CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Chuck Reed
MAYOR

October 22, 2014

United States Attorney
Honorable Melinda Haag
Northern District of California
Federal Courthouse
450 Golden Gate Avenue, 11th Floor
San Francisco, CA 94102
via regular mail and Fax: (415) 436-7234

Dear U.S. Attorney Haag,

I write to ask for your public corruption unit to commence an investigation into recent activities in San José that have generated allegations that imply that San José police officers have used their authority to serve their own interests rather than those of the citizens who they are sworn to protect.

The San Jose Mercury News recently published allegations of a woman who was in our police academy about comments made by the president of the police union during an officially sanctioned presentation on the first day of training:

> **"He said that our employment with the department did not help the POA's cause in proving Measure B was killing the department's recruitment capabilities. He urged us to find jobs elsewhere."** (Elyse Rivas, San Jose Mercury News, October 19, 2014, p.A19) A copy of the article is attached.

These actions appear to be part of an ongoing, coordinated effort by the Police Officers' Association to undermine the San José police department's recruiting and hiring efforts in order to achieve personal and political benefits.

Previously, the president of the association wrote to police officers that it would be a "lie" and "immoral" to tell prospective police recruits that things will get better. A copy of his message is attached.

The Police Officers' Association also implemented a boycott of retired officers to prevent them from assisting the city in performing backgrounds for prospective new officers. A copy of the Membership Alert is attached.

The ability of the department to recruit and hire new officers has been made a central issue in the city elections by the Police Officers' Association, and police officers have used their authority to undermine the department's recruiting and hiring efforts in order to build support for favored

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candidates who will reverse voter approved pension reforms and grant police officers higher pay and benefits.

These coordinated efforts to sabotage the San José Police Department's recruiting and hiring efforts for political or personal gains are worthy of your attention, because they are an egregious breach of public trust.

I anticipate that on November 4, 2014, the City Council will appoint an independent investigator to determine the facts in these matters and any information and records found in that investigation will be available for your review.

Sincerely,

Chuck Reed

Chuck Reed
Mayor

San Jose police recruit: Union told class to quit right away for good of the department

By Elyse Rivas Special to the Mercury News
Posted: 10/17/2014 02:00:00 PM PDT

MercuryNews.com

Over the years, my family and I have watched our neighborhood transform from a relatively safe place to a neighborhood plagued by drug dealers, violent crime and an alarming number of homicides. Crime around the area of Tully and King Roads has grown like a cancer; and like cancer, the problem seems to be spreading throughout the city.

I wanted to be part of the solution. I applied for and was offered a job with the San Jose Police Department in May.

As a recruit, I was required to attend the six-month San Jose Police Academy program. During my time in the Academy, I was ranked academically number two in my class by mid-term. But then, a few weeks before graduation, I was forced to resign.

I had never before handled a firearm, and I was told by one of the Academy's sergeants that he would recommend my termination due to my poor firearm safety training performance. I believe that with additional training, I could have passed the safety training component. But this is not about sour grapes. Rather, it is a cautionary tale about what I believe is a serious problem within the San Jose Police Department.

The San Jose Police Officers Association (POA) constantly complains that the department is understaffed and overworked. The department's leadership says it is unable to fill the vacancies in its incoming Academy classes. My class consisted of only 29 recruits; when I left, the number had dropped to 21.

The feeling I got while I was there was that the rank and file officers are not invested in building a bigger and better police force for San Jose. I believe this because on the first day of the Academy, our orientation included the opportunity to meet the Police Officers Association's president, Jim Unland.

In no uncertain terms, he blamed Measure B for the departure of hundreds of officers -- and he told us that it would be better for the Department and for us if we would just quit, right then and there. He said that our employment with the Department did not help the POA's cause in proving Measure B was killing the Department's recruitment capabilities. He urged us to find jobs elsewhere. He told us all of this as if he were doing us a favor.

As we listened to Unland, most of my fellow recruits and I knew that our very presence in that room belied the POA's claim. Measure B had obviously not deterred us. To the contrary, we were excited about the opportunity to join the Department.

From a pool of over 1,000 applicants, my class yielded 29 hires. This means that it is harder to get into the San Jose Police Academy (with its 2.9 percent admission rate) than it is to be admitted to Harvard (with its 5.9 percent admission rate). Has the Department deliberately kept the number of recruits artificially low at the behest of the POA? If so, then Unland and his POA

members have done a major disservice to the people who live and work in San Jose.

Maybe I didn't fit the San Jose police mold because I am a woman, or because I am outspoken, or because I am a lawyer. I was tossed from the Academy because of my poor firearm safety training performance, without being provided the opportunity to undertake additional Department training. I would have thought that a police department so desperately in need of good recruits would have gone the extra mile to provide training. It didn't; and I have moved on.

I will be fine. But I worry for my community. I can't help thinking that there is something seriously amiss in the San Jose Police Academy.

Elyse Rivas lives in San Jose and is substitute teaching until she resolves her career goals. She wrote this for this newspaper.

