

September 7, 2021

Fred Ferrer
Chair, Charter Review Commission
c/o Office of the City Clerk
San José City Hall, 14th Floor
200 E. Santa Clara St.
San José, CA 95113

Dear Mr. Ferrer,

I write to share information and perspective with you and the Charter Review Commission (“the Commission” hereafter) related to our efforts to reimagine policing in San José. Many of our community leaders, public officials, and involved residents have devoted their time, expertise, and leadership to chart a path forward on this issue. With its recent work on police oversight structures, the Commission has joined this conversation. We are fortunate to have community leaders in San José who are deeply committed to making a difference on this issue.

Given the broad interest in police oversight and the number of different efforts underway, I would first like to ensure that the Commission is aware of two additional policy development processes that touch on oversight and are moving forward in parallel.

- First, as you may know, the City Council established the Reimagining Public Safety Community Advisory Committee (“the Advisory Committee” hereafter) in June of this year. The creation of this body was proposed and championed by a community coalition. At the request of the coalition, it is a community-led body with a diverse membership capable of broadly engaging our community. The City Council gave the Advisory Committee scope to comprehensively review and make recommendations on matters related to reform and reimagining of policing, including identifying alternatives to policing, reforming police policies and practices, and increasing police accountability and transparency, including through changes to oversight and disciplinary practices. For more information on the formation of this group and its clear remit from the Council on policing, please see the staff memorandum dated June 18, 2021 included with this letter as Enclosure 1. In particular, see Recommendation 1 on page 6 pertaining to the Advisory Committee’s scope.
- Second, on August 18, 2020, the City Council directed the Independent Police Auditor (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. On March 16, 2021, City staff presented and the Council accepted a work plan for this project that involved procuring a consultant to

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produce an evaluative report (the memorandum that outlines this work plan is included with this letter as Enclosure 2). The report will assess whether responsibility for investigations involving sworn police personnel should remain with Internal Affairs, be transferred from Internal Affairs to the IPA, or to an alternative entity or model. The IPA and the Administration are currently carrying out this work plan.

Note that with the passage of Measure G at the November 2020 election, some of the City Charter constraints on further expansion of the IPA's powers have been removed. Granting the IPA additional powers consistent with the revised Charter language, such as moving Internal Affairs investigations to the IPA, would be subject to Council approval and meet and confer obligations with the San José Police Officers' Association, but would not require a further amendment to the Charter through a ballot measure. A full description of Measure G is provided in Enclosure 3, a memorandum from the City Administration dated July 23, 2020.

Between these two existing processes, two separate recommendations on police oversight structures could potentially make their way to the City Council. If the Commission also forwards a recommendation on this topic there could be a total of three separate recommendations on oversight structures.

I honor the passion and commitment of the Commission to lead on this issue. While acknowledging the value of this community leadership, I also want to point out challenges that arise from the overlap between the work of the Commission and the Advisory Committee, particularly with respect to public engagement. Conducting two separate public processes on police oversight could potentially confuse members of the public who want to engage on this issue. Attending the meetings of two separate bodies could also impose unreasonable demands on their time. Based on recommendations from the community, the Council established a membership structure for the Advisory Committee that is specifically intended to engage historically underrepresented portions of our community on the issue of policing. If police oversight recommendations are forwarded from the Commission to the Council in advance of the Advisory Committee completing its engagement work, the intent of conducting a participatory process may be frustrated.

Given these considerations, I believe that the Advisory Committee is best positioned to conduct a public process and develop recommendations on police matters. With all respect to the public-spirited leadership of the Commission, I would recommend that the Commission consider referring its work on police matters to the Advisory Committee. Eliminating this duplication would have benefits for public engagement as described above, and could also benefit the Commission's work by freeing time on upcoming agendas for other important matters on which the Commission will forward recommendations. Importantly, even after referring this work,

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Commission members could still provide leadership on this issue: they can participate in the Advisory Committee process as members of the public and help to shape its recommendations.

I offer this recommendation in the spirit of collaboration and coordination, to ensure that we can engage the public in the clearest and most efficient manner. As I mentioned above, San José is fortunate to have so many committed community leaders; I strongly support continued community leadership on this issue. I welcome further dialogue on this matter if you have questions or thoughts—please feel free to get in touch at any time. Finally, I would like to thank you and the entire Commission for your continued service to our city.

Sincerely,



Jennifer Maguire
City Manager

Enclosures:

- Enclosure 1: Staff Memorandum dated June 18, 2021
- Enclosure 2: Staff Memorandum dated March 5, 2021
- Enclosure 3: Staff Memorandum dated July 23, 2020

cc:

- Mayor and City Council
- Toni Taber, City Clerk
- Shivaun Nurre, Independent Police Auditor
- Poncho Guevara, Member, Reimagining Public Safety Community Advisory Committee



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Angel Rios, Jr.

**SUBJECT: POLICE REFORMS WORK PLAN:
REIMAGINING COMMUNITY
SAFETY STATUS REPORT**

DATE: June 18, 2021

Approved

Date

06/18/21

SUPPLEMENTAL

RECOMENDATION

- (a) As recommended by the Public Safety, Finance and Strategic Support Committee on May 20, 2021, accept a status report on the Police Reforms Work Plan: Reimagining Community Safety work.
- (b) Discussion and direction to the Administration on:
 - (1) Expanding the scope of the Reimagining Community Safety process;
 - (2) The organizational framework and leadership model for the process; and
 - (3) The City's commitment of resources in support of the process.

REASON FOR SUPPLEMENTAL MEMORANDUM

At the May 20, 2021 meeting of the Public Safety, Finance and Strategic Support (PSFSS) Committee, the PSFSS Committee heard a status report on the Reimagining Community Safety process. The memorandum for this item provided a detailed description of the process thus far as well as a summary of concerns with the process expressed by participants and community members. During public comment, a number of community members spoke in favor of establishing a revised, community-led process with an expanded scope.

The PSFSS Committee cross-referenced the item to City Council with additional direction that staff issue a supplemental memorandum that laid out paths forward for the process and evaluated the implications of each path. Subsequent to the PSFSS Committee meeting, staff received a proposal from a coalition of community organization (hereafter "coalition proposal") for how a revised process should be constituted. This proposal is provided as an Attachment A to this memorandum. Staff has met several times with representatives of the coalition and provided feedback on this proposal.

This supplemental memorandum responds to PSFSS Committee direction to evaluate paths forward for the Reimagining Community Safety process.

ANALYSIS

The analysis in this memorandum is divided into two parts. First, it provides an overview of several potential configurations for an advisory body and associated processes, and assesses the benefits and drawbacks of each option. Second, it provides a detailed review of the coalition proposal, along with specific recommendations on how to proceed with this proposal should the Council wish to pursue that option.

