



AGENDA

CITIZEN PUBLIC SAFETY OVERSIGHT TASK FORCE

A Regular Meeting via Teleconference

Wednesday, August 19, 2020 at 5:00 p.m.

La Mesa Police Department Community Room
8085 University Avenue, La Mesa, California

This meeting is being conducted utilizing teleconferencing and electronic means consistent with State of California Executive Order N-29-20 dated March 17, 2020, regarding the COVID-19 pandemic.

The public may view the meeting live using the following remote options:

Teleconference Meeting Webinar

<https://zoom.us/j/98407899624>

Telephone (Audio only)

(669) 900-6833 or (253) 215-8782 | Webinar ID: 984 0789 9624

Public Comments for Items non on the Agenda

Members of the public who wish to make public comments may submit their comments by email to be read aloud at the Citizen Public Safety Oversight Task force meeting by staff. Email comments must be submitted to Comments@cityoflamesa.us by 3:00 p.m. the day of the Task Force meeting and be no more than 300 words. Any language beyond the 300 words shall not be read during the Task Force meeting. The counting of words, for the purposes of public comment submissions, shall follow the same standards as set forth in Elections Code § 9 (*see Attachment A*). Please note in your email subject line that this is for "PUBLIC COMMENT". All email comments shall be subject to the same rules as would otherwise govern speaker comments at the Task Force meeting.

Public Comments for Items on the Agenda

Members of the public who wish to make comments on items on the agenda may submit their comments by email to be read aloud at the Citizen Public Safety Oversight Task Force meeting by staff. Email comments will be accepted prior to the Task Force meeting and up until the time that the Chair announces that public comment is closed for that item. Email comments must be submitted to Comments@cityoflamesa.us and be no more than 300 words. Any language beyond the 300 words shall not be read during the Task Force meeting. The counting of words, for the purposes of public comment submissions, shall follow the same standards as set forth in Elections Code § 9 (*see Attachment A*). Please note in your email subject line the agenda item number related to the comment. All email comments shall be subject to the same rules as would otherwise govern speaker comments at the Task Force meeting.

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

PUBLIC COMMENTS

NOTE: Members of the public may address the Task Force on subjects within the jurisdiction of the Task Force. Unless such subjects are contained within this agenda, there can be no discussion or action by the Task Force until a subsequent, publicly noticed meeting.

CURRENT BUSINESS

1. **APPROVAL OF THE MINUTES FOR THE CITIZEN PUBLIC SAFETY OVERSIGHT TASK FORCE REGULAR MEETING HELD WEDNESDAY, JULY 15, 2020**
2. **REVIEW OF DRAFT REPORT TO CITY COUNCIL RECOMMENDING THE CREATION OF A COMMUNITY POLICE OVERSIGHT BOARD**
3. **REVIEW AND APPROVAL OF PROPOSED ORDINANCE CREATING A COMMUNITY POLICE OVERSIGHT BOARD FOR CITY COUNCIL CONSIDERATION**
4. **STAFF AND TASK FORCE MEMBER ANNOUNCEMENTS**

ADJOURNMENT to the Regular meeting of Wednesday, September 16, 2020 at 5:00 p.m. in the La Mesa Police Department Community Room, 8085 University Avenue.

Materials related to an item on this agenda submitted to the Task Force after distribution of the agenda packet are available for public inspection in the City Clerk's Office, 8130 Allison Avenue, during normal business hours.

Copies of the Task Force Agenda are posted for public review on the lobby door of the La Mesa Police Department and the announcement boards located near the entrance to City Hall and the entrance to the Council Chambers, 8130 Allison Avenue, La Mesa, California, no less than seventy-two (72) hours prior to a meeting of the Task Force

The City of La Mesa encourages the participation of disabled individuals in the services, activities and programs provided by the City. Individuals with disabilities, who require reasonable accommodation in order to participate in Task Force meetings, should contact the City's Americans with Disabilities Act (ADA) Coordinator, Rida Freeman, Director of Administrative Services, 48 hours prior to the meeting at 619.667.1175, fax 619.667.1163, or rfreeman@cityoflamesa.us.

