

# Investigations of Police Misconduct in San José



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For the City of San José

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# San José Police Department



# EXECUTIVE SUMMARY

The City of San José has made a strong commitment to examining the San Jose Police Department (SJPD or Department) and its relationship with its community members and stakeholders. To this end, the City has undertaken a series of reviews of the SJPD from external consultants, including a review of SJPD's policies and practices. It also created the precursor to the San José Reimagining Public Safety Community Advisory Committee (RiPS)—a collaboration of community groups initiated to review current public safety concerns and develop recommendations. RiPS presented its findings and recommendations to City Council in May 2022, which included suggestions for increased accountability, as well as civilian oversight of law enforcement.

Collectively, these evaluation efforts demonstrate the City's commitment to fostering stronger police-community relations while also reinforcing the need for further changes to achieve that goal. This independent report, requested by the City, builds on San José's prior reviews with a focus on exploring and recommending an approach to investigations of SJPD personnel that will optimize effectiveness, transparency, cooperation and accountability.

Officer misconduct is an important concern for the City and its Police Department, as it brings direct harm to the very individuals law enforcement is in place to serve and protect; and it negatively affects the public's perception of the Department, which, in turn, can damage officer morale and diminish their ability to safely execute their duties. Objective investigations of officer misconduct are essential for the Department to demonstrate to the community and internal stakeholders that it is committed to the highest level of accountability.

Investigative systems can take a wide variety of forms and there is no "best" model that uniformly suits every city. Regardless of its form, the system must be sufficiently independent—from the political, professional, financial and investigative authority perspectives—to execute its duties. Civilian oversight, therefore, has become an important tool in many jurisdictions to help establish greater transparency and public confidence in investigations regarding allegations of officer misconduct.

This report's consulting team interviewed members of the SJPD, including command staff and current and former members of Internal Affairs, and conducted a field visit to IA. They also visited the offices and spoke to

current and former members of the Office of the Independent Police Auditor (IPA), San José's civilian oversight authority. The consulting team also conducted interviews with various community groups who were part of the RiPS process, which revealed that the internal and external administrative investigation processes are entirely unknown or misunderstood by these community members. The community members who were interviewed perceived the police to have both oversized authority and a lack of accountability in their work.

The team observed a Department that is, in many respects, receptive to or implementing changes that are in line with modern policing principles and an oversight structure that can be improved in order to increase confidence in both the Department and the oversight structure.

Under San José's existing oversight model, the IPA monitors the activities of SJPD's Internal Affairs Unit (IA). The IPA does not have the authority to independently investigate allegations of misconduct; that responsibility falls principally to IA. When voters approved Measure G in 2020, the IPA gained enhanced authority to review administrative misconduct allegations against Department personnel on a trial basis, but did not gain the ability to independently investigate these incidents. Although the IPA has historically agreed with the majority of IA investigations or analyses in cases it has audited, it has disagreed with IA's findings or closed cases "with concerns" in approximately 9-20% of cases over the past decade.

This project examined different investigative models, including San José's current Internal Affairs (IA) Model; the Civilian Oversight Model; and the Hybrid Model. Each offers its own benefits and challenges. However, after carefully assessing the needs of the community and the Department, the consultants recommend that the City continue to build on the improvements it has made by strengthening the IA/IPA structure that is already in place and enhancing authority and performance requirements through the establishment of an IPA investigative arm. This should foster continued evolution toward improved investigative and oversight processes and help create greater confidence in investigations of misconduct and transparency.

Under the proposed model, the IPA will be able to assume greater responsibility for particular types of cases of concern or cases of significant public interest. The approach is intended to improve the performance of IA and investigations in San José by allowing for greater resources, continuity in IA, and oversight of investigations of alleged



officer misconduct.

A list of the team's recommendations is included in more detail in the report. Those recommendations include:

- An expansion of the IPA with three new positions—an Investigative Supervisor overseeing two investigators. As outlined in greater detail below, the IPA will have the discretion to conduct independent investigations of complaints it receives or in other identified areas. The IPA is currently not resourced nor is its staff equipped to take on the investigative function. This new structure will require additional staffing to allow for independent investigations in circumstances that warrant it;
- The IPA's investigating unit having the highest unfettered and direct access (short of administrative control of records management systems) to SJPD records, to ensure the greatest efficiency and investigative credibility;
- A review every three years to address any unintended or unanticipated consequences from the proposed oversight approach so that improvements can be made;
- The IPA publicly reporting on the outcome of its investigations to City Council while maintaining the confidentiality required by the California Penal Code. It shall also report on appropriate investigative disagreements between the IPA and the Chief;
- The City and the SJPD enhancing their information and education efforts with the community to increase awareness and understanding of investigative oversight and the processes in this jurisdiction; and
- Maintaining greater continuity within IA, including attempts to reduce turnover to allow for this continuity.

These recommendations align with the recommendations and principles outlined in the CNA Group's 21st Century Policing Standards report, the direction established by Measure G, and the consulting team's research and analysis. All point to strengthening the independent oversight function, and the consulting team believes that doing so within the current framework of SJPD oversight will increase actual and perceived independence and contribute to the Department's and the City's efforts at reforms without over-burdening the City to create a brand new system. This approach maximizes the benefits of oversight transformation within the City's resource constraints.



# METHODOLOGY

As part of its ongoing efforts toward transparency and accountability, the City of San José held a competitive bid and selected Moeel Lah Fakhoury LLP (MLF) to evaluate and provide recommendations for retaining or altering the City's police investigation model. The RFP language was drafted and reviewed by staff from many City agencies, including the Department, the City Manager, and the City Attorney. The panel evaluators consisted of persons from the IPA, the Department, the Office of Employee Relations and the Office of Racial Equity. Led by Andrew Lah, Managing Partner, MLF, and working with subject matter experts Russell Bloom, the Independent Police Auditor for the Bay Area Rapid Transit District, and Rania Adwan, former Chief of Staff for the San Francisco and Oakland Police Commissions, MLF conducted the project over the course of approximately four months.

## Background Review

The team began by conducting research, outreach, and a background review of documents provided by the IPA and other San José officials in order to learn about the specific processes used by IA, the IPA, and the City.

## Field Research

Upon completing the initial research and document and process review, the team conducted interviews and site visits. The first set of interviews was with SJPD, including members of the SJPD Command staff and Chief Anthony Mata. The Command staff and members of Internal Affairs made themselves readily available to the consultants and cooperated fully with requests for information, including sitting for interviews, providing access to documents, and offering opinions on possible models moving forward. A Union-authorized response was not provided, and therefore not included in this report.

The IPA's Office was also pivotal in the interview process. The consulting team spoke with current and past IPA staff and reviewed key documents provided by the IPA, which also guided and facilitated the flow of information for this project.

Several members of the Santa Clara County District Attorney's Office sat for interviews and provided feedback on the current protocols in place regarding officer-involved shootings, in-custody deaths, and criminal excessive use of force investigations.

Other City officials were interviewed, including representatives from the Office of the City Manager and its Office of Employee Relations. They provided important background and context on the systems currently in place in San José regarding employee discipline generally, and specifically with respect to members of the SJPd who face substantiated complaints.

The consulting team also interviewed subject matter experts from other jurisdictions, specifically looking into oversight models that use sworn and civilian investigators. Representatives from agencies across the country presented information about other models in place.

Concurrently, the team conducted community outreach. The consultants built upon the valuable outreach San José has already done as part of the Reimagining Public Safety (RiPS) Community Advisory process and spoke with community members, impacted families, and representatives of RiPS from prior outreach efforts by San José. The City Manager's Office provided helpful assistance in providing contacts to facilitate this outreach.

The consulting team also made separate site visits to the Internal Affairs office and the IPA's office. The IA Commander, the IPA, and their respective staff graciously created time to meet with the consultants, discuss processes and concerns, and provide a tour of their respective physical spaces.

During this entire information gathering process, the material was compiled and analyzed to compare historical information with that of other jurisdictions, the information from SJPd, the IPA, City officials, and community members to inform the team's ultimate recommendations.



# BACKGROUND AND RESEARCH FINDINGS

The City of San José has undertaken a series of external reviews of the San José Police Department (SJPD), including a review of its policies and practices according to 21st Century Policing Principles,<sup>1</sup> a review of its use of force policies,<sup>2</sup> and an independent review of the events of May 29 to June 7, 2020.<sup>3</sup> The City has also engaged in a Charter Review Commission<sup>4</sup> and a Reimagining Public Safety process that touched on the issues raised here. The California State Auditor has also evaluated the SJPD, among other departments, regarding how it investigated biased-based conduct.<sup>5</sup>

The CNA Group's assessment of SJPD's alignment with 21st Century Principles noted that the City should identify ways the IPA could contribute to a civilian-led oversight structure, including authorizing the IPA to conduct certain types of investigations.<sup>6</sup> The Auditor's report examined how allegations of bias-based policing were handled by five police departments, including San José's, and found investigative deficiencies in how those complaints were handled internally.<sup>7</sup> In response to these reports, SJPD made and/or is examining making improvements to its handling of allegations of misconduct.

Collectively, these reviews and the City's response demonstrate San José's commitment to examining its law enforcement processes and the Police Department's relationships with its communities. Officer misconduct is a serious concern for any city and its law enforcement agencies as it harms the victims, negatively impacts public perception of policing,

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<sup>1</sup> <https://www.sanjoseca.gov/home/showpublisheddocument/84986/637866619268730000>

<sup>2</sup> <https://www.sanjoseca.gov/home/showpublisheddocument/84984/637866618097130000>

<sup>3</sup> <https://www.sanjoseca.gov/home/showpublisheddocument/84982/637866620119370000>

<sup>4</sup> <https://www.sanjoseca.gov/home/showpublisheddocument/84988/637866623755030000>

<sup>5</sup> <https://www.auditor.ca.gov/reports/2021-105/index.html>

<sup>6</sup> 21<sup>ST</sup> Century Policing Assessment of the San José Police Department, Recommendation 2.8 at p. 58-59.

<sup>7</sup> See note 5. The Auditor's Office found deficiencies in the departments it was auditing, including San José's, and noting deficiencies in the investigations of biased-based policing complaints.

damages officer morale and diminishes their ability to safely execute the Department's duties to serve and protect the community. Investigating officer misconduct on an administrative level is, therefore, both essential and challenging, due to its high-stakes implications. Proper investigation of officer misconduct allegations is the cornerstone of demonstrating to the public and internal stakeholders that the Department is committed to the highest level of integrity when it comes to serving communities. The investigations must be evidence-based and complete so that the officers, who serve San José, receive a fair investigative and adjudicative process that leads to objective outcomes.

The administrative investigative process is heavily regulated. While labor laws exist to protect all unionized workers, because of the nature of law enforcement and the immense responsibility (and liability) inherent in policing, more stringent rules exist in the form of the Public Safety Officers Procedural Bill of Rights (PBOR)<sup>8</sup> and additional measures negotiated into collective bargaining contracts. That said, in light of public protests against actual and perceived police misconduct, some laws have been relaxed or amended to allow for greater transparency.<sup>9</sup>

This report's review expands and builds on the City's prior reviews and focuses on evaluating the Internal Affairs model, the Civilian Oversight model and the Hybrid model of investigations to recommend ways to allocate responsibility for personnel investigations that will optimize effectiveness, transparency, cooperation and accountability.

## Creating the IPA

The IPA was established in 1993. Three years later, voters approved an initiative that amended the City Charter to include Section 809 to make the IPA a permanent arm of City government.<sup>10</sup> The IPA was created to audit IA investigations but lacks the authority to conduct its own investigations. The SJPD's current process involving IA investigations and IPA audits has achieved certain improvements after an extensive review and the recommendations of prior consultants and the President's Task Force on 21st Century Policing.

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<sup>8</sup> California Government Code sections 3301-3313.

<sup>9</sup> For example, Penal Code section 832.7 was amended by Senate Bill 1421 to allow for the public to request access to certain categories of misconduct allegations, including uses of deadly force.

<sup>10</sup> <https://www.sanjoseca.gov/your-government/appointees/independent-police-auditor/establishment-of-the-office/charter>

The IPA recently received enhanced authority through the passage of Measure G, which amended the City Charter to “expand the Independent Police Auditor’s oversight, including unredacted review of officer-involved shootings and use of force incidents causing death or great bodily injury, and review of department-initiated investigations against officers” among other changes.<sup>11</sup> The changes from Measure G pave the way for more robust civilian oversight of the SJPd, though these processes are unrelated to the criminal prosecution of officers in connection with violations of state or federal law. Criminal investigations are addressed by a county-wide agreement with the Santa Clara District Attorney’s Office and run separately from administrative investigations to avoid potentially compromising those criminal investigations.