Potential Advisory Body Configurations

The Reimagining Community Safety process was organized around an Advisory Group composed of community leaders. As discussed in the PSFSS Committee memorandum, members of the Advisory Group expressed concern that the policy scope set for the group was not broad enough and that the group did not have sufficient independence from staff and ability to control its own work. The issue of scope is discussed in the next section in the context of the coalition proposal (see “Purpose” section on page 5). This section provides an overview of options for how the advisory body could be established, with an analysis of the benefits and drawbacks of each option and an eye to how each would accomplish the desire for an independent, community-led process.

1. **Body Advisory to the City Manager:** The current Reimagining Community Safety Advisory Group is established as a body that is advisory to the City Manager. This type of advisory body is appointed by the City Manager and, as a formal matter, submits any reports or recommendations that it may produce to the City Manager. Coalition members expressed concern with this model on the basis that if their recommendations are submitted to the City Manager, there is an opportunity for staff to control or suppress which recommendations are ultimately delivered to the City Council. Along with the objection to the project scope, this was one of the main concerns with the current process.

The principal advantage of a body that is advisory to the City Manager is its flexibility. For example, the City Manager may appoint additional members to the group at any time without returning to the City Council, as would be necessary for option 2 below. The downside to this type of body, especially from the perspective of the coalition, is that because the body is established by the City Manager, staff does have the potential to exert control over the process. A body established by the City Council, as discussed in the next bullet, could potentially provide the body with greater independence from staff.

It is important to note that staff’s intent was not to suppress Advisory Group recommendations, but to transmit any report or recommendations received from the Advisory Group to the City Council, in full. That said, staff appreciates and understands

the desire of the coalition for an advisory body that provides its recommendations directly to the Council.

2. **Body Advisory to the City Council:** This type of body is appointed by the City Council and submits any recommendations or reports directly to the City Council. Permanent City commissions, such as the Planning Commission, are of this type. The City Council has also established ad hoc advisory groups and task forces around specific projects, such as the Station Area Advisory Group or the Envision San Jose 2040 Task Force.

The advantage of a body appointed by the Council in this case is that it would establish a direct relationship between the Council and the body, thus addressing the concern that staff may interfere with or suppress recommendations that the body wishes to make to the Council. A body appointed by the City Council is slightly less flexible than one appointed by the City Manager, in that any changes to the composition of the body would need to be approved by the Council. This type of body is also less flexible than an exterior process, described below, as any body established by the City would need to comply with City rules—for example, procurement rules. It is also important to note that unlike a body that is advisory to the City Manager, a body that is advisory to the Council is subject to the Brown Act.

The coalition proposal most closely matches with this type of body, but as discussed in the “Coalition Proposal” section below, some adjustments are necessary for it to fit into this framework.

3. **Exterior Process:** An exterior process would be a process run by an organization other than the city—for example, by a community organization.

A City-established body, whether advisory to the City Manager or the Council, can have a high degree of independence to guide its own work, but any City process must comply with some basic rules. For example, if a consultant procurement is necessary to support the body, such procurement must comply with the City’s procurement rules. A process that is exterior to the City, run by a community organization, would not necessarily need to abide by the City’s rules, but could still submit a report or recommendations to the City Council at the end of the process.

The advantage of this option is that it would provide process participants with maximum autonomy from the City. The disadvantage of an exterior process is that it could receive or be perceived as receiving less involvement, support and commitment from the City, and the resulting report and recommendations could end up being less well-coordinated with the City. This issue could potentially be addressed by making the City a participant in the process and setting expectations as to what the City’s role would be.

There is also a question of how such a process would be funded, should consultant support or other staffing be required. It could potentially be funded by an outside

organization, such as a foundation. The City could also provide funding, but would need to do so through a procurement process. For example, a community-based organization could be selected through an RFP to conduct a policy development process and funding could be provided pursuant to a contract, which would require certain deliverables, such as a final report to the City Council.

Although this option would provide community participants maximum autonomy from the City, staff's understanding is that the coalition proposal contemplates a process established by the City, not an exterior process.

4. **Bifurcated Process:** At the PSFSS Committee meeting, PSFSS Committee members discussed the possibility of a bifurcated process. A bifurcated process would establish two separate advisory bodies that would work in parallel on different policy topics. For example, one body could be formed to work on the issue of alternatives to policing, and a separate body could be formed to work on issues of police policy, practices, accountability, and transparency (consistent with the distinct scope topics laid out in the "Purpose" section on page 5). It would be possible to constitute each body differently under the three categories discussed above. For example, one body could be advisory to the City Council and the other body could be exterior to the City.

A bifurcated process could be advantageous in that two bodies with narrower scopes would allow each body to cover less ground and focus more closely on a particular issue area. Community representatives could be assigned between the two groups based on the issues that are most relevant and of greatest interest to themselves and their constituencies. Each group would be able to pursue its own area of scope without concern that one set of issues would overshadow the other, or that difficulties for one group, such as timeline delays or disagreements on process or policy, would affect the other.

There are also disadvantages to a bifurcated process. It is likely that the scope of the policy areas under the responsibility of each group would overlap. For example, the policy area of alternatives to policing would likely overlap in some respects with the area of police policies and practices. A single process with a single advisory body would be able to coordinate on the areas of overlap and address issues from an integrated, systemic perspective. Two separate bodies could potentially duplicate work in areas of overlap or arrive at recommendations that were not consistent or integrated. Running two parallel processes could also be more resource intensive, as it could involve a greater number of meetings per month and a greater commitment of staff or consultant time.

The coalition proposal does not divide different elements of the scope into two separate processes; however, the coalition proposal does propose the establishment of two parallel advisory bodies—a main advisory body and a body composed of youth members. Both

bodies would have the same scope, but could forward independent recommendations. This issue is discussed in greater detail in the following section.

Coalition Proposal

A coalition of nonprofits and community organizations has submitted a proposal for a revised advisory body and associated process. The advisory body contemplated by this proposal, known as the Re-Imagining Public Safety Community Advisory Committee (“Advisory Committee” hereafter) most closely resembles an advisory body established by the City Council, as described in bullet two in the previous section. The proposed process does not have a bifurcated scope. Major elements of the proposal include:

- An expanded scope that includes alternatives to policing, police policies and practices, police accountability and transparency, and implementation issues.
- An estimated project timeline of 6 months.
- An Advisory Committee composed of 27 voting members appointed by community organizations. This body would also include 8 non-voting members who would provide expertise or represent various agencies.
- A Youth Council composed of 12 members appointed by community organizations. The Youth Council would be parallel to and independent from the Advisory Committee. It would have the same scope but could deliver its own recommendations independent from the Advisory Committee.
- Request for staff support, consultant support and independent legal counsel.

Staff believes this proposal can be implemented, but would propose a few alterations and additions to the proposal for City Council’s consideration. These proposed changes are intended to clarify the coalition proposal, ensure direct neighborhood representation as part of this process, ensure that the proposal is consistent with relevant City rules, and outline staff’s resource commitments.