State of California**ELECTIONS CODE****Section 9**

9. (a) Counting of words, for purposes of this code, shall be as follows:
- (1) Punctuation is not counted.
 - (2) Each word shall be counted as one word except as specified in this section.
 - (3) All proper nouns, including geographical names, shall be considered as one word; for example, "City and County of San Francisco" shall be counted as one word.
 - (4) Each abbreviation for a word, phrase, or expression shall be counted as one word.
 - (5) Hyphenated words that appear in any generally available standard reference dictionary, published in the United States at any time within the 10 calendar years immediately preceding the election for which the words are counted, shall be considered as one word. Each part of all other hyphenated words shall be counted as a separate word.
 - (6) Dates shall be counted as one word.
 - (7) Any number consisting of a digit or digits shall be considered as one word. Any number which is spelled, such as "one," shall be considered as a separate word or words. "One" shall be counted as one word whereas "one hundred" shall be counted as two words. "100" shall be counted as one word.
 - (8) Telephone numbers shall be counted as one word.
 - (9) Internet Web site addresses shall be counted as one word.
- (b) This section shall not apply to counting words for ballot designations under Section 13107.

(Amended by Stats. 2014, Ch. 697, Sec. 3. (SB 1253) Effective January 1, 2015.)

**SPECIAL MEETING OF THE CITY OF LA MESA
CITIZEN PUBLIC SAFETY OVERSIGHT TASK FORCE
5:00 PM, LA MESA POLICE DEPARTMENT COMMUNITY ROOM
8085 UNIVERSITY AVENUE, LA MESA, CA 91942**

**MINUTES
July 15, 2020**

This meeting was conducted utilizing teleconferencing and electronic means consistent with State of California Executive Order N-29-20 dated March 17, 2020, regarding the COVID-19 pandemic.

CALL TO ORDER

City Clerk Wiegelman called the meeting to order at 5:01 p.m.

ROLL CALL (X indicates present)

- Robert Duff X
- Dr. Janet Castanos X
- Jamal McRae X
- Susan Wayne X
- Caitlin Tiffany X
- Patricia Dillard X
- Rev. Frank Willey X
- Joshua David Morse X
- Steven Evans X
- Jack Shu X
- Vacant (Police Beat 4 Resident Representative)

Others present: Megan Wiegelman, City Clerk; Lieutenant Chad Bell La Mesa Police Department; Community Service Officer Nora Allsberry, La Mesa Police Department

PLEDGE OF ALLEGIANCE

PUBLIC COMMENTS

City Clerk Wiegelman and Lieutenant Bell read aloud the emailed public comments submitted by 3:00 p.m. the day of the Task Force Meeting.

Sarina Dahlan submitted a comment regarding standards for law enforcement officers.

Vinton Omaleki submitted a comment regarding his objection to having a police officer on the future La Mesa Police Oversight Committee.

Dave Palmer submitted a comment regarding his support of the Task Force and their possible transition to an official citizen review board.

Breanne Leinum submitted a comment regarding her support of a town hall meeting and a Police

Oversight Committee.

Andy Trimlett submitted a comment regarding NACOLE's principles.

Demetrius and Rebecca Antuna submitted a comment regarding potential oversight committee members.

Cheri Robertson submitted a comment regarding the components she would like in an Independent Citizens Police Oversight Board.

Emily Green submitted a comment regarding her support for a citizens oversight board.

Anonymous submitted a comment regarding the support of a police officer as a voting member for a potential oversight committee.

Sasha Jonestein submitted a comment regarding her support for the Task Force's work.

Ann M. Johns submitted a comment regarding her opposition to having a police officer on the La Mesa Oversight Commission.

Sarah Young submitted a comment regarding her support for LMPD and an independent citizen oversight board.

Melissa submitted a comment regarding her appreciation for the work the Task Force is doing.

Debbie Kinsinger submitted a comment regarding the need for community conversation.

