

Police Oversight

Presentation to the Charter Review Commission

By Commissioner Magnolia Segol

Problem

There is a history of policing practices, which has resulted in excessive and unnecessary force towards residents of San Jose ultimately causing our citizens to distrust the police. This distrust has caused concerns regarding police hiring, training, accountability, mental health awareness, and lack of basic care for the people they are sworn to protect.

San Jose lacks a robust police oversight structure that, in turn, lacks credibility and legitimacy among impacted communities. The oversight structure does not promote community empowerment and engagement and does not promote prevention of systemic issues or accountability of police management.

Citizen groups in San Jose are interested in seeing stronger community safety oversight and would like to participate in that oversight process by being on a Commission that reviews police conduct, policies, practices, training, and other aspects they deem important to modern community safety. Excluding the public in decision-making about the largest department in the City, and about the department that exercises force and control over residents, is inconsistent with procedural justice, democratic norms, and good governance.

Police Commission



Office of
Inspector General

Independent
Investigations
Department (IID)

Police Commission

The Police Commission has the role of recommending candidates to the City Council for the hiring of a police chief. Hiring the police chief shall involve interviews with community panels and selecting finalists to send to the City. A representative from the Police Commission shall be on the community panel, as the Commission is expected to engage with the public during the selection process. Individual city councilmembers may add candidate names for a vote so long as the community panel has had an opportunity to weigh in on the candidate. Further, the Commission has the role of appraising the police chief's performance in the form of regular performance evaluations. The police chief reports to the Police Commission.

The City Council may fire the police chief without cause by a 2/3 vote, and with cause by a majority vote. The Commission may fire the police chief by a majority vote for cause, and what counts as cause shall be defined by ordinance. The Commission may not fire the police chief without cause. The City Council may block the firing of the police chief by the Commission with a 2/3 vote, within 15 days of the Commission's vote, or it becomes law. Commission shall appoint an acting chief who already works for the SJPD during the 15 days and until a new chief is hired through the hiring process.

The City Manager no longer has the role of hiring, appraising, and firing the police chief.

Police Commission: How is it formed?

Each councilmember, and the mayor, shall select one applicant for a four-year term, for a maximum of 2 terms if the applicant so desires once selected by a councilperson. Half of the initial applicant pool shall serve a two-year term so that at any given time only half the commission needs to be replaced.

Former or current law enforcement, and those affiliated with law enforcement or police unions shall not be eligible to serve on the Commission. Disclosures shall be made regarding any immediate family members who are or have served as law enforcement, and immediate family members who are or were affiliated with a police union. Additionally, no city staff is eligible for this Commission.

Each commissioner may create any number of subcommittees of which members of the public will be eligible to be appointed to by the commissioner who is a subcommittee lead.

Commissioners may be removed for cause, as defined by ordinance, by the City Council by a majority vote. Commissioners may not be removed for political reasons, and the elements of “cause” shall exclude politics to the extent it can.

Office of Inspector General

The Office of Inspector General (IG) will have subpoena authority and full unfettered and unredacted access to the documents contained by any city department or employee relating to SJPd.

- This includes full access to anything and everything that the police department's Internal Affairs has, as well as all body-worn camera footage, recordings, transcripts, data, police reports, use of force reports, stop data, police communications, disciplinary histories, force reviews, training, etc.
- All documents shall be unredacted to the extent permitted by current State and Federal laws.

The IG shall have the existing powers of the IPA, but with additional access and authority. Its IPA authorities should also include a role in whether a case should be sustained and in the disciplinary decisions.

- The IG will report directly to the police commission, outside the police department's chain of command.
- The office can initiate an investigation into any area.
- The IG is authorized to compel any SJPd employee, including the Police Chief, to submit to an IG investigation. An IG investigation can only be stopped by a majority vote of the commissioners in a public session.
- The IG shall have the authority to access all of SJPd's facilities, as well as its documents, audio, and video evidence.

The Commission would direct the IG's reviews and receive reports and recommendations from the IG. The Commission would utilize these reports and recommendations, as well as its own access, to craft policy changes and review the performance of police management.

Independent Investigations Department

The IPA Office will be converted to an Independent Investigations Department (IID), with subpoena power. The IID reports directly to and can be hired/fired/appraised by the Commission. Rather than audit Internal Affairs' investigations of complaints as the IPA currently does, IID would conduct the investigations itself. The Commission, through a subcommittee on discipline, would play a limited role in adjudicating disagreements between the Chief and IID as to whether to sustain an allegation and as to the level of discipline issued in a particular case. The Commission would also have access to all IID cases (both directly and through the Office of Inspector General).

- IID shall issue annual reports.
- IID shall have sufficient staffing based on a formula relating to caseloads/number of complaints.
- The IID shall have full unfettered and unredacted access to the documents contained by any city department or employee relating to SJPd.
- This includes full access to anything and everything that the police department's Internal Affairs has, as well as all body-worn camera footage, recordings, transcripts, data, police reports, use of force reports, stop data, police communications, disciplinary histories, force reviews, training, etc.
- All documents shall be unredacted to the extent permitted by current State and Federal laws.

Why San Jose needs a Police Commission

Expanded oversight will benefit all San Joseans but will especially benefit BIPOC community members and community members who belong to other marginalized communities, including those with disabilities, the unhoused, and the LGBTQ+ community. This is because of the historical realities of policing affecting those communities most, and the historical distrust between these communities and police.

In addition, our communities will benefit because:

- Oversight can help hold the police department accountable for officers' actions
- Oversight bodies can help improve the quality of the department's internal investigations of alleged misconduct. **A commission can provide a community voice into that process and evaluate broader policies and systemic issues.**
- The community at large can be reassured that discipline is being imposed when appropriate, while also increasing the transparency of the disciplinary process.
- When the oversight agency confirms a complainant's allegation(s), the complainants may feel validated.
- Similarly, when the oversight agency exonerates the officer, the officer may feel vindicated.
- Oversight agencies can help improve community relations by fostering **communication** between the community and police agencies. Oversight agencies can help increase the public's understanding of law enforcement **policies** and procedures, and why they are a particular way and help reduce public concern regarding high profile incidents.
- Oversight agencies can assist a jurisdiction in liability management and reduce the likelihood of costly litigation by identifying problems and proposing corrective measures before a lawsuit is filed. Access to unredacted records and data is essential.
- By establishing a strong, modern oversight system that reflects best practices. Public officials are provided the opportunity to demonstrate their desire for increased police accountability and the need to eliminate misconduct.