In November 2020, the San José City Council’s Rules Committee directed the City Manager and the IPA to explore reallocating existing resources to introduce investigatory capacity within the Office of the IPA,<sup>12</sup> which is the focus of this report.

## Community Input

This project’s consulting team conducted various community interviews, which revealed that the investigative and auditing process is entirely unknown or misunderstood by community members with whom the team communicated. The fact that the outcomes of investigations are not shared with the community only adds to the opacity and skepticism by those community members regarding officer accountability. As a result, there is a perception among the interviewed community members that police have both oversized authority and incomplete accountability in their work despite legal constraints that prohibit certain public disclosures regarding misconduct investigations. The City’s previous efforts to initiate beneficial changes have netted few, if any, notable results from these interviewees’ perspectives, deepening the skepticism about each new effort.

Prior to this project, the City of San José created the precursor to the

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<sup>11</sup> <https://www.sanjoseca.gov/home/showpublisheddocument/62440/637323203079670000>

<sup>12</sup> <https://sanjose.legistar.com/View.ashx?M=A&ID=799174&GUID=4D0EDCBD-6B9B-4DD2-A3F5-CF9376E09457>





San José Reimagining Public Safety Community Advisory Committee (RiPS)—a community group initiated to review current public safety concerns and develop recommendations. The RiPS’ presentation to City Council in May of 2022 noted that despite the City’s long history of reform movements, challenges persist with regard to policing and that the system must increase accountability.<sup>13</sup> Among the 59 recommendations made by the RiPS board were improving civilian oversight and increasing accountability for the SJPD. The committee’s suggested reforms included the addition of a police commission, the creation of an Inspector General, and the conversion of the IPA to an independent investigation agency accorded subpoena powers and unredacted and unfettered access to evidence.<sup>14</sup> The creation of these three entities was also recommended by those community members serving on the City’s Charter Review Commission.

<sup>13</sup> <https://sanjose.legistar.com/View.ashx?M=F&ID=10885883&GUID=7E18D0F2-7102-4E0F-8F2B-763C1AF3E979>;

<sup>14</sup> *Ibid.*, see also <https://sanjose.legistar.com/View.ashx?M=F&ID=10860951&GUID=67148606-483F-4E54-B28F-3492A9FD7886>

The consultants acknowledge the substantial work the City and community stakeholders have done and note that RiPS suggested actions that would allow the City to achieve “quick wins” that can continue improving the police-community landscape. The consulting team for this project emphasizes several of the RiPS’ recommendations, including the need to increase communications with the community regarding police oversight, raising public awareness of investigative activities, providing greater transparency regarding the process, and allowing easier access to public information (recognizing the need for confidentiality as legally necessary), as the City has done, for example, with publicly posting arbitrator’s decisions from grievances relating to officer discipline.<sup>15</sup>

## City of San José Perspectives

The consultants spoke to law enforcement personnel from within the SJPD and City departments, as well as IPA staff regarding current structures, existing challenges, and San José’s specific investigative context.

As a general matter, most City stakeholders believed in a system of checks and balances, although there were reasonable differences of opinions on what that could or should look like.

Some City and SJPD officials, including a former IPA, raised concerns about creating separate organizations and commissions due to the questionable efficacy and bureaucracy found in other jurisdictions and the challenges of those structures operating well in San José. A fundamental point raised by many within the City, regardless of any views on a model, involved the quality of the investigations, a point with which the consultants strongly agree. If investigators, whether sworn or civilian, are insufficiently trained and the quality of the investigations is inadequate, any recommendations that flow from them will be compromised.

The question of training aside, some SJPD staff opposed relying

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<sup>15</sup> See, e.g., <https://www.sanjoseca.gov/home/showpublisheddocument/84828/637864720753300000> for an example of a redacted arbitrator’s decision posted online. The consultants offer no opinion on the merits of this or any other particular arbitration and include a link only as an example.

on civilian investigators because of the nuances of use-of-force investigations. Officers are allowed to use reasonable force pursuant to SJPD Policy and California Penal Code Section 835(a). Because force incidents are often by nature violent, those voicing this opinion noted that civilians lack the experience of having been in such situations to properly assess the circumstances and understand why an officer has taken the actions at issue. In other words, what might look like a violent reaction from an officer (e.g. the use of force) may be reasonable and within policy when evaluating the totality of the circumstances.

SJPD Chief Anthony Mata opined that although there are challenges related to the analysis of conduct or performance when conducted by people unfamiliar with the nuances of policing, civilians with a background in law enforcement oversight and a commitment to becoming educated can learn enough about policing to provide valuable input in connection with accountability processes. Chief Mata and other San José officials added that their interest is in ensuring that investigations are complete and thorough, and whether an investigation is conducted by IA or an independent agency, knowledge of sound investigative techniques is an important part of reaching an objective and fair finding. One former SJPD IA investigator acknowledged that although the independent review of IA investigations was not preferred, that review process did serve to improve the quality of the unit's work.

Others in SJPD expressed some confidence in the possibility of a hybrid model where civilians interface with IA, with, again, the key point being that the subject officer's conduct is viewed objectively by trained investigators. Past IPAs believed strongly that having civilian investigators housed in the IPA's office or elsewhere in the City would be an important way to strengthen the investigative process and ensure objective investigations. The input collected from civilian oversight professionals indicated that a skilled, dedicated investigatory unit would provide a more objective review than personnel with professional and potentially personal connections to the subjects of an investigation. It was also suggested that, at a minimum, the existence of independent civilian investigators could mitigate the perception or concern that officers may be motivated to disregard or downplay allegations of misconduct.

The City and the San José Police Officers' Association (POA) have agreed, pursuant to a Side Letter, to continue discussions related to items on the Police Reforms Work Plan, including the RiPS work plan items to identify initiatives and practices to help improve community and police



relations.<sup>16</sup> This includes investigation of alleged police misconduct.<sup>17</sup> The POA did not provide a union-authorized response for this report. Some of the changes recommended in the report will likely be subject to labor negotiations.

## Practices from Other Jurisdictions

In terms of oversight structures, there is no “best” model that uniformly suits every city. The key to any model or process is that it must be fair, objective and thorough. As the career and, potentially, the public reputation of the subject police officer(s) may be at issue, officers need to have confidence in an effective and objective investigative process. Simultaneously, the public must perceive the process as fair and objective as well. These two important, competing goals are not in conflict if the structures are created properly.

Citing De Angelis, Rosenthal, and Buchner’s “Civilian Oversight of Law Enforcement: Assessing the Evidence,” The National Association for Civilian Oversight of Law Enforcement (NACOLE) proposes an “effective practices” approach:

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<sup>16</sup> <https://www.sanjoseca.gov/home/showpublisheddocument/80786/637753329203230000>

<sup>17</sup> The Side Letter is considered part of the tentative agreement for a successor Memorandum of Agreement between the SJPd and the POA. It shall become effective only as part of the overall tentative agreement for a successor MOA, and when signed by all parties and approved by the City Council.

To date, research has emphasized that civilian oversight should be established according to “best fit” rather than “best practice.” A NACOLE report on the strengths and weaknesses of civilian oversight models found that there is not necessarily any best practice path to establishing civilian oversight, or any best oversight model that will be effective for all jurisdictions. What can be considered best is a function of the unique elements and needs of the community and jurisdiction looking to establish or update its civilian oversight. These elements will ultimately shape what form of oversight is possible, feasible, and congruent with community expectations. As such, the best form of oversight depends on the local circumstances of the jurisdiction.

Similarly, in performing the actual work of civilian oversight, there are few to no existing prescribed approaches that will lead to the best outcomes. Just as there is no best model of oversight that will work for all jurisdictions, there is no single set of best practices that are guaranteed to be more successful in achieving civilian oversight’s goals of improving law enforcement’s accountability, transparency, and relationship with the communities it serves. Given the unique complexities of the field, the closest approximation to best practices that can most likely be attained is a set of recommendations that will strengthen an oversight agency’s work in relation to a set of principles that are widely accepted as preconditions for effective oversight.<sup>18</sup>

Civilian oversight has become an important tool in helping establish greater transparency and public confidence in investigations regarding allegations of officer misconduct. The consultants reviewed the investigative models in a sampling of other jurisdictions to assess their approaches and whether any effective practices could be gleaned from them. The consultants also interviewed leaders in jurisdictions across California and in other parts of the country for additional insight.

Information the consultants gleaned from other jurisdictions provided support for this model, which provides for an investigative and monitoring function managed by the IPA’s office, and ensures that both functions are overseen by the IPA.

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**18** 2021 Report on the State of the Field and Effective Oversight Practices

With regard to the staffing of investigative agencies, the consultants learned from officials managing investigative staff consisting of or including sworn law enforcement personnel that there are certain advantages to such staffing structures. Sworn employees may have collected valuable investigative skills, particularly related to interview techniques and evidence collection. Familiarity with the policies and procedures of the department can streamline the process of performing the analysis that will become the basis for recommending findings.

One reported beneficial aspect of a blended investigative staff is that sworn staff who return to typical law enforcement assignments after working within the accountability structure tend to approach their work and their interactions with a deeper understanding of the ways in which contacts can lead to complaint allegations and to the imposition of discipline. It is noted that they may both adjust their own conduct and model appropriate conduct for other officers in the field.

Moreover, there may be a perception that sworn investigators may be unable to put aside bias to perform objective investigations. These concerns about law enforcement personnel reviewing the conduct of their peers can be very difficult to overcome according to the civilian oversight professionals with whom the consultants spoke, and may inhibit the department's ability to reassure complainants and community members that the accountability structure is truly fair and objective. Civilian management of sworn investigative staff can help to mitigate that perception and may also safeguard against any actual favoritism or application of bias by injecting a civilian perspective into the conduct analyses.

One potential practical challenge identified by one interviewee with regard to employing sworn investigators is that civilian managers or directors may not be authorized to conduct performance evaluations of their sworn staff if that function is reserved for supervisors within the officer's departmental chain of command. There may, therefore, be little leverage for civilian managers to improve the quality of an investigator's work.

The consultants have included examples of other structures in Appendix B to this report, intended to illustrate the various oversight solutions implemented in other jurisdictions. The examples highlight the numerous approaches to establishing a structure that takes into consideration the nuances of local law, departmental culture and history,

and community expectations. Though the consulting team examined the structures included in Appendix B, it remained focused on crafting recommendations that meet the needs of the City of San José, its residents, the Police Department, and the IPA.

Recycle Bin Academy

Google Classroom





# INVESTIGATIVE MODELS

A comprehensive oversight system that upholds accountability and transparency incorporates the best practices identified to date. Oversight systems can take a wide variety of forms and structures managed by various authorities. This project focused on three investigative models:

**Internal Affairs Model** – in which investigations of alleged misconduct are conducted by sworn law enforcement personnel;

**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.

The three different models were compared to consider the advantages and disadvantages of each and determine a recommendation most suited to San José's needs and resources.

## Internal Affairs Model (San José's Current Model)

In this model, which San José currently utilizes, investigations of alleged misconduct are completed by sworn law enforcement personnel within the Police Department.

SJPD's IA conducts two categories of investigations: Criminal and Administrative. Criminal investigations deal with alleged criminal conduct and follow a separate, firewalled process from administrative investigations.

Administrative investigations, which address alleged violations of SJPD policy and carry employment-related sanctions such as suspension or termination, may originate from the public or internally (Department Initiated Investigation, or DII).

Combining criminal and administrative investigations can create 5th

Amendment self-incrimination issues because subject officers' statements are often compelled. Where those compelled statements are revealed to criminal investigators, they can compromise that criminal investigation. Moreover, sworn law enforcement officers are best suited to handle criminal investigations under the California Penal Code because they have the statutory authority to do certain key things, such as obtain search warrants and make arrests. The IPA does not have such authority, and the consultants do not believe that a non-sworn administrative agency should be charged with those duties. Finally, the California Attorney General and the Santa Clara District Attorney already have jurisdiction over certain criminal investigations involving police officers, such as shootings of unarmed individuals (the AG) and other deadly force incidents (the Santa Clara DA's office). From interviews with representatives of the Santa Clara DA's office, the consultants heard that the County-wide officer-involved shooting protocol was generally working well.

