



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jennifer A. Maguire

SUBJECT: SEE BELOW

DATE: November 29, 2022

**SUBJECT: RESPONSE TO REPORT – INVESTIGATIONS OF POLICE MISCONDUCT
IN SAN JOSE BY MOEEL LAH FAKHOURY, LLP**

RECOMMENDATION

- (a) Accept the report on the Investigations of Police Misconduct in San Jose By Moeel Lah Fakhoury, LLP.
- (b) Refer responses to the Investigations of Police Misconduct in San José report from the Independent Police Auditor and the Administration to the Public Safety, Finance and Strategic Support Committee meeting in April 2023 and direct staff to provide additional analysis.

OUTCOME

The City Council will accept the report on the Investigations of Police Misconduct in San Jose By Moeel Lah Fakhoury, LLP. and refer responses from the Independent Police Auditor and the Administration to the Public Safety, Finance and Strategic Support (PSFSS) Committee in April 2023 and direct staff to provide additional analysis.

BACKGROUND

On July 30, 2020, Mayor Liccardo and Councilmembers Jones, Diep, and Carrasco submitted a memorandum to the Joint Meeting for the Rules and Open Government Committee and Committee of the Whole entitled *Actions Related to Police Reform, Reimagining Police, and Strengthening the Investigative Authority of the Office of the Independent Police Auditor*.¹ The memorandum was referred to the City Council meeting on August 18, 2020.² This memorandum was approved by City Council and directed the Independent Police Auditor (IPA) and the City Manager to:

¹ Details from this meeting may be found here:

<https://sanjose.legistar.com/MeetingDetail.aspx?ID=797906&GUID=45D41CBC-8CD8-4C73-9EB3-C59BFB7EB9B0>

² Details from this meeting may be found here:

<https://sanjose.legistar.com/MeetingDetail.aspx?ID=790209&GUID=ADE483EB-9087-4BCC-884E-FD25E35C7E49>

“Provide Council with specific recommendations for how the IPA would take over investigations of police misconduct from SJPD’s internal affairs that would incorporate the following elements:

- 1) Reallocating resources to introduce investigatory capacity within the IPA by the conclusion of negotiations;
- 2) Enabling the IPA to make factual findings based on its investigations of misconduct allegations; and
- 3) Enabling the IPA to continue to report concerns between her factual findings and the Department’s disciplinary decisions to the Council and public.”

In response, the Independent Police Auditor contracted with [Moeel Lah Fakhoury, LLP](#) to complete the report entitled *Investigations of Police Misconduct in San José* (“the Report,” hereafter).

ANALYSIS

The Report evaluates three models for investigating alleged police misconduct, which it describes as follows:

- Internal Affairs (IA) Model – in which investigations of alleged misconduct are conducted by sworn law enforcement personnel (this is San José’s current model);
- Civilian Oversight Investigations Model – in which investigations of alleged misconduct are conducted by professional civilian investigators who are independent of the Police Department; and
- A Hybrid Model – in which some investigations are completed by law enforcement personnel and other investigations are completed by professional civilian investigators who are independent of the Police Department.

As noted above, the IA Model is the model that the City currently uses. The Report recommends that the City adopt the Hybrid Model. Implementation of this model would involve retaining the existing IA investigative function within the Police Department while at the same time adding investigatory authority and staff capacity under the IPA. The Report makes 24 discrete recommendations, organized into 14 categories, that are intended to implement the Hybrid Model.

Over the past several years, the Police Department has received numerous recommendations for reform and operational improvement from a variety of sources, and has been working diligently to analyze, implement, and report out on them. Most recently, the Department reported on the status of these recommendations at the November 17, 2022 PSFSS Committee meeting.³ As reported to the Committee, there are a total of 531 recommendations, 252 of which have already been implemented.

³ Details from this meeting may be found here:

<https://sanjose.legistar.com/MeetingDetail.aspx?ID=987866&GUID=D4F606D8-20EB-41AE-B0FD-142536888B3E>

With the completion of the Investigations of Police Misconduct in San José report, the Administration and the Police Department will now turn to analyzing the recommendations the report puts forward, in coordination with the IPA. The Administration recommends that the City Council direct staff to bring forward analysis of the recommendations contained in the report at the April 20, 2023 PSFSS Committee meeting. As part of the review, staff will analyze policy considerations that arise from the recommendations, as well as implementation considerations, including the need for a ballot measure to make amendments to the City Charter necessary for implementation, the need to meet and confer with the San José Police Officers Association on a number of the recommendations, and resource implications.

CONCLUSION

The Administration thanks Moeel Lah Fakhoury, LLP for the Investigations of Police Misconduct in San José report. If so directed by the City Council, the Administration will bring forward an analysis of the report's recommendations at the April 20, 2023 PSFSS Committee meeting.

EVALUATION AND FOLLOW-UP

As described above, the Administration recommends that the City Council direct staff to bring forward analysis of the recommendations in the Investigations of Police Misconduct in San José at the April 20, 2023 PSFSS Committee meeting. As part of the review, staff will analyze policy considerations that arise from the recommendations, as well as implementation considerations, including the need for a ballot measure to make amendments to the City Charter necessary for implementation, the need to meet and confer with the San José Police Officers Association on a number of the recommendations, and resource implications.

CLIMATE SMART SAN JOSÉ

The recommendation in this memorandum has no effect on Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This memorandum will be posted on the City's agenda website for the December 13, 2022 City Council meeting.

COORDINATION

This memorandum was coordinated with the City Attorney's Office and the Office of the Independent Police Auditor.

COMMISSION RECOMMENDATIONS/INPUT

No commission recommendation or input is associated with this action.

CEQA

Not a Project, File No. PP17-008, General Procedure and Policy Making, resulting in no changes to the physical environment.


JENNIFER A. MAGUIRE
City Manager

For questions, please contact Lee Wilcox, Assistant City Manager, at 408-535-8100.