

# **DRAFT BART CITIZEN OVERSIGHT MODEL**

**Purpose:** To provide an effective, independent citizen oversight system that promotes integrity and encourages systemic change and improvement in the police services BART provides to the public by ensuring that internal police accountability systems function properly; that behavioral, procedural and policy deficiencies are identified and appropriately addressed, including racial profiling and allegations of racially abusive treatment; and, that complaints are investigated through an objective and fair process for all parties involved. The system will analyze allegations of misconduct; utilize data to identify trends, including disciplinary outcomes and trends; recommend corrective action and or training; maintain confidentiality; make policy recommendations; and, report regularly to the BART Board of Directors and the public. The essential community involvement component of the system shall be accomplished through the inclusion of a Citizen Board.

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## **Chapter 1-01 OFFICE OF THE INDEPENDENT POLICE AUDITOR**

The Office of the Independent Police Auditor shall be established by the Board of Directors in keeping with the Core Principles for an Effective Police Auditor's Office.<sup>1</sup>

## **Chapter 1-02 APPOINTMENT OF THE AUDITOR**

The Auditor shall be appointed by and report directly to the BART Board of Directors.

## **Chapter 1-03 SCOPE**

The Office of the Independent Police Auditor shall have the authority to exercise its duties and responsibilities as outlined below, with regard to any and all law enforcement and police activities or personnel operating under authority of the San Francisco Bay Area Rapid Transit District. The Auditor's scope of authority does not extend beyond the BART Police Department.

## **Chapter 1-04 DUTIES AND RESPONSIBILITIES**

### **A) Citizen Complaints**

A victim of on-duty police misconduct, a victim's parent or guardian, or a witness to misconduct may file with the Office of the Independent Police Auditor a complaint or allegation of wrongdoing against a BART police officer. Upon receipt of such complaint or allegation, the Office of the Independent Police Auditor shall:

- i) Ensure that a timely, thorough, complete, objective and fair investigation into the complaint is conducted. The Police Auditor shall investigate all complaints of allegations of police officer misconduct regarding unnecessary or excessive use of force, racial profiling, sexual orientation bias, sexual harassment, and the use of deadly force, suspicious and wrongful deaths.
- ii) Provide timely updates on the progress of all investigations conducted by the Office of the Independent Police Auditor to the complainant and the officer who is the subject of the investigation, unless the specific facts of the investigation would prohibit such notification.
- iii) Based on the results of the investigation, reach an independent finding as to the facts. The Auditor shall assess the conduct of the BART police officer in light of the facts discovered through the investigation, the law, and the policies and training of the BART Police Department.

### **B) Recommendations for Corrective Action**

- i) Independent investigative findings made by the Office of the Police Auditor shall include recommendations for corrective action, up to and including termination where warranted and shall include prior

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<sup>1</sup> Report of the First National Police Auditors Conference, March 26-27, 2003, Prepared by Samuel Walker

complaints and their disposition. When the evidence does not support the allegations of misconduct, the Auditor shall recommend that the matter be dismissed.

- ii) In a confidential personnel meeting, the Auditor shall submit his/her investigative findings and recommendations to the Citizen Board for review. Should the Citizen Board agree with the findings and recommendations, the report will be submitted to the Chief of Police for appropriate action. The Chief of Police shall implement the recommended action, absent appeal.
- iii) Should the Chief of Police disagree with the findings and recommendation of the Auditor and Citizen Board, the Chief of Police, in a confidential personnel meeting, may appeal to the General Manager. The Chief of Police will submit his/her disagreements and recommendations to the General Manager. In a confidential personnel meeting, the General Manager shall make a decision and make his/her decision known to the Chief of Police, Citizen Board and the Auditor. The Chief of Police shall implement the General Manager's decision, absent appeal. Appeal of decisions made by the General Manager shall follow the process outlined in Chapter 1-04(B)vi.
- iv) Should the Citizen Board disagree with the Auditor's findings, by simple majority, in a confidential personnel meeting, the Auditor and the Citizen Board shall attempt to come to a consensus. If the Citizen Board and the Auditor fail to come to a consensus, by simple majority, the Citizen Board may appeal. The efforts made to achieve consensus shall be documented by the Citizen Board and shall be forwarded to the Chief of Police as a part of the appeal. All appeals regarding findings and recommendations for corrective action or dismissal, between the Citizen Board and the Auditor will be initially appealed to the Chief of Police, in a confidential personnel meeting. The Citizen Board will submit their disagreements and recommendations to the Chief of Police, in a confidential personnel meeting. The Auditor will submit his/her recommendation to the Chief of Police, in a confidential personnel meeting. The Chief of Police shall make a decision on the matter and make his/her decision known to the Citizen Board and the Auditor, in a confidential personnel meeting. The Chief of Police shall implement discipline or dismissal, absent appeal.
- v) If the Citizen Board disagrees with the Chief of Police's decision and it is reflected by simple majority of its members, they may appeal to the General Manager, in a confidential personnel meeting. The Citizen Board and the Auditor's recommendations will be submitted to the General Manager, in a confidential personnel meeting. The General Manager will render a finding and report it to the Chief of Police and Citizen Board, in a confidential personnel meeting. The Chief of Police shall implement the General Manager's decision, absent appeal.

