

INTRADEPARTMENTAL CORRESPONDENCE

December 7, 2022

1.13

TO: The Honorable Board of Police Commissioners

FROM: Chief of Police

SUBJECT: RESPONSE EVALUATING THE EFFECTIVENESS OF ALL-CIVILIAN BOARD OF RIGHTS (ORDINANCE NO. 186100)

RECOMMENDED ACTION

That the Board of Police Commissioners REVIEW and TRANSMIT the Department's response to the Los Angeles City Council (City Council) containing an evaluation of all-civilian Board of Rights.

DISCUSSION

In 2019, City Council passed Ordinance No. 186100 (the Ordinance), which provided sworn employees of the Department facing a Board of Rights (Board) the option of having their Board composed of three civilian hearing examiners. This change was designed to remain in place for two years, after which its effectiveness would be evaluated.

The Department has observed that all-civilian Boards are resulting in an increased frequency in which sworn employees who have committed serious misconduct are not being removed from their positions. Similarly, all-civilian Boards are proving substantially more lenient reducing every recommended penalty in each Board completed this year.

The attached letter presents the background of the Ordinance, quantitative and qualitative analysis of all-civilian Boards, and a recommendation that the Council review the impact resulting from changes implemented by the Ordinance and work with the Department and labor to effectuate a Board of Rights process that would increase fairness and accountability in police disciplinary matters.

If there are any questions, please have your staff contact Deputy Chief Michael P. Rimkunas, Commanding Officer, Professional Standards Bureau at (213) 996-2772.

Respectfully,



MICHEL R. MOORE
Chief of Police

Attachment

LOS ANGELES POLICE DEPARTMENT



MICHEL R. MOORE
Chief of Police

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December 7, 2022

The Honorable City Council
City of Los Angeles
200 North Main Street, Room 395
Los Angeles, California 90012

Dear Honorable Members:

RESPONSE EVALUATING THE EFFECTIVENESS OF ORDINANCE NO. 186100

I. Overview and Purpose

Based on the Charter of the City of Los Angeles (Charter), non-probationary sworn Los Angeles Police Department (Department) employees may not be removed, or otherwise separated from the service of the Department (other than by resignation), except for good and sufficient cause shown upon a finding of guilty of the specific charge or charges assigned as cause or causes after a full, fair, and impartial hearing before a Board of Rights. After completing an internal investigation, the Chief of Police (Chief) must order an accused employee to be sent to a Board of Rights (Board) for a hearing on potential termination.

Prior to 2019, a Board was composed of one civilian hearing examiner and two sworn members of the Department command staff, at the rank of Captain or above. In 2017, Los Angeles voters amended the Charter through the passage of Measure C, permitting the Los Angeles City Council (Council) to adopt an ordinance offering an all-civilian Board.

In 2019, Council passed Ordinance No. 186100 (the Ordinance), which awarded sworn employees of the Department facing a Board the option of having their Board composed of three civilian hearing examiners. This change was designed to remain in place for two years, after which its effectiveness would be evaluated. This document serves as the Department's evaluation of the Ordinance.

II. Background

A. Rules of a Board

A Board is an administrative tribunal charged with conducting an internal hearing into alleged sworn employee misconduct. The procedures for a Board are detailed in Section 1070 of the Charter. There are two types of Boards: opted and directed. Opted Boards occur when a sworn employee disagrees with an adjudication on a disciplinary matter or its penalty (and has received up to a 22-day suspension). When a sworn employee is only contesting the penalty, the sworn employee may stipulate to guilt on the allegations in the complaint and argue only for a reduced penalty. Regardless of whether the sworn employee is challenging guilt and the penalty, or just the penalty, the Board may decrease, increase, or keep the penalty the same. Directed Boards occur when the Chief believes that the sworn employee should be removed from the Department.

In either case, the Board is comprised of three hearing examiners. Until the passage of the Ordinance, two of the examiners were command staff officers at the rank of Captain or above, and the remaining member was a civilian hearing examiner. Each was randomly selected. The Ordinance allows the accused employee to instead select a Board composed *solely* of civilians, with no Department command staff member.

The Board operates in a quasi-judicial environment. The Department presents evidence against the accused employee, who may be represented by an attorney (generally provided by the sworn employee's union, the Los Angeles Police Protective League [LAPPL]) or a representative of the employee's choice. Unlike a legal proceeding in court, the Board's rules are quite relaxed. There is a strong preference given to hearing all evidence in a search for the truth.

