

Anthony D. Prince (SBN # 202892)
General Counsel, California Homeless Union/Statewide Organizing Council
Law Offices of Anthony D. Prince
2425 Prince Street, Ste. 100
Berkeley, CA 94705
Tel: 510-301-1472

Attorneys for Plaintiffs

UNITED STATES COURT

NORTHERN DISTRICT OF CALIFORNIA

SAUSALITO/MARIN COUNTY CHAPTER
OF THE CALIFORNIA HOMELESS UNION
on behalf of itself and those it represents;
ROBBI POWELSON; SHERI I.
McGREGOR; MICHAEL ARNOLD;
ARTHUR BRUCE; MELANIE MUASOU;
SUNNY JEAN YOW; NAOMI
MONTEMAYOR; MIKE NORTH and
JACKIE CUTLER on behalf of themselves
and similarly situated homeless persons,

Plaintiffs

vs.

CITY OF SAUSALITO; MAYOR JILL
JAMES HOFFMAN; POLICE CHIEF JOHN
ROHRBACHER; CITY MANAGER
MARCIA RAINES; DEPT. OF PUBLIC
WORKS SUPERVISOR KENT BASSO,
individually and in their respective official
capacities,

Defendants.

Case No.: 3:21-cv-01143-EMC

**DECLARATION OF ANTHONY D.
PRINCE IN SUPPORT OF PLAINTIFFS'
MOTION FOR ORDER TO SHOW
CAUSE WHY DEFENDANTS' SHOULD
NOT BE HELD IN CONTEMPT AND
FOR MODIFICATION OF
PRELIMINARY INJUNCTION**

Date: December 9, 2021

Time: 1:30 pm

Courtroom: 5-17th Floor

Courtroom: Zoom Videoconference

Judge: Hon. Edward M. Chen

DECLARATION OF ANTHONY D. PRINCE

I, Anthony D. Prince, hereby declare:

1. I am counsel of record for Plaintiffs in the above-captioned case.

- 1 2. Attached hereto as **Exhibit A** is a true and correct copy of a series of emails between
2 Sausalito Mayor Jill Hoffmn, City Attorney Mary Wagner, Counsel for the City of
3 Sausalito Arthur Friedman and Sausalito Police Chief John Rohrbacher regarding the
4 seizure and return of vital medications by Sausalito police.
- 5 3. Over the last three months I have been to the Marinship Park approximately six times,
6 four of them since the “bomb cyclone” storm of October 23-24, 2021. I have personally
7 observed the destruction at the camp and, more recently, the accumulation of fetid water
8 and soil in and around the camp. I accompanied Robbie Powelson on both occasions
9 when he collected samples of potentially contaminated water and can personally attest to
10 the accuracy of the descriptions of the potential contamination provided by the Union
11 officers and other residents.
- 12 4. I was present when the majority of photographs attached to the Declaration of Robbie
13 Powelson were taken and can confirm they are accurate depictions of what I personally
14 observed on those occasions.
- 15 5. I promptly sent lab reports of the water samples taken by Mr. Powelson to Defendants’
16 counsel Arthur Friedman as soon as I received them. Though I have requested reports
17 resulting from the City’s own soil sampling, none have been provided.
- 18 6. I was present at Marinship Park prior to the establishment of the encampment and many
19 times since and have always viewed both the men’s and women’s restrooms on each
20 occasion. I can confirm that none of the sinks or toilets have ever been replaced. I have
21 reviewed the past and present photographs of the toilets and sinks attached as exhibits to
22 the Declaration of Robbie Powelson and can confirm they accurately reflect my own
23 personal observation. This is also true as regards the absence of any personal protective
24 equipment available to residents and the sporadic nature of the cleaning and maintenance
25 of these facilities.
26
27
28

- 1 7. Attached hereto as **Exhibit B** is a true and correct copy of a City report detailing the
2 expenditures on “Homeless Services” made by the City of Sausalito.
- 3 8. Attached hereto as **Exhibit C** is a true and correct copy of a series of newspaper articles
4 regarding police mistreatment of Marinship Park campers, contamination issues at the
5 encampment and last week’s arrest of photojournalist Jeremy Portje as he was attempting to
6 film the homeless in Marinship Park.
- 7 9. Attached hereto as **Exhibit D** is a true and correct copy of excerpts from the Sausalito Police
8 Department Policy Manual including the Chief’s Preface and pertinent portions of Policy
9 1019, “Personnel Complaints.”
10

11 I hereby swear and affirm under penalty of perjury under the laws of the United States athe
12 State of California that the foregoing statement is true and correct and based on personal knowledge
13 and otherwise on information and belief.
14

15
16 Dated: December 5,2021

17 Executed at Berkeley, CA

Anthony D. Prince

Exhibit A

RE: Seizure of medical devices, medicine and other personal items from Holly Wild

From: Anthony Prince (princelawoffices@yahoo.com)

To: jrohrbacher@sausalito.gov; mwagner@sausalito.gov; afriedman@sheppardmullin.com

Cc: czapata@sausalito.gov; robbiewpowelson@gmail.com

Date: Wednesday, November 24, 2021, 05:21 PM PST

This is outrageous. We will try to get a prescription for the albuterol inhaler and the other medication. City will be held fully accountable.

[Sent from Yahoo Mail on Android](#)

On Wed, Nov 24, 2021 at 5:15 PM, John Rohrbacher <JRohrbacher@sausalito.gov> wrote:

Good Afternoon,

We met with Mr. Powelson and returned Ms. Wild's papers and backpack (with contents).

Our team did not locate her inhalers which she reported to Mr. Powelson were in a bright colored shoulder bag. We did not locate that bag in our PD property and evidence lockers.

The arresting officers are not on-duty today but we have reached out to them to see if they recall seeing that shoulder bag. We are waiting for return phone calls from them.

