



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Dave Sykes

SUBJECT: SEE BELOW

DATE: June 23, 2020

SUPPLEMENTAL

SUBJECT: APPROVAL OF THE TERMS OF A SIDE LETTER AGREEMENT WITH THE SAN JOSE POLICE OFFICERS' ASSOCIATION (POA) RELATED TO THE EXPANSION OF REVIEW AUTHORITY FOR THE INDEPENDENT POLICE AUDITOR (IPA)

REASON FOR SUPPLEMENTAL

On June 23, 2020, the City and the San Jose Police Officers' Association (SJPOA) reached an Amended Side Letter Agreement (Agreement) relating to the expansion of the Independent Police Auditor's review authority. The purpose of this supplemental memorandum is to bring forward the Amended Agreement with the additional terms to the City Council for consideration. The following language was added to the Side Letter Agreement, "To allow the IPA to perform such other duties consistent with this Charter as may be required of him or her by the Council subject to any requirement to meet and confer with the recognized employee organization for police officers, including the exhaustion of applicable impasse resolution procedures." This will allow the City and the SJPOA to agree to further expansion of the IPA's duties, subject to the meet and confer process, without the need to return to the voters for modifications to the City Charter.

ANALYSIS

A complete copy of the Amended Side Letter Agreement is attached (Attachment A). The following is a summary of the key provisions of the Agreement.

**Department Initiated
Administrative Investigations**

The IPA will have the ability to review Department Initiated Administrative Investigations (DIIs), in the same fashion the City Charter and City's Municipal Code currently provides for Citizen Initiated Complaints.

Unredacted Records

The IPA will have the right to review any records that are non-exempt and available for public inspection under the law, but without redactions, for officer involved shootings

(OIS), and uses of force resulting in great bodily injury if a Citizen Initiated Complaint had not been made concerning the OIS or uses of force resulting in great bodily injury, provided that such records shall not be released until a criminal investigation or administrative investigation involving the specific officer or officers is complete, in order for the IPA to make recommendations with regard to Police Department policies and procedures.

- a. "Great bodily injury" shall be defined as a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily member or organ, a wound requiring extensive suturing, and serious disfigurement.

Redacted Records and Reports

The IPA will have access to Police redacted records and reports, including, but not limited to, use of force statistics, police reports, and body worn camera footage, in order for the IPA to make recommendations with regard to Police Department policies and procedures, subject to the following requirements:

- a. The Police records being sought by the IPA must be directly related to a topic that is the subject of a DII or Citizen Initiated Complaint; and
- b. The Police records and reports being sought by the IPA must be directly related to a topic that is part of an approved work plan that has been submitted by the IPA and approved by City Council; and
- c. Officer names and personally identifiable information shall be redacted in any Police records and reports being sought by the IPA in addition to any other redactions that are provided under state law; and
- d. Any findings or recommendations from the IPA based on Police records and reports that were accessed by the IPA pursuant to the above are reviewed by the City Manager's Office, the Chief

June 23, 2020

Subject: Approval of the Terms of a Side Letter Agreement with the San Jose Police Officers' Association (POA) Related to the Expansion of Review Authority for the Independent Police Auditor (IPA)

Page 3

of Police, the City Attorney's Office, and reviewed with City Council in Closed Session, if appropriate, prior to disclosure.

Procedures

To the extent possible, the existing procedures used by the IPA for Citizen Initiated Complaints as well as drafting the Annual Report to City Council shall be used in regard to the additional duties and responsibilities of the IPA as described above.

Other Duties

To allow the IPA to perform such other duties consistent with this Charter as may be required of him or her by the Council subject to any requirement to meet and confer with the recognized employee organization for police officers, including the exhaustion of applicable impasse resolution procedures.

Additionally, the IPA's duties will be expanded to allow the IPA to contract with any entity consistent with the powers and duties under this Charter and subject to any limitation imposed by Council. Please note that the expansion to provide the IPA with the ability to contract with any entity is not in the Amended Side Letter Agreement because it is not subject to meet and confer, which the POA also agrees with.



David Sykes
City Manager

For questions, please contact Jennifer Schembri, Director of Employee Relations and Director of Human Resources, at (408) 535-8150.

AMENDED

SIDE LETTER AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
THE SAN JOSE POLICE OFFICERS' ASSOCIATION

**INDEPENDENT POLICE AUDITOR
EXPANSION OF DUTIES AND RESPONSIBILITIES**

The City of San Jose and the San Jose Police Officers' Association ("POA") agree to the following additional duties and responsibilities for the Independent Police Auditor, or "IPA:"

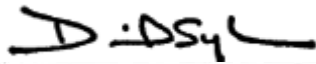
1. To include Department Initiated Administrative Investigations ("DII") of San Jose Police Officers to the Independent Police Auditor's review of internal investigation complaints, in the same fashion the Charter and San Jose Municipal Code currently provides for Citizen Initiated Complaints;
2. To provide the Independent Police Auditor the right to review any records that are non-exempt and available for public inspection under the law, but without redactions, for officer involved shootings, or "OIS," and uses of force resulting in great bodily injury if a Citizen Initiated Complaint had not been made concerning the OIS or uses of force resulting in great bodily injury, provided that such records shall not be released until a criminal investigation or administrative investigation involving the specific officer or officers is complete, in order for the IPA to make recommendations with regard to Police Department policies and procedures;
 - a. For purposes of this section, "great bodily injury" shall be defined as a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily member or organ, a wound requiring extensive suturing, and serious disfigurement.
3. To allow the Independent Police Auditor access to Police redacted records and reports, including, but not limited to, use of force statistics, police reports, and body worn camera footage, in order for the IPA to make recommendations with regard to Police Department policies and procedures, subject to the following requirements:
 - a. The Police records and reports being sought by the IPA must be directly related to a topic that is the subject of a Department Initiated Administrative Investigation or Citizen Initiated Complaint; and
 - b. The Police records and reports being sought by the IPA must be directly related to a topic that is part of an approved work plan that has been submitted by the IPA and approved by City Council; and
 - c. Officer names and personally identifiable information shall be redacted in any Police records and reports being sought by the IPA in addition to any other redactions that are provided under state law; and

- d. Any findings or recommendations from the IPA based on the Police records and reports that were accessed by the IPA pursuant to Section 3 are reviewed by the City Manager's Office, the Chief of Police, the City Attorney's Office, and reviewed with City Council in Closed Session, if appropriate, prior to disclosure.
- 4. To the extent possible, the existing procedures used by the IPA for Citizen Initiated Complaints as well as drafting the Annual Report to City Council shall be used in regard to the additional duties and responsibilities of the IPA as described above.
- 5. To allow the IPA to perform such other duties consistent with this Charter as may be required of him or her by the Council subject to any requirement to meet and confer with the recognized employee organization for police officers, including the exhaustion of applicable impasse resolution procedures.

The City shall prepare language for a Charter Amendment to present the new duties described above to the voters for approval. The Charter language shall be limited to, and must substantively conform with, the agreements described above.

This agreement shall become effective when signed by all parties below.

FOR THE CITY



6/23/2020

David Sykes
City Manager

Date



6/23/2020

Jennifer Schembri
Director of Employee Relations
Director of Human Resources

Date



6/23/20

Edgardo Garcia
Chief of Police

Date

FOR THE UNION



Paul Kelly
President, SJPOA

Date



Sean Pritchard
Vice President, SJPOA

Date



Gregg Adam
SJPOA Legal Counsel

Date