



CITY OF PACIFIC GROVE
300 Forest Avenue □ Pacific Grove, California

December 22, 2020

ALLEGED SOCIAL MEDIA POST BY POLICE OFFICER

Bill Peake, Mayor
City of Pacific Grove
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I'm providing this statement in response to ongoing public requests for additional information. It contains all information currently made available to me. My expectation is that more information will become available in time.

On November 29, 2020 the Police Chief issued a statement that a police officer allegedly posted disparaging remarks on social media, was placed on administrative leave and an independent investigation had begun.

The Chief has contracted with Kramer Workplace Investigations.

City Council does not have a direct, active role in personnel processes (City Charter Articles 19(b) and 21). The Council is responsible for general administrative oversight of performance and determines legislative processes that apply to City staff through the City Manager.

Further clarification of the process underway follows. This process ensures that all relevant protocols and laws are followed.

PUBLIC SAFETY OFFICER PROCEDURAL RIGHTS

The California Public Safety Officers Procedural Bill of Rights Act (POBR) (Govt C §3300) was first enacted in 1976. Section 4.20.410 of the Pacific Grove Municipal Code applies this process to our public safety staff and provides rights to a Police Officer who is under investigation or is subject to discipline. POBR rights interplay with, but do not limit, other employment rights that arise under the separate *Skelly* and *Lubey* doctrines.

Our City Code requires notice that specifies grounds for any investigation together with supporting materials and allows the employee a minimum of 10 days to respond.

POBR requires specific procedural safeguards:

- Any interrogation must occur on duty time. The Officer must be compensated.

- Prior to the interrogation, the Officer must be informed of the nature of the investigation.
- The officer must have “prior notice” of an interview in time to consult with a representative who is also allowed to be present. Questioning is time-limited; also, only two persons may pose questions.
- The officer may record the interview and receive:
 - transcribed notes made by a stenographer.
 - reports, complaints, or statements made by or to the investigator.
 - any recording of the interview.

If the City chooses to impose discipline, actual advance notice of the proposed discipline must be given to the Officer via a Letter of Intent and Notice of Adverse Action within 30 days of City’s decision.

If the City does not follow these processes required by these laws, an Officer may obtain an injunction, an award of damages, attorney’s fees, and may also have resulting discipline vacated.

Next, the Officer must be granted an opportunity to administratively review the Chief’s notice of intent to impose discipline. This appeal includes an opportunity to:

- confront and cross-examine witnesses.
- establish a formal record of the circumstance causing the discipline.
- attempt to convince the City to reverse its decision; and
- provide proof of mitigating circumstances.

In addition, the California Penal Code (§832.5) provides Public Safety personnel records and information are confidential and shall not be disclosed, unless the disclosure is to the district attorney, attorney general, or grand jury.

The sole exception to confidential treatment of Police Officer records are records that relate to:

- discharge of a firearm or use of force resulting in death or great bodily injury.
- a sustained finding of sexual assault; or
- a sustained finding of dishonesty relating to investigation or prosecution of a crime.

PERSONNEL COMPLAINTS PROCESS

Applying the POBR process, the Police Chief makes all preliminary decisions to address allegations of officer misconduct, including deciding whether to investigate and selecting the person who should conduct the investigation. If an investigation reveals possible officer misconduct, the Police Chief makes the first decision as to what action, including discipline, should be considered.

A determination by the Chief to impose discipline next triggers further notice and review opportunities as referenced in POBR, *Skelly* and *Lubey*. Ultimately, following exhaustion of

the officer's due process rights, the Chief makes the final decision whether to impose discipline.

After receiving notice of the discipline (if any), the officer then has the right to file an administrative appeal of the discipline. Pacific Grove personnel rules section 4.20.410 provides an appeal hearing before the City Manager who presides at the hearing, receives witness testimony, considers written evidence, and then writes a decision. The appealing employee has the right to determine whether the hearing is open to the public or closed.

The hearing on appeal usually commences within 45 days following the filing of the appeal, The City Manager's decision is the final step in the City's administrative process.

A report of the action of the City Manager is required by law to be submitted in writing to the Council, for information only, unless the appealing employee requests the report not be made. In any event, the City Manager's action shall be final.

JUDICIAL REVIEW PROCESS

If the officer chooses to further contest the City's imposition of discipline, the officer can file a petition for writ of mandate in the Monterey County Superior Court.