vi) If the Citizen Board disagrees with the General Manager with a super (2/3) majority, they may appeal to the BART Board of Directors. All reports developed as part of the investigation will be submitted to the BART Board of Directors, who will render a decision in a closed personnel session. BART Board of Directors decisions regarding discipline will require a super (2/3) majority of the BART Board of Directors for approval. In a confidential personnel session, the BART Board will notify the Citizen Board, Auditor, General Manager and Chief of Police. The Chief of Police will implement the decision of the Board of Directors, which will be final.

vii) Discipline recommended herein shall be subject to an administrative hearing prior to implementation, in a manner consistent with addressing the due process rights of public employees, when applicable.

C) Review Internal Affairs Investigations conducted by the BART Police Department

The Office of the Independent Police Auditor shall review internal affairs investigations conducted by the BART Police Department to determine if the investigations are complete, thorough, objective and fair. The Auditor, at his or her discretion, shall have authority to monitor or require follow-up investigation into any citizen complaint or allegation that is handled by the BART Police Department.

D) Mediation

The Office of the Independent Police Auditor shall develop a voluntary alternative dispute resolution process for resolving those citizen complaints which involve conduct which may most appropriately be corrected or modified through less formal means. The Auditor shall review a draft of the voluntary alternative dispute resolution process with the Citizen Board and BART Police Associations and secure their concurrence prior to implementation.

E) Appeal of Internal Affairs Investigation Findings

Any complainant may file with the Office of the Independent Police Auditor an appeal of the findings of an internal investigation conducted by the BART Police Department regarding on-duty incidents. Upon receipt of such an appeal, the Office of the Independent Auditor shall:

- i) Review the completed investigation.
- ii) Determine whether or not further investigation is warranted and, if necessary, ensure that a timely, thorough, complete, objective and fair

follow-up investigation into the complaint or allegation is conducted. This follow-up investigation may, at the discretion of the Auditor, be conducted by the Office of the Independent Police Auditor, the BART Police Department or any other competent investigative agency.

- iii) Provide timely updates on the progress of the review and any follow-up investigation to the complainant, to the extent permitted by law, and to the BART police officer who was the subject of the original investigation, unless the specific facts of the investigation would prohibit such notification.
- iv) Based on the review of the original investigation and the results of any follow-up investigation (if conducted), reach an independent finding as to the facts.
- v) Independent investigative findings made by the Office of the Police Auditor shall include recommendations for corrective action, up to and including termination where warranted. When the evidence does not support the allegations of misconduct, the Auditor shall recommend that the matter be dismissed.
- vi) All internal affairs investigative findings that are appealed to the Office of the Independent Police Auditor shall be subject to the procedures for corrective action as outlined in Chapter 1-04.B, above.

**F) On-Duty Officer Involved Shooting Incidents**

The Auditor shall be notified immediately by the officer in charge at the scene to respond to the investigative scene regarding an officer involved shooting, resulting in the death or serious bodily injury to a citizen or a police officer.

The Auditor shall have the authority to monitor all aspects of the ensuing investigation while it is in progress. The Auditor may be present when interviews of employees, citizen complainants and witnesses are conducted and may submit questions to be asked by the interviewer in accordance with state and federal law.

