

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE CALLING AND GIVING NOTICE OF, ON ITS OWN MOTION, THE SUBMISSION TO THE ELECTORS OF THE CITY OF SAN JOSE AT A SPECIAL MUNICIPAL ELECTION, TO BE TO BE CONSOLIDATED WITH THE STATEWIDE GENERAL ELECTION ON NOVEMBER 3, 2020, A BALLOT MEASURE PROPOSAL TO AMEND THE CITY CHARTER TO EXPAND THE REVIEW AUTHORITY FOR THE INDEPENDENT POLICE AUDITOR IN ACCORDANCE WITH THE AMENDED SIDE LETTER AGREEMENT BETWEEN THE CITY OF SAN JOSE AND THE SAN JOSE POLICE OFFICERS ASSOCIATION**

**WHEREAS**, San José City Charter Section 1600 authorizes the City Council to set the date for a Special Municipal Election; and

**WHEREAS**, the City Council desires to submit to the electors of the City of San José at a Special Municipal Election a ballot measure proposal to amend the City Charter to expand the review authority for the Independent Police Auditor in accordance with the Amended Side Letter Agreement between the City of San José and the San José Police Officers Association;

**NOW, THEREFORE**, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

**SECTION 1.** A Special Municipal Election is hereby called and ordered to be held in the City of San José on November 3, 2020 for the purpose of voting on a ballot measure to expand the review authority for the Independent Police Auditor in accordance with the Amended Side Letter Agreement between the City of San José and the San José Police Officers Association. The full text of the measure and the actual language of the proposed Ordinance amending the Code is attached to this Resolution as Exhibit A and incorporated by reference in this Resolution.

**SECTION 2.** The ballot measure will be placed on the ballot for the November 3, 2020 election in the following form:

**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?	YES	
	NO	

**SECTION 3.** The City Council hereby requests the Board of Supervisors of the County of Santa Clara, California to permit the Registrar of Voters of Santa Clara County ("Registrar of Voters") to render to the City of San José such services as the City Clerk of the City of San José may request relating to the conduct of the above-described Special Municipal Election with respect to the following matters:

Coordination of election precincts, polling places, voting booths, voting systems and election officers; Printing and mailing of voter pamphlets; Preparation of tabulation of result of votes cast; and all other services necessary to conduct an election.

**SECTION 4.** The City Council hereby requests that the Registrar of Voters consolidate the Special Municipal Election called and ordered to be held on November 3, 2020 with any other election that may be held on that date.

**SECTION 5.** The City Council hereby authorizes the Board of Supervisors of Santa Clara County, California to canvass the returns of the Special Municipal Election.

**SECTION 6.** The City Council hereby directs the City Clerk to reimburse the County of Santa Clara in full for any of the above-mentioned services which may be performed by the Registrar of Voters, upon presentation of a bill to the City, with funds already appropriated to the City Clerk for election purposes.

**SECTION 7.** The City Council hereby directs the City Clerk to take all actions necessary to submit the measure to the Registrar of Voters for placement on the November 3, 2020 ballot and facilitate the Special Municipal Election in the time frame specified herein and comply with provisions of the Elections Code of the State of California, City Charter, Ordinances, Resolutions and Policies regarding the conduct of the Special Municipal Election.

**SECTION 8.** The City Council hereby directs the City Clerk to: (a) pursuant to Section 12111 of the California Elections Code, cause a synopsis of the proposed measure to be published at least one time not later than one week before the election in the Mercury News, a newspaper of general circulation within the City of San José; (b) consolidate the Notice of Measure to be Voted with the Notice of Election into a single notice; (c) cause the statement set forth in Section 9280 of the California Elections Code regarding notice of availability of a copy of the measure to be printed in the impartial analysis to be prepared by the City Attorney; and (d) do all other things required by law to submit the specified measure above to the electors of the City of San José at the Special Municipal Election, including causing the full text of the proposed measure to be made available in the Office of the City Clerk at no cost and posted on the City Clerk's website.

**SECTION 9.** Pursuant to Sections 9282 and 9285 of the California Elections Code, the City Council hereby approves the submittal of direct arguments for and against the ballot measure, if any, and authorizes the City Council or any member or members of the Council to author and submit a ballot measure argument in favor of the ballot measure and approves the submittal of rebuttal arguments in response to arguments for and against the ballot measure and authorizes the City Council or any member or members of the City Council to author and submit a rebuttal, if any.