Some administrative investigations are resolved at the supervisory level, depending on the severity of the issue. More serious administrative allegations are the purview of the Command staff and can result in a disciplinary process including, but not limited to, termination or suspension. Final recommendations are brought by the Police Chief to the Office of Employee Relations for implementation, with a possible grievance procedure to follow if the officer is disciplined.

Under the current IA model, administrative investigations of alleged misconduct are typically completed by sworn law enforcement personnel within the SJPD Internal Affairs department (IA). A lieutenant leads the department, in which officers review initial complaints and sergeants conduct investigative interviews. Some investigations are resolved at the supervisory level, depending on the severity of the issue. The assigned IA Lieutenant reports directly to the Assistant Chief and manages a unit consisting of sworn officers who solely conduct intake interviews, a supervisor who manages those sworn officers, and sergeants who conduct investigations. The IA Lieutenant also manages two non-sworn employees who handle case management and data.

Turnover within IA was raised by certain interviewees as an ongoing issue, with lieutenants being relatively frequently reassigned to duties outside of the unit. Records provided by SJPD indicate that IA leadership has shifted every two to three years since 2005, and that relatively frequent turnover of IA staff has the potential to create challenges related to the consistency



of IA processes, continuity of leadership style, priorities, and approach to the performance of departmental duties.

The duration of these assignments may also impact the development of effective working relationships between IA and IPA staff. Most recently, the IA lieutenant assigned to head the unit in February 2022 was promoted out of the IA unit approximately seven months later. The turnover of lieutenants in the IA unit was described as less than ideal by one SJPD supervisor who noted that strong leadership is a necessary component of the IA unit.

### IA Model Advantages

Sworn law enforcement personnel have certain advantages in conducting investigations of alleged misconduct. First, they have unrestricted access to SJPD records, evidence and other resources. Police officers have received extensive training on police practices at the academy, on the job, and in continuing education. Having served as active law enforcement officers, they are well versed in the conditions of work and the circumstances that police officers face when responding to calls for service or during situations in which an application of force is warranted and policy-compliant. Moreover, by the time sworn SJPD personnel who have served within the Department are elevated to Internal Affairs, they may be more familiar with the policy language and changes that apply to the analysis of an allegation. In addition, sworn law enforcement personnel may increase the perception of the legitimacy of the process among members of the Department.

## IA Model Disadvantages

There is the possibility or the perception that sworn investigators may allow their empathy for and association with subject officers (officers alleged to have committed misconduct) to diminish the objectivity of the investigative approach and of the final analysis and conclusion. This may manifest in weighing assumptions or resolving discrepancies in the officer's favor, whether intentional or not, rather than an impartial review of the evidence. According to a 2007 report by the International Association of Chiefs of Police (IACP), "Public trust and confidence are built when the public perceives that employee misconduct is addressed and corrected by the agency. This, in turn, promotes public willingness to assist the agency in carrying out its mission. In a climate that fosters trust and transparency between the public and law enforcement, citizens are more likely to come forward to testify, provide evidence of criminal acts, and contribute other needed assistance in reducing crime." This report also noted that: "[t]he process of conducting internal investigations must also guard against personal influence or bias. The possibility that an investigation may be stifled or unduly influenced as a result of favoritism, discrimination, or personal dislike increases as more [law enforcement] personnel are involved in the internal investigation function."<sup>19</sup>

It has also been opined, primarily by civilian oversight professionals, that sworn IA investigators may support their investigative findings by referring to their own training and experience, thereby applying their own perspective to what it is intended to be an objective analysis, which can undermine the accuracy of findings.

Other limitations of the existing IA structure include the practical matter of providing consistent leadership during an era in which all law enforcement entities are struggling to recruit and maintain personnel. The difficulty of filling budgeted positions can lead to internal staffing and deployment challenges.

With regard specifically to the objectivity and thoroughness of IA investigations, there have been disagreements between IA leadership and the IPA related to whether an allegation of Conduct Unbecoming

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<sup>19</sup> Building Trust Between the Police and the Citizens They Serve: An Internal Affairs Promising Practices Guide for Local Law Enforcement" chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://cops.usdoj.gov/RIC/Publications/cops-w0724-pub.pdf

An Officer should be addressed as a lesser-included allegation of more serious misconduct. The minimization or the appearance thereof, or the summary dismissal of such allegations, may also reinforce the perception that sworn IA investigators are attempting to underplay or excuse policy violations.

Finally, the inherent conflict between officers and civilian oversight agencies may result in strained communication and cooperation. As police departments nationwide strive to improve transparency, the optics of police policing themselves may hinder efforts to rebuild trust, as self-assessments of misconduct may be perceived as ineffective or biased.

## Civilian Oversight Investigations Model

In this model, professional civilian investigators who are independent of the Police Department conduct the administrative investigations of alleged misconduct. In order to conduct a thorough investigation, civilian investigators must be granted full, unfettered access to all Police Department records and information, including body-worn camera footage, dispatch records, and personnel files. Police personnel may also be required to cooperate with the independent investigation as a matter of policy and may be subject to discipline for failing to do so. All subject officers are provided the same employment-related protections available during an internal investigation, including the right to representation. The civilian investigative agency is required to maintain confidentiality pursuant to state law.

San José does not have an oversight investigations model. Staff in the IPA's office audit investigations to determine whether the investigations are complete, thorough, objective and fair and whether the findings and conclusions are supported by the evidence. With the passage of Measure G in 2020, the San José IPA was accorded expanded authority, allowing auditors to ask questions in officer interviews for the first time under a pilot program. Additionally, they may dispute IA investigative findings and request additional investigative efforts, but the IPA's current structure is not an investigative model and does not currently permit such investigations.

### Civilian Oversight Investigations Advantages

Employing civilian investigators who are not housed within the Police Department provides some advantages. As noted in the "IA Model



Disadvantages” section above, there is the community perception that civilian investigations into misconduct allegations will be more objective than those conducted by sworn officers. Separating out investigations to civilians may heighten the objectivity of the investigative approach by eliminating any potential or perceived conflicts of having them all internal to one organization.

### **Civilian Oversight Investigations Disadvantages**

Conversely, civilian investigators typically have less law-enforcement-specific training (e.g., defensive tactics, firearms), which may impact the quality of the investigation. Officers and Union representatives may resist the application of any disciplinary recommendations issued by non-sworn investigators or agencies. Sworn personnel may perceive civilian-led oversight and accountability efforts as inherently biased against the police and failing to properly consider officer safety in assessing officer conduct. For these reasons, Department leadership may resist providing information and documentation to a civilian-led agency, which impacts the ability to perform thorough investigations.

Additionally, whether merely a rhetorical tool or not, officers and Union representatives may suggest that being subjected to civilian oversight is one of the reasons that officer recruitment has flagged and that officers

are reluctant to perform their duties for fear of being disciplined by people who do not share their perspective about the requirements of constitutional policing.

Finally, investigative integrity can be compromised when the independent investigation relies on the provision of evidence from the law enforcement investigators who are being overseen. Lack of direct access also substantially increases process time, which has myriad potential implications:

- Timely completion is important and fair to subject officers facing potential discipline
- Officers may also be reluctant to perform their duties if there is an ongoing lack of clarity as to whether they violated applicable policies
- Delays in the completion of investigations may also impact officer morale if they perceive that the accountability structure is inefficient or that it fails to consider the personal impact of a pending disciplinary determination
- Complainants whose allegations are not addressed in a timely fashion may perceive the oversight structure as not designed to promptly and fully address their complaints

## Hybrid Model

In the Hybrid Model, some investigations of alleged misconduct are executed by law enforcement personnel and other investigations are completed by professional civilian investigators who are independent of the Police Department.

Civilian oversight agencies are increasingly adopting structures of oversight that extend beyond the traditional review-focused, investigation-focused, and auditor/monitor-focused parameters by combining elements of several models.

There are two approaches to implementing hybrid civilian oversight: hybrid agencies and hybrid systems. With hybrid systems, a single jurisdiction may have several agencies overseeing the same department.

The SJPD currently employs a hybrid agencies approach,<sup>20</sup> in which one agency prioritizes its focus on the oversight function while also executing other functions, such as reviewing internal investigations and auditing policy compliance. According to NACOLE, “Individual agencies assuming hybrid forms are increasingly common, but several jurisdictions have also created multiple agencies responsible for performing different oversight functions of the same law enforcement department.”<sup>21</sup>

## Hybrid Model Advantages

A hybrid model combines the advantages of the IA and IPA models. Having some investigations conducted by sworn personnel increases the perception of the legitimacy of the process among members of the department. The model leverages the training, experience, and knowledge of police practices that sworn law enforcement personnel possess, as well as their familiarity with the department’s policies. Additionally, a hybrid model supports the heightened objectivity associated with neutral civilian investigators as well as the community’s perception of objectivity. Overall, it allows for a more effective system of checks and balances against both sworn and civilian employees.

## Hybrid Model Disadvantages

Similarly, the hybrid model merges the disadvantages of both previous models. The civilian agency may be perceived by the public as not independent enough from the Police Department while, conversely, law enforcement and the Police Union may mount resistance to investigations, holding the position that civilians are ill-equipped to evaluate police tactics and may approach the work with an anti-police bias. There remains the possibility that sworn investigative personnel’s empathy may impact their objectivity when evaluating a subject officer, and community trust may diminish as they perceive a bias in sworn officers being permitted to investigate their colleagues. Lastly, there are practical concerns related to cost and resources.

Ultimately, the blended approach has increased the advantages and disadvantages, but it represents a more robust process.

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**20** It should be noted that while San José has an IA model officially, there are instances in which civilian investigators from outside of the Department lead investigations into police misconduct. This approach is periodically employed when deemed appropriate, such as in cases of allegations of discrimination or harassment.

**21** NACOLE: Models of Oversight, [https://www.nacole.org/models\\_of\\_oversight](https://www.nacole.org/models_of_oversight)





# RECOMMENDATIONS & ROADMAP

As police departments across the country seek to strengthen their oversight functions, demonstrating fairness to all parties and increasing trust in the investigative process is critical. Accountability and objectivity are essential to ensure that officers, complainants, and community and internal stakeholders have faith in the investigative and adjudicative processes and outcomes. There are various models for investigation and oversight, and no single model can or should serve all jurisdictions due to the many variances that can occur from place to place. As a result, “Each jurisdiction will have to carefully assess the needs of the community and the cost-benefits of the oversight program they adopt. The key question is whether the oversight system is sufficiently independent—in terms of political, professional and financial independence and authority—to do what is needed and what is asked of it.”<sup>22</sup>

Following their examination and assessment of the structures and processes currently in place, the consultants recommend that the City continue to build on the improvements it has made. Informed by their extensive research and the discovery phase, the consultants recommend creating a hybrid model that will strengthen the IA/IPA structure in place and enhance authority and performance requirements by giving the IPA an investigative arm.

The consultants observed a Department that is, in many respects, implementing changes that are in line with modern policing principles and believe these recommendations will foster continued evolution toward improved investigative and oversight processes.

Regardless of perspective, the key to effective misconduct investigations is unfettered and direct access to evidence and a productive working relationship to produce complete and objective investigations for all parties involved. No thorough or fair investigation can occur without access to the evidence that informs whether there was a violation of policy, regardless of which entity is conducting the investigation.

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<sup>22</sup> NACOLE: Oversight Models: Is one model better than another? [https://www.nacole.org/oversight\\_models](https://www.nacole.org/oversight_models)

## Rationale for Recommendations

The consultants evaluated the different approaches outlined above in response to the RFP and the City of San José's interest, including maintaining the current model of having the Police Department's IA division as the sole investigative body into allegations of misconduct. The consultants ultimately recommend this model for San José for several reasons.

First, policing and civilian oversight is evolving in many places across the country as expectations of transparency and accountability in policing and public safety become part of the conversation. This shift has been readily acknowledged in nationally-recognized reports, such as the President's Task Force on 21st Century Policing.<sup>23</sup> In San José, the RiPS recommendation called for variations of civilian oversight and public safety. In addition, a prior consultant, the CNA Group, similarly echoed the RiPS recommendation that San José consider having an outside entity conduct at least some independent investigations into alleged misconduct. The consultants here agree. Allowing for more robust, independent oversight and independent investigations when appropriate and within the discretion of the IPA can help temper some perceptions that police officers investigating their peers, partners and possible associates is a direct conflict of interest or, at best, subject to the perception of partiality.

