sup>3</sup> Materials not provided to all the voters cannot be used to discern the voters' intent, and therefore are not legislative history. Moreover, "In construing a statute we are to be governed solely by the language employed, and are not bound by the opinions of individual members of the legislative body." (In re Lavine, 2 Cal.2d 324 (1935); see also Myers v. Philip Morris Companies, Inc., 28 Cal.4<sup>th</sup> 828, 845 (2002).)

#### IV. Analysis

For purposes of this opinion, we assume that the officer is responding to a call for service on time funded by Measure Y.<sup>1</sup> We also assume that the officer is responding to calls for service in his/her assigned "community policing" beat. If this is not the case, the conclusion and analysis may be different.

Measure Y defines five community policing objectives for which Measure Y proceeds may be used. They are (a) neighborhood beat officers, (b) school safety, (c) a crime reduction team, (d) domestic violence and child abuse intervention, and (e) officer training and equipment. (Measure Y, Part 1, Section 3.) The section states:

The tax proceeds raised by this ordinance may only be used as part of the following integrated program of violence prevention and public safety intervention, in accordance with the following specific purposes:

- I. **Community and Neighborhood Policing:** Hire and maintain at least a total of 63 police officers assigned to the following specific community-policing objectives:
  - a) *Neighborhood beat officers: each community policing beat shall have at least one neighborhood officer assigned solely to serve the residents of that beat to provide consistent contact and familiarity between residents and officers, continuity in problem solving and basic availability of police response in each neighborhood;*
  - b) *School safety:* supplement police services available to school safety and truancy;
  - c) *A crime reduction team:* at least 6 of the total additional officers to investigate and respond to illegal narcotic transactions and commission of violent crimes in identified violence hot spots;
  - d) *Domestic violence and child abuse intervention;* additional officers to team with social service providers to intervene in situations of domestic violence and child abuse, including child prostitution;
  - e) *Officer training and equipment;* training in community-policing techniques, establishing police-social referrals and equipping officers provided in this paragraph, the total costs of which shall not exceed \$500,000 in any fiscal year that this ordinance is in effect.

(Emphasis added.)

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<sup>1</sup> Any restrictions of Measure Y on an officer are only on time paid for by Measure Y.

48:19 (6<sup>th</sup> Ed.) (2005). Since neither the language of Measure Y nor the ballot materials mentioned Resolution 72727, it is very difficult to say that the voters were even cognizant of any limitation in Resolution 72727 when they approved Measure Y. And while Measure Y mentions "community policing objectives," Measure Y expressly defines these objectives as the five "community policing objectives" listed above, including "basic availability of police response." Finally, Resolution 72727 is only a resolution, and cannot, as a matter of law, erase what Measure Y expressly permits and was voted upon by the people.

This analysis answers only the question of whether the terms of Measure Y prohibits using Measure Y money for officers that respond to calls. This analysis does not analyze the different question of whether under Resolution 72727 community police officers may or may not respond to calls for service. (See below.)

#### Responding to Calls Outside of Community Policing Beat.

If, contrary to the above stated assumptions, the officer is responding to calls outside his assigned community policing beat, an issue would arise as to whether the officer is "solely . . . serv[ing] the residents" of his/her community service beat. If the officer engages in a measurable amount of time on outside-of-beat service calls, then the funding for that time should come from non-Measure Y funds or the Measure Y account should be reimbursed for that time. (We are not suggesting that a Measure Y funded officer stand by and ignore a call for assistance, service, or help because it is outside his/her community service beat. Rather, the proper accounting should be done so that any non-Measure Y activity is not funded by Measure Y. Precise time accounting should not be required. A reasonable estimate is sufficient.)

Finally, there may be a further limit to the extent that a Measure Y officer is allowed to respond to calls. It would be problematic if a Measure Y officer did nothing but respond to calls. Measure Y also requires the officer must also "provide consistent contact and familiarity between residents and officers and continuity in problem solving . . ." The Measure Y funded officer must be sure to tend to these duties as well. We are unable to give a precise proportional division as to how much time the officer must spend "problem solving" versus "police response" because Measure Y does not provide any time allocation. Given an absence of specificity in the allocation between the two tasks, the City Council has the power to pass clarifying legislation. However, since both duties are specified, the City Council could not, for example, pass legislation that mandates zero Measure Y funding spent on police response because this would violate the expressed intent of the voters.

#### Resolution 72727

As discussed above, the prior analysis answers only whether Measure Y money can be used for responding to calls for service. A separate question that may be asked is whether Resolution 72727, by itself, allows community police officers to respond to calls for service (regardless of the funding source, Measure Y or other). The

Community Policing Advisory Board is the body that has oversight jurisdiction over Resolution 72727. (Id., Section 5.3.)

Resolution 72727 states that community police officers "shall not be routinely reassigned to 911 patrol or other non-community policing duties." (Id., Section 7.2, emphasis added.) The City Council passed the resolution in 2005. The resolution makes a distinction between proactive, collaborative problem solving versus 911 emergency response. (Id. at Section 1.2.3.) Since we have not found a court decision that has attempted to define the word "routine," we take the common usage of the term as something done regularly or at regular intervals.

If a community police officer is reassigned routinely or regularly to 911 emergency response duties, a set day every a week solely for such duties, for example, such a practice would violate Resolution 72727.

If the Police Department wishes to modify this restriction, it can seek an amendment of Resolution 72727 from the City Council.

#### V. Conclusion

Measure Y does not prohibit the use of Measure Y revenue for officers who respond to calls for service in their assigned community policing beat.

Very truly yours,

John A. Russo  
City Attorney

By:   
Mark T. Morodomi  
Supervising Deputy City Attorney

MTM:ww