**SECTION 10.** The City Council hereby directs the City Clerk to transmit a copy of the measure qualifying for placement on the ballot to the City Attorney for preparation of an impartial analysis in accordance with Section 9280 of the California Elections Code.

**SECTION 11.** The City Council hereby acknowledges that the consolidated election will be held and conducted in the manner prescribed in California Elections Code Section 10418.

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ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk

**EXHIBIT A TO RESOLUTION NO. \_\_\_\_\_ OF THE CITY OF SAN JOSE**

That the citizens of the City of San José do hereby enact the following amendments to the City Charter:

Section 1. That Section 809 of the City Charter be amended to read as follows:

**SECTION 809. Office of the Independent Police Auditor**

The Office of the Independent Police Auditor is hereby established. The Independent Police Auditor shall be appointed by the Council. Each such appointment shall be made as soon as such can reasonably be done after the expiration of the latest incumbent's term of office. Each such appointment shall be for a term ending four (4) years from and after the date of expiration of the immediately preceding term; provided, that if a vacancy should occur in such office before the expiration of the former incumbent's terms, the Council shall appoint a successor to serve only for the remainder of said former incumbent's term.

The Office of Independent Police Auditor shall become vacant upon the happening before the expiration of his or her term of any of the events set forth in subsections (a), (b), (c), (d), (e), (h), (i), (j), (k) and (l) of Section 409 of this Charter. The Council, by resolution adopted by not less than ten (10) of its members may remove an incumbent from the office of the Independent Police Auditor, before the expiration of his or her term, for misconduct, inefficiency, incompetence, inability or failure to perform the duties of such office or negligence in the performance of such duties, provided it first states in writing the reasons for such removal and gives the incumbent an opportunity to be heard before the Council in his or her own defense; otherwise, the Council may not remove an incumbent from such office before the expiration of his or her term.

The Independent Police Auditor shall have the following powers and duties:

- (a) Review Police Department investigations of complaints initiated by members of the public and administrative investigations initiated by the Police Department 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) Make recommendations with regard to Police Department policies and procedures.

- (1) For the purposes of making recommendations in accordance with this subsection (c), the Independent Police Auditor shall have access to and authority to examine reports and records that are not exempt from disclosure and available for public inspection under the law for officer-involved shootings and uses of force resulting in death or great bodily injury, regardless of whether a complaint has been made. The Police Department shall make these reports and records available to the Independent Police Auditor without redaction, but the Police Department may withhold such reports and records from the Independent Police Auditor until any criminal or administrative investigation involving the police officer or police officers specifically involved in the incident is complete. For the purpose of this subsection (c)(1), "great bodily injury" means 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.
- (2) In addition to the records and reports described in subsection (c)(1), the Independent Police Auditor shall have access to and authority to examine redacted records and reports of the Police Department, including, but not limited to, use of force statistics, police reports, and body worn camera footage, for the purposes of making recommendations in accordance with this subsection (c), subject to the following limitations:

  - i. Records and reports sought by the Independent Police Auditor must be directly related to a topic that is the subject of a complaint or administrative investigation; and
  - ii. Records and reports sought by the Independent Police Auditor must be directly related to a topic that is part of a work plan submitted to the Council by the Independent Police Auditor and approved by the Council; and
  - iii. In addition to any other redactions authorized under State law, the Police Department shall redact police officer names and personally identifiable information of police officers in any record and report provided to the Independent Police Auditor under this subsection (c)(2); and
  - iv. Any recommendation from the Independent Police Auditor that is based on the records and reports that were examined by the Independent Police Auditor under this subsection (c)(2) shall be reviewed by the City Manager, Chief of Police, City Attorney, and the Council, if appropriate, in accordance with the closed session

provisions of California Government Code section 54950 et seq.,  
before disclosure.

- (d) 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.
- (e) Contract with any entity consistent with the powers and duties under this Charter and subject to any limitation imposed by Council.
- (f) 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.

*NOTE: Additions to the text are underlined and deletions are shown in ~~strikethrough~~.*