**G) Recommendations on Procedures, Practices and Training**

The Office of the Independent Police Auditor shall develop specific recommendations concerning General Orders and Directives, procedures, practices and training of the BART Police Department. Such recommendations should have as their goal improved professionalism, safety, effectiveness and accountability of BART Police Department employees. The Office of the Independent Police Auditor shall review with the Chief of Police and other stakeholders and shall present its recommendations to the Citizen Board for review and comment.

H) BART Police Associations

The Auditor shall meet periodically with and seek input from the BART Police Managers Association and the BART Police Officers Association regarding the work of the Office of the Independent Police Auditor.

I) Community Outreach

The Office of the Independent Police Auditor, in conjunction with the Citizen Board, shall develop and maintain a regular program of community outreach and communication for the purpose of listening to and communicating with citizens in the BART service area, and educating the public on the responsibilities and services of the Independent Police Auditor and functions of the Citizen Board.

J) Reporting

The Auditor shall prepare annual reports for the Board of Directors and the public, which prior to being finalized shall be reviewed in draft with the Citizen Board. To the extent permitted by law, reports shall include the number and types of cases filed, number of open cases, the disposition of and any action taken on cases including recommendations for corrective action, and the number of cases being appealed; findings of trends and patterns analyses; and, recommendations to change BPD policy and procedures, as appropriate. The reports shall include all complaints regarding police officers received by the Office of the Independent Police Auditor, BART Police Department, Office of the District Secretary, and other District departments.

**Chapter 1-05 RELATIONSHIP BETWEEN OFFICE OF THE INDEPENDENT POLICE AUDITOR AND THE CITIZEN BOARD**

- A) At least monthly, the Citizen Board shall receive reports from the Independent Police Auditor on the number and types of cases filed, number of open cases, the disposition of and any action taken on cases, recommendations for corrective action, including discipline and dismissals; the number of independent investigations concluded by the Office of the Independent Auditor. The report shall also include the number of cases being appealed either to the Office of Police Auditor by citizens or by the Citizen Board according to the appeals process described in Chapter 1-04.b.ii-iv, above in the case of disagreements between the Chief of Police and the Auditor, Citizen Board to the General Manager or Citizen Board to the BART Board of Directors.

Reports shall include all complaints received by the Office of the Independent Police Auditor, BART Police Department, Citizen Board, Office of the District Secretary, and other District departments. For tracking purposes and

to insure timeliness, this report shall include the number of days that have elapsed between the date of the complaint and the report to the Citizen Board.

- B) The Office of the Independent Police Auditor shall, for informational purposes, promptly notify the Chair of the Citizen Board whenever the Auditor is informed of a critical on-duty officer involved incident where death or serious bodily injury results.
- C) The Office of the Independent Police Auditor will facilitate the preparation of reports by the Citizen Board to the Board of Directors and the public.
- D) The Office of the Independent Police Auditor will provide staff support to and facilitate training for the Citizen Board.
- E) The Office of the Independent Police Auditor will coordinate a regular program of community outreach and communication with the public, in conjunction with the Citizen Board.
- F) The Office of the Independent Police Auditor will facilitate the application process for seats on the Citizen Board and will coordinate the selection process with the Office of the District Secretary and the Board of Directors.
- G) The performance and effectiveness of the Office of the Independent Police Auditor shall be assessed by the Citizen Board for consideration by the Board of Directors' Personnel Committee.

**Chapter 1-06 RELATIONSHIP BETWEEN OFFICE OF THE INDEPENDENT POLICE AUDITOR, BART POLICE DEPARTMENT, OFFICE OF THE DISTRICT SECRETARY, AND OTHER DISTRICT DEPARTMENTS**

- A) The Chief of Police, District Secretary and other Executive Managers with employees that routinely receive comments/complaints from the public shall each, jointly with the Auditor, develop standard operating procedures to govern the relationship and flow of communication regarding complaints involving police officers between the Office of the Independent Police Auditor and each of their respective departments.
- B) The Office of the Independent Police Auditor and the Chief of Police shall provide each other with timely notification of complaints, investigations, appeals and findings and with such information and cooperation as is appropriate and necessary.

**Chapter 1-07 COOPERATION WITH THE OFFICE OF THE INDEPENDENT POLICE AUDITOR**

- A) The Auditor shall have unfettered access to police reports and police personnel records. All parties who have access to confidential information

shall comply with all confidentiality requirements of the Department, the District, and all state and federal laws.