Purpose (Coalition Proposal, page 1-2)
<i>Project Scope</i>
The “Purpose” section of the coalition proposal seeks to define the scope of their proposed process. As discussed in the PSFSS Committee staff report for this item, a desire to broaden the scope of the work was a key point of dissatisfaction with the original process. The original Council direction mainly encompassed the issue of alternatives to policing, defined as alternative programs and service models to address social problems that do not involve a police response. The coalition retains this element in their proposed scope, but also expands

the scope to include three additional areas: transformation of police policies and practices, increased police accountability and transparency to the public, and implementation strategies.

Staff supports this expanded scope, but would like to propose some revisions to the wording for clarity and completeness. Revisions are as follows:

- On all four scope elements, staff proposes clarifying that the purpose of the process is to provide recommendations to the City Council within each subject area.
- On bullet 1, Alternatives to Policing, staff proposes adding mention of alternative city service models as a policy option, in addition to “community-based programs and interventions.”
- Bullet 2, Transformation of police policies and practices, and Bullet 3 Increased police accountability and transparency to the public, describe potentially overlapping areas of scope. In the coalition proposal, the “Transformation of police policies and practices” section includes mention of “oversight” and “disciplinary practices,” which are elements of police accountability that would seem to also fall under the “Increased police accountability and transparency to the public” section. To avoid confusion, staff proposes moving mention of oversight and disciplinary practices to bullet 3, to provide more detailed examples of what this element of scope could include.
- Bullet 4, Implementation strategies, provides that the Advisory Committee may make recommendations to the City Council on the approach to implementing its recommendations in the other areas of scope. A more detailed discussion of implementation considerations is provided under the “follow-up” section on page 6, including discussion of ongoing tracking of implementation progress. To increase clarity, staff has included implementation tracking as an example of the type of implementation considerations the Advisory Committee may consider, along with identification of resource needs.

Staff’s revised version of the project scope is laid out in the below recommendation.

Recommendation 1:

Direct that the project scope be revised as follows:

1. ***Alternatives to policing.*** Make recommendations to the City Council on identification and resourcing of community-based programs and interventions and alternative City service models that will significantly change, reduce, or eliminate the role of law enforcement in addressing social challenges. These may involve both the creation of alternative emergency response systems and preventative approaches.
2. ***Transformation of police policies and practices.*** The Commission must develop a detailed understanding of current SJPD policies and institutional context to inform policy recommendations moving forward. The body will explore what police policies

require immediate reform and make recommendations to the City Council on reform of those policies and practices, including, but are not limited to, crowd control techniques, use of force policies, training, and hiring.

3. ***Increased police accountability and transparency to the public.*** Make recommendations to the City Council on increased police accountability, which may include, but are not limited to, oversight and disciplinary practices, and transparency to the public.
4. ***Implementation strategies.*** Make recommendations to the City Council on implementation strategies for alternatives to policing, applying necessary policy reforms, and increasing public accountability/transparency in San José. Implementation recommendations may include, but are not limited to, proposals for publicly tracking implementation of recommendations and identifying resource needs and funding strategies.

Structure and Timeline (Coalition Proposal, page 2)

Timeline

The coalition proposal anticipates a six month project timeline. Staff agrees that six months is sufficient time for the Advisory Committee to conduct its work, but would note that additional start-up time will be needed to provide the opportunity for Advisory Committee members to be nominated by designated organizations and for a procurement process to be conducted, as requested in the coalition proposal. Staff recommends targeting the below timeline.

Recommendation 2:

Staff recommends targeting the following timeline for the coalition work:

- June – July 2021: Receive membership nominations from nominating organizations and establish Committee roster.
- August 2021: Begin Committee meetings
- August – September 2021: Conduct consultant procurement
- November 2021: Report on project status to the PSFSS Committee.
- March 2022: Finalize Committee report
- April 2022: Present report to City Council

Meeting Frequency

Page 2 indicates that the Advisory Committee and Youth Council will both meet twice per month, for a total of four monthly meetings. Page 2 also indicates that the Advisory Committee may choose to organize subcommittees; it provides a recommended structure that includes three subcommittees. Assuming three meetings per month for subcommittees, this project could entail 7 meetings per month, not counting outreach meetings. Staff is concerned

that planning for too many monthly meetings may impose burdens on staff, the consultant and Advisory Committee and Youth Council members that will reduce the effectiveness of the process. Staff includes a recommendation on page 11 below with regard to the Youth Council that would reduce the number of monthly meetings. Staff is not proposing a cap on the number of meetings per month, but does note that to ensure the success of the process the number of meetings should not exceed the ability of staff, the consultant and committee members to coordinate and prepare for them.

Steering Committee

Staff agrees with the suggestion that the Advisory Committee establish a steering committee for purposes of meeting coordination and preparation and to serve as a point of contact for staff and the consultant. A steering committee, chair or co-chairs, or other leadership structure will be necessary to facilitate meeting planning and coordination. Staff recommends that a steering committee or similar leadership structure be established by the Advisory Committee, as below.

Recommendation 3:

The Advisory Committee, once constituted, will establish a leadership structure, such as a steering committee, committee chair or co-chairs, or other comparable structure of its choosing, which will be designated as the primary point of contact for staff and the consultant for purposes of meeting planning, coordination, and other similar activities.

Engagement Teams

Page 2 of the coalition proposal indicates that the Advisory Committee may establish engagement teams to develop and implement outreach efforts. Public outreach is a key component of any City policy development process, and especially on policy matters that attract high levels of public interest. The below recommendation would establish outreach as a key component of the process, provide guidance on outreach targets, and establish the role of the Advisory Committee and staff.

Recommendation 4:

The Advisory Committee will conduct outreach to San José residents as part of their policy development process. Outreach to residents will include both targeted outreach to specific communities and populations as well as opportunities for the general public to participate. Target populations may include communities of color, faith communities, communities disproportionately impacted by policing or public safety issues, business community, police rank-and-file, and other communities, especially those that have traditionally been left out of City decision-making processes. In conducting this outreach, it will be important to make space for a wide variety of differing opinions. The Advisory Committee will take the lead on setting the outreach strategy, but City staff will have the opportunity to provide input on

outreach approach, including methods and target populations, for the Advisory Committee’s consideration. An update on planning for and the status of outreach efforts will be provided as part of the update on this process scheduled for the November 18, 2021 PSFSS Committee meeting.

**Reimagining Public Safety Community Advisory Committee Membership
(Coalition Proposal, Page 3-4)**

Who Decides Advisory Committee Membership

The coalition proposes that membership of the Advisory Committee be determined by designating a list of organizations who would nominate representatives to fill seats on the Advisory Committee. The coalition also proposes in a note on page 3 that “the coalition may choose to alter the list” of appointing organizations.

Staff supports the concept of designating organizations to appoint representatives to the Advisory Committee; however, for the Advisory Committee to be established by and be advisory to the City Council, staff believes the City Council must make the final decision on which organizations will make appointments to the enumerated seats on the Commission. After the Council provides direction as to which organizations would make appointments, neither the coalition nor City staff would be able to add or remove appointing organizations or members appointed by the designated organizations without additional direction from the City Council.

