



# Memorandum

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**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Dave Sykes

**SUBJECT:** SEE BELOW

**DATE:** June 16, 2020

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**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)**

## **RECOMMENDATION**

- A. Adopt a resolution to approve the terms of a Side Letter Agreement (Agreement) between the City of San Jose (City) and the San Jose Police Officers Association (POA) related to the expansion of review authority for the Independent Police Auditor (IPA)
- B. Direct the City Attorney to return to the City Council with a Ballot Measure to amend the City Charter relating to the expansion of the IPA's review authority for the next Statewide general election to be held on November 3, 2020.

## **OUTCOME**

Approving the terms of a Side Letter Agreement between the City and the POA and directing the City Attorney to return to the City Council with a draft Ballot Measure will result in a Ballot Measure for placement on the next Statewide general election to be held on November 3, 2020, to amend the City Charter to expand the IPA's review authority as provided in the Agreement.

## **BACKGROUND**

Under San Jose City Charter Section 809, the IPA currently has the following powers and duties:

- (a) Review Police Department investigations of complaints against police officers to determine if the investigation was complete, thorough, objective and fair.
- (b) Make recommendations with regard to Police Department policies and procedures based on the Independent Police Auditor's review of investigations of complaints against police officers.

- (c) Conduct public outreach to educate the community on the role of the Independent Police Auditor and to assist the community with the process and procedures for investigation of complaints against police officers.

In July 2018, the City commenced "*Seal Beach* Bargaining" with the POA related to expanding the IPA's current power and duties under City Charter Section 809. "*Seal Beach* Bargaining" is a labor term that comes from a court case involving the City of Seal Beach, California, and the Seal Beach Police Officers' Association. It refers to bargaining or negotiating over a proposed ballot measure prior to it being placed on a ballot for consideration by voters during an election. This is only done when a proposed ballot measure affects matters within the scope of representation.

The City and POA reached an Agreement relating to the expansion of the IPA's review authority in June 2020. Since a City Charter Amendment is required to expand the IPA's review authority as set forth in the parties' Agreement, this memo includes a recommendation that the City Council direct the City Attorney to return to the City Council for approval of a Ballot Measure to expand the IPA's review authority under the City Charter for placement on the next Statewide general election to be held on November 3, 2020.

Under the Elections Code, the deadline to call the election for November 3, 2020 and submit the measure to the Registrar of Voters for consolidation is Friday, August 7, 2020. The Registrar has also established August 11, 2020 as the deadline to submit arguments in favor of and against a ballot measure and August 18, 2020, for submitting rebuttals to arguments in favor of and against a measure.

## **ANALYSIS**

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

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**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.

**CONCLUSION**

It is recommended that the City Council approve the terms of the Side Letter Agreement between the City and the POA related to the expansion of review authority for the IPA and direct the City Attorney to return to the City Council with a Ballot Measure to amend the City Charter relating to the expansion of the IPA's review authority for the next Statewide general election to be held on November 3, 2020.

**EVALUATION AND FOLLOW-UP**

If approved, the City Attorney will return to City Council in August 2020 with a Ballot Measure to amend the City Charter relating to the expansion of the IPA's review authority for the next Statewide general election to be held on November 3, 2020.

**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 June 30, 2020 Council Meeting.

**COORDINATION**

This memorandum was coordinated with the City Attorney's Office.

HONORABLE MAYOR AND CITY COUNCIL

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**COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

**CEQA**

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

  
David Sykes  
City Manager

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

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.

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.

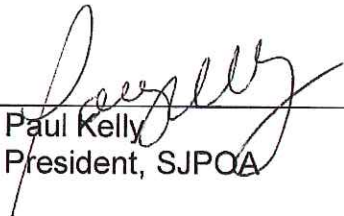
**FOR THE CITY**

**FOR THE UNION**

  
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David Sykes  
City Manager

6/4/2020

Date

  
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Paul Kelly  
President, SJPOA

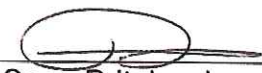
5/27/20

Date

  
\_\_\_\_\_  
Jennifer Schembri  
Director of Employee Relations  
Director of Human Resources


6/4/2020

Date

  
\_\_\_\_\_  
Sean Pritchard  
Vice President, SJPOA

5/21/20

Date

  
\_\_\_\_\_  
Edgardo Garcia  
Chief of Police

6/4/20

Date

  
\_\_\_\_\_  
Gregg Adam  
SJPOA Legal Counsel

5/27/20

Date