- B) During an investigation all involved sworn personnel shall be compelled to meet and cooperate with the Auditor in accordance with the Government Code 3300-3313.
- C) No person shall directly or indirectly force, or by any threats to person or property, or in any manner willfully intimidate, influence, impede, deter, threaten, harass, obstruct or prevent, another person, including a child, from freely and truthfully cooperating with the Office of the Independent Police Auditor.

#### **Chapter 1-08 INDEPENDENCE OF THE OFFICE OF THE INDEPENDENT POLICE AUDITOR**

- A) The Auditor and any employee of the Office of the Independent Police Auditor shall, at all times, be totally independent. All investigations, findings, recommendations and requests made by the Office of the Independent Police Auditor shall reflect the views of the Office of the Independent Police Auditor alone.
- B) No District employee or Director shall attempt to unduly influence or undermine the independence of the Auditor or any employee of the Office of the Independent Police Auditor in the performance of the duties and responsibilities set forth in this Chapter.

#### **Chapter 1-09 CONFIDENTIALITY OF RECORDS AND INFORMATION**

The Office of the Independent Police Auditor shall comply with all state and federal laws requiring confidentiality of law enforcement records, information, and confidential personnel records, and respect the privacy of all individuals involved.

#### **Chapter 1-10 CODE OF ETHICS**

The employees of the Office of the Police Auditor shall adhere to the National Association for Civilian Oversight of Law Enforcement (NACOLE) Code of Ethics.

#### **Chapter 1-11 TIMELINESS**

Nothing in this section is intended to delay or interfere with the timely investigation and disposition of internal affairs investigations of alleged police misconduct. The Auditor and Citizen Board shall jointly develop a timeline for completion of the disciplinary process that will be concluded within 365 days.



## **Chapter 2-01 CITIZEN BOARD**

A Citizen Board shall be established by the Board of Directors to increase visibility for the public into the delivery of BART police services, to provide community participation in the review and establishment of BART Police Department policies, procedures, practices and initiatives, and to receive citizen complaints and allegations of misconduct by BART Police Department employees. Results of investigations into allegations of misconduct by BART police and recommendations for corrective action, including discipline, will be reviewed by the Citizen Board.

## **Chapter 2-02 APPOINTMENT OF CITIZEN BOARD MEMBERS**

The Citizen Board shall report directly to the BART Board of Directors. The Citizen Board shall consist of eleven (11) members appointed as follows: Each BART Director shall appoint one (1) member. The BART Police Associations (BPMA and BPOA) shall jointly appoint one (1) member, who will not be a current member of either Association. There shall be one (1) public-at-large member to be appointed by the BART Board of Directors. Members of the Citizen Board must reside in one of the three counties that make up the BART District and shall agree to adhere to the Code of Ethics described in Chapter 2-08. The initial appointments of Citizen Board members will be a combination of one-year and two-year terms. All subsequent appointments or re-appointments to the Citizen Board shall be for two-year terms. Service on the Citizen Board shall be voluntary. *(COMPENSATION TO BE DETERMINED)*

## **Chapter 2-03 CITIZEN BOARD MEMBER QUALIFICATIONS**

Citizen Board members must reside in one of the three counties that make up the BART District. Citizen Board members must be fair minded and objective with a demonstrated commitment to community service. All appointees to the Citizen Board shall be subject to background checks. **No person currently serving as a sworn police officer shall be eligible for appointment to the Citizen Board.** No person convicted of a felony shall serve on the Citizen Board.

## **Chapter 2-04 REMOVAL OF CITIZEN BOARD MEMBERS**

The members of the Citizen Advisory Board shall adhere to the National Association for Civilian Oversight of Law Enforcement (NACOLE) Code of Ethics and comply with all applicable state and federal laws regarding confidentiality. Citizen Board members shall not miss more than three regularly scheduled meeting per year. In cases that warrant removal of a member from the Citizen Board for reasons including but not limited to breach of ethics, confidentiality, or criminal conviction, said removal shall be accomplished only by a resolution adopted by the majority of the Board of Directors.