John

From: Anthony Prince <princelawoffices@yahoo.com>

Sent: Wednesday, November 24, 2021 3:46 PM

To: Mary Wagner <MWagner@sausalito.gov>; Arthur Friedman <afriedman@sheppardmullin.com>

Cc: John Rohrbacher <JRohrbacher@sausalito.gov>; Chris Zapata <czapata@sausalito.gov>; Robbie .Powelson <robbiewpowelson@gmail.com>

Subject: RE: Seizure of medical devices, medicine and other personal items from Holly Wild

I have authorized Robbie Powelson to retrieve Ms. Wild's possessions before 5:00 pm. He will be at the police station shortly.

Anthony Prince

[Sent from Yahoo Mail on Android](#)

On Wed, Nov 24, 2021 at 3:06 PM, Mary Wagner <MWagner@sausalito.gov> wrote:

Mr. Prince,

There is a typo in the email below. The Chief is available up until 5pm today. Not 2pm as indicated below.

Mary

From: Mary Wagner
Sent: Wednesday, November 24, 2021 2:59 PM
To: Anthony Prince <princelawoffices@yahoo.com>; Arthur Friedman <afriedman@sheppardmullin.com>
Cc: John Rohrbacher <JRohrbacher@sausalito.gov>; Chris Zapata <czapata@sausalito.gov>
Subject: RE: Seizure of medical devices, medicine and other personal items from Holly Wild

Mr. Prince,

The Chief of Police, John Rohrbacher, is available to meet with Ms. Wild at the Sausalito Police Station up until 2pm. If the Police have items such as you describe below with the exception of the a tent, tarp, pillow, and bedding, that belong to Ms. Wild they will be returned. If Ms. Wild is not available to meet with the Chief today he will make himself available to meet with Ms. Wild at the Police Department at another mutually agreeable day and time other than tomorrow, November 25th.

Please advise.

Mary

Mary Anne Wagner
City Attorney, City of Sausalito

From: Anthony Prince <princelawoffices@yahoo.com>
Sent: Wednesday, November 24, 2021 7:56 AM
To: Arthur Friedman <afriedman@sheppardmullin.com>; Mary Wagner <MWagner@sausalito.gov>
Cc: Robbie .Powelson <robbiepowelson@gmail.com>
Subject: Seizure of medical devices, medicine and other personal items from Holly Wild

Counsel: My client has provided the following list of some of the items that were seized by police and are being wrongfully withheld for examination as evidence.

Two prescription albuterol inhalers for chronic obstructive pulmonary disease -- COPD -- and emphysema; medical and dental records;

Hygiene, food and essential personal transportation items including anti-bacterial and anti-viral sanitizing wipes for protection from COVID-19 and other transmissible diseases; soap, clothing including pants, shirts, coffee, butter, bacon, salt, a sandwich; shoes and forty dollars cash with which she purchases food and other necessities.

Essential survival items including her tent, tarps, pillow and bedding.

Essential documents and I.D. items: social security card, DMV certificates and confidential, protected medical and legal documents, including documents pertaining to the assault on Mr. Wild by police department employee Michael McKinley and the ongoing criminal investigation regarding said assault; photographic evidence and confidential communications with counsel on her cell phone, which is also being withheld. Deprived of her cell phone, she is unable to make emergency or other calls for medical emergencies or other purposes relating to her physical well-being.

By depriving my client of the above-listed items, particularly her albuterol inhalers, the City is putting her life at risk should she experience difficulty in breathing as the result of her COPD and emphysema.

Accordingly, the City must immediately return the above-listed items and all others currently being withheld by the Sausalito Police Department.

Anthony Prince,
Attorney for Holly Wild

RE: Seizure of medical devices, medicine and other personal items from Holly Wild

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To: princelawoffices@yahoo.com; mwagner@sausalito.gov; afriedman@sheppardmullin.com

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Accordingly, the City must immediately return the above-listed items and all others currently being withheld by the Sausalito Police Department.

Anthony Prince,
Attorney for Holly Wild

Exhibit B

FISCAL IMPACT

On October 14, the Finance Department requested information from City of Sausalito departments regarding costs incurred relating to homelessness. The total year-to-date estimated budgetary impact is \$675,428.51. This cost is expected to increase as additional time and direct expenses are incurred.

Background & In-Kind Allocations

The encampment took hold with the first tent on December 20, 2020. The Police Department first got fully immersed at the beginning of January 2021. There are two Police Department employees (Chief of Police & Lieutenant) that have been involved since the start of the year. Since their initial involvement in January, it is estimated that 50% of each of their respective work time has been consumed by all matters related to the encampment. The City Manager started in June, and estimates 25% of work time is associated with the homeless encampment. To account for this time, the Finance Department has estimated in-kind amounts based on work time estimates. The in-kind amounts are associated with staff time being consumed and were calculated based on the departments' estimated percent of time spent. The Finance Department used employee total compensation year to date to estimate those impacts. Please note, that those cost are expected to continue.

Direct Expenses & Purchase Orders

In addition to the employee in-kind cost allocation, there have been direct purchase and budgetary impacts recorded throughout the year. These include Urban Alchemy, Springfield Consulting, Sheppard Mullin legal costs, City Attorney legal costs, Budget Rental, food purchases, and contracted costs related to the soil stockpile move from Dunphy Park.

Below is a table summary by budgetary classification of the year-to-date expenditures related to the homeless encampment.

