

CITY OF OAKLAND

Memorandum

TO: The Honorable Oakland City Council
FROM: Oakland Police Department
DATE: 18 Jul 22
RE: POST Academy Reimbursement

Council President Fortunato-Bas and Honorable Members of the Oakland City Council,

Please accept this brief memorandum regarding OPD's policy and practices on recovering costs related to California Peace Officer Standards and Training (POST) required training for sworn members who receive the training and then voluntarily separate prior to serving the City for at least five (5) years.

Background:

The memorandum of understanding (MOU) between the Oakland Police Officers' Association (OPOA) and the City of Oakland requires that police officer trainees who voluntarily separate from City service after graduating from the OPD basic academy but prior to serving for five (5) full years must reimburse the City for the cost of training. The current top amount for reimbursement is \$11,000, with the amount decreased by 20% for each year of service up to five.

Prior Collection Procedures

The Department has sought and received repayment in accord with the MOU provisions. However, there were varying levels of follow-through on recouping the required reimbursement. This provision has existed in the MOU between OPOA and the City since at least July 1, 2015. Therefore, OPD Human Resources Section (HRS) will research every person who graduated the OPD Basic Academy and who voluntarily separated beginning July 1, 2015 to determine A) whether they owed reimbursement and B) whether they properly reimbursed the City. Any cases discovered where reimbursement was not collected will be sent to the City's Collections Officer to determine if the amount can be legally collected at this point and if so, to initiate the City collections process, which is formalized in an Administrative Instruction.

Ongoing Collection Procedures

Effective immediately, OPD HRS has a written policy and procedure (P&P) which will ensure that reimbursement is sought in all cases where it is warranted by the MOU. Should members not reimburse the City prior to separating from City employment, their case will be forwarded to the City's Collections Officer to initiate the collections process.

Development of a Revised Maximum Reimbursement Amount

The City and OPOA recently agreed on a draft proposal, subject to City Council approval, which includes an increase in the amount of reimbursement that the City can recover from persons who voluntarily separate prior to five years' service. The increased amount will include estimates of staff costs, range and driving course costs, and ammunition.

Legally, the City can recuperate costs associated with providing the basic POST training, which is the portion of the training that is mandated by POST and which individuals can get elsewhere (such as other academies). This amount includes the cost for renting facilities (the Concord range, driving locations, etc.), conducting background checks, all supplies (binders, paper, computers and other tech, ammunition etc.), and some instructor time.

The OPD academy requires approximately 230 hours of training in addition to the basic courses required by POST. The costs associated with these additional hours cannot be recuperated by the City and are not included in the revised reimbursement amount. Costs associated with the OPD-specific training cannot be recuperated because these costs are considered necessary expenses required for an employee to discharge their duties. (In re Acknowledgment Cases, 239 Cal. App. 4th 1498, 1505-1507 (2015)). Labor Code Section 2802(a) requires the employer to indemnify the employee against such necessary costs. In contrast, California courts have consistently found that an employer is not generally required to pay for training leading to licensure or the cost of licensure for an employee. (In re Acknowledgment Cases, 239 Cal. App. 4th at 1506). Since completing the basic POST training is a statutory pre-requisite to exercising the powers of a peace officer in California, the costs associated with the basic training is akin to a professional certificate and not an expense of discharging the duties of employment as required by the employer under Labor Code 2802(a). (Also see DLSE Op. Ltr. (Nov. 17, 1994)). The City also cannot recuperate cost associated with trainee pay for any part of the training because employers are disallowed from collecting or receiving any part of wages paid to an employee. (Cal. Labor Code § 2202).

In short – due to various court decisions and legal constraints, the City and OPD can recover only the training costs associated with state-mandate peace officer training, not wages or city/OPD-specific job training that the Academy presents above the state minimums. OPD remains committed to recuperating what costs we can to the fullest extent allowable by law.

Respectfully,



Kiona Suttle
Deputy Director
Bureau of Services
Oakland Police Department