Voting Members

The coalition proposal seeks to ensure broad representation on the Advisory Committee by designating an array of community organizations to appoint Advisory Committee members. Staff appreciates the breadth and depth of community involvement these organizations bring and agrees that they will nominate members representative of a broad range of different communities.

In addition to seats appointed by community organizations, staff believes that some seats should also be set aside for residents who live in neighborhoods impacted by public safety issues. To that end, the recommendation below sets out a process and criteria for how six additional voting members would be selected. Providing opportunities for residents of impacted neighborhoods to join the commission would honor their work organizing and advocating for their neighborhoods, even if they don’t have a connection with any other community organization. Attachment B includes a comprehensive list of the proposed Advisory Committee nominating organizations, including both those recommended by the coalition as well as the staff additions.

Recommendation 5:

Approve the list of nominating organizations for voting members included on page 3 of the coalition proposal with the following amendments:

1. Add six additional members to the list of voting members. These members would directly represent San José neighborhoods impacted by public safety issues. The criteria for appointment would be as follows:
 - a. Appointees must reside within an area designated as a Mayor’s Gang Prevention Task Force 2019-2020 Gang Hotspot Area or a neighborhood participating in the City’s Project Hope program.
 - b. Appointees must be actively involved in their neighborhoods, such as through a neighborhood association or other community organization or project.
 - c. Appointees must be interested in advocating on behalf of their neighborhood on issues of neighborhood concern related to public safety.
2. The appointment process for these seats will be as follows:
 - a. Staff will develop an application form for these six seats based on the above criteria and work with City Council Offices, City program staff, and relevant community organizations to solicit applications.
 - b. Once received, applications will be evaluated according to the above criteria.
 - c. Based on this evaluation, the City Manager’s Office will forward 6 recommended candidates to fill these seats to the full Advisory Committee.
 - d. The voting members of the Committee would then vote on whether to seat each of the six candidates on the Advisory Committee.

Non-Voting Members

A list of proposed non-voting members are included on page 4 of the coalition proposal. Given the inclusion of preventative approaches to public safety in the alternatives to policing element of the project scope, staff believes it would be useful to add the San José Parks, Recreation and Neighborhood Services (PRNS) Department Deputy Director for Community Services as a non-voting member of the Advisory Committee. That recommendation is included below.

Staff also notes that under “Expectations of Nominees for Advisory Membership” on page 3 the coalition proposal indicates that non-voting members would “take on assigned tasks.” The non-voting members are drawn from excellent partner agencies and organizations and staff looks forward to their cooperative and supportive participation in the process. Staff would note however that any tasks requested of them would require their willing participation.

Recommendation 6:

Approve the list of nominating organizations for non-voting members on page 4 of the coalition proposal with the addition of the PRNS Deputy Director for Community Services as the ninth non-voting member.

**Youth Council Membership
(Coalition Proposal, Pages 4-5)**

Youth Council

As noted above, the coalition proposal contemplates establishing two separate advisory bodies: the Advisory Committee discussed in the previous section and a Youth Council composed of residents under the age of 21. These two groups would have the same scope and would work in parallel. They would be able to issue two separate sets of recommendations to the City Council.

As discussed above, supporting two advisory bodies that both meet twice a month would likely stretch the ability of staff, consultants, and committee members to adequately prepare and coordinate for meetings. In particular, staff notes that it appears that four members on the Advisory Committee and Youth Council (the members appointed by African American Community Services Agency, HERO Tent, LGBTQ Youth Space, and Bill Wilson Center) could potentially serve on both advisory bodies. If so, these members would be expected to attend four meetings per month—two for the Advisory Committee and two for the Youth Council.

Staff appreciates and supports the commitment of the coalition to youth engagement, but suggests that it may be more effectively accomplished through the outreach process than through a second advisory body that reports directly to the City Council. As noted above, there are four youth representatives included on the Advisory Committee. These Advisory Committee members could form an engagement team and conduct outreach to youth. This outreach could potentially involve forming a Youth Council with the same membership from the coalition proposal, but be constituted as an outreach effort instead of as a body directly advisory to Council. The youth members of the Advisory Committee could then carry the feedback from this outreach back to Advisory Committee to inform their work. This arrangement would have the added benefit of generating one set of recommendations that integrate the youth perspective in a cohesive whole instead of two sets of separate recommendations.

Recommendation 7:

Instead of appointing a Youth Council, direct that youth be engaged through the Advisory Committee youth members and through the outreach process, potentially including formation of a Youth Council as an outreach effort, and that the youth perspective be integrated into the recommendations of the Advisory Committee.

**Role of City: Budget, Staff and Consultants
(Coalition Proposal, Page 6)**

Staff Role

Page 6 of the coalition proposal requests support from staff and consultants in three areas:

1. Meeting support, including meeting preparation, note-taking and logistics.
2. Stakeholder engagement, including support for preparation, translation and logistics
3. Development of recommendations and drafting of a final report

Staff proposes to meet these needs as follows.

Recommendation 8:

Staff recommends that the substantive work of research, meeting and outreach material preparation, policy development and report writing required under all three bullets be primarily undertaken by the consultant and the members of the Advisory Committee. Staff will provide support for these efforts as outlined below, but is mindful of the desire of the Advisory Committee for independence from staff control. For example, if staff is the primary author of the Advisory Committee's final report, it is possible that concerns about staff suppression or manipulation of Advisory Group recommendations could resurface.

Instead, staff proposes undertaking a supporting role, as follows:

- To support the logistical needs outlined in bullets 1 and 2, staff proposes to hire one temporary support staff person. This position would be devoted to meeting the logistical needs of Advisory Group meetings and any outreach efforts. Coordinating City review and posting of meeting agendas would be included in this logistical support. It would not include note-taking or preparation of meeting summaries, as that would be completed by Advisory Committee members or the consultant.
- In support of the outreach strategy, staff would provide input on outreach approach, including methods and targets, as described above. The support staff person would provide logistical support for outreach, but material preparation and conducting meetings would be the primary responsibility of Advisory Committee members and the consultant.
- In support of research and policy development, staff would take responsibility for fielding any requests for information or data from the City, consistent with information available to the public under the Public Records Act. Staff could also provide feedback on policy questions or potential recommendations, but would not take the lead in drafting them.

The above supportive tasks will be accomplished by the support staff person, the City's non-voting members on the Advisory Committee, and a staff liaison assigned to the project, as necessary.

Consultant Procurement

On page 6, the coalition proposal indicates that “The City Manager’s Office should assist the [Advisory Committee] in the selection process for consultants and counsel. The voting [Advisory Committee] will then vote to select the consultants and counsel in coordination with the appropriate hiring agency.”

Staff has already procured a consultant for the original community process. The coalition suggests here a second procurement and selection of a new consultant. Staff can accommodate this request and conduct a second procurement process, but the procurement will need to be consistent with the City’s procurement rules. As such, the Advisory Committee will not be able to vote on consultant selection as requested in the proposal. Staff recommends proceeding as below.