Jessyka Heredia submitted a comment regarding her approval of, and appreciation for an independent citizens police oversight task force.

Missy Solis submitted a comment regarding her support for the Task Force.

Patricia Harris submitted a comment regarding her support for the Task Force.

The following comments were not received by the 3:00 p.m. deadline, and therefore were not read aloud during the Task Force Meeting:

Ashley Brown submitted a comment regarding her support for a police oversight committee.

Emily McDonald submitted a comment regarding how the La Mesa Citizen Police Review Board members should be selected.

CURRENT BUSINESS

1. APPROVAL OF THE MINUTES FOR THE CITIZEN PUBLIC SAFETY OVERSIGHT TASK FORCE SPECIAL MEETING HELD WEDNESDAY JULY 1, 2020

ACTION: Motioned by Member Duff and seconded by Vice Chair Shu to approve the minutes for the Citizen Public Safety Oversight Task Force Special Meeting held Wednesday, July 1, 2020, as

amended, to change Bill Larson to Dale Larson on page 4 and add the names of the Subcommittee Members to Item 6's motion.

Vote: 10-0

Yes: Chair McRae, Vice Chair Shu, Members Castanos, Duff, Wayne, Tiffany, Morse, Evans, Dillard, and Willey

No: None

Abstained: None

Absent: None

Motion passed.

2. BRIEFING ON THE ROLES AND RESPONSIBILITIES OF A CITIZEN POLICE REVIEW BOARD

National City Community & Police Relations Commission Members Dan Long and Candy Morales

Mr. Long is National City Police Department's POA Secretary and is a non-voting member of their review board. Mr. Long acts as a resource to deal with policy issues and answered questions of the board members.

Ms. Morales is the Chair of National City's review board. Ms. Morales described how they review IA cases.

Vinton Omaleki submitted a comment regarding law enforcement presence on a review board.

- Task Force Member Willey left the meeting.

3. DISCUSSION REGARDING THE POSSIBLE TRANSITION OF THE CITIZEN PUBLIC SAFETY OVERSIGHT TASK FORCE TO A CITIZEN POLICE REVIEW BOARD

ACTION: Motioned by Member Castanos and seconded by Chair McRae to propose to the City Council to transition the Task Force to the Oversight Board on a temporary basis until City Council approval.

Vote: 7-1-1

Yes: Chair McRae, Vice Chair Castanos, and Members Wayne, Tiffany, Morse, Dillard, and Duff

No: Member Evans

Abstained: Member Shu

Absent: Member Frank Willey

Motion passed.

Debbie Kinsinger submitted a comment regarding transitioning the Task Force to the Commission.

Sarah Young submitted a comment regarding opposition to having law enforcement on the Commission.

Rebecca Littlejohn submitted a comment regarding the transition process.

Gayle Neville submitted a comment regarding her support for a completely independent citizen police oversight commission.

4. DISCUSSION OF THE PROPOSAL TO ESTABLISH A CITIZEN POLICE REVIEW BOARD FOR LEGAL COUNSEL REVIEW

The Task Force discussed the seats to be filled on the Board, term limits, law enforcement presence, legal support, budget, meeting frequency, complaint processes, audits vs. investigations, subpoena power and details regarding the language of the proposal.

- Task Force Member Evans left the meeting.

Rev. Rebecca Littlejohn submitted a comment regarding the components of the proposal.

Rev. Kelly Ryan submitted a comment regarding the presence of LMPD within a Citizen Police Review Board.

Debbie Kinsinger submitted a comment regarding her opinion that it should not be a deliberative body.

Teri Andre submitted a comment regarding the presence of a police representative on the committee.

- Task Force Member Willey returned to the meeting.

ACTION: Motioned by Vice Chair Shu and seconded by Member Duff to create an ad-hoc subcommittee, consisting of Patricia Dillard, Frank Willey and Jamal McRae, to work on a complaint handbook for the committee.