Second, the current oversight system appears to be providing the City with what it is intended to do, which is to audit cases involving force allegations and at least 20% percent of IA's other investigations.<sup>24</sup> The IPA has historically agreed with SJPD's findings in the majority of cases it reviews, which indicates that in these cases IA is reaching the appropriate outcome.<sup>25</sup> This suggests to the consultants that the current structures

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**23** Page 7 - Five things local governments can do: [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewiTorrHlZ\\_7AhW7jokEHS2dBQcQFnoECBQQAQ&url=https%3A%2F%2Fcops.usdoj.gov%2FRIC%2Fpublications%2Fcops-p341-pub.pdf&usg=AOvVaw3Ocp9XKxc2QWbJXYkJy-DL](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewiTorrHlZ_7AhW7jokEHS2dBQcQFnoECBQQAQ&url=https%3A%2F%2Fcops.usdoj.gov%2FRIC%2Fpublications%2Fcops-p341-pub.pdf&usg=AOvVaw3Ocp9XKxc2QWbJXYkJy-DL)

**24** SJMC 8.04.010 (A)(1)

**25** See 2021 Report, <https://www.sanjoseca.gov/home/showpublisheddocument/89389/637983396074570000> at p. 61; 2020 Report, <https://www.sanjoseca.gov/home/showpublisheddocument/75185/637608205048830000> at p. 14, 2019 Report, <https://www.sanjoseca.gov/home/showpublisheddocument/64206/637413097620070000> at p. 17; 2018 Report, <https://www.sanjoseca.gov/home/showpublisheddocument/51641/637163199178600000> at p. 21.

can be supplemented to improve the current oversight system in line with calls for independent investigations of alleged misconduct. The consultants believe that increasing the IPA's staffing, authority, and investigative expertise will also enhance the IPA's monitoring abilities by allowing IPA staff to more closely and methodically examine and evaluate the quality of IA investigations and recommendations.

Third, the flip side of these audits is that the IPA has historically disagreed with the process or outcome of cases, or expressed concerns about how the investigations were conducted, in a relatively consistent percentage of cases. For example, the IPA's audit determinations for the past four years shows that the IPA raised concerns or disagreed entirely with IA's investigations in 9-20% of cases.<sup>26</sup> During those years, the IPA requested IA conduct further investigation in 9-22% of cases and ultimately agreed after additional investigation occurred.<sup>27</sup> The IPA would have the discretion to investigate these and other cases of strong public interest or concern.

Moreover, the IPA has also raised certain concerns in its reports regarding potential bias on the part of IA determinations in certain cases. For example, the IPA's annual reports cite instances where IA failed to interview subject officers or otherwise exhibited issues of bias. Similar concerns regarding investigator bias were also raised by the State Auditor with respect to investigations regarding complaints relating to biased-based policing.<sup>28</sup> The IPA's increased authority and resources should improve the investigative process of cases in San Jose.

Ultimately, after evaluating evidence and hearing a wide range of opinions on oversight and appropriate approaches for San José, the team concluded that enhancing the current civilian oversight entity (the IPA) can increase confidence in the efficacy of accountability systems, improve public safety resulting from increased trust in the Department, improve the quality of investigative processes, and help ensure objective investigative outcomes, largely within the current structure.

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<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> The State Auditor found in its investigations that it reviewed included over-reliance on officers' after-the-fact denials regarding bias." <https://www.auditor.ca.gov/pdfs/reports/2021-105.pdf> at p. 65.



The consultants' recommendations also would address issues identified during field research, including:

- enhancing the civilian oversight and investigative purview for cases of strong public interest or where the IPA independently chooses to investigate;
- addressing limitations within the current structure, such as IA staff turnover;
- achieving earlier agreement regarding complaint allegations; and
- improving consistency in communication (as staffing tenure increases).

Certain changes, outlined in the recommendations and based on the consultants' analysis of the issues raised by different stakeholders, could also help improve investigations where the auditor has raised concerns.

Introducing a robust accountability structure that is transparent and easily understood can:

- improve public perception and understanding of law enforcement;
- improve the quality of policing and public safety by elevating the performance of the Department;
- achieve the goals of rebuilding trust and bolstering the relationship between police and the communities they serve; and
- demonstrate a commitment to modernizing policing according to the 21st Century Policing Principles.

The suggested solution can increase transparency, accountability, and broader community support for and belief in the process and the SJPD.

# SUMMARY OF RECOMMENDATIONS

## Maintain Current Entities and Supplement IPA with Investigators

1

- 1.1 Create an Investigations Unit within the current IPA structure. The existing IA and IPA structures should largely remain in place, aside from the proposed recommendations.
- 1.2 Hire an experienced Investigative Supervisor and investigators.
- 1.3 Provide funding for the new unit, including salaries, physical space, and administrative support.
- 1.4 Ensure that the IPA has full, unfettered access to investigative tools.

## Staffing for IPA and IA

- 2.1 Create three experienced investigator positions to serve in the IPA's Investigative Unit, preferably with some language qualifications.
- 2.2 Ensure both IA and IPA new investigators have taken appropriate investigative training courses.
- 2.3 IA should work toward reducing the frequency of IA staff and leadership turnover to enhance continuity of operations.

2

## Periodic Oversight Structure Review

- 3.1 Ensure systematic reviews for the proposed structure every three years.
- 3.2 Utilize the reviews to gauge performance and make adjustments as the review determines appropriate.

3

## Schedule Regular Community Outreach

- 4.1 Mandatory, periodic communication programs may increase community understanding of the investigative process and its limitations.

4

## Ensure Coordination between the IPA and IA/SJPD

- 5.1 Ensure that communication between the two agencies is timely and responsive in order to ensure effective coordination.
- 5.2 Engage in joint trainings as appropriate.

5

## Ensure All Evidence is Captured in IAPro

- 6.1 IA should ensure that any obtained evidence and reports are updated in a timely manner in IAPro.

6

## Revise IA Duty Manual as Appropriate and Create an IPA Procedure Manual

- 7.1 The new IPA unit should create an investigative procedures manual.
- 7.2 SJPD should revise the duty manual to account for the changes to administrative investigations. Examples of initial amendments might include:

Amending Sections 1712 and 1721 to include the Investigative Supervisor in determining allegations and referring conduct complaints to the Bureau level.

Amending Section 1716 to allow IA investigators to reach any appropriate findings.

Amending Section 1722 to require IA to notify the Investigative Supervisor when a DII is initiated.

Amending the IA Unit Guidelines to correspond to these changes to the Duty Manual.

7

## Determining Allegations

- 8.1 Investigate allegations of CUBO violations (after addressing the appropriateness of including the allegation).

8

## Determining Investigative Authority

- 9.1 Jointly establish which allegations to investigate at the front end, adjusting appropriately as investigations develop.
- 9.2 Create a hybrid approach whereby IA continues to investigate criminal and administrative complaints, and the IPA investigates certain categories outlined in the report or where the IPA appoints investigators.

9

## Proposed Investigative Steps

- 10.1 Provide the IPA with discretion to monitor or investigate complaints, following the procedures outlined in the Report and adjusting as appropriate.

10

## Reporting

- 13.1 Create timeframes for the IPA to investigate cases and forward to the Chief, ensuring statutes of limitations are met.
- 13.2 The IPA should be required to publicly report on the outcome of its investigations to City Council, maintaining confidentiality as required.

13

## Investigative Tools

- 11.1 Provide the IPA with appropriate investigative tools, including but not limited to unfettered access to IAPro and evidence.com.

11

## Record Keeping

- 12.1 SJPD will remain custodian of records for personnel complaints.

12

## Discipline Recorded in IAPro

14

## Recommendation 1: Maintain Current Entities and Supplement IPA with Investigators

Under this recommended approach, the City will maintain the existing IA unit and IPA structures and enhance the authority and performance requirements for both IA and the IPA. The IPA's current monitoring function for administrative cases will remain and would be supplemented with a discretionary investigative function. To accomplish this new investigative function, additional investigators and investigative authority should be assigned to the IPA in the form of a new Investigative Unit managed and overseen by the IPA to address certain administrative complaints (i.e., those that could result in disciplinary action).

During this project's consultations, City staff uniformly maintained, and the consultants agree, that any investigative staff conducting misconduct investigations, whether internal or external to the Department, must 1) be experienced in investigations, 2) be well trained and/or experienced in police practices and procedural/legal issues,<sup>29</sup> and 3) have an objective perspective. The IPA is currently not resourced nor is its staff equipped to take on this function, so this new structure will require additional staffing to allow for independent investigations in circumstances that warrant it and allow for more robust monitoring of cases the IPA does not investigate where appropriate.

The consultants recommend three new positions, including an Investigative Supervisor. It is crucial to ensure the ability of this investigating unit to compel the production of evidence. The City should provide additional funding to support the addition of new personnel and should ensure that physical space and administrative support are sufficient. In order to ensure the greatest efficiency and investigative credibility, the IPA Investigative Unit must receive the highest (short of administrative) unfettered, direct access to SJPD records and unimpeded subpoena power<sup>30</sup> in order to conduct its investigations.<sup>31</sup>

### 1. Maintain Current Entities and Supplement IPA with Investigators

**1.1** Create an Investigations Unit within the current IPA structure. The existing IA and IPA structures should largely remain in place, aside from the proposed recommendations.

**1.2** Hire an experienced Investigative Supervisor and investigators.

**1.3** Provide funding for the new unit, including salaries, physical space, and administrative support.

**1.4** Ensure that the IPA has full, unfettered access to investigative tools.

<sup>29</sup> Investigators should be trained in POBR, relevant Penal Code sections, the legal rights and obligations for investigating police officers, and applicable MOU provisions.

<sup>30</sup> This may require charter amendment and/or meet/confer.

<sup>31</sup> It is anticipated that all hiring within the IPA Investigative Unit will be conducted per municipal direction to maintain confidentiality requirements.

Under this structure, the IPA will remain the head of that office. The Investigative Supervisor will supervise the investigative staff and report to the appointed IPA.

IA will continue to investigate cases subject to the IPA's monitoring and auditing, with the IPA having the additional authority to independently investigate cases within the IPA's sole discretion. Similarly, IA should ensure that its incoming investigators have investigative or other qualified backgrounds that ensure evidence-based investigations. In addition, SJPD should take steps to reduce IA turnover to allow for greater continuity of operations. Although SJPD leadership noted that IA Commanders are chosen for their potential and abilities, and thus likely to serve other important leadership needs and promote out, continuity in IA is important to ensure the efficacy of this process.

The proposed model will provide steps within the process for consultation between the IA Lieutenant, IPA Supervisor and the Chief to settle disagreements regarding appropriate allegations and investigative outcomes, as well as opportunities after the process to document any objections to disciplinary decisions.

Under the proposed model, the role of the IPA in reviewing investigations completed by the IA would remain, as would the IPA's ability to appeal those determinations to the Chief. The new measures, outlined in the Investigative Process section of this report will establish which allegations are appropriate for IA or IPA review.



## Recommendation 2: Staffing for IPA and IA

It is imperative that both the IPA investigators and incoming IA investigators have prior investigative experience, as well as strong interviewing skills, demonstrated objectivity, and the ability to analyze policies and write clear reports. Language qualifications, such as Spanish, Vietnamese or other prevalent non-English languages spoken in the San José area and familiarity working with San Jose's diverse communities would also be an asset.

In addition, to fill out their skill set, incoming IA and IPA investigators must undertake or will undertake shortly after joining all of the appropriate law enforcement and investigative training courses/workshops, as well as equity training in trauma-informed approaches and best practices as expressed by the National Association for Civilian Oversight of Law Enforcement (NACOLE). The investigators should attend the training that SJPD is sending its IA investigators to regarding biased-based policing. The City may also require all staff in the Investigative Unit to be NACOLE certified as oversight practitioners and to abide by NACOLE's Code of Ethics.

To ensure the smooth and efficient operation of the Investigative Unit, there may be some need for additional resources to provide administrative support, collect evidence and manage correspondence. The number of resources needed for these duties can be assessed by the IPA staff as the new model is implemented.

As noted earlier, IA should work toward reducing the frequency of IA staff and leadership turnover to enhance continuity of operations. Turnover is disruptive in any organization, but given the importance of IA within SJPD, having consistent leadership during the transition period with the IPA will be especially important.

### 2. Staffing for IPA and IA

**2.1** Create three experienced investigator positions to serve in the IPA's Investigative Unit, preferably with some language qualifications.