Recommendation 9:

1. Set a budget for the new consultant contract and translation services of \$100,000-\$125,000 funded by the existing budget allocation for the Police Reforms Work Plan.
2. Staff will draft a Request For Proposals (RFP) and conduct a procurement process for a new consultant to provide meeting support, assist with stakeholder engagement, and to assist with development of recommendations and drafting of a final report. Staff will work collaboratively with members designated by the Advisory Committee to draft the RFP, which will define the scope of consultant services. Staff will also provide an opportunity for Advisory Committee members to sit on the procurement panel along with staff for the purpose of evaluating consultant proposals. The final decision on the procurement will be made pursuant to the procurement panel’s evaluation consistent with the City’s procurement rules.

Outside Legal Counsel

The coalition proposal makes reference to procurement of outside legal counsel. Given the City’s existing capacity for legal analysis within the City Attorney’s Office, the time involved in undertaking an additional procurement process, and the potentially significant expense of outside counsel, staff believes that resources devoted to this project should be focused on procuring consultant support, as described above. Staff does not recommend procuring outside counsel.

Recommendation 10:

Do not proceed with procurement of outside legal counsel and instead utilize City Attorney’s Office staff, as needed to review draft recommendation from the Advisory Committee.

CONCLUSION

Staff appreciates the commitment and passion of coalition members and all other participants in this reimagining community safety process to date and looks forward to continuing this process. If the City Council decides to pursue the coalition proposal as modified by the staff recommendations, staff will proceed according to the timeline outlined above, and will report to the PSFSS Committee on the progress of the work at the November 18, 2021 meeting. If the Council wishes to pursue a different approach, such as an exterior process or a bifurcated process as outlined above, staff will develop a revised work plan and timeline for implementing the approach as directed by the City Council.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office.

/s/
ANGEL RIOS, JR.
Deputy City Manager

For questions, please contact Angel Rios, Deputy City Manager, at (408) 535-4884

Attachment A: San José Re-Imagining Public Safety Community Advisory Committee Coalition Proposal

Attachment B: Proposed Reimagining Public Safety Advisory Committee Nominating Organizations

San José Re-Imagining Public Safety Community Advisory Committee

Coalition Proposal

June 2021

The undersigned organizations offer a proposal for a community-led process that we believe can lead to meaningful recommendations for reform and alternatives to policing in our community. The proposed structure was derived from other local models, similar bodies in other Bay Area cities, and specific feedback from community organizations over the last month. This may be revised by the coalition as necessary.

The proposal recommends a refined purpose, structure and timeline, suggestions for voting and non-voting membership, a youth council, governance, and role of the City and consultants.

Background

The murder of Mr. George Floyd by Minneapolis Police Officer Derek Chauvin stirred a massive public uprising against the intolerable and persistent legacy of racist law enforcement misconduct in communities across this country, including our own. Last June, local leaders called on the City of San José to commit meaningful resources to establish an Office of Racial Equity and to direct that office to:

“Develop a process to redirect resources away from policing toward other community-based solutions. This effort needs to incorporate and center the voices of individuals traditionally left out of our decision making, in partnership with diverse community-based organizations that have long served and represented the voices of those community members harmed by systemic racism.”

–June 15, 2020, letter to the Mayor Liccardo and City Council entitled, ***This Budget Fails to Measure up to this Moment***, signed by over 75 community-based organizations.

The Council agreed to create the Office of Racial Equity and charged the administration with establishing a community process on the “future of policing,” to recommend new ways of addressing social issues, and “a process to review our use of force policies.”

This spring, the City Manager’s office launched a Reimagining Community Safety Advisory Group with a large and diverse group of stakeholders. Members were told they were selected, in part, because of their direct relationships with grassroots constituencies. Many of the participants expressed significant concerns with inadequate representation of youth and system impacted individuals, along with frustration with the pace, scope, and poor facilitation of the process. By the first week of May, over a third of the appointees resigned from the Advisory Group, calling for a community-led process.

This proposal represents an attempt to articulate such a process.

Purpose

The purpose of the Re-Imagining Public Safety Community Advisory Committee (RPSCAC) is to identify, research, develop, and advance:

- ***Alternatives to policing.*** Redirecting resources toward community-based programs and interventions that will significantly change, reduce, or eliminate the role of law enforcement in addressing social challenges. These involve both the creation of alternative emergency response systems and preventative approaches.

- ***Transformation of police policies and practices.*** The Council must develop a detailed understanding of current SJPD policies and institutional context to inform policy recommendations moving forward. The body will explore what police policies require immediate reform, including but not limited to crowd control techniques, use of force policies, training, hiring, oversight, and disciplinary practices.
- ***Increased police accountability and transparency to the public.***
- ***Implementation strategies*** to employ alternatives to policing, apply necessary policy reforms, and increase public accountability/transparency in San José.

Structure & Timeline

The RPSCAC and RPSCAC Youth Council will work for approximately six months to develop a report with a set of findings, policy recommendations, and strategies for implementation to the City Council. The final report will be presented to the Council by members of the Committee.

In the course of this work:

- RPSCAC meetings will be open to the public and include opportunity for public comment;
- RPSCAC will be empowered to invite individuals, organizations, and/or agencies to testify;

The RPSCAC and RPSCAC Youth Council will meet twice per month, on a day/time accessible to the community and the membership. Voting members may decide to change the frequency or length of meetings at any time, and may schedule committee meetings as necessary and appropriate.

Committees

The RPSCAC may choose to organize itself and some of its work using committees and engagement teams.

A recommended structure would be to organize committees around the purposes of the RPSCAC:

- Alternatives to Policing
- Transformation of Policing Policies and Practices
- Public Accountability and Transparency

The Role of each Committee would be to:

- Incorporate and center the voices of individuals traditionally left out of our decision-making processes, especially those that have been harmed by traditional policing practices.
- Identify, develop, and prioritize recommendations for action using a results-based accountability framework with a focus on eliminating racial disparities.
- Propose a narrative shift to community stakeholders and policymakers for how recommendations can achieve a new vision of public safety.

Engagement Teams

The RPSCAC may consider developing engagement teams of members designed to help develop and implement outreach strategies to engage specific constituent stakeholders (impacted populations, neighborhoods, etc.) in order to surface input in the process.

RPSCAC Membership

Guiding principles of the RPSCAC composition will be:

- To center the voices of systems impacted families and communities while uplifting their narrative experiences throughout the process.
- To engage diverse community constituencies disproportionately impacted by policing systems, identifying nominating organizations who have capacity and experience in representing these communities.
- To ground RPSCAC findings and recommendations in mutually observable evidence such as scholarship, data, and reporting.

Below is a suggested list of nominating community-based organizations.

[Note: The organizations listed are possible examples. Ultimately their capacity will need to be confirmed, and the coalition may choose to alter this list. These are suggestions for key populations to be represented.]