Table 1.0 – Estimated Budget Impact – October 20, 2021

	Admin	Public Works	Police	Legal	Other	Total
Salaries & Wages	\$27,355.88		\$202,343.77		\$63.08	\$229,762.73
Materials			\$1,267.17		\$8,229.75	\$9,496.92
Purchased Svcs.			\$99,770.64	\$252,000.00	\$23,898.52	\$375,669.16
Other Services		\$29,623.70			\$30,876.00	\$60,499.70
Total	\$27,355.88	\$29,623.70	\$303,381.58	\$252,000.00	\$63,067.35	\$675,428.51

Project Management

Project Expenditures

User: Vtdauditor
 Printed: 10/20/2021 - 1:49 PM
 Project Label: ENCAMP
 Task Label: ENCAMP-000
 Date: 10/20/2021
 Include Closed POs: no



CITY OF SAUSALITO
 420 Lirio Street
 Sausalito, CA 94965
 tel (415) 289-4100
 fax (415) 289-4167

PM Type	Description	Reference	Budget	PO Number	PO Original Amt	Expended Amt	Encumbered	Avail Budget
ENCAMP	Encampment							
ENCAMP-000	Encampment							
C								
Labor	CIP Labor w/benefits		0.00					
	Payroll Period 09/20/21-10/03/21				0.00	25.23	0.00	
	Payroll Period 09/19/21-10/02/21				0.00	37.85	0.00	
	Labor Total:				0.00	63.08	0.00	
	C Total:				0.00	63.08	0.00	-63.08
M	Materials		0.00					
Material	Purchased material & equipment							
	Hagel Supply Co				0.00	85.37	0.00	
	Material Total:				0.00	85.37	0.00	
	M Total:				0.00	85.37	0.00	-85.37
P	Supplies		0.00					
Supplies	Goodman Building Supply Co				0.00	145.60	0.00	
	National Construction Rentals Inc				0.00	2,792.30	0.00	
	Hagel Supply Co				0.00	-85.37	0.00	
	Water Components & Bldg Supply				0.00	85.00	0.00	
	Tamalpais Paint & Color				0.00	152.55	0.00	
	Goodman Building Supply Co				0.00	121.18	0.00	
	Goodman Building Supply Co				0.00	23.80	0.00	
	Goodman Building Supply Co				0.00	58.62	0.00	
	Hagel Supply Co				0.00	767.20	0.00	
	Herc Rentals Inc.				0.00	132.70	0.00	

PM Type	Description	Reference	Budget	PO Number	PO Original Amt	Expended Amt	Encumbered	Avail Budget		
S	Services Purchased services	Bay Area Barricade Service Inc			0.00	1,759.63	0.00			
		Water Components & Bldg Supply			0.00	503.88	0.00			
		Water Components & Bldg Supply			0.00	490.53	0.00			
		Water Components & Bldg Supply			0.00	490.53	0.00			
		Goodman Building Supply Co			0.00	336.06	0.00			
		Ferguson US Holdings, Inc.			0.00	151.07	0.00			
		Goodman Building Supply Co			0.00	80.86	0.00			
		Ferguson US Holdings, Inc.			0.00	138.24	0.00			
		Supplies Total:					0.00	8,144.38	0.00	
		P Total:					0.00	8,144.38	0.00	-8,144.38
		Services Total:					0.00	209.75	0.00	
		Here Rentals Inc.					0.00	2,231.90	0.00	
		Bay Cities Refuse Service Inc					0.00	1,437.90	0.00	
		Bay Cities Refuse Service Inc					0.00	2,113.80	0.00	
		Bay Cities Refuse Service Inc					0.00	525.00	0.00	
American Sanitation Inc.					0.00	552.80	0.00			
Bay Cities Refuse Service Inc					0.00	1,139.90	0.00			
American Sanitation Inc.					0.00	609.63	0.00			
Here Rentals Inc.					0.00	209.75	0.00			
Brazzer Communications, Mara Brazzer dba					0.00	1,200.00	0.00			
American Sanitation Inc.					0.00	893.84	0.00			
Deignan, Monte					0.00	2,450.00	0.00			
Deignan, Monte					0.00	5,210.00	0.00			
American Sanitation Inc.					0.00	945.63	0.00			
American Sanitation Inc.					0.00	560.97	0.00			
American Sanitation Inc.					0.00	894.81	0.00			
American Sanitation Inc.					0.00	893.84	0.00			
Bay Cities Refuse Service Inc					0.00	1,819.00	0.00			
Services Total:					0.00	23,898.52	0.00			
S Total:					0.00	23,898.52	0.00	-23,898.52		
ENCAMP-000 Total:					0.00	32,191.35	0.00	-32,191.35		

PM Type	Description	Reference	Budget	PO Number	PO Original Amt	Expended Amt	Encumbered	Avail Budget
	ENCAMP Total:				0.00	32,191.35	0.00	-32,191.35
	Report Totals:				0.00	32,191.35	0.00	-32,191.35

Encampment Cost Detail

Administration

Employee	Since	Gross earnings	1% ER to Def. Plan	CalPERS ER	Uniform	Total Comp		Encampment Allocation
Chris Zapata	6/7/2021	98,776.93	546.60	10,100.00		109,423.53	25%	27,355.88

Total 27,355.88

Legal Department

Sheppard Mullin - January 2021-current								200,000.00
City Attorney								52,000.00

Total 252,000.00

Department of Public Works

Dunphy Park Soil Stockpile Removal						CO#01		25,895.50
Dunphy Park Soil Stockpile Removal						CO#02		1,385.00
Dunphy Park Soil Stockpile Removal						CO#03		2,343.20

Total 29,623.70

Police

100-200-3000-320 (Professional Services)								
Urban Alchemy-								27,971.72
Springfield Consulting-								980.00
Budget Rental-								147.51
								29,099.23

100-200-6000-630 (Food)								
Starbucks-								63.85
Golden Cream Donuts-								60.00
Drivers Market-								7.77
Golden Gate Market-								975.00
Target-								57.48
Safeway-								103.07
								1,267.17

