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## Standards of Conduct

### 340.1 PURPOSE AND SCOPE

This policy establishes standards of conduct that are consistent with the values and mission of the Bay Area Rapid Transit Police Department and are expected of all department members. The standards contained in this policy are not intended to be an exhaustive list of requirements and prohibitions but they do identify many of the important matters concerning conduct. In addition to the provisions of this policy, members are subject to all other provisions contained in this manual, as well as any additional guidance on conduct that may be disseminated by this department or a member's supervisors.

### 340.2 POLICY

The continued employment or appointment of every member of the Bay Area Rapid Transit Police Department shall be based on conduct that reasonably conforms to the guidelines set forth herein. Failure to meet the guidelines set forth in this policy, whether on- or off-duty, may be cause for disciplinary action.

### 340.3 GENERAL STANDARDS

Members shall conduct themselves, whether on- or off-duty, in accordance with the United States and California constitutions and all applicable laws, ordinances and rules enacted or established pursuant to legal authority.

Employees shall maintain cooperation between the ranks and units of the Department and other District employees to accomplish the District objective of providing a safe, efficient and fast transit system for the public.

Members shall familiarize themselves with policies and procedures, as well as all applicable laws and regulations, and are responsible for compliance with each. Members should seek clarification and guidance from supervisors in the event of any perceived ambiguity or uncertainty.

Employees are required to obey any lawful order of a superior, including any order relayed from a superior by an employee of the same or lesser rank. Deliberate refusal of any employee to obey a lawful order given by proper authority shall be insubordination.

Obedience to an unlawful order is never a defense for an unlawful action. Therefore, no employee is required to obey any order which is contrary to Federal or State law. Responsibility for refusal to obey rests with the employee and said employee shall be strictly required to justify his action.

Upon receipt of an order conflicting with any previous order or instruction, the member affected will advise the person issuing the second order of this fact. Responsibility for countermanding the original instruction then rests with the individual issuing the second order. If so directed, the latter command shall be obeyed first. Orders will be countermanded or conflicting orders will be issued only when reasonably necessary for the good of the Department.

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Discipline may be initiated for any good cause. It is not mandatory that a specific policy or rule violation be cited to sustain discipline. This policy is not intended to cover every possible type of misconduct.

#### 340.3.1 INFORMAL PRE-DISCIPLINE

The informal steps of the progressive discipline system are as follows:

- (a) **Informal Counseling (first level of pre-discipline):** When warranted, an informal counseling may be the first step of the process. It is an informal discussion between a supervisor and an employee about conduct, attendance or work performance. It is not documented and is pre-disciplinary.
- (b) **Letter of Discussion (second level of pre-discipline):** A letter of discussion may be the next step of the process of the informal process. It is a written memorandum to the employee making the employee aware of the unacceptable behavior. A letter of discussion is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to the next level of the process or to move to formal progressive discipline. An employee who may be issued a letter of discussion is entitled to appropriate representation.
  - 1. After the supervisor has discussed the performance or infraction with the employee, the Letter of Discussion memorandum should be presented to the employee for his or her signature. The supervisor shall give a copy of the Letter of Discussion to the employee, and the supervisor then forwards a copy to the Support Services Deputy Chief for placement into the employee's personnel file. The Letter of Discussion will remain in the employee's personnel file for a period as determined by the collective bargaining agreement.
- (c) **Oral Counseling (third level of pre-discipline):** An oral counseling may be the next step of the informal process. It is documented in a memorandum to the employee entitled "Oral Counseling." Prior to issuance, the supervisor should discuss the performance or infraction in detail with the employee. The purpose of the discussion is for the employee to be made aware of the unacceptable behavior. An employee who is covered by a collective bargaining agreement and who may be issued an Oral Counseling is entitled to appropriate association representation. An Oral Counseling is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to progressive discipline. After the supervisor has discussed the performance or infraction with the employee, the Oral Counseling memorandum should be presented to the employee for his or her initials. The supervisor shall give a copy of the Oral Counseling to the employee, while the supervisor then forwards a copy to the Support Services Deputy Chief for placement into the employee's personnel file. The Oral Counseling will remain in the employee's personnel file for a period as determined by the collective bargaining agreement.

References to Letter (s) of Discussion/Oral Counseling (s) may be included in an employee's semi-annual performance evaluation if the informal pre-discipline was issued during the evaluation period. Later annual performance evaluations received by the employee shall not reference the letter of discussion or the oral counseling.