These organizations are recommended based on their connection to key resident constituencies. Organizations are encouraged to nominate representatives with lived experience, and to consider someone other than their highest-ranking executive leadership. Nominees do not necessarily have to be members of their nominating organization. All nominees must have the capacity to fulfill the obligations of the role and be empowered to meaningfully represent their designated resident constituencies.

Members (Voting) – Community-Based Organization Nominees (27)

<u>Nominating Organization</u>	<u>Representation</u>
1) SV DeBug	System impacted individuals who experienced arrest/incarceration
2) SV DeBug	System impacted families who lost loved ones to SJPD encounters
3) Race Equity & Community Safety Cmt.	System impacted change advocates
4) San José Neighborhoods Commission	Broad representation of SJ neighborhoods, resident orgs
5) San José Neighborhoods Commission	Neighborhood Association representative
6) Destination:Home	Current and formerly unhoused residents
7) Interfaith Leaders Collaborative	Faith communities
8) People Acting in Community Together	Faith communities
9) NAACP SJ/SV	AfAm/Black community and multi-racial coalition
10) Black Leadership Kitchen Cabinet	AfAm/Black community
11) African American CSA	AfAm/Black youth attending public school with SROs
12) SOMOS Mayfair	East San José community
13) Latinos United for New America	Latinx communities
14) La Raza Roundtable	Latinx communities
15) National Compadres Network	Latinx communities, youth intervention
16) Amigos de Guadalupe	Undocumented communities
17) Asian Law Alliance	AAPI communities
18) LEAD Filipino	Filipinx community
19) Vietnamese American Roundtable	Vietnamese American Community
20) Indian Health Center of SCV	Indigenous/Native Communities
21) LGBTQ Youth Space	LGBTQIA youth/community
22) Behavioral Health Contractors' Association	Residents impacted by mental health/addiction challenges
23) Next Door Solutions to Domestic Violence	Women's rights leadership/DV and SV survivors
24) Parents Helping Parents	Differently-abled residents
25) Sacred Heart Community Service	Low-income residents
26) Bill Wilson Center	Unhoused & system involved youth
27) HERO Tent	Youth/young adult civil and human rights activists

Expectations of Nominees for Membership:

- They have the capacity to facilitate engagement of their designated community constituents in the process.
- They are empowered to reasonably represent the interests of their designated community constituency.
- They are familiar and in agreement with the purposes of the RPSCAC above.
- They have familiarity with the fundamental reasons and motivations of the movement against racist police violence.
- They can attend the scheduled meetings in addition to committee meetings or work on assigned / volunteered tasks.

Advisory Members (Non-Voting) – Relevant Experts and Public Agencies (8)

<u>Nominating Organization</u>	<u>Role / Representation</u>
1) SJP	Officer/representative, SJP
2) Independent Police Auditor, CSJ	Legal expert, IPA CSJ
3) Public Defender Office, CSC	Legal expert, PD CSC
4) Probation Department, CSC	Applied professional, PD Juvenile Justice CSC
5) Office of the District Attorney, CSC	Legal expert, DA CSC
6) Human Rights Institute, SJSU	Academic expert: policing/human rights/civil rights, Member
7) Dept. of Family & Children’s Services, CSC	Family and child social services expert, DFCS CSC
8) Office of LGBTQ Affairs, CSC	LGBTQ relations expert, Member

Expectations of Nominees for Advisory Membership:

- They can reasonably represent their respective agencies and professions.
- They are familiar with and respect the purposes of the RPSCAC.
- They understand their role is to advise and serve at the behest of the voting members—to answer questions, take on assigned tasks, and inform (not make) the decisions of the RPSCAC.
- They have some familiarity with the fundamental reasons and motivations of the movement against racist police violence.
- They can attend the scheduled meetings in addition to potential committee meetings or work on assigned/volunteered tasks.

TOTAL Members = 35 (27 voting + 8 advisory)

RPSCAC Youth Council Membership

The RPBCAC Youth Council will be an arm of the RPSCAC organized entirely by youth residents. The Youth Council is meant to provide a relatively autonomous space for youth to discuss and formulate their own recommendations relative to the RPSCAC purposes and findings.

The Youth Council will meet on a separate, parallel track and put forward their own recommendations in a distinct section of the Final Report. While their recommendations will be in conversation with the broader recommendations of the RPSCAC, they will not require approval of the RPSCAC to be included.

All voting members of the Youth Council must be residents of San José, under the age of 21 at the point of nomination. Below is a suggested list of nominating organizations.

Youth Council Members – Youth Organization Nominees (12)

<u>Nominating Organization</u>	<u>Representation</u>
1) SV DeBug	Youth residents who experienced arrest/detention
2) City of San Jose Youth Commission	Youth residents
3) African American CSA	AfAm/Black youth attending public school with SROs
4) HERO Tent	Youth/young adult civil and human rights activists
5) LGBTQ Youth Space	LGBTQIA+ youth
6) Bill Wilson Center	Homeless/system impacted youth
7) NAACP	Multi-racial youth organizing for civil rights protection
8) LEAD Filipino	Filipinx youth
9) Fresh Lifelines for Youth	Multi-racial system impacted youth
10) Young Women’s Freedom Center	Young women
11) San Jose Unified Equity Coalition & San Jose Strong	Multi-racial youth
12) APALI Youth Leadership Academy	AAPI youth

Expectations of Nominees for Youth Council Membership:

- They are empowered to reasonably represent the interests of their designated community constituency.
- They are familiar and in agreement with the purposes of the RPSCAC above.
- They have some familiarity with the fundamental reasons and motivations of the movement against racist police violence.
- They can attend the scheduled meetings in addition to potential committee meetings or work on assigned/volunteered tasks.

TOTAL Youth Council Members = 12

Governance

Voting

While the goal will be to reach unanimous consensus on decisions whenever possible, all decisions by the RPSCAC and RPSCAC Youth Council can be made by a *majority vote* of the voting members. They may decide to follow the principles of [Robert’s Rules of Order](#), and require a *minimum quorum of 2/3rds voting members* to make a decision.

Steering Committee

The voting RPSCAC and RPSCAC Youth Council members may decide to elect a Steering Committee from among their ranks. Steering Committee may be responsible for:

- Developing meeting agendas.
- Ensuring proper facilitation of meetings.
- Ensuring communication between committees.
- Incorporating member feedback on expectations, process, and decision-making.
- Represent the group when necessary.
- Work with City staff, consultants and counsel to facilitate the drafting of the Final Report.

The Steering Committee membership will not have additional powers of any significance.

Role of City: Budget, Staff, and Consultants

The City should provide staff, consultant support, and retain counsel for the RPSCAC and RPSCAC Youth Council.

Meeting Support:

Staff and consultants will support the Steering Committee in providing preparatory materials for Advisory Council members and the public, including:

- Agendas and background summaries on upcoming meeting topics and explanations of the process for discussion, which may include the use of guiding questions.
- Minutes/Notes from previous meetings that are accessible to their constituents.
- Materials which are provided at least a week in advance of meetings.
- Other logistical support as needed.