100-200-3000-320 (Professional Services)								
Urban Alchemy-		(June 10-30)						10,247.29
Urban Alchemy-		(July 1-31)						20,036.64
Urban Alchemy-		(August 1-31)						21,523.68
Urban Alchemy-		(September 1-6) * Not Paid Yet						5,148.20
Urban Alchemy-		(September 7-30) * Not Paid Yet						13,715.60
								70,671.41

Employee	Since	Gross earnings	1% ER to Def. Plan	CalPERS ER	Uniform	Total Comp		Encampment Allocation
Stacie Gregory	1/1/2021	156,485.68	1,314.35	31,331.60	1,000.00	190,131.63	50%	95,065.82
John Rohrbacher	1/1/2021	172,407.78	1,629.13	39,519.00	1,000.00	214,555.91	50%	107,277.96
								202,343.77

Other Expenditures: (Non-Dept - See "ENCAMPMENT" Report)								\$ 32,191.35
Other Expenditures: Marin County Dedication of ARPA Funds								\$ 30,876.00

Total 675,428.51

Exhibit C



RISING TENSIONS Sausalito police officers help to clear a homeless encampment in June. Photo by Nikki Silverstein

Sausalito Police Under Investigation for Treatment of Homeless Residents

By Nikki Silverstein

Sep 28, 2021

At least two independent probes were opened this month into the treatment of local homeless residents by the Sausalito Police Department. Tensions are already high between the City of Sausalito and the residents of a homeless encampment in Marinship Park, as the parties have remained embroiled in litigation for the last seven months.

A civilian employee of the [Sausalito Police Department](#) faces an allegation of criminal misconduct against a homeless resident. The case has been referred to the Marin County Sheriff's Office for investigation, according to Sausalito Mayor Jill Hoffman. The City has also begun internal personnel investigations into the conduct of police officers. An independent investigator will be hired to oversee those investigations.

While the City of Sausalito keeps mum on the recent spate of troublesome incidents between the Sausalito Police Department and the homeless community, video evidence, letters by attorneys and interviews with victims and witnesses shed light on the questionable conduct of some police employees.

On Sept. 10, Holly Wild, 58, a then-resident of the Sausalito homeless encampment, stood at a break in the fence surrounding the Army Corps of Engineers boatyard in Sausalito. The homeless encampment is a few feet away from the boatyard, where vessels are crushed. Many mariners who once lived anchored out on Richardson Bay, including Wild, have had their boats destroyed at the boatyard. After their boats are demolished, they often move into the Sausalito homeless encampment.

Wild watched as heavy equipment destroyed a boat that she believed belonged to her. Upset and frustrated, she admits to kicking the fence and yelling, maybe even using a foul word or two.

Michael McKinley, the emergency services coordinator for the Sausalito Police Department, stood inside the boatyard. Upon hearing Wild, he approached the fence, where the two had a brief conversation. Wild claims McKinley identified himself as Curtis Havel, who is the harbormaster for the Richardson's Bay Regional Agency (RBRA), the local

government agency responsible for overseeing policy on Richardson Bay.

Without provocation, McKinley reached down, picked up a rock and hurled it at her with tremendous force, Wild said. The rock allegedly came through the several-inch gap in the fence and Wild dodged the projectile to avoid getting hit in the face by it.

“It was a five-inch-by-three-inch rock,” Wild said. “And he had good aim.”

A second rock thrown by McKinley hit the fence, according to Wild. McKinley then began to move toward the front of the boatyard.

“He told me, ‘I’m coming to get you,’” Wild said.

Fearful for her safety, Wild left the area. In fact, she no longer feels safe staying at the homeless encampment and has returned to living anchored out on Richardson Bay.

Unbeknownst to Wild and McKinley, Tim Logan, a mariner, observed the rock-throwing from the water and shot video of part of the encounter. Logan later shared the video with Wild.

Bringing the video with her as evidence, Wild twice attempted to file a report with the Sausalito Police Department about the incident. Both times the department refused to accept the report.

Logan even spoke on the phone with Sausalito police officer Nick White about taking a report from Wild. White refused and said he wasn’t going to “play any games,” according to Logan.

Attempting to report the incident himself, Logan met in-person with Sausalito police officer Edgar Padilla. Padilla

spent several minutes justifying the rock-throwing incident, according to a video Logan took of the meeting. Again, no report was taken. Instead, Padilla said the conversation was documented by his bodycam.

Eventually, on Sept. 14, Wild wrote a report and hand-delivered it to the desk of a Sausalito Police Department employee. It appears the report was finally accepted.

The following day, Anthony Prince, attorney for the California Homeless Union, and Holly Wild, wrote a strongly worded letter to the City of Sausalito's attorney and their outside counsel about the series of events. Prince said the rock-throwing incident was extremely serious, as was the officers' refusal to investigate.

"In conclusion, at this point we insist that pending a full investigation of the attack on Ms. Wild and the police department's response – or lack thereof – to the attack, that Mr. Michael McKinley as well as Officers White and Padilla be suspended and have no further contact with Marinship Park encampment residents," Prince wrote.

Mary Wagner, the City of Sausalito's attorney, replied to Prince on Sept. 17, and said McKinley had been placed on administrative leave pending investigation by the Marin County Sheriff's Office. No mention was made of suspending any officers.

The Marin County Sheriff's Office spokesperson, Sergeant Brent Schneider, said in an email that it takes all allegations of crimes very seriously, regardless of the person's employer.

McKinley, too, remained tight-lipped. He declined to discuss the events, citing the investigation by the Sheriff's Office.

These examples of the Sausalito police department personnel treating members of Sausalito's homeless

community with disrespect do not appear to be isolated incidents.

Earlier this month, Lieutenant Stacie Gregory lost her temper with Robbie Powelson, a resident of the homeless encampment. Powelson followed several feet behind Gregory as she walked through the encampment, and peppered her with questions. During the strained encounter, which Powelson captured on video, Gregory turned around, approached Powelson and stood within inches of his face.