**2.2** Ensure both IA and IPA new investigators have taken appropriate investigative training courses.

**2.3** IA should work toward reducing the frequency of IA staff and leadership turnover to enhance continuity of operations.

### Recommendation 3: Periodic Oversight Structure Review

To mitigate any unintended or unanticipated consequences from the proposed new oversight structure, the consulting team recommends that the city examine the efficacy of the structure and that its processes be reviewed every three years to determine whether there are needed improvements or any adjustments that should be applied. This review will be conducted with input from key stakeholders, including SJPD, the IPA, the POA, and community stakeholders. The IA and IPA will then jointly produce a report and present their findings to City Council. Council should be empowered to make any necessary adjustments after the presentations. The triennial review will allow for issues to be efficiently addressed and processes to be revised accordingly.

#### 3. Periodic Oversight Structure Review

**3.1** Ensure systematic reviews for the proposed structure every three years

**3.2** Utilize the reviews to gauge performance and make adjustments as the review determines appropriate.

### Recommendation 4: Schedule Regular Community Outreach

As noted in the introduction, community interviews revealed that the investigative process is entirely unknown or misunderstood. Community expectations of how the SJPD can address misconduct allegations are often outside the bounds of California laws and collective bargaining agreements.

The consultants therefore strongly recommend that IA and IPA establish mandatory, periodic communication programs (e.g., at least once a month) to increase community understanding of the investigative process, including clearly differentiating administrative and criminal processes. These education efforts should be used to explain the process, communicate the role and performance of the IPA and SJPD, share investigation outcomes to the extent required by law, and improve understanding of the investigative limitations. They offer an opportunity to continually measure community opinion on these issues, strengthen trust in the oversight process and achieve community and neighborhood buy-in.

#### 4. Schedule Regular Community Outreach

**4.1** Mandatory, periodic communication programs may increase community understanding of the investigative process and its limitations.

Outreach could take the form of education campaigns; meaningful community engagement that primarily centers community perspectives and experiences as part of any approach to providing public safety and/or accountability measures; or targeted public information campaigns sharing how the SJPD has followed through on RiPS recommendations adjacent to this RFP. The IPA recently hired a staff member who is responsible for community outreach, and the SJPD has community outreach personnel as well.



## Recommendation 5: Ensure Coordination Between the IPA and IA/SJPD

Certain City officials opined that the IPA's office has, at times, been slow to respond to IA reports or raise concerns. Current and former IPA staff have raised similar concerns about IA. The consulting team understands that the IPA has had vacancies that have recently been filled, which should mitigate these delays, however the consultants recommend that the IPA's and IA's staff agree upon timelines and communicate promptly in order to avoid delays approaching statute-of-limitations deadlines.

Where feasible, IA and IPA investigators should attend joint trainings regarding investigative practices and procedures, which will also improve cross-departmental consistency of process.

## Recommendation 6: Ensure All Evidence is Captured in IAPro

Because IAPro is the principal database capturing IA's investigative information, it is critical that all IA investigators update it in a timely fashion so that the IPA investigators have complete access to the investigative record.

### 5. Ensure Coordination between the IPA and IA/SJPD

- 5.1 Ensure that communication between the two agencies is timely and responsive in order to ensure effective coordination.
- 5.2 Engage in joint trainings as appropriate.

### 6. Ensure All Evidence is Captured in IAPro

- 6.1 IA should ensure that any obtained evidence and reports are updated in a timely manner in IAPro.

## Recommendation 7: Revise IA Duty Manual as Appropriate and Create an IPA Procedure Manual

The consultants recommend that the IPA Supervisor and the IPA create an investigative procedures manual to codify procedures for its new responsibilities. The IPA's Investigative Supervisor should craft and implement investigative guidelines and procedures for investigative staff. These processes should mirror those of IA where possible to maintain consistency of format, process, and quality. The Investigative Supervisor should also communicate with the IA Lieutenant if there are issues or concerns related to the investigative processes within IA.

Additionally, the consultants recommend that IA's Duty Manual be revised as follows:

- Amend sections to incorporate the recommended processes. For example, Section 1712 addresses the classification of complaints. Section 1721 currently provides that some complaints are assigned at the Bureau level such that an investigation will be conducted by a Command Officer. The Investigative Supervisor should be included in discussions and decisions about classification of complaints and whether to assign complaint investigations to the Command Officer, IA, or the IPA.
- Section 1716 provides that a completed investigation shall be forwarded to the Command officer in the bureau where the subject officer is assigned. The Command Officer is tasked with responsibility for reviewing the investigation, "determining the findings and making recommendations, including requesting further investigation." This responsibility should be removed from the Command Officer, who should be responsible solely for delivering any information about discipline imposed by the Chief and providing any associated training recommendations.
- Section 1722, which provides that the department may initiate an investigation on its own, should be amended to require that IA affirmatively notify the Investigative Supervisor whenever such an investigation is initiated. This requirement, in conjunction with an internal IPA process that includes the systematic review of all

### 7. Revise IA Duty Manual as Appropriate and Create an IPA Procedure Manual

**7.1** The new IPA unit should create an investigative procedures manual.

**7.2** SJPD should revise the duty manual to account for the changes to administrative investigations. Examples of initial amendments might include:

Amending Sections 1712 and 1721 to include the Investigative Supervisor in determining allegations and referring conduct complaints to the Bureau level.

Amending Section 1716 to allow IA investigators to reach any appropriate findings.

Amending Section 1722 to require IA to notify the Investigative Supervisor when a DII is initiated.

Amending the IA Unit Guidelines to correspond to these changes to the Duty Manual.



entries into the IAPro database, will help ensure that all allegations and investigative outcomes are independently reviewed for completeness, thoroughness, objectivity, and fairness.<sup>32</sup>

The consultants also recommend that the IA investigations be reviewed to ensure timely completion. The timely completion of misconduct investigations is important to complainants who want to be assured that their complaint has been fully and appropriately addressed, and officers, who prefer not to be the subject of a lengthy investigation with unknown outcomes and consequences. As with all investigations monitored by the IPA, the IPA should regularly report on the initiation and disposition of department-initiated investigations.

## Recommendation 8: Determining Allegations

One area of friction between the IPA and IA is related to the addition of an allegation that the subject officer violated the policy prohibiting unbecoming conduct. Duty Manual section 1404 provides that an officer's conduct, either on or off duty, which adversely reflects upon the Department is deemed to be conduct unbecoming of an officer (CUBO). Each case of

### 8. Determining Allegations

**8.1** Investigate allegations of CUBO violations (after addressing the appropriateness of including the allegation).

<sup>32</sup> Municipal Code - Section 8.04.010A

misconduct will be examined to determine if the act was such that a reasonable person would find that such conduct was unbecoming an officer. With this standard in place, conduct that may otherwise be the basis of a misconduct allegation may also signal the propriety of an investigation to determine whether the conduct adversely reflects upon the Department.

The process of making an investigative determination with regard to CUBO when the conduct is already being analyzed in connection with other allegations is perceived as “stacking”, and some SJPD personnel have expressed frustration with the IPA’s requests to add the CUBO allegation.

Effective oversight and accountability practices dictate that all potential violations of policy be thoroughly investigated. The determination about whether the conduct negatively reflects upon the department or the officer does not necessarily require that additional discipline be imposed because the Chief may ultimately decide that issuing appropriate levels of discipline for the most serious sustained allegations is sufficient to correct the officer’s approach going forward, which also has a remedial effect on the culture of the department and on the field training received by newer officers.

Disregarding an allegation simply because the conduct may implicate more than one policy requirement necessarily results in an incomplete investigation and does not result in the type of thorough and complete analysis calculated to improve performance and to signal to the people served by the Department that all potential misconduct and potential policy violations will be fully addressed. However, the consultants also heard concerns from IA and the Office of Employee Relations that requests to address this allegation later in the process caused delays. Addressing the appropriateness of allegations early in the process between the IA Lieutenant and the IPA Investigative Supervisor should mitigate this issue. Accordingly, the consulting team recommend that when a policy violation may objectively reflect poorly on the Department, an allegation of CUBO should be fully investigated and a conclusion should be reached as to whether the policy was violated.



## Recommendation 9: Determining Investigative Authority

### Investigative Process

Having a clear process for determining which allegations are the purview of the IA or the IPA is essential to mitigating friction and/or inadvertent duplication between the two arms.<sup>33</sup> The consultants propose the following division of IA and IPA investigations under this hybrid approach.

IA will continue to investigate any complaint received by the SJPD regarding potential misconduct by department members. It will conduct all criminal investigations, except those for which there are agreements in place with the DA's office.<sup>34</sup>

When a complaint is received by the IPA, the IPA and the Investigative Supervisor will decide whether to initiate an independent investigation. Where the IPA elects to investigate the complaint, the IPA will assign the case to the Investigative Supervisor for further action. After notifying

<sup>33</sup> The City would be responsible for abiding by the requirements of SB-2 and any other applicable state notification.

<sup>34</sup> The DA's office expressed concern about a lack of transparency regarding criminal use-of-force cases from SJPD and noted that SJPD should establish a better process for sending potential excessive force cases for the review by the DA's office. IA should establish clearer guidelines for reporting use-of-force cases to the DA's office for any potential liability of Penal Code section 149.

IA about the nature of the investigation and after a record is created in the IPro database, IA may elect to defer its own investigation such that there are no parallel or conflicting investigative processes. IPA can also appoint investigators to cases and, preferably, IA and IPA will reach agreement on deciding which investigative entity will conduct the investigation. In cases where the IPA elects to conduct an investigation, IA may elect to defer the investigation to the IPA.

The IPA will also investigate:

- Any complaints involving high-ranking members of SJPD
- An investigation of the Chief of Police<sup>35</sup>
- An officer-involved shooting or in-custody death<sup>36</sup>
- Any non-sworn SJPD personnel who is identified as a subject in connection with a complaint against sworn personnel<sup>37</sup>

The IPA's investigative authority over non-sworn SJPD personnel shall be limited to those complaints in which a non-sworn SJPD employee is identified as a subject in connection with a complaint against sworn personnel. These are infrequently "major" misconduct allegations, but can be quite serious if related to dispatching, record maintenance, and other support services.

Investigation of complaints against non-sworn personnel, such as disputes about the propriety of a parking citation, shall remain the purview of IA as they may unnecessarily tax the resources of the IPA investigative unit,

## 9. Determining Investigative Authority

**9.1** Jointly establish which allegations to investigate at the front end, adjusting appropriately as investigations develop.

**9.2** Create a hybrid approach whereby IA continues to investigate criminal and administrative complaints, and the IPA investigates certain categories outlined in the report or where the IPA appoints investigators.

**35** If the Chief of Police is the subject of the investigation, the City Manager will perform the duties typically executed by the Chief of Police in terms of determining whether the IPA's recommendation will be adopted.

**36** Under the proposed model, the SJPD's current structure and approach to investigating officer-involved shooting incidents and in-custody deaths would remain. To which, the IA leads the investigation, and the IPA monitors the investigations. The IPA has the same access to the scene and any investigative information that the IA has. SJPD's homicide unit conducts any criminal investigation with the Santa Clara District Attorney's Office.

**37** Complaints solely involving civilian employees of SJPD would be forwarded to IA for investigation. For example, IA would investigate a conduct complaint solely against a dispatcher. If the complaint implicates a sworn officer and non-sworn personnel, the IPA may investigate. As another example, the IPA may investigate a complaint alleging excessive force and may also investigate the conduct of a dispatcher if the alleged misconduct occurred in connection with the same incident or contact. Civilian employee protections would remain in place as they currently exist.



potentially affecting the IPA's ability to perform other duties and tasks in a timely manner.

Considering this, the consultants recommend the IPA Supervisor and the IA Lieutenant hold biweekly meetings to discuss routine matters and that they establish a requirement to respond to active investigation-related communications within 24 hours to address matters that are too time-sensitive for the biweekly meeting.

The IPA will maintain its current authority under current Municipal Code Section 804.010(A), including its authority to monitor:

- Any officer-involved incident
- Any Department-Initiated Investigation (DII)

## Recommendation 10: Proposed Investigative Steps

Complaints about a law enforcement officer may be received by the IPA or forwarded to the IPA by another City agency/ elected official. Complaints may be received in any manner (e.g., online, in person, fax, phone, etc.) The IPA Investigative Supervisor will identify any preliminary allegations and will notify IA that a complaint was received, including any preliminary allegations. The IPA will have the discretion to decide whether to (a) investigate a complaint or (b) monitor the IA investigation of the complaint. The IPA should make this determination based on available resources, the level of public attention to the allegation(s), and the severity of the allegation(s). IA shall generate a record in IAPro within 24 hours of being informed by the IPA.