Vote: 9-0

Yes: Chair McRae, Vice Chair Shu, and Members Wayne, Tiffany, Morse, Castanos, Dillard, Duff, and Willey

No: None

Abstained: None

Absent: Member Evans

Motion passed.

ACTION: Motioned by Vice Chair Shu and seconded by Member Duff for the Task Force to make a presentation to the City Council regarding the proposal.

Vote: 9-0

Yes: Chair McRae, Vice Chair Shu, and Members Wayne, Tiffany, Morse, Castanos, Dillard, Duff, and Willey

No: None

Abstained: None

Absent: Member Evans

Motion passed.

5. BRIEFING ON LA MESA PD INTERNAL AFFAIRS INVESTIGATIONS OVER THE LAST 5 YEARS

ACTION: Motioned by Member Willey and seconded by Member Duff to table the briefing on La Mesa PD internal affairs investigations over the last 5 years.

Vote: 9-0

Yes: Chair McRae, Vice Chair Shu, and Members Wayne, Tiffany, Morse, Castanos, Dillard, Duff, and Willey

No: None

Abstained: None

Absent: Member Evans

Motion passed.

6. DISCUSSION OF CONDUCTING A SURVEY TO ESTABLISH BASELINE DATA TO DETERMINE CHANGES TO THE POPULATION OVER TIME

ACTION: Motioned by Member Castanos and seconded by Member Dillard for Janet Castanos and Caitlin Tiffany to create a participant questionnaire for a pre-survey.

Vote: 9-0

Yes: Chair McRae, Vice Chair Shu, and Members Wayne, Tiffany, Morse, Castanos, Dillard, Duff, and Willey

No: None

Abstained: None

Absent: Steven Evans

Motion passed.

Debbie Kinsinger submitted a comment regarding the need for a round table meeting.

7. STAFF AND TASK FORCE MEMBER ANNOUNCEMENTS

Task Force Member Duff brought up scheduling conflicts with other City Board and Commission meetings.

ADJOURNMENT

Chair McRae adjourned the meeting at 8:23 p.m.

The next regular meeting is scheduled for Wednesday, August 19, 2020.

Prepared by:

Nora Allsberry, Community Service Officer

**A Report From the
La Mesa Citizen Public Safety Oversight Task Force
to the La Mesa City Council
Recommending the Creation of a
Civilian Police Oversight Board**

August __, 2020

Task Force Members:

Jamal McCrae, Chair
Dr. Janet Castanos, Vice-Chair
Patricia Dillard, Robert Duff, Steven Evans, Joshua Morse, Kathie Taylor,
Caitlin Tiffany, Andy Trimlett, Susan Wayne, Rev. Frank Willey,

Drafted with the Assistance of
Andrea Sheridan Ordin, Dale Larson, and Caroline Chiappetti
of Strumwasser & Woocher LLP

Table of Contents

Table of Contents	2
Introduction	4
I. What a citizen police oversight committee would look like in La Mesa.....	5
A. Overview of purpose, powers, and model of oversight.....	5
B. Board construction and meetings.....	6
C. Auditing of serious incidents and complaints of misconduct.....	6
1. Serious incidents.....	6
2. Complaints of misconduct.....	6
3. Results of audits, recommendations, and responses.....	7
4. Receiving complaints.....	7
D. Additional oversight powers and duties.....	7
E. Impact of a CPOB on the Existing Personnel Appeals Board.....	7
II. What Other Cities of Similar Size Are Doing in Regards to Citizen Police Oversight Commissions ..	8
A. Models for Civilian Oversight of Law Enforcement.....	8
1. Investigation-Focused Model.....	8
2. Review-Focused Model.....	8
3. Auditing/Monitoring-Focused Model.....	8
B. Examples From Other Similarly Sized California Cities	9
1. Novato (general law city) – pop. 55,000.....	9
2. National City (general law city) – pop. 61,000	9
3. Santa Cruz (charter city) – pop. 65,000	10
4. Palo Alto (charter city) – pop. 67,000.....	11
5. Davis (general law city) – pop. 69,000	11
III. The Difference Between Citizen Police Oversight Commissions in General Law Cities and Charter Cities.....	12
A. Overview of Powers in a California General Law City	12
B. Overview of Powers in a California Charter City.....	12
IV. Solutions That Can Be Achieved Under Each Type of Government and Within State and Local Laws and Policies	13
A. Solutions That Can Be Achieved in a California General Law City	13
1. Government Code section 38630, stating that the police department of a city is under the control of the chief of police.	13
2. Government Code sections relating to a city council’s subpoena power.....	14