“Get out of my face,” Gregory said, though it was she who stepped up to Powelson. “You got no reason to be talking to me right now. No reason.”

Although the mistreatment of homeless residents wasn't part of the initial litigation between the City of Sausalito and the homeless, it will likely be a factor in the current settlement negotiations. The Sausalito Homeless Union sued the City of Sausalito in February to stop the encampment from being moved and to prevent a ban on daytime camping. The encampment was eventually moved from the downtown area to Marinship Park, yet camping is still permitted 24/7 by the homeless.

As the *Pacific Sun* went to press on Tuesday, Sept. 28, the parties are scheduled for a private settlement conference. The same night, the Sausalito City Council is scheduled to discuss a resolution to spend \$185,000 for a six-month period on security at the Marinship Park homeless encampment.

The conduct of the police staff will be discussed at the settlement conference, which is being held at Prince's insistence. Prince maintains that the City of Sausalito has failed to make the camp safe for the residents and that there are negative psychological effects for the former anchor-out

mariners who are forced to live next to the boatyard that crushed their boats.

“It’s time for the City to settle,” Prince said. “They have abdicated their responsibility. We want the City to house people now.”



During the recent "bomb cyclone" storm, Marinship Park predictably flooded. Personal possessions were drenched, and many of the approximately 40 campers took refuge by huddling in the bathrooms. Photos courtesy of Sausalito Homeless Union

Sausalito Homeless Union Claims City Mistreated Residents of City-Sanctioned Camp

By Nikki Silverstein

Nov 10, 2021

The Sausalito Homeless Union and the City of Sausalito are scheduled to face off again in the U.S. District Court of Northern California next month. Court documents filed last week by the homeless union argue that Sausalito should be held in contempt for failing to protect and causing harm to the residents of the city-sanctioned homeless encampment, an alleged violation of a previous court order.

“When the City of Sausalito moved the encampment to Marinship Park, they assumed responsibility to make it safe,” Anthony Prince, attorney for the Sausalito Homeless Union, said in an interview. “The court order permitting the move said the basis was safety. The city has a duty of care, which they wouldn’t have had if they had let the residents stay at Dunphy Park. Our motion is to hold them in contempt of court because they haven’t made the encampment safe.”

The parties have been embroiled in a lawsuit since February, one that has **cost** Sausalito approximately \$500,000 so far, City Manager Chris Zapata said at a city council meeting in September. The Sausalito Homeless Union is represented pro bono by Prince.

The Homeless Union’s new accusations against Sausalito include the assault of two female campers by police personnel, the city’s failure to protect the sanctioned encampment at Marinship from the “bomb cyclone” storm in late October and the city’s threats to demolish a storage shed under construction by a volunteer at the camp.

Michael McKinley, a civilian employee of the Sausalito Police Department, **threw rocks** at then-camper Holly Wild in September, according to the court filing. Wild and a witness who took video of the alleged assault attempted to file police reports about the incident, but officers Nick White and Edgar Padilla refused to take their statements. Days later, the department finally accepted a report Wild dropped off at the station. Wild no longer resides at the camp due to concerns for her safety.

After the alleged rock-throwing, the city placed McKinley on unpaid administrative leave pending a criminal investigation by the Marin County Sheriff’s Office. However, no action has been taken against the officers who repeatedly refused to take reports about the alleged assault, according to the court filing.

Sausalito Mayor Jill Hoffman has given the *Pacific Sun* three conflicting statements about investigations into the police officers' conduct, two in the last few days.

“The City of Sausalito has also opened up internal personnel investigations, for which we will hire an independent investigator,” Hoffman wrote in a September email.

I contacted the mayor again last week to follow up on the issue and she responded the following day.

“Once the Sheriff’s Office has completed its investigation, the City—as is protocol—will then conduct its internal investigation using the services of an appropriate and qualified outside vendor,” Hoffman wrote in an email on Nov. 5.

Hoffman appears to have conflated two issues: McKinley’s alleged assault on Wild and the officers refusing to take a police report. One is a criminal investigation conducted by the Marin County Sheriff’s Office and the other is an internal investigation managed by the City of Sausalito. Both could happen simultaneously.

Even more puzzling, the Marin County Sheriff’s Office finished their investigation into McKinley in mid-October, according to Sergeant Brenton Schneider of the Marin County Sheriff’s Office. They forwarded the report to the Marin County District Attorney’s Office.

The DA’s office confirmed they received the report and are reviewing it to determine whether charges will be filed against McKinley.

I informed Hoffman that the Marin County Sheriff’s Office completed their investigation three weeks ago. Based on Hoffman’s previous statement from two days before, I assumed she would say the internal investigations into the

police officers' conduct would begin immediately. However, that is not the case.

“As regards the Marin County Sheriff’s Office, we are aware that the Office has forwarded its criminal investigation to the District Attorney’s Office for review,” Hoffman wrote in an email on Nov. 8. “The City of Sausalito will not begin an internal investigation into the allegations against the civilian employee and the police officers until we hear from the District Attorney.”

A reasonable person might conclude the mayor’s changing narrative and the delays to initiate the internal investigations indicate the officers’ conduct is not being taken seriously. Ditto for the results of the atmospheric river the Bay Area experienced in late October, which leveled the city-sanctioned homeless encampment.

Although the city received ample warning of the severity of the weather system, deemed the worst storm in a century, officials did not relocate the campers from the low-lying, flood prone Marinship Park. Instead, the city delivered “gravel, sleeping bags, hygiene kits, tarps and tents” prior to the storm, Mayor Hoffman said.

There is some dispute from the campers about what items the city provided. Regardless, the supplies were wholly inadequate for the storm’s brutality, Robbie Powelson, president of the Marin County Homeless Union, said.

