



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: David Sykes
Shivaun Nurre

SUBJECT: POLICE REFORMS: INDEPENDENT INVESTIGATION OF POLICE MISCONDUCT WORK PLAN **DATE:** March 5, 2021

RECOMMENDATION

Approve the proposed work plan for independent investigation of police misconduct.

OUTCOME

Approval of the proposed work plan for independent investigation of police misconduct, including consideration of policy formulation, possible budget impacts, and a negotiation schedule, would confirm the current work efforts of the Office of the Independent Police Auditor (IPA) and the City Manager's Office of Employee Relations as part of the Police Reforms efforts. This work includes conducting a Request for Proposals (RFP) for a consultant to evaluate if the IPA or an alternative entity (or entities) should be considered for conducting investigations of police misconduct and provide a written report, including a transition plan, that would identify the necessary steps required to ensure that investigations conducted by the IPA or an alternative entity were thorough and conducted in accordance with applicable laws, such as the Public Safety Officers Procedural Bill of Rights (PBOR), should a decision be made to do so. If it is decided to move forward with having the IPA or alternative entity (or entities) conduct independent investigations of police misconduct, it would require meeting and conferring with the San Jose Police Officers' Association (SJPOA), as appropriate. This work also includes the City Manager's Office, in coordination with the IPA, exploring other alternatives for independent investigation of police misconduct while the RFP process is underway.

BACKGROUND

As part of the Police Reforms efforts, on August 18, 2020, the City Council directed the IPA and the City Manager to provide the Council with specific recommendations for how the IPA could take over investigations of police misconduct from the Police Department's Internal Affairs Unit, including consideration of the following elements:

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

On November 18, 2020, the Rules and Open Government Committee further directed the City Manager, City Attorney, and the IPA to report back to the City Council in public session by March 1, 2021 with a proposed work plan, policy formulation, possible budget impacts, and negotiation schedule for the expansion of the authority of the IPA to include investigation of alleged police misconduct.

This memorandum is in response to this direction and subsequent direction to explore alternatives for independent investigation of police misconduct while the RFP process is underway. It should be noted that because the City Attorney’s Office has not been in a lead role related to this Police Reforms Work Plan item, they are not a principal author of this memorandum, but instead they have reviewed and provided input on this item as indicated in the Coordination section below.

ANALYSIS

Work Plan

Steps	Estimated Date of Completion
RFP Process	
Post RFP	March 1
Receive and Review RFP Responses	By April 16
Select a Consultant and Enter into Contract	By May 5
Consultant Completes Report	By July 9
Possible Budget Impacts Evaluated	By July 30
Return to City Council with Recommendations	By August 31
SJPOA Negotiations (As Applicable)	N/A
Exploration of Alternatives	
Explore Alternatives	Commence Week of March 8
Explore Alternatives with SJPOA, as Appropriate	By April 2
Return to City Council with Update in Closed Session	By April 13

Policy Formulation

The City Manager's Office of Employee Relations and the IPA worked together to develop an RFP for a consultant that will be responsible for evaluating the current misconduct investigation model and recommending potential alternatives, including the potential for transferring the responsibility for investigating some or all allegations of misconduct involving sworn police personnel from the Police Department's Internal Affairs Unit to the Independent Police Auditor or another entity (or entities).

The consultant's evaluation will include interviewing stakeholders including, at a minimum, current and former Internal Affairs Commanders, staff from the City Manager's Office of Employee Relations, staff from the IPA's Office, members of the Police Department's Command Staff, and members of the SJPOA's Board of Directors. The consultant will, at a minimum, evaluate:

- The structure of the Internal Affairs Unit, the IPA, and/or the new entity/entities (if any) including a reallocation of resources to introduce investigatory capacity, organizational roles, lead management and key personnel;
- Which entity/entities would classify complaints, which may impact which entity/entities would subsequently investigate allegations of misconduct;
- The structure of the process from intake through the investigation process and making factual findings on allegations of police misconduct;
- Whether complaints involving high ranking members of the Police Department should follow a different investigations process;
- The authority of the investigating entity to make factual determinations and findings on allegations;
- The continuation of the role of the IPA to review completed investigations and to appeal determinations to the City Manager;
- Enabling the IPA to continue to report concerns between her factual findings and the Police Department's disciplinary decisions to the City Council and public;
- Which entity/entities would be the custodian of record for personnel complaints involving sworn Police Department members;
- Which entity/entities would manage the Internal Affairs Unit Pro database and what other entities would have access to that database;
- Identification of any obstacles created by City Charter/Code or state law/regulation that would inhibit or impede the City's ability to implement various alternatives to the current model; and
- An appropriate staffing model for the IPA or entity/entities recommended to be responsible for conducting personnel investigations.