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#### 340.3.2 FORMAL DISCIPLINE

If informal pre-discipline does not correct the conduct, attendance, work performance or the violation is of such a nature to warrant formal discipline, formal discipline may be warranted.

- (a) The steps of formal discipline are:
  - 1. First level: Written Reprimand
  - 2. Second level: Pay Step Reduction (up to six months)
  - 3. Third level: Suspension without pay (thirty (30) day maximum)
  - 4. Fourth level: Demotion
- (b) Application:
  - 1. A single occurrence may be serious enough to warrant formal disciplinary action.
- (c) Removal of Discipline:
  - 1. If there have been no re-occurrences at the end of the time frames as determined by the collective bargaining agreement, the immediate supervisor shall meet with the employee and advise him/her that the progressive discipline has become inactive and has been removed from the employee's personnel files.
  - 2. If an employee is unable to perform his/her assigned duties due to a non-industrial injury, leave of absence, or military leave occurring during the active period of the discipline, the deactivation date shall be extended for the total number of days the employee was unable to perform his/her assigned duties.
  - 3. The Support Services Bureau removes the progressive discipline from the employee's departmental personnel file and also sends a memorandum to Human Resources instructing them to remove the discipline from the employee's District personnel file. A copy of this memorandum will also be sent directly to the employee.
  - 4. References to formal discipline should be made in the employee's semi-annual performance evaluation, if the discipline was issued during the evaluation period. Material in the personnel file may be utilized in progressive discipline and/or grievance proceedings as determined by collective bargaining agreement.

#### 340.3.3 TERMINATION

Termination is the final level of Progressive Discipline.

#### 340.3.4 CRISIS SUSPENSION

A crisis suspension should be used when an employee's inappropriate behavior is so serious that immediate removal from the workplace is necessary. The employee may be placed on administrative leave, with pay, pending further investigation by supervisory personnel. The preliminary investigation should normally be conducted within twenty-four (24) hours of the incident. The employee will be informed by his/her immediate supervisor to report to the Support Services Deputy Chief at 10:00 hours on the next business day. The Chief of Police and the

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employee's zone Lieutenant or Bureau Deputy Chief must be notified as soon as appropriate on all crisis suspensions.

(a) Cause for Crisis Suspensions

1. Allegations or infractions serious enough to result in termination may result in a crisis suspension.

#### **340.4 CAUSES FOR DISCIPLINE**

The following are illustrative of causes for disciplinary action. This list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for violation of other rules, standards, ethics and specific action or inaction that is detrimental to efficient department service:

##### **340.4.1 LAWS, RULES AND ORDERS**

- (a) Violation of, or ordering or instructing a subordinate to violate any law (federal, state, local, or administrative), policy, procedure, rule, order, directive, requirement or failure to follow instructions contained in department or District manuals.
- (b) Disobedience of any legal directive or order issued by any department member of a higher rank.

##### **340.4.2 ETHICS**

- (a) Using or disclosing one's status as a member of the Bay Area Rapid Transit Police Department in any way that could reasonably be perceived as an attempt to gain influence or authority for non-department business or activity.
- (b) The wrongful or unlawful exercise of authority on the part of any member for malicious purpose, personal gain, willful deceit or any other improper purpose.
- (c) The receipt or acceptance of a reward, fee or gift from any person for service incident to the performance of the member's duties (lawful subpoena fees and authorized work permits excepted).
- (d) Acceptance of fees, gifts or money contrary to the rules of this department and/or laws of the state.
- (e) Offer or acceptance of a bribe or gratuity.
- (f) Misappropriation or misuse of public funds, property, personnel or services.
- (g) Any other failure to abide by the standards of ethical conduct.

##### **340.4.3 DISCRIMINATION, OPPRESSION, OR FAVORITISM**

Unless required by law or policy, discriminating against, oppressing, or providing favoritism to any person because of actual or perceived characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, age, disability, economic status, cultural group, veteran status, marital status, and any other classification or status protected by law, or intentionally denying or impeding another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing the conduct is unlawful.