When a Board finds an accused employee "Not Guilty," there is no further internal discipline process available; the accused employee generally returns to work. When a Board returns a guilty verdict, the Board may impose any penalty up to and including removal (termination). The Chief may *reduce*, but not *increase* a Board penalty.

B. History of the Ordinance — Implementing All-Civilian Boards

The LAPPL worked to create the new, all-civilian Board composition. On January 6, 2017, prior to the formation of the all-civilian Board, the Chief Legislative Analyst (CLA) prepared a report for the Council (Council File No. 16-1331). This report made several observations regarding civilian members of Boards for hearings between 2011 - 2016. In pertinent part, the CLA Report noted:

1. Civilian members were consistently more lenient than sworn members. In all 39 cases where the Chief recommended termination, but the Board ultimately found the sworn employee Not Guilty, the civilian member voted for acquittal.

2. Civilian members consistently voted for lesser punishments or acquittals in cases dealing with demotions or suspensions. During the period considered, four such cases were determined by a two-to-one margin. In all of these, the civilian member was the one vote for a more lenient outcome.

III. Numerical Analysis of All-Civilian Boards – 2019 to 2022

Several patterns have emerged in the years since the implementation of the newer format.

A. Sworn Employees are Now Overwhelmingly Pursuing All-Civilian Directed Boards

During 2019, 2020, and 2021, the percentage of sworn employees directed to a Board (for removal) who then selected all-civilian boards grew from 62 percent, to 88 percent, to 91 percent respectively.¹ For 2022, there are 41 sworn employees that the Chief has directed to a Board for removal year-to-date. Of those 41 directed Boards, only 34 employees completed the selection for the Board's composition, with 100 percent choosing all-Civilian.²

B. When Sworn Employees Pursue an Opted Board, they Choose All-Civilian Boards

Once the all-civilian boards became an option, accused employees largely selected this format. In the three years prior to the new format, there were a total of 65 opted Boards selected (27 in 2016, 17 in 2017, and 21 in 2018). In the years since then, the totals are:

2019:	39, with 20 all-civilian (51%)
2020:	26, with 25 all-civilian (95%)
2021:	31, with 31 all-civilian (100%)
2022:	35, with 35 all-civilian (100%)

Given the CLA's report (detailed above) and the resulting outcomes determined by all-civilian Boards, it is not surprising that sworn employees are overwhelmingly opting for all-civilian Boards.

¹ In actual numbers, the Directed Boards from 2019 to 2022 were as follows:

2019 – 16 of 26 (62 percent) employees selected all-civilian examiners for their directed Board
(Note: The Ordinance became effective in June 2019, and only sworn employees directed to Boards after the effective date had the option of selecting an all-civilian Board.)

2020 – 38 of 43 (88 percent) employees selected all-civilian examiners for their directed Boards

2021 – 42 of 46 (91 percent) employees selected all-civilian examiners for their directed Boards

2022 – 34 of 41 (83 percent) employees directed to a Board are proceeding with all-civilian examiners. One employee settled the case prior to commencing the Board, and six failed to apply in a timely manner (see note below). For employees who applied in a timely manner, 34 of 34 (100 percent) elected all-Civilian.
(through October 15, 2022)

² Six employees failed to apply for a Board hearing in a timely manner. In those instances, the Chief of Police is permitted to select a traditional Board composition on their behalf. One employee settled prior to commencing a Board.

IV. All-Civilian Boards Find Sworn Employees Guilty of Misconduct but Often Fail to Remove Them

While it is rare, the Chief may recommend that a sworn employee be terminated from their employment based on acts of serious misconduct.³ The Charter, however, designates the Board as the final tribunal to confirm or veto the Chief's recommendation of removal. Under the all-civilian Board model, it has become common for the Chief's recommendation to be rejected.

For example, during 2020, Boards were completed for 18 sworn employees who were recommended by the Chief for removal. The misconduct in these cases included injuring and threatening to kill a spouse during a domestic violence incident, insubordination by failing to submit to an internal affairs interview after being ordered to, committing Worker's Compensation Fraud, and accessing and disseminating sensitive information without a right or need to know. Of those recommended for removal, 12 selected an all-civilian Board. All 12 were found guilty of the misconduct alleged. However, only three of those 12 (25 percent) were removed. In contrast, in the six cases where two sworn members served on the board, four of six (67 percent) were removed.

