

Response to the Investigations of Police Misconduct in San José Report by Moeel, Lah, Fakhoury, LLP

City Council

Lee Wilcox, Assistant City Manager

Karyn Sinunu-Towery, Acting Independent Police Auditor

November 14, 2023

Public Safety, Finance, and Strategic Support Committee Action – 10/19/23

- Accepted MLF Report and Staff response
- Rejected MLF Report's recommended "hybrid" model; directed staff to pursue policy alternatives to strengthen existing City oversight processes
- Cross-referenced matter to City Council

Police Oversight in San José: the Current Process

City Oversight

Internal Affairs

Office of the
Independent Police
Auditor

Office of Employee
Relations

State Oversight

The California State Commission on Peace Officer Standards and Training (POST) has the statutory authority to review investigations completed by law enforcement agencies and, as necessary, conduct additional investigations into serious misconduct that may provide grounds for action against a peace officer's certification.

MLF Report Analysis

MLF analyzed three oversight models.

Internal Affairs Model

Investigations of alleged misconduct are mostly conducted by sworn law enforcement personnel.

San José's Current Model

Civilian Oversight Investigations Model

Investigations of alleged misconduct are exclusively conducted by professional civilian investigators who are independent of the Police Department.

Hybrid Model

Some investigations are completed by law enforcement personnel and other investigations are completed by professional civilian investigators who are independent of the Police Department.

MLF's Recommendation

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Comparing Proposed Oversight Models

	San José's Current Model	MLF Report: "Hybrid" Model
Internal Affairs Role	Internal Affairs conducts investigations into police misconduct.	No change to current role.
IPA Role	The IPA audits Internal Affairs investigations to determine whether they are complete, thorough, objective, and fair, but does not conduct their own investigations. As part of this role, the IPA is allowed to: (1) give input regarding the allegations to be investigated; (2) participate in all investigative interviews; and (3) request additional witnesses to be interviewed. The IPA has unfettered access to documents related to Internal Affairs' investigations.	The IPA would have discretion to conduct their own investigations, independent of Internal Affairs, for some portion of misconduct complaints. To perform this work, the report recommends adding three new investigator positions within the IPA's Office, one of which would be an investigative supervisor.
OER Role	OER investigates some allegations of City employee misconduct and violations of the City Administrative Policy Manual, including misconduct by sworn police personnel.	No change to current role.

Potential Next Steps

Hybrid Model

Pursue Hybrid Model

Council Action

Council may direct the City Manager and the IPA to commence the meet and confer process with SJPOA.

Policy Alternatives

Implement Process Improvements

Council may direct the City Manager and IPA to implement the process improvements.

Increase IPA Staffing

Council may give direction to prioritize the additional funding needed to increase staffing through their approval of the Mayor's March Budget Message for Fiscal Year 2024-2025.

Increase OER Staffing

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