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#### 340.4.4 RELATIONSHIPS

- (a) Unwelcome solicitation of a personal or sexual relationship while on-duty or through the use of one's official capacity.
- (b) Engaging in on--duty sexual activity, including but not limited to sexual intercourse, excessive displays of public affection, or other sexual contact.
- (c) Establishing or maintaining an inappropriate personal or financial relationship, as a result of an investigation, with a known victim, witness, suspect, or defendant while a case is being investigated or prosecuted, or as a direct result of any official contact.
- (d) Associating with or joining a criminal gang, organized crime, and/or criminal syndicate when the member knows or reasonably should know of the criminal nature of the organization. This includes any organization involved in a definable criminal activity or enterprise, except as specifically directed and authorized by this department.
- (e) Associating on a personal, rather than official basis with persons who demonstrate recurring involvement in serious violations of state or federal laws after the member knows, or reasonably should know of such criminal activities, except as specifically directed and authorized by this department.
- (f) Participation in a law enforcement gang as defined by Penal Code § 13670. Participation is grounds for termination (Penal Code § 13670).

#### 340.4.5 ATTENDANCE

- (a) Leaving the job to which the member is assigned during duty hours without reasonable excuse and proper permission and approval.
- (b) Unexcused or unauthorized absence or tardiness.
- (c) Excessive absenteeism or abuse of leave privileges.
- (d) Failure to report to work or to the place of assignment at the time specified and fully prepared to perform duties without reasonable excuse.

#### 340.4.6 UNAUTHORIZED ACCESS, DISCLOSURE, OR USE

- (a) Unauthorized and inappropriate intentional release of confidential or protected information, materials, data, forms, or reports obtained as a result of the member's position with this department.
  - (a) Members of this department shall not disclose the name, address, or image of any victim of human trafficking except as authorized by law (Penal Code § 293).
- (b) Disclosing to any unauthorized person any active investigation information.
- (c) The use of any information, photograph, video, or other recording obtained or accessed as a result of employment or appointment to this department for personal or financial gain or without the express authorization of the Chief of Police or the authorized designee.
- (d) Loaning, selling, allowing unauthorized use, giving away, or appropriating any department property for personal use, personal gain, or any other improper or unauthorized use or purpose.

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- (e) Using department resources in association with any portion of an independent civil action. These resources include but are not limited to personnel, vehicles, equipment, and non-subpoenaed records.
- (f) Duplicating any District key or loaning any District key to any person not authorized to possess same, unless instructed to do so by a command officer.

#### 340.4.7 EFFICIENCY

- (a) Neglect of duty.
- (b) Unsatisfactory work performance including but not limited to failure, incompetence, inefficiency, or delay in performing and/or carrying out proper orders, work assignments, or the instructions of supervisors without a reasonable and bona fide excuse.
- (c) Concealing, attempting to conceal, removing, or destroying defective or incompetent work.
- (d) Unauthorized sleeping during on-duty time or assignments.
- (e) Failure to notify the Department within 24 hours of any change in residence address or contact numbers.
- (f) Failure to notify the Human Resources Department of changes in relevant personal information (e.g., information associated with benefits determination) in a timely fashion.

#### 340.4.8 PERFORMANCE

- (a) Failure to disclose or misrepresenting material facts, or making any false or misleading statement on any application, examination form, or other official document, report or form, or during the course of any work-related investigation.
- (b) The falsification of any work-related records, making misleading entries or statements with the intent to deceive or the willful and unauthorized removal, alteration, destruction and/or mutilation of any department record, public record, book, paper or document.
- (c) Failure to participate in, or giving false or misleading statements, or misrepresenting or omitting material information to a supervisor or other person in a position of authority, in connection with any investigation or in the reporting of any department -related business.
- (d) Being untruthful or knowingly making false, misleading or malicious statements that are reasonably calculated to harm the reputation, authority or official standing of this department or its members.
- (e) Disparaging remarks or conduct concerning duly constituted authority to the extent that such conduct disrupts the efficiency of this department or subverts the good order, efficiency and discipline of this department or that would tend to discredit any of its members.
- (f) Unlawful gambling or unlawful betting at any time or any place. Legal gambling or betting under any of the following conditions:

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1. While on department premises.
  2. At any work site, while on-duty or while in uniform, or while using any department equipment or system.
  3. Gambling activity undertaken as part of an officer official duties and with the express knowledge and permission of a direct supervisor is exempt from this prohibition.
- (g) Improper political activity including:
- (a) Unauthorized attendance while on-duty at official legislative or political sessions.
  - (b) Solicitations, speeches or distribution of campaign literature for or against any political candidate or position while on-duty or, on department property except as expressly authorized by District policy, the memorandum of understanding, or the Chief of Police.
- (h) Engaging in political activities during assigned working hours except as expressly authorized by District policy, the memorandum of understanding, or the Chief of Police.
- (i) Concealing oneself except for the furtherance of some police purpose. Members shall be readily available to the public during duty hours.
- (j) Any act on- or off- duty that brings discredit to this department.