## **Chapter 2-05 SCOPE**

The Citizen Board shall have the authority to exercise its duties and responsibilities as outlined below, with regard to law enforcement and police activities or personnel operating under authority of the San Francisco Bay Area Rapid Transit District.

## **Chapter 2-06 DUTIES AND RESPONSIBILITIES**

### **A) Citizen Complaints**

A victim of on-duty police misconduct, a victim's parent or guardian, or a witness to misconduct may file, at any public meeting of the Citizen Board, a written complaint or allegation of wrongdoing against a BART police officer. Upon receipt of such complaint or allegation, the Citizen Board will immediately turn the complaint or allegation over to the Office of the Independent Police Auditor for investigation.

### **B) Recommendations for Corrective Action**

- i) In a confidential personnel meeting, the Auditor shall submit his/her investigative findings and recommendations to the Citizen Board for review. Should the Citizen Board agree with the findings and recommendations, the report will be submitted to the Chief of Police for appropriate action. The Chief of Police shall implement the recommended action, absent appeal.
- ii) Should the Chief of Police disagree with the findings and recommendation of the Auditor and Citizen Board, the Chief of Police, in a confidential personnel meeting, may appeal to the General Manager. The Chief of Police will submit his/her disagreements and recommendations to the General Manager. In a confidential personnel meeting, the General Manager shall make a decision and make his/her decision known to the Chief of Police, Citizen Board and the Auditor. The Chief of Police shall implement the General Manager's decision, absent appeal.
- iii) Should the Citizen Board disagree with the Auditor's findings by simple majority, in a confidential personnel meeting, the Auditor and the Citizen Board shall attempt to come to a consensus. If the Citizen Board and the Auditor fail to come to a consensus, by simple majority, the Citizen Board may appeal. The efforts made to achieve consensus shall be documented by the Citizen Board and shall be forwarded to the Chief of Police as a part of the appeal. All appeals regarding findings and recommendations for corrective action or dismissal, between the Citizen Board and the Auditor will be initially appealed to the Chief of Police, in a confidential personnel meeting. The Citizen Board will submit their disagreements and recommendations to the Chief of Police, in a confidential personnel meeting. The Auditor will submit his/her recommendation to the Chief of Police, in a confidential personnel meeting. The Chief of Police shall make a decision on the matter and make his/her decision known to the Citizen Board and the Auditor, in a confidential personnel meeting. The Chief of Police shall implement discipline or dismissal, absent appeal.

- iv) If the Citizen Board disagrees with the Chief of Police's decision and it is reflected by simple majority of its members, they may appeal to the General Manager, in a confidential personnel meeting. The Citizen Board, Auditor and Chief of Police recommendations will be submitted to the General Manager, in a confidential personnel meeting. The General Manager will render a finding and report it to the Chief of Police, Auditor and Citizen Board, in a confidential personnel meeting. The Chief of Police shall implement the General Manager's decision, absent appeal.
- v) If the Citizen Board disagrees with the General Manager with a super (2/3) majority, they may appeal to the BART Board of Directors. All reports will be submitted to the BART Board of Directors, who will render a decision in a closed personnel session. All of the BART Board of Director's decisions will require a super (2/3) majority of the BART Board of Directors for approval. In a confidential personnel session, the BART Board will notify the Citizen Board, Auditor, General Manager and Chief of Police. The Chief of Police will implement the decision of the Board of Directors, which will be final.
- vi) Discipline recommended herein shall be subject to an administrative hearing prior to implementation, in a manner consistent with addressing the due process rights of public employees, when applicable

C) Recommendations on Procedures, Practices and Training

The Citizen Board shall develop and review recommendations as to the general orders and directives, procedures, and practices of the BART Police Department in consultation with the Auditor. Recommendations should have as their goal improved professionalism, safety, effectiveness and accountability of BART Police Department employees. The Citizen Board may make recommendations to the Chief of Police, General Manager, and Board of Directors, as appropriate.

The Citizen Board shall review and comment on all additions and changes to policy, procedures and practices as well as all new initiatives (including training and equipment) proposed by the BART Police Department or the Office of the Independent Police Auditor and make recommendations to the BART Board of Directors.

D) Disagreements Regarding Proposed Policies, Procedures, and Practices

The Board of Directors shall review and resolve all disagreements regarding proposed policies, procedures, and practices that may arise between the Citizen Board and the Chief of Police, Auditor or General Manager. The Board of Directors shall make the final determination in all such instances.