### 10. Proposed Investigative Steps

**10.1** Provide the IPA with discretion to monitor or investigate complaints, following the procedures outlined in the Report and adjusting as appropriate.

### If the IPA decides to monitor the IA investigation:

1. The IPA Investigative Supervisor shall meet with the IA Lieutenant within one week of receipt of the complaint to establish appropriate allegations for investigation. This evaluation shall be based on the intake information, including any interviews of the complainant and any information gleaned from preliminary inquiry, such as whether body-worn cameras were properly activated. Note that appropriate allegations for investigation may include allegations that have not been identified by the complainant, but which become apparent to IA or IPA staff independently.



If there is disagreement about appropriate allegations, the IA Lieutenant shall convene a meeting with the Chief of Police and the IPA Investigative Supervisor. The IPA Investigative Supervisor and the IA Lieutenant will present their respective rationales for including/excluding certain allegations and the Chief will decide which allegations will be investigated by IA. Any agreements reached during this process would obviate any subsequent effort by the IPA to amend the allegations or to request additional investigative efforts related to any additional allegations.

Note: IPA may monitor any Department Initiated Investigation (DII) at its own discretion. The IA investigation process for DIIs will mirror the post-complaint process described below. The IPA process for monitoring DIIs will mirror that for monitoring IA complaint investigations, outlined above.

2. IA will conduct its investigation in adherence to the existing requirements (currently the 2020 IA Guidelines).
3. The IPA will monitor the IA investigation to ensure that the work is thorough, timely, objective and fair. Under the consultants' proposed model, the IPA investigator should have the same access to the scene(s) and interviews as the IA investigator and

should automatically monitor the incident. The IPA investigator should maintain the existing authority to ask questions during an administrative interview, subject to the limitations of the POBR.

4. IA shall generate a report after completing its investigation and within 180 days of receipt of the complaint or, in any event, within 365 days as required by Government Code section 3303, and subject to extension due to tolling provisions. The report will include recommendations regarding whether to sustain any allegations that were investigated.
5. Within seven (7) calendar days of completing the report, the IA shall forward it to the IPA for its review.
6. Within 14 calendar days of receiving the IA report, the IPA shall generate a memo indicating any issues or concerns regarding the quality or timeliness of the investigation.
7. **A.** If the IPA memo indicates no concerns with the IA investigation, the IPA memo will be added to the IAPro file, after which the IA report, its recommendations and the IPA concurrence shall be forwarded to the Chief. The Chief will generate a memo instructing IA to implement the IA findings and will impose discipline in connection with any sustained findings.  
  
**B.** If the IPA disagrees with the IA recommendations and investigative findings, a meeting will be convened within seven (7) calendar days to include the Chief, the IA Lieutenant, the IPA Investigator, and the Investigative Supervisor.

The Investigative Supervisor will present a memo explaining the way(s) in which the IA report failed to meet the standards for timeliness, thoroughness, fairness, and/or objectivity. The Investigative Supervisor will also identify any issues related to the investigative process (e.g., failing to interview a witness, asking leading questions) and may request that IA perform additional or remedial tasks to improve the quality of the investigation or the report.

If the Chief agrees with the monitoring findings of the IPA, the Chief shall generate a memo indicating agreement with the IPA recommendations for remediation and will instruct IA to perform any recommended tasks and/or revise findings accordingly.

If the Chief agrees with the IA recommendations, the Chief shall generate a memo instructing IA to record its findings in IAPro over the objections of the IPA. That memo shall be appended to the file in IAPro and will also be forwarded to the IPA.

The City's disciplinary process will remain the same.

### **If the IPA decides to independently investigate:**

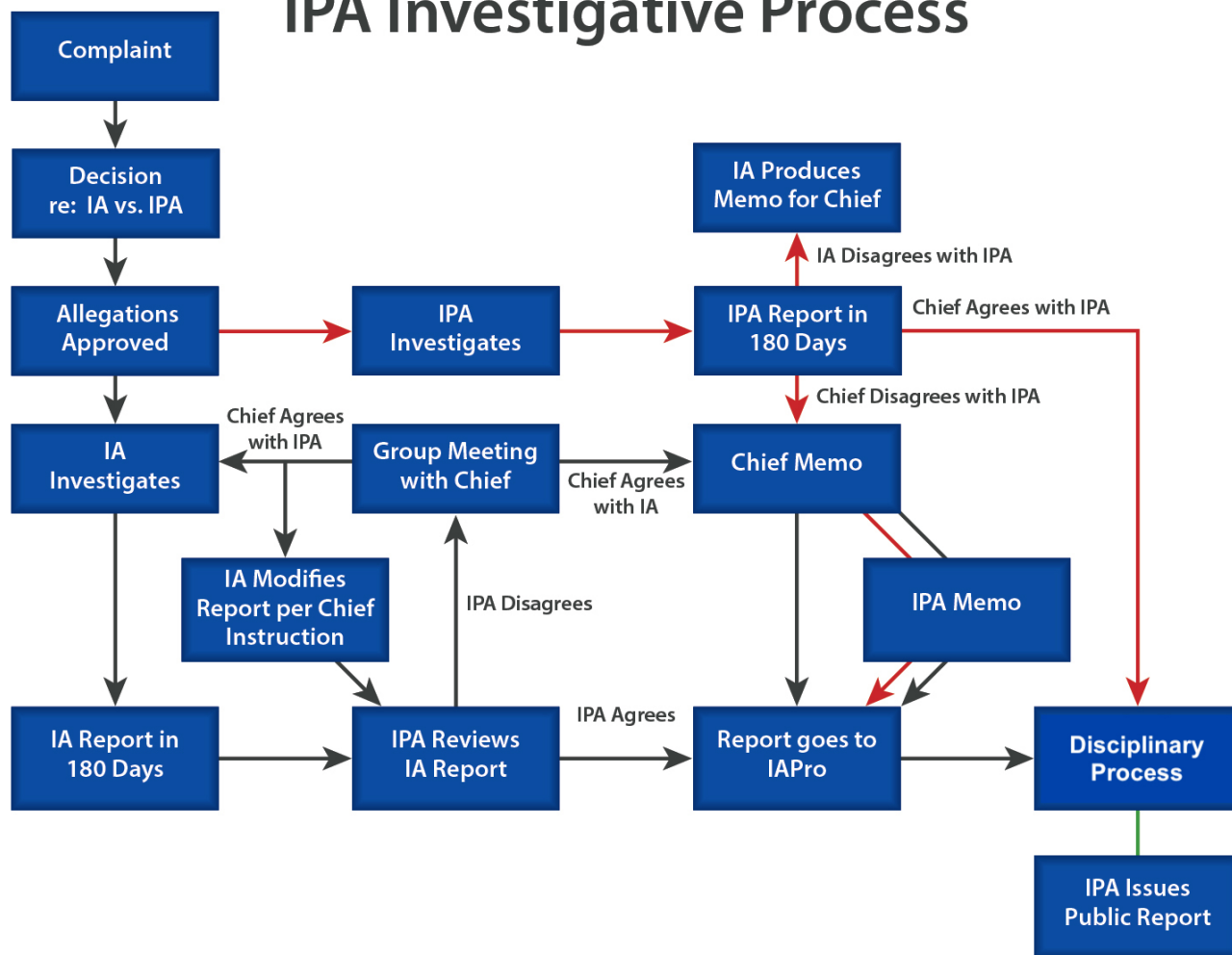
While IA maintains the right to conduct a concurrent investigation, it may defer its own investigation to avoid duplicative efforts that may be burdensome for the subject, witness officers and civilian witnesses, and may cause confusion for the complainant upon resolution. Either via policy revision or a Memorandum of Understanding between the Chief and the IPA, the possibility of delivering conflicting information regarding investigative outcomes and discipline can be avoided. Additionally, subject officers, witnesses, and complainants will not be subjected to duplicative processes and allegations can be established via a single intake interview, which obviates the issue of identifying different allegations due to the low likelihood of receiving identical information in duplicate interviews.

Importantly, the IPA must develop a sense among SJPD personnel that its findings are fair and objective and that its analyses and conclusions are sound, evidence-based, and well-reasoned. The objective quality of the IPA investigations can be partially measured by examining the frequency of disagreements between the IPA and the Chief and disagreements between the IA Lieutenant and the IPA.

### **Investigative Process:**

1. The investigator(s) will collect all evidence. SJPD and IA shall provide IPA direct access to all SJPD records for the purpose of investigating complaints and auditing SJPD performance. This includes full access to evidence.com, rather than the current process of providing a link that expires after 30 days.
2. Subjects and witnesses will be notified of the investigation and

# IPA Investigative Process



the IPA will arrange interviews with them and the investigator. Proper investigative notice shall include all admonishments and information required by the Government Code respecting public safety officers.

3. Investigators will conduct interviews with all subjects and witnesses.
4. Investigators will document all investigative steps and weigh the available evidence against the relevant policies.
5. Upon completion of the investigation, and within 180 days of the complaint filing, the investigator will prepare a report of investigation for the Investigative Supervisor for completion.
6. The Investigative Supervisor will send a final report, including recommendations regarding whether to sustain any allegations that were investigated, to the IA Lieutenant for addition to the file in IAPro. IA will forward the IPA report to the Chief.
7. If IA disagrees with the IPA recommendation, it shall include

| Task                                 | IA | IA Lieutenant | IPA | IPA Supervisor | Chief |
|--------------------------------------|----|---------------|-----|----------------|-------|
| Receives Complaints                  | ●  |               | ●   |                |       |
| Assigns/Closes Complaints            |    | ●             |     | ●              |       |
| Investigates Complaints              | ●  |               | ●   |                |       |
| Decides Whether a Violation Occurred |    | ●             |     | ●              |       |
| Recommends Discipline                |    | ●             |     | ●              |       |
| Decides Discipline                   |    |               |     |                | ●     |
| Adds Memo to IAPro                   |    | ●             |     | ●              |       |
| Reports to Public on Findings        |    |               |     | ●              |       |
| Monitors Progress of Investigations  |    | ●             | ●   | ●              |       |

a memo for the Chief and for the IAPro file outlining its disagreement. The Chief will then meet with the IA Lieutenant and the IPA Investigative Supervisor discuss their differing conclusions.

8. Upon receipt of the IPA report (and, if necessary, a conference with the IA Lieutenant and the IPA Investigative Supervisor), the Chief may:

A. Agree with the IPA recommendation, and shall generate a memo for the file in IAPro. The Chief will then impose appropriate discipline.

B. Disagree with the IPA recommendation and generate a memo for the file in IAPro outlining his or her disagreement, and take his or her determined appropriate action. In this case, the IPA will also generate a memo regarding its disagreement with the Chief's decision.

During the investigative process, the IPA may identify additional appropriate allegations that were not submitted by the complainant (e.g., failure to activate body-worn camera, incomplete reporting, etc.)

The existing DRP process should remain in place and be applied to IPA investigations, and IPA staff should make themselves available to answer questions from the DRP.

Though this report does not suggest changing the DRP process, this might be a shift the City chooses to consider and review depending on how and whether these recommendations are ultimately implemented.

All employment protections shall be honored, including the right to pre-disciplinary processes, such as Skelly hearings, any post-disciplinary processes, such as administrative appeal rights to arbitration pursuant to any collective bargaining agreement or the City of San José's Civil Service Commission, and arbitration pursuant to any collective bargaining agreement.

## Recommendation 11: Investigative Tools

The IPA Investigative Unit will require unfettered access to evidentiary resources. This includes access to:

1. Body-worn camera video
  - Direct access via evidence.com
  - Separate IPA account with AXON (evidence.com) or unrestricted access as a user under the SJPD account
2. Computer Aided Dispatch (CAD) records
  - Direct, real-time access
3. Audio/Video recordings
  - Radio or scanner communications
  - Any recordings of complainants, witnesses, or other recordings
4. Officer photos
  - To help identify subject and witness officers
5. Officer work schedules
  - To help identify subject and witness officers
6. Prior disciplinary history via IAPro
7. Records management systems
  - Police reports, including officer narratives and use of force reports

### 11. Investigative Tools

**11.1** Provide the IPA with appropriate investigative tools, including but not limited to unfettered access to IAPro and evidence.com.