3. The Public Safety Officers Procedural Bill of Rights Act (POBRA) 15

4. Penal Code, § 832.7: Personnel records; confidentiality; discovery; exceptions; records relating to discharge of firearm, sexual assault, or dishonesty by peace officer or custodial officer available for public inspection; complaint disposition notification..... 16

B. Solutions That Can Be Achieved in a California Charter City 17

C. Whether a General Law City Could Create a More Powerful Oversight Body Through a Ballot Measure 19

DRAFT

Introduction

On October 8, 2019, the City Council unanimously established a Citizen Public Safety Oversight Task Force (the “Task Force”) to serve as an advisory body charged with conducting specific research and making recommendations to the City Council. Specifically, the City Council has charged the Task Force with answering four specific questions:

- (1) what a citizen police oversight committee would look like in La Mesa;
- (2) what other cities of similar size are doing in regards to citizen police oversight commissions;
- (3) the difference between citizen police oversight commissions in general law cities and charter cities; and
- (4) solutions that can be achieved under each type of government and within state and local laws and policies.

The Task Force has met regularly since its formation and has taken the following steps to answer these questions, including, but not limited to:

- creating subcommittees that researched each of the four questions;
- reviewing literature on police oversight models and best practices;
- retaining the law firm Strumwasser & Woocher LLP to assist in answering related legal questions raised by these questions and drafting this Report;
- interviewing in public meetings several experts in this area, including a representative from the National Association for Civilian Oversight of Law Enforcement, an attorney with expertise in creating law enforcement bodies, commissioners from oversight bodies of similarly sized California general law cities such as the Cities of National City and Davis, a well-respected independent police auditor, and the attorneys retained by the Task Force;
- including a representative from the Police Officers’ Association on the Task Force to understand the law-enforcement perspective on these issues; and
- communicating with various La Mesa stakeholders and community members.

This Report answers the four questions asked by the City Council. Upon analyzing these questions and related issues and examining the needs of the City of La Mesa, the Task Force recommends that the City Council pass an ordinance creating a Civilian Police Oversight Board (“CPOB”) and retaining an Independent Police Auditor (“IPA”). The recommended CPOB would be charged with auditing investigations of serious incidents or complaints of misconduct, and would also be required to examine La Mesa Police Department policies, procedures, practices, and training on a range of issues, including potential alternatives to policing and incarceration within the City. The proposed CPOB is designed to add accountability to La Mesa law enforcement, improve transparency of law enforcement operations, strengthen police-community relationships and trust, and act as an adviser to the City Council on all matters related to public safety in the City. This would represent a

unique, robust version of an auditing-monitoring model of oversight. In answering the first question regarding what police oversight would look like in La Mesa, the Task Force has drafted a proposed ordinance creating such a body for the City Council's consideration, attached to this Report as **Attachment 1**.

As to the second question, the Task Force has found that similar-sized California cities have created a range of oversight bodies. Older bodies tend to have more of an investigatory and review role, while newer bodies tend to focus more on auditing and rely on the use of an independent professional auditor. The Task Force has concluded that there is no single "best practice" when it comes to creating a new oversight body, and it is critical to develop the right fit for the needs of La Mesa and its residents. This Report details the oversight structure of five such similarly-sized cities, three of which are general law cities.