E) BART Police Associations

The Citizen Board shall meet periodically with and seek input from the BART Police Managers Association and the BART Police Officers Association on issues of interest to the parties.

F) Community Outreach

The Citizen Board, in conjunction with the Office of the Independent Police Auditor, shall develop and maintain a regular program of community outreach and communication for the purpose of listening to and communicating with citizens in the BART service area, and educating the public on the responsibilities and services of the Independent Police Auditor and functions of the Citizen Board.

G) Reporting

The Citizen Board shall file quarterly reports of its activities with the Office of the District Secretary for distribution to the Board of Directors and shall prepare an annual report on its accomplishments and activities (including recommendations to improve BART Police Department services) for presentation to the Board of Directors and the public.

The Citizen Board shall review and comment on annual report drafts prepared by the Office of the Independent Police Auditor prior to the report being finalized for distribution to the Board of Directors and the public.

H) Monitor Study Recommendations

The Citizen Board shall report on the accomplishments or lack of progress made by the BART Police Department in implementing recommendations resulting from periodic studies that may be conducted to look at departmental policies and procedures, practices and training.

**Chapter 2-07 RELATIONSHIP BETWEEN THE CITIZEN BOARD AND THE OFFICE OF THE INDEPENDENT POLICE AUDITOR**

- A) At least monthly, the Citizen Board shall meet to receive reports from the Independent Police Auditor on the number and types of cases filed, number of open cases, the disposition of and any action taken on cases, recommendations for corrective action, including discipline and dismissals; the number of independent investigations concluded by the Office of the Independent Auditor; and, the number of cases being appealed either to the Office of Police Auditor by citizens or in the case of disagreements between the Chief of Police and the Auditor, Citizen Board to the General Manager or Citizen Board to the BART Board of Directors.

Reports by the Independent Police Auditor shall include all complaints received by the Office of the Independent Police Auditor, BART Police Department, Citizen Board, Office of the District Secretary, and other District departments. This report shall also include the number of days that have elapsed between the date of the complaint and the report to the Citizen Board.

- B) The Citizen Board shall make forms available at its meetings to accept complaints and allegations of police misconduct from the public. The Citizen Board will immediately file all complaints and allegations it receives from the public with the Office of the Independent Police Auditor for investigation.
- C) The Chair of the Citizen Board shall, for informational purposes, be promptly informed by the Office of the Independent Police Auditor of all critical on-duty officer involved incidents, where death or serious bodily injury results.
- D) The Citizen Board shall prepare reports for the Board of Directors and the public with support provided by the Office of the Independent Police Auditor.
- E) The Citizen Board (as well as the BART Police Associations) shall participate in an advisory role in the selection of the Chief of Police by interviewing finalist candidates.
- F) The Citizen Board shall assess and report to the Board of Directors' Personnel Committee on the performance and effectiveness of the Office of the Independent Police Auditor.
- G) The Citizen Board (as well as the BART Police Associations) shall participate in an advisory role in the process of selecting all successors to the first Independent Police Auditor.
- H) The Citizen Board will participate in a regular program of community outreach and communication with the public, in conjunction with the Independent Police Auditor.
- I) The Office of the Independent Police Auditor will provide staff support to and facilitate training for the Citizen Board.

#### **Chapter 2-08 CONFIDENTIALITY OF RECORDS AND INFORMATION**

Members of the Citizen Board shall comply with all state and federal laws requiring confidentiality of law enforcement records, information, and confidential personnel records, and respect the privacy of all individuals involved.

#### **Chapter 2-09 CODE OF ETHICS**

The members of the Citizen Board shall agree to adhere to the National Association for Civilian Oversight of Law Enforcement (NACOLE) Code of Ethics.

### **Chapter 3-01 OVERSIGHT SYSTEM EVALUATION**

The Board of Directors, with input from the Citizen Board, Auditor, BART Police Associations, complainants and the public, will evaluate the BART Police citizen oversight structure after the first year of implementation to determine if the need exists to make changes and or otherwise make adjustments to the system to improve its continued performance. This evaluation shall in no way be intended to eliminate the BART Police citizen oversight structure.

# **APPENDIX**

## **Citizen Complaint Flow Charts**