Stakeholder Engagement:

Staff and/or consultants will support RPSCAC and RPSCAC Youth Council members in conducting outreach to resident stakeholders by providing:

- Clear expectations, direction, and support in soliciting feedback from their constituents to inform the process.
- Support in collecting and presentation of data on the needs and priorities of community stakeholders.
- Providing language interpretation as needed.
- Other logistical support for outreach activities as needed.

Recommendations/Final Report:

City staff, counsel, and consultants will support the RPSCAC and RPSCAC Youth Council in research and development of specific proposals for consideration and adoption in the Final Report including:

- Review and present current City policies and practices.
- Research support for alternatives to policing models for discussion.
- Presentation of data and findings.
- Technical assistance in developing proposals for consideration.
- Drafting final report and presentation in formats accessible to the community.
- Communication with City Departments and City Council.

The City Manager's office should assist the RPSCAC in the selection process for consultants and counsel. The voting RPSCAC will then vote to select the consultants and counsel in coordination with the appropriate hiring agency. Either the City or one of the RPSCAC member organizations may serve as the fiscal agent for consultants and counsel.

All recommendations from consultants are subject to review and approval by the RPSCAC membership.

Follow-Up

A process should be established by RPSCAC members in conversation with consultants to monitor the implementation of recommendations by the City. This would include publicly tracking the recommendations adopted, partially adopted, or rejected by City Council, and relevant City agencies. This may also include setting appropriate expectations and/or timelines for implementation.

See, for example, the following tracking strategy employed by the SCC Blue Ribbon Commission on jails:

<https://www.sccgov.org/sites/jr/summarized-recommendations/Pages/completed.aspx>

Abode Services	Loaves & Fishes
African American Community Service Agency	NAACP San Jose/Silicon Valley
Alum Rock Counseling Center	National Compadres Network
Amigos de Guadalupe Center for Justice & Empowerment	Next Door Solutions to Domestic Violence
Asian Americans for Community Involvement	Office of the Public Defender, County of Santa Clara
Asian Law Alliance	MACLA/Movimiento de Arte y Cultura Latino Americana
Behavioral Health Contractors' Association (BHCA)	Metropolitan Education District
Bill Wilson Center	Momentum for Health
Black Leadership Kitchen Cabinet	PACT (People Acting in Community Together)
Catholic Charities of Santa Clara County	Parents Helping Parents
Carry the Vision	Peninsula Family Service
Center for Employment Training	Project HIRED
Center for Excellence in Nonprofits	Recovery Café San Jose
Child Advocates of Silicon Valley	San Jose Conservation Corps
City Year	San Jose Parks Foundation
Community Health Partnership	San Jose Taiko
Community Solutions	Sí Se Puede Collective
Council on American-Islamic Relations	SJSU Human Rights Institute
Destination: Home	SOMOS Mayfair
Educare California at Silicon Valley	Sacred Heart Community Service
Family Supportive Housing, Inc.	Santa Clara County La Raza Lawyers Association
Fresh Lifelines for Youth (FLY)	Silicon Valley Bicycle Coalition
Grail Family Services	Silicon Valley Council of Nonprofits
Green Foothills	South Bay Community Land Trust
Guadalupe River Park Conservancy	St. Joseph's Family Center
The Health Trust	SV@Home
HomeFirst Services	Ujima Adult and Family Services
International Children Assistance Network	Unity Care
Jewish Family Services	Uplift Family Services
Justice At Last	Veggielution
Latina Coalition	Vietnamese American Roundtable (VAR)
Latinos United for a New America/LUNA	West Valley Community Services
Law Foundation of Silicon Valley	Working Partnerships USA
LEAD Filipino	Youth Community Service
LifeMoves	

Attachment B

Proposed Reimagining Public Safety Advisory Committee Nominating Organizations

Table 1: Nominating Organizations for Voting Members

Red text indicates a proposed addition by City staff

	Nominating Organization	Representation
1	SV DeBug	System impacted individuals who experienced arrest/incarceration
2	SV DeBug	System impacted families who lost loved ones to SJPD encounters
3	Race Equity & Community Safety Committee	System impacted change advocates
4	San José Neighborhood Commission	Broad representation of SJ neighborhoods, resident orgs
5	San José Neighborhood Commission	Neighborhood Association representative
6	Destination: Home	Current and formerly unhoused residents
7	Interfaith Leaders Collaborative	Faith communities
8	People Acting in Community Together	Faith communities
9	NAACP SJ/SV	AfAm/Black community and multi-racial coalition
10	Black Leadership Kitchen Cabinet	AfAm/Black community
11	African American Community Services Agency	AfAm/Black youth attending public school with School Resource Officers
12	SOMOS Mayfair	East San José community
13	Latinos United for New America	Latinx communities
14	La Raza Roundtable	Latinx communities
15	National Compadres Network	Latinx communities, youth intervention
16	Amigos de Guadalupe	Undocumented communities
17	Asian Law Alliance	AAPI communities
18	Lead Filipino	Filipinx community
19	Vietnamese American Roundtable	Vietnamese American Community
20	Indian Health Center of SCV	Indigenous/Native Communities
21	LGBTQ Youth Space	LGBTQIA youth/community
22	Behavioral Health Contractors' Association	Residents impacted by mental health/addiction challenges
23	Next Door Solutions to Domestic Violence	Women's rights leadership/DV and SV survivors
24	Parents Helping Parents	Differently-abled residents
25	Sacred Heart Community Service	Low-income residents
26	Bill Wilson Center	Unhoused & system involved youth
27	Hero Tent	Youth/young adult civil and human rights activists
28	Approved by the Advisory Committee pursuant to a nomination from the San José City Manager's Office	Gang Prevention Hot Spot/Project Hope Neighborhoods
29	Approved by the Advisory Committee pursuant to a nomination from the San José City Manager's Office	Gang Prevention Hot Spot/Project Hope Neighborhoods
30	Approved by the Advisory Committee pursuant to a nomination from the San José City Manager's Office	Gang Prevention Hot Spot/Project Hope Neighborhoods
31	Approved by the Advisory Committee pursuant to a nomination from the San José City Manager's Office	Gang Prevention Hot Spot/Project Hope Neighborhoods

32	Approved by the Advisory Committee pursuant to a nomination from the San José City Manager's Office	Gang Prevention Hot Spot/Project Hope Neighborhoods
33	Approved by the Advisory Committee pursuant to a nomination from the San José City Manager's Office	Gang Prevention Hot Spot/Project Hope Neighborhoods

Table 2: Nominating Organizations for Non-Voting Members
Red text indicates a proposed addition by City staff

	Nominating Organization/Individual Appointee	Role/Representation
1	San José Police Department	Officer/representative, SJPD
2	San José Independent Police Auditor	Police oversight
3	County of Santa Clara Public Defender Office	Legal expert
4	County of Santa Clara Probation Department	Applied professional, County of Santa Clara Juvenile Justice
5	County of Santa Clara Office of the District Attorney	Legal Expert
6	San José State University Human Rights Institute	Academic expert on policing/human rights/civil rights
7	County of Santa Clara Department of Family and Children's Services	Family and child social services expert
8	County of Santa Clara Office of LGBTQ Affairs	LGBTQ relations expert
9	San José Parks, Recreation, and Neighborhood Services Department Deputy Director for Community Services	City of San José community services representative



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

March 5, 2021

Subject: Police Reforms: Independent Investigation of Police Misconduct Work Plan

Page 6

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.