Jim Unland

President's Message

The Ethics Of Recruiting

As the Department searches for its next recruiting sergeant, I started thinking about the ethical issues involved in selling a product you know to be second rate and full of financial traps. We all know that recruits hired by SJPD will be placed into Measure B's 2nd Tier pension plan (the worst police pension plan in the State). We know that if 2nd Tier officers are seriously hurt on the job, they face removal from the Police Department and may be offered a civilian job somewhere else in the City. This of course comes with a transfer to the Federated retirement plan, a new union, and a new retirement age of 65. This "guaranteed job" will also come with a few bonuses such as bumping rights from other employees based on seniority, layoffs and possible termination if you do not complete probation.

ADDING TO ALL THIS UNCERTAINTY, WE ALSO KNOW that 2nd Tier members must pay 50% of all unfunded liability costs within their plan with no cap. How high those costs could rise is anyone's guess, but they certainly carry extreme long-term financial risks to our members and their families.

So let's imagine you are the new recruiting sergeant and you find yourself at a job recruiting function. A young woman comes up to you and says she has heard some fine things about the SJPD and was thinking of applying. She goes on to tell you that she is currently taking Administration of Justice courses and is 2 years away from earning her college degree. She currently lives at home with her parents and works part time as a server. She also is a single mother with a 2 year old daughter and is looking for a new career to better support her family.

"I have heard that some of our 'satellite recruiters' are telling prospective applicants that 'things will get better'. A statement such as this, backed not by any quantifiable facts but instead by only a sense of ungrounded optimism is, in my view, a lie. We do not know that things will get better and to tell someone so, especially from a position of authority, is immoral."

As a new recruiting sergeant, what do you tell this woman?

She does not yet have the life experience or understanding of pensions to ask you anything about Measure B. Do you bring it up? Do you tell her that many of our officers must accept a disability pension at some point in their career, so the chances are very good that she could suffer a career-ending injury?

Do you tell her that under Measure B's 2nd Tier rules, if she receives a career-ending injury as a police officer, in all likelihood she may be offered a civilian job somewhere else with the City? Do you tell her that in her new civilian position, there is a good chance she will go years without a raise?

Do you tell her that approximately 21% of her paycheck will go to pension costs and those costs can rise exponentially when unfunded liabilities creep into the plan? Do you explain how this might affect her ability to provide for her daughter, or do you withhold these simple truths?

We know that as police officers we are not to lie and doing so can quickly get us fired or placed on the "Brady List"

with the Santa Clara County District Attorney's Office. I wouldn't expect our new recruiting sergeant to intentionally lie or mislead a prospective applicant if directly asked a Measure B related question. It is the lie of omission I worry about. If the sergeant isn't asked, does he have a moral obligation to explain the downside anyway? I believe he does.

It occurs to me that not too long ago, our current Assistant Chief of Police taught a course to the entire Police Department on ethics. I would love to know the direction our Chief's Office will give the new recruiting sergeant on this issue. Is it a lie to omit the facts? Is it morally right to take advantage of a young adult's lack of life experience to meet a recruiting quota?

I have heard that some of our "satellite recruiters" are telling prospective applicants that "things will get better". A statement such as this, backed not by any quantifiable facts but instead by only a sense of ungrounded optimism is, in my view, a lie. We do not know that things will get better and to tell someone so, especially from a position of authority, is immoral. We do, however, know what the City Charter says will happen if one of our Tier 2 officers suffers a career ending injury – and it's an ugly truth. □

Editor's Note: *Please send any comments to Jim Unland at:* ***president@sjpoa.com***

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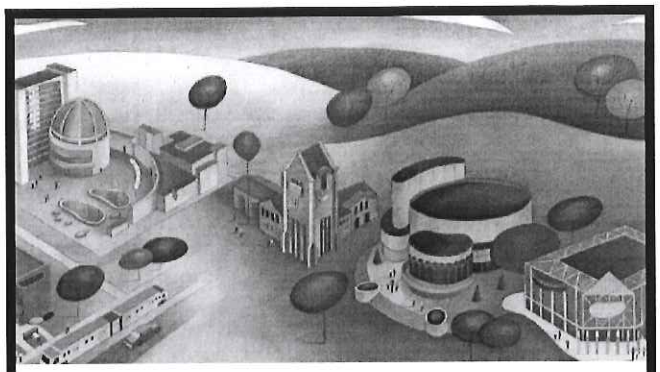

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NCUA

From: "Constant, Pete" <pete.constant@sanjoseca.gov>
Date: October 18, 2013 at 6:58:57 PM PDT
To: "CMO: Debra Figone" <Debra.Figone@sanjoseca.gov>, "Alex Gurza" <alex.gurza@sanjoseca.gov>, "COS Mayor's Office: Pete Furman" <Pete.Furman@sanjoseca.gov>
Subject: POA letter to retirees

I wanted to be sure you saw this:

AN IMPORTANT MESSAGE FROM THE POA TO ALL RETIREES

Oct. 14th

To our retired brothers and sisters, we need your help!

The City is planning on hiring retired police officers as independent contractors in a civilian capacity to conduct the backgrounding function of the Police Department's hiring process. The active members of the SJPOA are asking all of you NOT to participate.