Sections of a fence installed by the city to enclose the encampment fell onto tents. Almost all the tents collapsed, either from the strong winds or the fallen fence. Marinship Park predictably flooded. Personal possessions were drenched, and many of the approximately 40 campers took refuge by huddling in the bathrooms.

Community members rescued 18 of the most vulnerable campers by paying for seven hotel rooms and hot meals. Other residents sheltered in cars or on higher ground.

No one from the city came to the camp during the brunt of the storm, which began late on Oct. 23, to check on the campers. The following evening, a Red Cross shelter was set up at a Sausalito school gym with 20 beds, which would have accommodated only half of the displaced encampment residents. By then, only six people remained at the camp and they declined the city's offer to relocate.

As the campers returned to Marinship Park after the storm, donated items arrived from the community, not the city,

encampment residents said. New tents, sleeping bags, clothing and food allowed them to rebuild the camp.

A local nonprofit group, Marin Housing For All, donated \$3,000 in materials to build a storage shed to protect the camp's essential supplies, according to the group's co-founder Jason Sarris, who is also homeless and lives in a Novato encampment.

Volunteer Emilio Pineda began construction of the wood shed on Oct. 27. Two days later, the city posted a stop work order, which stated a building permit was needed. Pineda then applied for the permit, but the building department denied the application. The city returned to the camp on Nov. 1 with a 72-hour notice calling for removal of the structure.

Prince communicated with Arthur Friedman, Sausalito's outside counsel from the international law firm of Sheppard Mullin, and was informed the city intended to demolish the storage shed on Nov. 5. That threat was the final straw for Prince and the camp residents.

While Prince continued to negotiate with Friedman on the storage shed issue, he also filed the motion for contempt and sanctions against the city, as well as a modification of the preliminary injunction issued in federal court by Judge Edward Chen earlier this year, which prevents Sausalito from enacting a ban on daytime camping. The campers seek the court's permission to allow overnight camping outside of the designated Marinship area, due to the safety issues.

Prince and Friedman reached an agreement allowing the construction of the shed to continue, and the finished structure may remain at the encampment. Judge Chen, unaware the parties had resolved the dispute, issued a restraining order to prevent the city from removing and demolishing the shed. At Prince's request, the hearing

scheduled on the matter was removed from the court's calendar.

The remaining requests made in the motion will be heard next month before Judge Chen. And another issue has also surfaced.

Standing water at Marinship Park has fecal contamination, according to a bacteriological examination by Brelje and Race Laboratories, which was commissioned by the campers. Prince maintains there is a sewer leak somewhere causing the excessive fecal count. According to Hoffman, the city checked the bathrooms and no leak exists.

There seems to be no end in sight to the discord between the city and the camp residents, even as Sausalito's litigation costs soar. Prince says the campers will continue to take steps to ensure their safety.

"It's a political question," Prince said. "The city just doesn't want homeless people organizing themselves in their own interests."



CAMPED OUT 'Our costs on the encampment are now north of half-a-million dollars,' a Sausalito City Council member said at a recent meeting. Photo provided by Nikki Silverstein

Sausalito Admits Fecal Contamination at Homeless Encampment

By Nikki Silverstein

Nov 19, 2021

After weeks of denials, the City of Sausalito finally admitted on Wednesday that the soil at the city-sanctioned homeless encampment in Marinship Park is contaminated with concerning levels of fecal matter.

Fecal matter can spread illnesses, including hepatitis A, Salmonellosis and respiratory infections, according to the

Centers for Disease Control and Prevention.

The fecal concerns started late last month. After a powerful atmospheric river storm ended on Oct. 25, residents of the encampment noticed a foul-smelling liquid bubbling up from the soil. They reported the issue to Urban Alchemy, a nonprofit organization hired by Sausalito to monitor the camp, Robbie Powelson, camp resident and president of the Marin Homeless Union, said.

The city inspected the public bathrooms at Marinship Park on Oct. 27 and found no issues, according to Sausalito Mayor Jill Hoffman.

Powelson confirms that Patrick Guasco, Sausalito's sewer system coordinator, examined the manhole outside of the camp.

"I let Patrick Guasco know about the stuff bubbling up and he said it was highly unlikely that it's sewage," Powelson said. "Drainage out of the bathroom goes straight into the street, not into the field, was what he told me."

Troubled by potential health consequences, the campers took matters into their own hands. The day after Guasco's visit, they hired Brelje and Race Laboratories to test a sample of water collected from a puddle inside the homeless encampment. The grim results from the water analysis, which indicated an extremely high fecal count, came back on Nov. 1.

Anthony Prince, attorney for the Sausalito Homeless Union, said he immediately forwarded a copy of the lab report to Sausalito's outside counsel Arthur Friedman of Sheppard Mullin.

Powelson said he personally showed the fecal report to Sausalito City Manager Chris Zapata on Nov. 3, when Zapata visited Marinship Park.

In addition, Powelson sent the report to Guasco on Nov. 8. Guasco responded to Powelson, advising Powelson to obtain a lab analysis for enterococcus, a bacteria found in the intestines of humans and animals. When the bacteria exists in soil and water, it indicates fecal matter is present. Enterococci are opportunistic pathogens that cause millions of infections annually, according to the National Center for Biotechnology Information.

The City of Sausalito and the Sausalito Homeless Union have been embroiled in a lawsuit regarding the city's treatment of its homeless population since February. The parties, now participating in settlement negotiations, discussed the fecal issue on Nov. 8 at a settlement conference in front of Judge Robert Illman of the U.S. District Court for the Northern District of California.

Yet, on Nov. 8, Hoffman denied the city was aware of the fecal report.

“The City of Sausalito has no evidence or data indicating any issues concerning fecal matter in the water or the soil and no such evidence or data has been presented to the City,” Hoffman wrote in an email to the *Pacific Sun*.