#### 340.4.9 CONDUCT

- (a) Failure of any member to promptly and fully report activities on his/her part or the part of any other member where such activities resulted in contact with any other law enforcement agency or that may result in criminal prosecution or discipline under this policy. If the employee believes the information is of such gravity that it must be brought to the immediate attention of the Chief of Police, official channels may be bypassed.
- (b) Unreasonable and unwarranted force to a person encountered or a person under arrest.
- (c) Exceeding lawful peace officer powers by unreasonable, unlawful or excessive conduct.
- (d) Unauthorized or unlawful fighting, threatening or attempting to inflict unlawful bodily harm on another.
- (e) Engaging in horseplay that reasonably could result in injury or property damage.
- (f) Discourteous, disrespectful or discriminatory treatment of any member of the public or any member of this department or the District.
- (g) Use of obscene, indecent, profane or derogatory language while on-duty or in uniform.
- (h) Criminal, dishonest, or disgraceful conduct, whether on- or off-duty, that adversely affects the member's relationship with this department.
- (i) Unauthorized possession of, loss of, or damage to department property or the property of others, or endangering it through carelessness or maliciousness.

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- (j) Attempted or actual theft of department property; misappropriation or misuse of public funds, property, personnel or the services or property of others; unauthorized removal or possession of department property or the property of another person.
- (k) Activity that is incompatible with a member's conditions of employment or appointment as established by law or that violates a provision of any memorandum of understanding or contract to include fraud in securing the appointment or hire.
- (l) Initiating any civil action for recovery of any damages or injuries incurred in the course and scope of employment or appointment without first notifying the Chief of Police of such action.
- (m) Seeking restraining orders against individuals encountered in the line of duty without the express permission of the Chief of Police.
- (n) Any other on- or off-duty conduct which any member knows or reasonably should know is unbecoming a member of this department, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon this department or its members.
- (o) Failure to provide names and/or badge numbers in a courteous manner upon request.
- (p) Employees shall not permit their names or photographs to be used to endorse any product or service which is in any way connected with law enforcement without the permission of the Chief of Police. They shall not, without the permission of the Chief of Police, allow their names or photographs to be used in any commercial testimonial which alludes to their position or employment with the District.
- (q) Employees shall not seek personal publicity in the course of their employment.

#### 340.4.10 SAFETY

- (a) Failure to observe or violating department safety standards or safe working practices.
- (b) Failure to maintain current licenses or certifications required for the assignment or position (e.g., driver license, first aid).
- (c) Failure to maintain good physical condition sufficient to adequately and safely perform law enforcement duties.
- (d) Unsafe firearm or other dangerous weapon handling to include loading or unloading firearms in an unsafe manner, either on- or off- duty.
- (e) Carrying, while on the premises of the work place, any firearm or other lethal weapon that is not authorized by the member's appointing authority.
- (f) Unsafe or improper driving habits or actions in the course of employment or appointment.
- (g) Any personal action contributing to a preventable traffic collision.
- (h) Concealing or knowingly failing to report any on-the-job or work-related accident or injury as soon as practicable but within 24 hours.

#### 340.4.11 INTOXICANTS

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- (a) Reporting for work or being at work while intoxicated or when the member's ability to perform assigned duties is impaired due to the use of alcohol, medication or drugs, whether legal, prescribed or illegal.
- (b) Possession or use of alcohol at any work site or while on-duty, except as authorized in the performance of an official assignment. A member who is authorized to consume alcohol is not permitted to do so to such a degree that it may impair on-duty performance.
- (c) Unauthorized possession, use of, or attempting to bring a controlled substance, illegal drug or non-prescribed medication to any work site.

#### 340.4.12 TOBACCO USE

Members shall not smoke, vape, or chew any tobacco substance when within direct contact with the public. All special instructions regarding "no smoking" shall be obeyed.

#### **340.5 COOPERATION WITH INVESTIGATIONS**

Employees will cooperate in any investigation conducted by:

- (a) Any competent investigative body
- (b) A judicial tribunal
- (c) A hearing board of officer
- (d) A person authorized to take testimony
- (e) The BART Office of the Independent Police Auditor (OIPA)

Employees are required to answer questions by, or render material and relevant statements to, a competent authority in a District personnel investigation when so directed.