As you know, the background process is critical to ensuring the high standards of the SJPD. The POA's position continues to be that this job is best done by active, full-time police officers.

Many of you know that last year Chuck Reed and his Council majority (Liccardo, Nguyen, Constant, Oliverio, Khamis and Herrera) outsourced the job of backgrounding Department applicants. They did so against the wishes of the POA and ignored repeated warnings that their outsourcing plan would not work. The POA went to arbitration over the issue of outsourcing police work. We lost that fight and Chuck Reed went ahead with his plan to outsource backgrounds.

The POA conveyed to the City our concerns about the selection process, quality control and the ability of this new model to handle this important work. The City told us that only hand selected retired SJPD officers with solid reputations would be used. The City hired two firms who, in turn, hired retired police officers to conduct the backgrounds. It didn't take long for the City to realize that they did not have enough

retired officers to do the job. Before we knew it, retired officers from other agencies were doing the backgrounds of future SJPD officers. At this point, we could find no one who could or would explain the hiring and selection process. After one year, we have been told that the City has decided not to renew the contracts with the two outside firms.

Instead, the City has decided to hire retired officers directly as independent contractors in a non-sworn, civilian capacity to conduct the background checks.

We want to convey to our retirees how serious a breach in trust, brotherhood and solidarity we would take anyone's participation in this program. The active members of this Association consider you family. That sentiment must be a two-way street. We need you to have our back.

The actives have shown an incredible amount of unity over the last four years. As you know, we are in a fight that has devastated our ranks. Our pension costs have ballooned beyond anyone's imagination and every attempt at negotiating legal reforms to our pensions has been rejected by the City in favor of the unlawful Measure B. It is a reality that today's active SJPOA members are paying over twice the amount many retired members paid for retiree healthcare (9.5% of pay as opposed to 3.7%). That extra money supplements the retiree healthcare fund and keeps it solvent so that current and future retirees can enjoy the benefits they were promised. At the same time, active member POA dues were increased 50% while retiree's POA dues have been kept at $5 per month.

It is not easy for our active members to continue to make these payments. We are in the third year of a 10% wage giveback. Our last raise (1.5%) was in 2008 and 1.25% of that was immediately taken back to pay for retiree healthcare. Our active officers are taking home less today than they did in 2004. During that same time period, retirees have rightfully continued to receive their yearly 3% COLA. Many retirees take home more money than our actives.

Active members honor your service; you did your time here, paid your dues, and you have earned the retirement you enjoy today. We are happy for you and maybe even a bit jealous. Your work, dedication and sacrifice over the course of your careers built this Department. We are proud to carry on the traditions you began.

One of those traditions is UNITY. You stood together during the blue flu

and other challenges. Our current members have shown the same UNITY. At a time when all of our members desperately need a higher wage, the active membership stood together and voted down a 3% wage restoration by a vote of 954 to 2, virtually unanimous.

There may be some retirees who will be interested in doing the background work. They'll make a few extra bucks, feel like they're still a part of things here, keep busy and even do all they can to find quality applicants. But at what cost? If retirees start to do this job, then what's next, the training unit, permits or perhaps the range? With every outsourced position, an active officer is bumped.

I want to remind the retirees who would consider taking this job of the assault the City has carried out against you. Chuck Reed and his Council minions are currently trying to the gain the authority to suspend your COLA, they have already suspended your SRBR payments and are fighting to take them away forever. They have moved you to a different healthcare plan resulting in increased costs to you. Think about it for a minute. We are asking you to stand with us, like we stood by you in challenging various parts of Measure B that threaten to take away rights from retirees. If any retiree takes the job, working for the City as a backgrounder, they are siding with the entity responsible for the attacks on their hard earned benefits. Please don't do it.

We can never allow the City to manipulate and divide us this way. If the active members of this Association ever reach a point where they view the retired members of this Association detrimentally, we are done. The damage wrought by such a turn of events would be devastating. As an active member who will soon join the ranks of the retirees, I can tell you that the actives would come out on top of that fight. The active members of this Association have shouldered the costs of the litigation over Measure B. This fight will cost the members millions of dollars. The outcome of this legal battle will affect actives and retirees alike.

Officer Devlin Creighton receives a disability retirement. He was hit by a motorist while on motorcycle patrol. He broke his neck and back. He was not yet a top-step officer at the time and lives off of a 50% retirement based on Step-5 wages ($49,200 per year). During this last year he was supplementing his income by working for one of the firms hired by the City to do the backgrounding for SJPD.

He was ready to sign up with the City as an independent contractor and continue that work. That is until he heard of our call to boycott the job. He came to me and told me that he would not cross the line. He

understood the larger picture and would look for other work. It was not easy for me to make that ask of him. If he can support us, if he can stand shoulder to shoulder with us if he can forgo the temptation of the City's easy money, then surely you can as well.

We know that you support the active members and are there for us. You earned the peace that comes with retirement. What we are asking of you today is to stand with us and fight the tyranny coming out of City Hall. Do not sign up for this latest scheme by Chuck Reed to outsource our police department. Your active brothers and sisters need you to say NO to this latest divisive and destructive scheme being pushed by City Hall.

Jim Unland <president@sjpoa.com>