- 8. TASER deployment data
  - To assess how many activations, duration, etc.
- 9. Training history
- 10. Scanner for real-time monitoring of major events<sup>38</sup>

### Recommendation 12: Record Keeping

Under the proposed model, SJPD would remain the custodian of records for personnel complaints. Anything subject to release under SB1421 would be transmitted to IA and added to IAPro. Specific non-SJPD documents generated by the IPA will remain in IPA custody or produced appropriately. All findings and reports would be captured in the IAPro records, thereby maintaining the SJPD’s ownership and management of the information.

#### 12. Record Keeping

**12.1** SJPD will remain custodian of records for personnel complaints.

### Recommendation 13: Reporting

Within 180 days of receipt of the complaint or incident, the IPA will generate an investigative report that includes recommendations on whether to sustain the allegations, and any dispositions and recommended disciplinary actions.<sup>39</sup> The final report will be submitted to IA and IA will update the IAPro database to reflect the IPA’s findings.

The report will also be forwarded to the Chief of Police by IA for the recommendation to be implemented. The Chief will also be notified by memo as to whether the IA Lieutenant disagrees with the IPA’s recommendations. This memo will detail IA’s contrasting analysis and/or any concerns about the IPA investigative process.

The Chief has the discretion to follow or reject the IPA’s conclusion and recommended discipline. The Chief will resolve any disputes about the IPA recommendations by convening a meeting with the IPA, the Investigations Supervisor, and the IA Lieutenant.

If, after this meeting, the Chief agrees with IA, IA will generate a memo to

#### 13. Reporting

**13.1** Create timeframes for the IPA to investigate cases and forward to the Chief, ensuring statutes of limitations are met.

**13.2** The IPA should be required to publicly report on the outcome of its investigations to City Council, maintaining confidentiality as required.

<sup>38</sup> All privacy or legal issues will be addressed through the City and City Council processes.

<sup>39</sup> This assumes no exemption under Government Code section 3304 tolls the 1-year statute of limitations.



the file, outlining its own analysis leading to a finding different from that reached by the IPA. This memo shall address and/or directly refute the analysis and conclusion generated by the IPA. The Chief will also generate a memo to the file indicating that he or she is rejecting the IPA findings and is relying on the “rebuttal” from IA.

The IAPro database will be updated with the memos to reflect the outcome determined by the Chief and the IPA memo shall remain part of the file.

The IPA shall publicly report on the outcome of its investigation to City Council, maintaining the confidentiality required by the California Penal Code. The report shall include whether the IA and the Chief rejected the IPA recommendation and whether the Chief ultimately accepted or rejected suggestions to improve the outcome and/or the investigative process. The report shall also include any information on repeated similar misconduct, whether the decision was overturned at Skelly or arbitration, inconsistency of discipline for similar misconduct and the IPA’s assessment of any appearance of favoritism or retaliation. All appropriate information must be anonymized.

### Recommendation 14: Discipline Recorded in IAPro

#### 14. Discipline Recorded in IAPro

Under current San José processes, any discipline will be approved by the Office of Employee Relations on behalf of the City Manager. The IAPro record shall be updated to reflect the issuance of discipline, including an acknowledgement from the subject officer and the issuing supervisor.<sup>40</sup>

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**40** Arbitration was identified as a significant issue by numerous SJPd and City officials who opined that the arbitration system was flawed, at least in part, to the selection process for arbitrators. One issue highlighted by these officials was the concern that arbitrators were financially incentivized to “split the baby” and reduce the punishment that the Chief had imposed. However, as noted above, the consultants were unable to obtain a Union-authorized statement rebutting this and any other points.



# IMPLEMENTATION

Due to budgetary and personnel constraints, it may be prudent to initially limit the investigative authority of the IPA to the most serious allegations of misconduct, such as racially discriminatory misconduct or the use of force resulting in serious injury. More common allegations can remain with the IA until the IPA investigations unit can be fully staffed with new investigators, as recommended. While limiting the scope of the unit is a prudent measure, it is not without risks. Failure to fully and properly address “low-level” misconduct may result in more serious negative outcomes in the future.

The following actions are necessary to establish a functioning, efficient IPA Investigations Unit:

1. Provide funding for the unit.
  - Secure a physical space for the investigators and provide the necessary infrastructure—e.g., computers, access to IAPro and evidence.com, etc.—to support their success.
2. Hire experienced investigators with the right skills to conduct fair, thorough and unbiased investigations and report their findings clearly. Once funding for the unit has been approved, the IPA should post the job opportunity broadly to ensure a diverse and skilled pool of applicants, including with NACOLE and other entities with ties to investigations, to lead to a deeper pool of applicants. This process of hiring three investigators will likely take several months, background investigation duration notwithstanding. The duration of these investigations varies widely depending on employment history, age, and other factors.
3. Provide appropriate training on best practices in investigations, law enforcement practices, and working with vulnerable and equity-seeking communities. The Investigative Supervisor, working with the IPA, should identify appropriate training and also engage in on-the-job training as it builds out the investigations side of the office. SJPD should also ensure that its investigators receive the appropriate training in these areas and should coordinate with the IPA Investigative Supervisor to ensure parity and quality.
4. Provide the support staff necessary to ensure the Investigative Unit’s efficiency.

5. Create and/or modify policies and procedures in collaboration with IA, SJPD and subject matter experts to create an adjudicative process that is clear and manageable. The consultants recommend regular meetings with the Chief, IA, and the IPA to improve the process as it develops.
6. Establish policies and protocols for the IPA and IA on information sharing, timelines, and decision- making.
7. Begin receiving investigations at the IPA's/Chief Investigator's discretion.

## Potential Obstacles to Implementation

The proposed recommendation requires additional human resources within the IPA, thus the associated cost of salaries, benefits and training must be taken into account. The consultants believe the transparency, rigor and legitimacy that the IPA investigative Unit would confer to the public and other stakeholders regarding SJPD's oversight outweighs the attendant costs.

The expansion of the IPA's investigative authority may be met with some resistance from the Police Officers' Association as a civilian-led investigation unit may be perceived as being untrained or biased. As noted above, training and objectivity for investigators are critical, but absent a conversation with the Union, the consulting team is not able to fully consider accommodations that the Union might find fitting.

Under Measure G, the City and POA may agree to a further expansion of the IPA's duties without needing to return to voters to modify the City Charter. Some of the recommended changes may be interpreted as changes to the officers' working conditions and thus will likely require negotiation with the POA. This may delay implementation and the duration of that delay will be, in part, dependent on the parties' willingness and availability to participate in the process and reach agreement.

Each of these barriers raises potential implementation issues for various City stakeholders. The City should incorporate appropriate legal advice from the City Attorney about the best way to address any legal issues to implementing these recommendations.



# CONCLUSION

The City of San José is making notable strides toward strengthening police-community relations. Extensive reviews of the processes that undergird the community safety systems, as well as consultations with those in law enforcement and those who interact with the San José Police Department, have sparked changes with regard to processes and oversight.

The establishment of an investigative arm within the Independent Police Auditor's office will continue this trajectory and ensure that allegations of police misconduct are thoroughly and objectively investigated. Effective civilian oversight is a valuable tool for ensuring impartiality—both in perception and reality—and engendering trust in the process among community members. An investigative structure, as the one proposed in this report, that encourages a productive consultative relationship between the SJPD's Internal Affairs investigative office and the IPA Investigative Unit, should also assure the fairness and impartiality of the process for subject officers.

Transparency in these processes and the activities of the investigative units, while respecting the privacy rights of accusers and subject officers, is paramount. San José's efforts to demonstrate accountability would greatly benefit from increased community education and awareness activities regarding the structures of oversight in place, the role of civilian oversight staff, state and local laws regarding privacy and oversight, and the outcomes of closed investigations.

The proposed approach should be re-examined on a regular basis (the consulting team suggests every three (3) years) to assess its effectiveness and implement any modifications needed to optimize efficiency.

While changing complex, large municipal systems can be both slow and disruptive, the consultants believe that the recommendations presented within this report balance the least disruption and the best fit for the City's needs. Building on existing structures to enhance oversight will best position San José to increase public faith and build trust between citizens and their law enforcement department.

# APPENDIX A

## Summary of Recommendations

### Recommendation 1: Maintain Current Entities and Supplement IPA with Investigators

- 1.1 Create an Investigations Unit within the current IPA structure, as outlined in the Report. The existing IA and IPA structures should largely remain in place, aside from the proposed recommendations.
- 1.2 Hire an experienced Investigative Supervisor and investigators.
- 1.3 Provide funding for the new unit, including salaries, physical space, and administrative support.
- 1.4 Ensure that the IPA has full, unfettered access to investigative tools, as outlined in the report.

### Recommendation 2: Staffing for IPA and IA

- 2.1 Create three experienced investigator positions to serve in the IPA's Investigative Unit, preferably with some language qualifications.
- 2.2 Ensure both IA and IPA new investigators have taken appropriate investigative training courses.
- 2.3 IA should work toward reducing the frequency of IA staff and leadership turnover to enhance continuity of operations.

### Recommendation 3: Periodic Oversight Structure Review

- 3.1 Ensure systematic reviews for the proposed oversight structure every three years.
- 3.2 Utilize the reviews to gauge performance and make adjustments as the review determines appropriate.

### Recommendation 4: Schedule Regular Community Outreach

- 4.1 Mandatory, periodic communication programs may increase community understanding of the investigative process and its limitations.

## **Recommendation 5: Ensure Coordination between the IPA and IA/SJPD**

5.1 Ensure that communication between the two agencies is timely and responsive in order to ensure effective coordination.

5.2 Engage in joint trainings as appropriate.

## **Recommendation 6: Ensure All Evidence is Captured in IAPro**

6.1 IA should ensure that any obtained evidence and reports are updated in a timely manner IAPro.

## **Recommendation 7: Revise IA Duty Manual as Appropriate and Create an IPA Procedure Manual**

7.1 The new IPA unit should create an investigative procedures manual.

7.2 SJPD should revise the duty manual to account for the changes to administrative investigations. Examples of initial amendments might include:

Amending Sections 1712 and 1721 to include the Investigative Supervisor in determining allegations and referring conduct complaints to the Bureau level.

Amending Section 1716 to allow IA investigators to reach any appropriate findings.

Amending Section 1722 to require IA to notify the Investigative Supervisor when a DII is initiated.

Amending the IA Unit Guidelines to correspond to these changes to the Duty Manual.

## **Recommendation 8: Determining Allegations**

8.1 Investigate allegations of CUBO violations (after addressing the appropriateness of including the allegation).

## **Recommendation 9: Determining Investigative Authority**

9.1 Jointly establish which allegations to investigate at the front end, adjusting appropriately as investigations develop.

9.2 Create a hybrid approach whereby IA continues to investigate criminal and administrative complaints, and the IPA investigates certain categories



outlined in the report or where the IPA appoints investigators.

### **Recommendation 10: Proposed Investigative Steps**

10.1 Provide the IPA with discretion to monitor or investigate complaints, following the procedures outlined in the Report and adjusting as appropriate.

### **Recommendation 11: Investigative Tools**

11.1 Provide the IPA with appropriate investigative tools, including but not limited to unfettered access to IAPro and evidence.com.

### **Recommendation 12: Record Keeping**

12.1 SJPd will remain custodian of records for personnel complaints.

### **Recommendation 13: Reporting**

13.1 Create timeframes for the IPA to investigate cases and forward to the Chief, ensuring statutes of limitations are met.

13.2 The IPA should be required to publicly report on the outcome of its investigations to City Council, maintaining confidentiality as required.