Similarly, in 2021, the Chief recommended 46 sworn employees for removal. Forty-two selected an all-civilian Board, three selected Board panels with sworn and civilian members (these were Chief's picks due to the employee not participating in selection process), and one began retirement before Board selection. To date, of the 46 sworn employees directed to a Board for removal in 2021, eight were removed for failing to abide by the City's vaccine mandate, seven were removed for reasons other than vaccine mandate, 17 received reduced penalties, three were found Not Guilty, six retired/resigned, and five Boards are still pending.⁴

The combination of more sworn employees choosing all-civilian Boards and those Boards not removing the employees resulted in approximately 50 percent fewer removals. Thus, the authority of the Chief to remove employees found guilty of serious misconduct is eroded by this change. In turn, this undermines the ability of the Department to retain only those who have the character and integrity to serve as Los Angeles Police Officers. Ultimately, this negatively impacts the public's trust and confidence in the Department and the system in general.

³ Between January 2019 and October 15, 2022, the Chief has recommended a total of 177 employees for removal from the Department. Based on an approximate sworn size of 9,255 employees, this is approximately 1.9 percent of the Department. Of those recommended for removal, 31 had already resigned or retired by the time the internal investigation was completed.

⁴ Of the 46 directed Boards in 2021, 10 related to a failure to comply with vaccine mandates. Six Boards were closed as a result of the accused employee retiring or resigning; this includes one Board for a vaccine mandate.

V. Examples of Sworn Employees Who Were Not Removed Show the True Cost of All-Civilian Boards

While the statistics provide a sharp overview, anecdotal examples show the real implications of all-civilian Boards. For example, in one all-civilian Board, two partner officers were involved in an unauthorized vehicle pursuit, in which it was later discovered that they were involved in a traffic collision resulting in extensive damage to their police vehicle. Instead of reporting the traffic collision, as required, they left the scene, returned the vehicle to the station, and obtained another vehicle to continue patrol. The damage was discovered by the divisional mechanic one month later. Only a review of video footage revealed the officers' involvement. They were accused of failing to report the collision, failing to notify a supervisor regarding the involvement in a vehicle pursuit, and providing false and misleading statements to the investigating officer. Again, with video evidence in hand, the all-civilian Board failed to remove these sworn employees by finding them guilty but imposing only a 45-day suspension.

Similarly, one case involved an off-duty employee who admitted to drinking between twelve and seventeen beers before driving to a convenience store to purchase and drink three more. Despite being heavily intoxicated, the sworn employee drove away from the store and negligently discharged his firearm—nearly striking an on-duty law enforcement officer from an outside agency. The sworn employee did not stop and instead drove away to his home, colliding with his garage as he entered. The following morning, the employee removed and secreted the bullethole-damaged vehicle window and drove to a collision repair center, where the employee paid cash for a repair. Hours later, the employee admitted and notified a supervisor of what occurred. Although the sworn employee committed potentially deadly misconduct, the Board imposed just a five-day suspension.

In another directed Board, a sworn employee was accused of sexually harassing a subordinate. The all-civilian Board found the accused employee guilty of “sending unwanted, sexually-explicit text messages,” imposing a paper penalty of an Official Reprimand. Oddly, in so doing, the Board also found the same accused employee not guilty of “inappropriately contacting a subordinate.”

It is notable that in each of these cases, the Department now has an employee whose risk management profile is severely problematic. Their ability to do traditional police work is limited or eliminated, and they will likely be performing clerical work for much of the remainder of their careers.

VI. All-Civilian Boards Now Impose Lesser Penalties in All Opted Hearings

As noted above, sworn employees are now electing all-civilian Boards for all opted Boards. More importantly, opted Boards have returned a lesser penalty—or not guilty—in all 19 opted, all-civilian Boards convened in 2022. Of the 19 all-civilian Boards completed year-to-date, 10 Boards resulted in not finding guilt (i.e., “not guilty” or “out of statute”), while an additional nine resulted in lesser penalties.

For example, the Chief of Police recommended a 15-day suspension for an employee who used a Department-issued identification card to avoid paying for parking in their personal vehicle on multiple occasions—and who later provided false statements in justifications for doing so. The all-civilian Board found this employee not guilty.

Another sworn employee used two foreign-language curse words as an insult to a suspect during an arrest. The Chief recommended a ten-day suspension for the profane discourtesy. The sworn employee requested an opted Board and pled guilty to the charge—arguing only for a lesser penalty. Despite the accused employee pleading guilty to the charge, the Board nevertheless found the employee not guilty.

Similarly, the Chief of Police recommended a five-day suspension for a sworn employee who conducted a search of a person's property without legal justification. The all-civilian Board reduced the penalty to a Official Reprimand.