The mayor's denial mystified Powelson and Prince. They insist Friedman and at least two Sausalito staff members, including the city manager and the sewer system coordinator, knew about the lab report showing excessive levels of fecal matter in the water sample.

“I guess the mayor is having some communication issues with Friedman and Zapata,” Powelson said.

The campers had another lab analysis conducted on Nov. 8 by Brelje and Race Laboratories, this time to test for fecal matter and the enterococcus bacteria. The results returned on Nov. 11, indicated an extremely high fecal and

enterococcus count. Prince said he immediately forwarded the report to Friedman.

Residents of the homeless camp are experiencing skin infections with open sores and throat infections. One woman has an abscess inside her mouth. Several campers have been treated at the hospital and prescribed antibiotics for bacterial infections. While they can't directly correlate their maladies to the contamination at Marinship Park, the timing of the illnesses has caused apprehension throughout the camp.

Four campers, worried about the health risks, left Marinship Park for higher ground, and pitched tents on a very visible plot of land next to Dunphy Park in downtown Sausalito. The encampment was previously located there; however, earlier this year a federal judge allowed the city to move the campers to Marinship Park. Ironically, the city said Marinship Park was safer because it has bathrooms on site and mobile showers visit twice a week.

Finally, Sausalito had their own lab analysis done, testing soil samples from areas inside and outside of the camp. Friedman conveyed the results to Prince on Wednesday: fecal coliform levels inside the encampment area are significantly higher than outside the encampment.

On Wednesday, the same day Sausalito's attorney admitted to the fecal contamination in Marinship Park, the city locked a gate to keep the relocated campers off the land near Dunphy Park and did not allow them to retrieve their tents. City workers told the campers they would be trespassing if they entered the property. The city even hired a security guard.

Apparently, city officials had no qualms about sending the four campers back to sleep in contaminated Marinship Park. Instead, on Wednesday, four campers pitched tents on the

grass in front of Sausalito City Hall. They remained at city hall on Thursday.

Prince says forcing people to sleep in feces is par for the course with the way Sausalito has managed its homeless encampment, from moving it to Marinship Park, which is known to be low-lying and flood-prone, to leaving the campers to fend for [themselves](#) outdoors during the bomb cyclone storm that leveled the camp in late October.

“The main thing is the city failed to take action for three weeks,” Prince said. “They finally had to admit through their own testing that they recognize the need to get people out of there.”

On Thursday, city staff went to Marinship Park to move the campers from the contaminated field to half of a small parking lot a few yards away from the encampment. With approximately 40 campers, and the camping area they have been given, the city is likely violating the Centers for Disease Control and Protection [Covid-19 guidelines](#) recommending that public agencies provide at least 12 feet x 12 feet of space per individual. The city is now preparing the tennis courts to accommodate the campers, which is located next to the contaminated area.

The campers want to return to the site of the former downtown encampment near Dunphy Park. Outspoken Sausalito residents had objected to that location because it was very visible. Marinship Park, located in an area zoned for industrial and maritime businesses, is out of sight from tourists and most residents.

Prince said the city assumed a duty of care by clearing the original encampment and requiring all homeless people to stay in the city-sanctioned camp in Marinship Park.

The City of Sausalito reported it **spent** more than \$675,000 on homelessness, from Jan. 1 through Oct. 14. Legal fees, coming in at \$252,000 are the largest expense. Other expenses seem questionable, such as \$1,267 for food for the police, including, of course, donuts. The city charging an expense of almost \$30,000 to remove a soil stockpile at Dunphy Park seems like creative accounting, as the soil was from the park renovation, which occurred prior to the arrival of the homeless campers.

“I think it’s time for the leaders and the people of Sausalito to decide whether they want to continue spending hundreds of thousands of dollars needlessly to fight a group of homeless people,” Prince said. “Or are they going to actually get down to the business of providing real housing?”

The court saga continues on Dec. 9, when a federal judge will hear a motion to find the city in contempt for failing to keep the campers safe.



Screenshot from video by Emilio Pineda.

Sausalito Police Arrest Freelance Journalist Covering Homelessness

By Nikki Silverstein

Dec 3, 2021

Sausalito police officers arrested a Marin photojournalist while he was working at a homeless encampment in Marinship Park on Monday evening, according to interviews with camp volunteers and residents, and a video of the arrest.

Jeremy Portje, 43, was filming at the encampment, which is located on public property, when he was arrested. An experienced photojournalist, Portje is working on a documentary about homelessness in Marin County. Police confiscated Portje's camera and gear at the time of the arrest.

Though the circumstances leading up to the arrest remain somewhat unclear, an attorney with the First Amendment Coalition, a press freedom advocacy group, said that any arrest of a journalist doing their job is cause for concern.

Luis, a volunteer at the encampment who requested that his last name not be used, said he saw the arrest and the incidents preceding it. As Luis stood on the sidewalk near the parking area at [Marinship Park](#), he noticed an officer following Portje. When the journalist set up his camera and began filming, the officer stood directly in front of the camera.

An encampment resident who also witnessed the altercation, Jeff Jacobs, believes Officer Nick White blocked the camera; however, Luis said it was Sgt. Thomas Georges. Both Jacobs and Luis said that Georges, without provocation, grabbed Portje's camera. In doing so, Georges appeared to accidentally hit himself in the chin or chest with the piece of equipment, according to Luis.

"The officer reacted to the camera hitting him," Luis said. "He started punching Jeremy."

Portje attempted to block the blows by placing his arms over his head. Georges then grabbed Portje's arms, and forced the journalist to his knees on the pavement, according to Luis. Another officer assisted in cuffing Portje, while a third officer stood by, a video of the arrest shows.

Jacobs identified the third officer involved as Sean Smagalski.