### **Recommendation 14: Discipline Recorded in IAPro**

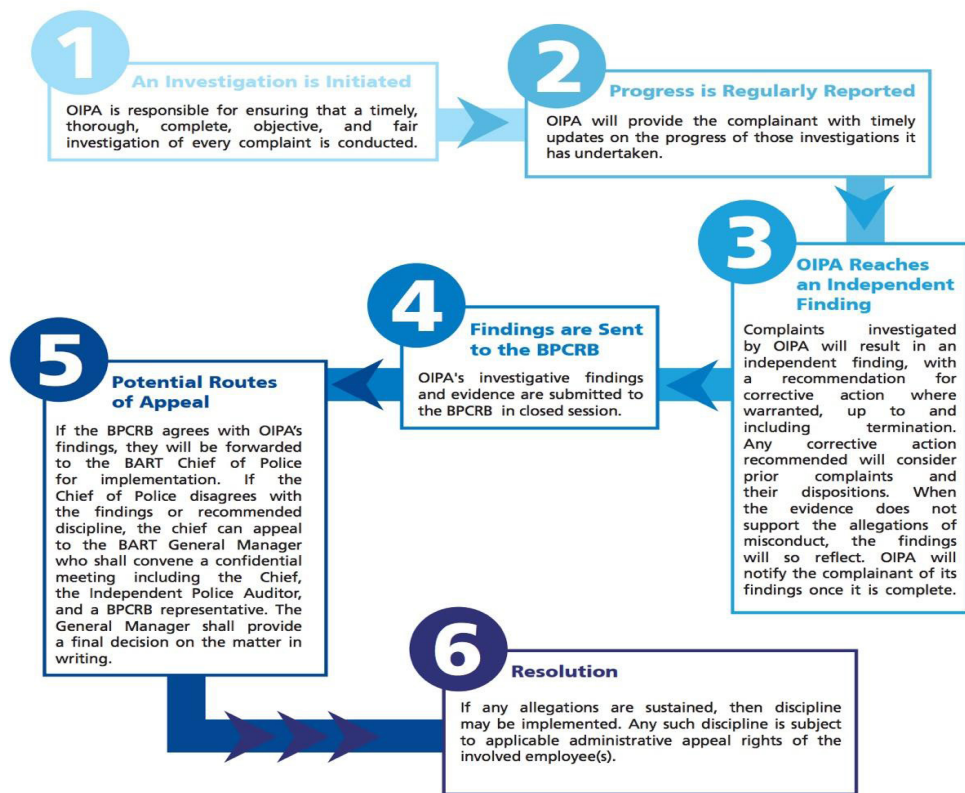
# APPENDIX B

## Jurisdictions Reviewed

### San Francisco Bay Area Rapid Transit District, CA

The consulting team is very familiar with the SF Bay Area Rapid Transit (BART) Citizen Oversight Model, which consists of a two-pronged oversight structure including a volunteer civilian review board and an Office of the Independent Police Auditor (OIPA). The BART model provides the OIPA with authority and responsibility to conduct independent investigations into any allegation of misconduct lodged against sworn personnel, among other duties. OIPA is staffed with two civilian investigators who have direct and unfettered access to all BART PD records, and BART officers are required by policy to cooperate with OIPA investigative processes. The BART Citizen Oversight Model was also significantly improved by the model's requirement for periodic review, which is intended to determine whether the need exists to improve the operation of the system, and which was most recently completed in 2018. Operating under this model, OIPA investigations are subjected to external review when completed investigations are presented to the BART Police Citizen Review Board, which is tasked with approval of OIPA investigative outcomes and disciplinary recommendations prior to implementation by the Chief of Police. Because IA may defer investigations to OIPA to avoid parallel processes pursuant to a Memorandum of Understanding approved by Union leadership, there is an implicit acknowledgement that the Union representatives and the Chief of Police have confidence in the overall quality and objectivity of OIPA investigations.

OIPA is also tasked with monitoring complaint investigations conducted by IA. This real-time monitoring process may involve discussions about appropriate allegations prior to notifying subject officers about the investigation, and may also involve resolving disagreements about investigative conclusions and findings, again prior to notifying the subject officer(s) and complainant(s) about the IA determinations. OIPA may require the department to conduct additional investigative tasks, but the real-time process is intended to address any issues or concerns early enough to reach agreement, if possible, and change course, if necessary.



## Seattle, Washington

The consultants reviewed the oversight structure in Seattle, WA, in particular because the staffing of the Seattle Office of Police Oversight (OPA) consists of both sworn and civilian investigators, a model that this project's process required us to consider and evaluate with regard to its fitness for San José. The OPA is responsible for receiving and addressing allegations of misconduct involving Seattle Police Department (SPD) employees. The agency is independent of SPD and has civilian leadership, while the staff consists of a blend of civilians and SPD sergeants.

The Seattle OPA oversight model provides that an agency supervisor shall review allegations of misconduct and determine whether to launch an investigation. OPA is required by law to investigate certain allegations, and in that event, the agency conducts a comprehensive investigation that includes the collection of evidence and interviewing subjects and witnesses.

Upon completion, the investigator submits the completed investigative

report to a supervisor for approval and the supervisor submits the report to the Seattle Office of the Inspector General (OIG) for certification. The OIG documents whether the investigation was thorough, timely, and objective and may require the OPA to conduct additional investigative steps.

The OPA Director transmits a memorandum to the Chief of Police, including a summary of the evidence and an analysis of the facts as applied to the relevant policy requirements. For sustained findings, the Chief of Police determines what discipline to implement.

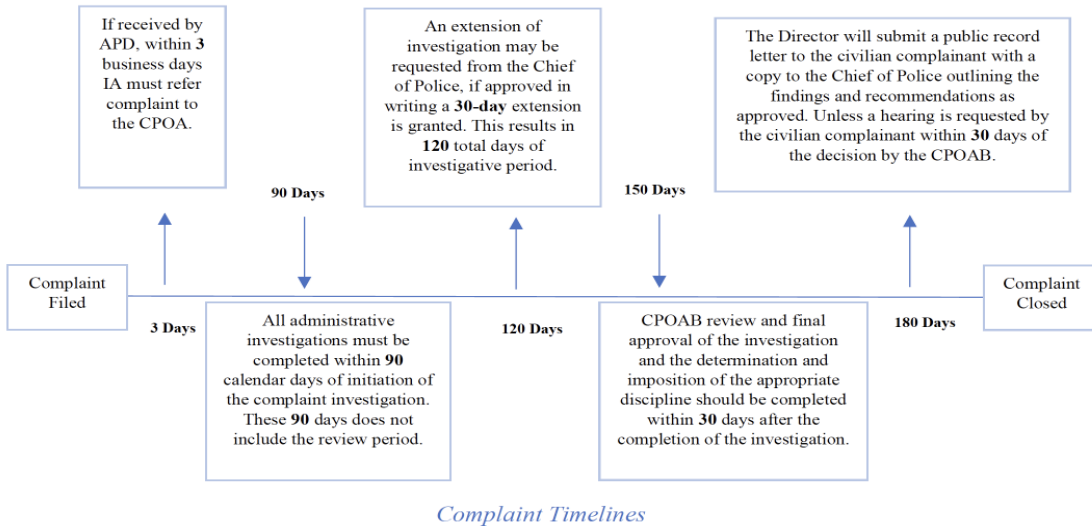
## Albuquerque, New Mexico

In Albuquerque, civilian police complaints can be filed with the Civilian Police Oversight Agency (CPOA) or the Police Department and referred to CPOA within three business days. The enabling ordinance provides that the CPOA shall independently investigate all civilian complaints and shall audit and monitor all use-of-force incidents and all investigations conducted by the Albuquerque Police Department's Internal Affairs division (IA). The CPOA prioritizes the mediation of complaints, whenever appropriate and with agreement from both parties. For cases not sent to mediation, the CPOA conducts and completes an investigation within 120 days.

The CPOA, for purposes of auditing the department, has full access to IA investigation files and is also empowered to subpoena documents and witnesses as necessary to perform that function. The Civilian Police Oversight Agency Board reviews the outcome of complaints at monthly meetings and agrees or disagrees with the Agency's finding. If it disagrees, it may return the complaint to the CPOA for further investigation. If it approves, the CPOA Executive Director submits a public record letter to the complainant and to the APD Chief of Police with the findings. The complainant may request an appeal within 30 days. If no appeal is lodged, the Chief of Police must notify the CPOAB and the complainant of his/her final disciplinary decision.

The Chief of Police/Superintendent of Police Reforms retains sole authority to take disciplinary action against an employee for violations of the department's Standards of Practice. However, the Chief of Police is required to provide a written memorandum within 30 days if they disagree with the recommendation for discipline stemming from an

## Complaint Investigation Process



## Portland, Oregon

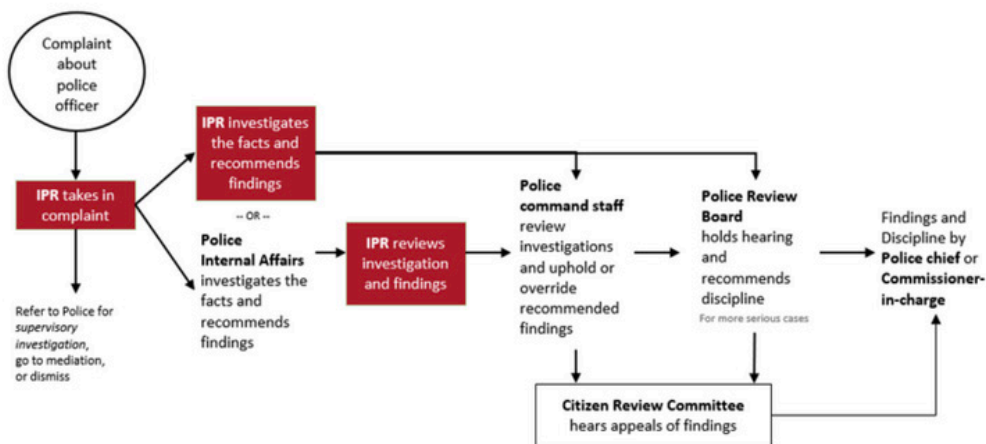
The Portland, Oregon Independent Police Review agency (IPR) has seven staff investigators and is authorized to initiate independent investigations and monitor investigations conducted by the Internal Affairs Division (IAD). Importantly, IPR investigators have access to all records of the Portland Police Bureau (PPB) and are required to maintain the confidentiality of protected records and information. Notably, the enabling ordinance that established the agency also provides that IPR shall have direct access to original database sources unless prohibited by law. As discussed elsewhere herein, this type of direct access is essential to the maintenance of investigative integrity and the timely completion of investigations.

Under the IPR model, Internal Affairs notifies the IPR of all complaints. IPR investigators engage people who want to file a complaint about an officer to understand the circumstances and evaluate evidence collected during the initial intake process. An IPR manager then decides what happens with the case depending on the available evidence. IPR may (a) resolve or administratively close a complaint(s), (b) conduct an independent investigation, (c) refer the complaint(s) to the Police Bureau’s Internal Affairs (IA) for administrative investigation or supervisory investigation, or (d) conduct a joint investigation with IA. Complaints that do not qualify

as misconduct can be referred for voluntary mediation or to a precinct commander to follow up on the complainant.

After an IA, IPR or joint investigation is completed, a Police Bureau supervisor reviews the investigation and provides a recommendation on whether the officer violated a Bureau policy. The Police Chief and Police Commissioner make the final decisions. If decisions are appealed by a subject officer, an arbitrator can weigh in to uphold or overturn their decisions.

Substantiated complaints that have the potential to result in discipline, including unpaid leave, are heard by the Police Review Board, which is an internal advisory body to the Chief. It is made up of command staff and officers, an IPR manager, and community volunteers. All officer-involved shootings or in-custody deaths go before the Police Review Board.



## Atlanta, Georgia

Overseeing a Police Department that includes approximately 2,100 sworn officers, the Atlanta Office of Professional Standards within the Atlanta Police Department investigates all allegations of employee misconduct and imposes appropriate disciplinary actions for all sustained employee work rule or city ordinance violations. The Citizen Review Board (ACRB) also receives complaints from members of the public concerning sworn members of the Atlanta Police Department and the Atlanta Corrections Department.

The Board reviews the complaint and may require an investigation into it.

ACRB staff includes four investigators and is prohibited from employing current or former APD officers. Cooperation with ACRB investigations is accomplished via the subpoena power granted to the agency as well as through the language in the enabling ordinance providing that the Board shall have full access to APD records and files and language that requires all City employees to submit to interviews and provide requested documents and records. Importantly, the Chief “shall” impose discipline on an employee who has failed to cooperate with ACRB processes. An ACRB staff investigator conducts the investigation.

After the investigation is deemed complete, the Board may conduct a review of the file or hold a hearing to establish findings and recommendations. The ACRB members may deliberate in a closed session; however, their vote is held in public. The complainant or subject officer(s) may have a representative of his/her choice present during the public hearing. While the Board has significant authority to investigate complaints and to recommend disciplinary action, the Chief retains the “full and ultimate authority” to take action against an employee.

### ACRB Investigative Process