The consultant will prepare a report summarizing their recommendations and a transition plan to effectuate their recommendation(s), including consideration of non-sworn misconduct investigations that are currently handled by the Internal Affairs Unit, should they be adopted.

In addition, and while the RFP is in progress, the City Manager's Office will be exploring alternatives to transferring investigations of police misconduct from IA while maintaining the responsibility within the City Manager's appointing authority. The City Council will be updated in Closed Session.

Possible Budget Impacts

The possible budget impacts would need to be determined after the consultant report has been completed. If it is recommended that the City transfer the responsibility for investigating allegations of misconduct involving sworn police personnel to the IPA or another entity/entities, the consultant will also be asked to put together a staffing plan, which may include eliminating positions in the Police Department and adding positions to the IPA or providing funding to another entity/entities, which could then be evaluated budgetarily. Although the focus of this evaluation is on independent investigation of sworn police misconduct, non-sworn misconduct investigation work and its associated budget impacts will be considered as well, as it is currently assumed that work would remain in the Police Department given it is currently the responsibility of the Internal Affairs Unit.

If any alternative options warrant further consideration once they are explored, any associated budget impacts would also be evaluated accordingly.

Negotiation Schedule

If it is decided to move forward with independent investigation of police misconduct, this would require meeting and conferring with the SJPOA. These negotiations would not begin until after the consultant's report is completed and, depending on the recommendation that is made, the decision by the City Council to pursue further. It is difficult to put a timeline on these negotiations, but, at a minimum, they could take a few months. If an agreement is unable to be reached, the appropriate dispute resolution procedures would need to be followed, which could also add significant time to the timeline.

If it is decided to move forward with one or more of the alternatives to be explored, meeting and conferring with the SJPOA would occur as needed and the appropriate dispute resolution would be followed if necessary.

CONCLUSION

It is recommended that the City Council approve the work plan to conduct an RFP for a consultant that will be responsible for evaluating the current investigation model for police misconduct and potential alternatives, including the potential for transferring the responsibility for investigating allegations of misconduct involving sworn police personnel to the IPA or another entity/entities. This work also includes the City Manager's Office exploring alternatives to independent investigation of police misconduct while the RFP process is underway.

EVALUATION AND FOLLOW-UP

At the conclusion of the consultant's evaluation, the consultant will prepare a report summarizing their recommendations and a transition plan to effectuate their recommendation(s) should they be adopted. An evaluation of any budgetary impacts would follow by City staff. The report will then be agendized for full City Council consideration later this summer. As discussed above, if the City Council chooses to move forward with any form of a transfer of investigations of police misconduct out of the Police Department, the Administration would then meet and confer with the SJPOA, as appropriate.

After alternative options to transferring investigations of police misconduct are explored, further discussion will occur in Closed Session by April 13, 2021. If the City Council chooses to move forward with one or more alternatives, the Administration will meet and confer with the SJPOA, as appropriate.

CLIMATE SMART SAN JOSE

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

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the March 16, 2021 Council Meeting.

COORDINATION

This memo has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

HONORABLE MAYOR AND CITY COUNCIL

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COST SUMMARY/IMPLICATIONS

The exact cost of a consultant is unknown at this time. The cost of the consultant will be funded by the Police Reforms Work Plan appropriation, totaling \$800,000 that was approved by the City Council on October 20, 2020.

There is no known cost to exploring alternatives for independent investigation of police misconduct at this time.

CEQA

Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action.

/s/
SHIVAUN NURRE
Independent Police Auditor


DAVID SYKES
City Manager

For questions, please contact Jennifer Schembri, Director of Employee Relations and Director of Human Resources, at (408) 535-8154, or Shivaun Nurre, Independent Police Auditor, at (408) 794-6226.