Luis and Jacobs agree that at some point during the clash, Georges threw the journalist's camera to the ground.

Georges was injured, Sausalito Mayor Jill Hoffman said in a brief email response.

Jacobs said Sausalito Police Chief John Rohrbacher pointed out a small scrape above Georges' eye just after Portje's arrest.

The Marin County Jail booking log shows two charges against Portje, a misdemeanor and a felony. However, Hoffman said there are three charges, including battery on a police officer, battery on a police officer requiring medical attention and resisting a law enforcement officer with violence. The Marin County District Attorney has not yet determined whether to press charges against Portje.

Portjes spent Monday night in jail and was released Tuesday morning on \$15,000 bail, according to Charles Dresow, a criminal defense attorney who is representing Portjes.

The arrest comes at a time of rising tensions between encampment residents and the police, leading some to speculate that Portjes' arrest was a form of retribution.

Georges, White and Smagalski are the same three officers who arrested two homeless people for camping in a downtown public park two weeks ago. Portjes recently made a public records request for the three officers' body camera footage from that arrest.

While Dresow won't comment yet on the motive of Portje's arrest, he is disturbed about the implications of arresting a journalist while he was doing his job. Of equal concern is the seizure of Portje's equipment, which contains the video of the police actions on the day of the altercation.

"My journalist client ended up on the ground," Dresow said. "It's clear the Sausalito police used force to arrest a journalist. To say this is an outrage of constitutional proportions is an understatement."

Glen Smith, litigation director of the [First Amendment Coalition](#), a San Rafael-based nonprofit which seeks to protect journalists and win access to public records, agrees.

“Anytime a journalist is arrested and has their equipment seized, it’s a matter of grave concern to the First Amendment Coalition and other journalist organizations and civil rights organizations,” Smith said.

Exhibit D

Sausalito Police Department

Sausalito PD Policy Manual

CHIEF'S PREFACE

The Sausalito Police Department Policy Manual is intended as a tool to assist members of the Department, individually and collectively, as we work together to promote public safety and enhance quality of life through our delivery of professional police services in our community. Adherence to Department Policy is mandatory and compliance enables the men and women of the Sausalito Police Department to better achieve goals and objectives, promotes accountability, and strengthens trust within our community. As outlined in this manual, all employees are responsible for familiarity and compliance with the policies contained herein.

The Policy Manual is based on current, relevant, and applicable Federal Law, State Law, Legal Precedent, and the best practices within the Law Enforcement Profession. The Policy Manual is reviewed and updated on a regular basis. It is available to all employees and also to the community on our Department web page. The manual acts as a compass to guide the members of our Department as we move forward in our journey of collaborative problem solving with other stakeholders in creating a better, safer Sausalito. At the same time, the Policy Manual is founded in the Sausalito Police Department's rich and long established history of providing the very best in traditional, professional police service. While it is understood that no policy, rule, or regulation can completely govern every facet of our complex and unique profession, employees must never forget that in the eyes of the people we serve, the actions of each member of the Sausalito Police Department reflect our character, professionalism, and integrity.

John Rohrbacher, Chief of Police

Exhibit D

**Policy
1019****Sausalito Police Department**
Sausalito PD Policy Manual

Personnel Complaints

1019.1 PURPOSE AND SCOPE

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

1019.2 POLICY

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

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

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

1019.3 PERSONNEL COMPLAINTS

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

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

1019.3.1 COMPLAINT CLASSIFICATIONS

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

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

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

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

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1019.3.2 SOURCES OF COMPLAINTS

The following applies to the source of complaints:

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

1019.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

1019.4.1 COMPLAINT FORMS

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

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

1019.4.2 ACCEPTANCE

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

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

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

1019.4.3 AVAILABILITY OF WRITTEN PROCEDURES

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

1019.5 DOCUMENTATION

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

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

1019.6 ADMINISTRATIVE INVESTIGATIONS

Allegations of misconduct will be administratively investigated as follows.

1019.6.1 SUPERVISOR RESPONSIBILITIES

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

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

The responsibilities of supervisors include but are not limited to:

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

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

1019.6.2 ADMINISTRATIVE INVESTIGATION PROCEDURES

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

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

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

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

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

1019.6.3 ADMINISTRATIVE INVESTIGATION FORMAT

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

Introduction - Include the identity of the members, the identity of the assigned investigators, the initial date and source of the complaint.

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

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

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

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

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

1019.6.4 DISPOSITIONS

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

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

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

Not sustained - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.

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

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

1019.6.5 COMPLETION OF INVESTIGATIONS

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

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

1019.6.6 NOTICE TO COMPLAINANT OF INVESTIGATION STATUS

The member conducting the investigation should provide the complainant with periodic updates on the status of the investigation, as appropriate.

1019.7 ADMINISTRATIVE SEARCHES

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

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

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

1019.7.1 DISCLOSURE OF FINANCIAL INFORMATION

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

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

1019.8 ADMINISTRATIVE LEAVE

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

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

1019.9 CRIMINAL INVESTIGATION

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

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

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

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

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1019.10 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES

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

1019.10.1 DIVISION COMMANDER RESPONSIBILITIES

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

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

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

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

1019.10.2 CHIEF OF POLICE RESPONSIBILITIES

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

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

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

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

1019.10.3 NOTICE OF FINAL DISPOSITION TO THE COMPLAINANT

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

1019.10.4 NOTICE REQUIREMENTS

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

1019.11 PRE-DISCIPLINE EMPLOYEE RESPONSE

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

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

1019.12 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE

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

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1019.13 POST-DISCIPLINE APPEAL RIGHTS

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

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

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

1019.14 PROBATIONARY EMPLOYEES AND OTHER MEMBERS

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

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

1019.15 RETENTION OF PERSONNEL INVESTIGATION FILES

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