#### **340.6 POST INVESTIGATION PROCEDURES**

##### 340.6.1 BUREAU DEPUTY CHIEF RESPONSIBILITIES

Upon receipt of any completed personnel investigation, the Bureau Deputy Chief of Internal Affairs shall review the entire investigative file, the employee's personnel file and any other relevant materials.

The Bureau Deputy Chief may make recommendations regarding the disposition of any allegations and the amount of discipline, if any, to be imposed.

- (a) Prior to forwarding recommendations to the Chief of Police, the Bureau Deputy Chief may return the entire investigation to the assigned detective or supervisor for further investigation or action
- (b) When forwarding any written recommendation to the Chief of Police, the Bureau Deputy Chief shall include all relevant materials supporting the recommendation. Actual copies of an employee's existing personnel file need not be provided and may be incorporated by reference

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#### 340.6.2 RESPONSIBILITIES OF THE CHIEF OF POLICE

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 Bureau Deputy Chief 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, to be imposed.

In the event disciplinary action is recommended, the Chief of Police shall provide the employee with written (Skelly) notice of the following information within one year of the date of the discovery of the alleged misconduct (absent an exception set forth in Government Code § 3304(d) or 3508.1):

- (a) Specific charges set forth in separate counts, describing the conduct underlying each count.
- (b) A separate recommendation of proposed discipline for each charge.
- (c) A statement that the employee has been provided with or given access to all of the materials considered by the Chief of Police in recommending the proposed discipline.
- (d) An opportunity to respond orally or in writing to the Chief of Police within five days of receiving the Skelly notice.
  1. Upon a showing of good cause by the employee, the Chief of Police may grant a reasonable extension of time for the employee to respond.
  2. If the employee elects to respond orally, the presentation ~~shall~~ **may** be recorded by the Department. Upon request, the employee shall be provided with a copy of the recording.

#### 340.7 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) This Skelly 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 Skelly 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 of such subsequent investigation prior to the imposition of any discipline.

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- (e) The employee may thereafter have the opportunity to further respond orally or in writing to the Chief of Police on the limited issue(s) of information raised in any subsequent materials.
- (f) Once the employee has completed his/her Skelly response or, if the employee 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 thereafter render a timely written decision to the employee imposing, modifying or rejecting the recommended discipline. In the event of a termination, the final notice of discipline shall also inform the employee of the reason(s) for termination and the process to receive all remaining fringe and retirement benefits.
- (g) Once the Chief of Police has issued a written decision, the discipline shall become effective.

### **340.8 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE**

In the event that an employee tenders a written retirement or resignation prior to the imposition of discipline, it shall be noted in the file.

The tender of a retirement or resignation by itself shall not serve as grounds for the termination of pending discipline.

### **340.9 POST SKELLY PROCEDURE**

In situations resulting in the imposition of a suspension, punitive transfer, demotion, termination of a non-probationary employee, the employee shall have the right to an evidentiary appeal of the Chief of Police's imposition of discipline pursuant to the operative Memorandum of Understanding (MOU) and personnel rules.

### **340.10 DISCIPLINARY ACTION AGAINST PROBATIONARY EMPLOYEES**

In the event that a probationary employee is terminated solely for unsatisfactory performance or the failure to meet department standards, the employee shall have no right to appeal and the following shall be considered:

- (a) Termination of a probationary employee for such failure to pass probation shall be so reflected in the employee's personnel file
- (b) In the event that a probationary employee is disciplined or terminated for misconduct, the employee shall only be entitled to appeal the decision in the same manner as set forth in the Skelly procedure as set forth above. This appeal process may be held prior to or within a reasonable time after the imposition of discipline
- (c) At all times during any investigation of allegations of misconduct involving a probationary officer, such officer shall be afforded all procedural rights set forth in Government Code § 3303 and applicable Department policies
- (d) A probationary employee's appeal of disciplinary action shall be limited to an opportunity for the employee to attempt to establish that the underlying allegations should not be sustained. Nothing in this policy or procedure, however, should be

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construed to establish any sort of property interest in or right to the employee's continuation of employment

- (e) The burden of proof for any probationary employee's appeal of disciplinary action shall rest with the employee and will require proof by a preponderance of the evidence
- (f) In the event that a probationary employee meets his or her burden of proof in such a disciplinary appeal, the Department shall remove all reference to the underlying allegations of misconduct from the employee's personnel file
- (g) In the event that a probationary employee fails to meet his or her burden of proof in such a disciplinary appeal, the employee shall have no further right to appeal beyond the Chief of Police