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: David Sykes

SUBJECT: SEE BELOW

DATE: July 23, 2020

**SUBJECT: PROPOSED BALLOT MEASURE FOR THE NOVEMBER 3, 2020
ELECTION TO AMEND CITY CHARTER – EXPANSION OF REVIEW
AUTHORITY FOR THE INDEPENDENT POLICE AUDITOR (IPA)**

RECOMMENDATION

- (a) Review and discuss the proposed ballot measure for the November 3, 2020 statewide general election to amend the City Charter to expand the review authority for the Independent Police Auditor (IPA) in accordance with the Amended Side Letter Agreement between the City of San Jose (City) and the San Jose Police Officers Association (SJPOA);
- (b) Adopt a resolution of the City Council:
 - (1) Calling and giving notice, on its own motion, for a Special Municipal Election to be consolidated with the Statewide General Election on November 3, 2020, to submit to the electors of the City of San Jose, the following measure:

Shall the San José City Charter be amended to expand the Independent Police Auditor's oversight to include unredacted review of officer-involved shootings and incidents where an officer used force in a manner that caused death or great bodily injury, as well as review of department-initiated investigations against police officers, and other technical amendments, as agreed to by the San José Police Officers Association?
 - (2) Directing the City Clerk to, pursuant to Elections Code Section 12111, cause a synopsis of the proposed measure to be published at least one time not later than one week before the election in the *San Jose Mercury News*, a newspaper of general circulation within the City of San José, instead of printing the full text of the measure in the Sample Ballot;
 - (3) Authorizing the City Council or any member or members of the City Council to submit a ballot argument in favor of the measure, pursuant to Elections Code Section 9282;

July 23, 2020

Subject: Proposed Ballot Measure for the November 3, 2020 Election to Amend City Charter – Expansion of Review Authority for the IPA

Page 2

- (4) Authorizing the submittal of rebuttal arguments pursuant to Elections Code Section 9285;
- (5) Directing the City Attorney to prepare an Impartial Analysis of the measure pursuant to Elections Code Section 9280; and
- (6) Directing the City Clerk to take all other actions necessary to place this measure on the November 3, 2020 ballot.

OUTCOME

Approval of this item will place a measure on the November 3, 2020 ballot that, if approved, would amend the City Charter to expand the IPA's review authority in accordance with the Amended Side Letter Agreement between the City and SJPOA.

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. Accordingly, August 4, 2020, is that last regularly scheduled City Council meeting before August 7, 2020, to adopt a resolution calling for a Special Municipal Election for this measure.

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.

Seal Beach Bargaining with the SJPOA:

It is worth noting that the meet and confer process over a ballot measure is somewhat different than the traditional meet and confer process, and it is referred to as "*Seal Beach Bargaining*." "*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.

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In July 2018, the City commenced “*Seal Beach* Bargaining” with the SJPOA related to expanding the IPA’s current power and duties under City Charter Section 809. The City and SJPOA reached an Agreement relating to the expansion of the IPA’s review authority in June 2020, relating to expanding the IPA’s review authority to Department Initiated Administrative Investigations and access to certain unredacted and redacted records. On June 23, 2020, the City and the SJPOA reached an Amended Side Letter Agreement relating to the expansion of the Independent Police Auditor’s review authority. 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.

A City Charter Amendment is required to expand the IPA’s review authority as set forth in the parties’ Agreement.

Election Requirements

Pursuant to California Elections Code section 1415, the City Council can submit a proposal to amend the City Charter to alter any procedural or substantive right, benefit, or employment statute of any local government employee, retiree or employee organization to the voters only at a statewide general election in November.

Staff is recommending the Council approve the recommend actions related to calling the election and each recommendation is based on past practices in other elections, most recently March 2020.

- Publishing a synopsis of the proposed measure in the *San Jose Mercury News*, a newspaper of general circulation within the City of San José, instead of printing the full text of the measure in the Sample Ballot;
- Authorizing the City Council or any member or members of the City Council to submit a ballot argument in support of the measure;
- Authorizing the submittal of rebuttal arguments;
- Directing the City Attorney to prepare an Impartial Analysis of the measure in accordance with Elections Code 9280; and
- Directing the City Clerk to take all other actions necessary to place this measure on the November 3, 2020 ballot.

However, Council also has the option under the Elections Code to print the full text of the measure in the voter information guide, at additional cost; and/or decline to allow the submission of rebuttal arguments.

The City Clerk has fixed Wednesday August 11, 2020, at Noon as the deadlines for arguments for or against the measure to meet the deadline established by the ROV.

If the City Council wishes to allow rebuttal arguments, the City Clerk may accept rebuttal arguments from either the author(s) of a primary argument in support of or in opposition to a ballot measure, or any other person(s) authorized in writing by the author(s) to submit a rebuttal argument. Rebuttal arguments may not exceed 250 words and may be signed by no more than five (5) persons. The City Clerk has fixed Wednesday, August 18, 2020, at Noon as the deadline for Rebuttals, to meet the deadline established by the ROV.

ANALYSIS

The terms of the Amended Side Letter Agreement have been incorporated into the ballot measure (Exhibit A to resolution calling the election). The following is a summary of the key provisions of the measure.

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 death or great bodily injury if a Citizen Initiated Complaint had not been made concerning the OIS or uses of force resulting in death or 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 the purposes of this Charter amendment, “Great bodily injury” is 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.

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.

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The measure will also permit the IPA to contract with any entity consistent with the powers and duties under the Charter and subject to any limitation imposed by Council.

CONCLUSION

It is recommended that the City Council adopt a resolution calling a Special Municipal Election to be held on and consolidated with the statewide general election on November 3, 2020, to submit to the voters a Charter amendment to expand the IPA's authority as described above.

EVALUATION AND FOLLOW-UP

Approval of this item will place a ballot measure on the November 3, 2020, ballot, which if approved by voters will amend the City Charter to expand the IPA's authority as described above.

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 August 4, 2020 Council Meeting.

COORDINATION

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

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

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CEQA

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

A handwritten signature in black ink, appearing to read "D. Sykes", with a horizontal line extending to the right.

David Sykes
City Manager

For questions, please contact Jennifer Schembri, Director of the City Manager's Office of Employee Relations and Director of Human Resources, at (408) 535-8150.