A chart with the results of all opted, all-civilian Boards completed in 2022 is shown below.

Opted Board #	COP Recommendation	Board Penalty	Outcome	Allegation Type
1	10 Days	Not Guilty	Not Guilty	Discourtesy
2	5 Days + Demotion	Demotion	Lesser Penalty	Neglect of Duty
3	15 Days	5 Days	Lesser Penalty	Neglect of Duty
4	2 Days	Official Reprimand	Lesser Penalty	Sexual Misconduct
5	5 Days	2 Days	Lesser Penalty	Neglect of Duty
6	2 Days	Official Reprimand	Lesser Penalty	Discourtesy
7	2 Days	Not Guilty	Not Guilty	Insubordination, Improper Remark
8	2 Days	Official Reprimand	Lesser Penalty	Neglect of Duty
9	2 Days	Out of Statute	Out of Statute	Unbecoming Conduct
10	10 Days	Official Reprimand	Lesser Penalty	Detrimental Workplace Behavior
11	7 Days	Not Guilty	Not Guilty	Unauthorized Force
12	2 Days	Official Reprimand	Lesser Penalty	Unauthorized Tactics
13	15 Days	3 Days	Lesser Penalty	Discourtesy
14	5 Days	Not Guilty	Not Guilty	Unbecoming Conduct
15	5 Days	Official Reprimand	Lesser Penalty	Search Violation
16	10 Days	Not Guilty	Not Guilty	Neglect of Duty
17	3 Days	Not Guilty	Not Guilty	Neglect of Duty, Unbecoming Conduct
18	15 Days	Not Guilty	Not Guilty	Neglect of Duty, False Statements
19	22 Days	Not Guilty	Not Guilty	Neglect of Duty

As the above chart confirms, sworn employees are able to avoid appropriate discipline by opting for an all-civilian Board.

VII. Civilian Hearing Examiner Insight

The Advocate Section of Internal Affairs Division surveyed 26 civilian hearing examiners for their perspective on the ideal composition of the Board. In broad categories, 21 examiners believed the Board of Rights proceedings were enhanced by having sworn members on the panel, two were neutral, and three believed all-civilian Boards were preferred.

Approximately half of those surveyed also stated that including a sworn member of the Department provided a better understanding of police terminology and business practices. Only one believed it was procedurally unfair to have sworn members on the panel to offer insight on police practices.

VIII. Department Actions Taken to Address Specific Concerns

Although the efficacy of all-civilian Boards is in question, the Department has taken actions to address specific concerns identified internally. First, the Department recently published the Thirteenth Edition of the Board of Rights Manual. This revision to the rules and procedures governing the conduct of a Board implemented several targeted remedies.

Critically, the Thirteenth Edition now imposes a specific requirement that, when finding an officer guilty of an offense, the Board's penalty rationale include a consideration of the sworn employee's ability to perform the essential functions of a law enforcement officer. This change is intended to ensure penalties reflect the seriousness of the offense, such as dishonesty, that inhibit an employee from testifying in court, a critical function of a peace officer.

The Thirteenth Edition also instructs that hearing examiners may not engage in policy nullification. That is, hearing examiners are directed that they may not set aside the weight of the evidence proving a charge because they do not agree with a policy of the Department.

Additionally, the Department is transitioning to attorneys as professional advocates to present Boards. The adoption of all-civilian Boards concided with a shift towards a more formal legal process, and attorneys working for the Department are best suited to match the legal capabilities of the accused employees' attorneys.

IX. Conclusion

The Department understands and respects the right of sworn employees to hold their office or position as a substantial property right protected by the Los Angeles City Charter. Additionally, the Department acknowledges that no "perfect" system exists. However, the most recent change provided by the Ordinance has resulted in a marked reduction in accountability involving officers found guilty of serious misconduct, as well as the perception of unjustified leniency.

The City Charter provision that the ultimate decision for a sworn employee's removal is entirely placed upon the Board of Rights was enacted with the expectation that it delivers a fair and

impartial hearing. Yet, the results of this investigation have raised concerns with the efficacy of the all-civilian Board of Rights.

It is therefore recommended that the Council review the impact resulting from changes implemented by the Ordinance and work with the Department and labor to effectuate a Board of Rights process that would increase fairness and accountability in police disciplinary matters.

Respectfully,

A handwritten signature in blue ink, appearing to read 'MICHEL R. MOORE', is positioned above the printed name.

MICHEL R. MOORE
Chief of Police