



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;

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- (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.

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.

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 from the end of the signature.

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.