In analyzing the difference between oversight in a general law city versus a charter city, the key difference is that a general law city's oversight body must not conflict with any existing state law. One result of this limitation is that a general law oversight body may not exert any "control" of a police department, meaning that it may not impose discipline or dictate changes in policies or procedures. Thus, a general law city's oversight body is limited to efforts such as investigations or audits resulting in recommendations; recommendations as to policies, procedures, practices, and trainings; efforts to increase transparency of law enforcement operations and investigations; receiving and tracking complaints of misconduct; and serving as a liaison between the police department and the public.

A charter city would have more flexibility, and it is likely that a charter city, depending on its charter, could have an oversight body that has a level of control over policies, practices, procedures, and discipline. Both general law and charter cities are bound to follow the protections and procedures provided in the Public Safety Officers Procedural Bill of Rights Act.

I. What a citizen police oversight committee would look like in La Mesa

After reviewing the current needs of the City, hearing public comments, analyzing the legal constraints as detailed below, and reviewing models from other cities, the Task Force recommends that the City create a Civilian Police Oversight Board with the following characteristics.

A. Overview of purpose, powers, and model of oversight.

The Task Force recommends a robust auditing/monitoring-focused model that utilizes a part-time independent police auditor in carrying out its powers and duties. The CPOB shall direct and review audits, and review and recommend policies, practices and programs designed to bring about community policing that is sensitive, effective, and responsive to the needs of the City and its residents. The CPOB shall promote and encourage open communication and cooperation between the La Mesa Police Department and residents of the City, recognizing that policing the City of La Mesa is a shared responsibility.

The CPOB will oversee audits of the investigations and dispositions of all serious incidents, such as officer-involved shootings, accidental discharge of weapons, uses of force, and officer-involved injuries, and have the power to oversee audits of the investigations and dispositions of any complaints of misconduct it wishes to audit. The results of these audits will be made transparent,

without disclosing confidential information, and will foster trust in the public that complaints are being investigated thoroughly, timely, and transparently.

The use of an independent police auditor for these audits will bring expertise to the audits and will allow the CPOB to not simply focus on reacting to incidents or complaints as they occur, but also to proactively examine police policies, procedures, practices, and training in a range of areas and to make public recommendations of ways to improve in those areas. The Task Force recommends that in addition to examining the internal policies, practices, and procedures of the La Mesa Police Department, the CPOB also critically examine and make recommendations related to community-oriented policing, alternatives to policing, crime prevention, and the role in public safety of various social services in La Mesa, including but not limited to those targeting mental health, alcohol and substance abuse, homelessness, and education.

B. Board construction and meetings.

The CPOB shall consist of 11 resident voting members representing various La Mesa stakeholders. The members should reflect a diverse representation of the community and include individuals with diverse backgrounds, experiences, economic status, interactions with law enforcement, and beliefs.

Terms shall be for two years each, with no more than 6 of the 11 seats expiring in a single year. Members will not be permitted to serve for more than four consecutive terms, and the Board shall elect a chairperson and vice-chairperson each year. Board members will serve without compensation, provided that the City Council may authorize the reimbursement of reasonable expenses incurred in the performance of duties.

During the first year, the Board shall meet at least once every two weeks, and after the first year, the Board shall meet at least monthly.

C. Auditing of serious incidents and complaints of misconduct.

The CPOB will generally be an auditing body, but the IPA would have the power to supplement Police Department investigations with witness interviews and access to files if deemed necessary. The audits would be automatic when there are serious incidents involved, but discretionary as to any other complaints of misconduct.

1. Serious incidents.

The CPOB will automatically initiate and review audits prepared by the IPA of all investigations and dispositions of incidents of use of force, accidental discharge of weapons, officer-involved shootings, officer-involved deaths, or officer-involved interactions resulting in serious bodily injury.

2. Complaints of misconduct.

The CPOB shall have the power at its discretion to initiate and review audits prepared by the Independent Police Auditor of the Internal Affairs investigations and dispositions of any complaints of misconduct by the La Mesa Police Department or its officers.

3. Results of audits, recommendations, and responses.

As part of these audits, the IPA will review and assess the investigations and dispositions for objectivity, thoroughness, and appropriateness. Upon completing an audit, the IPA shall provide reports of each investigation and disposition to the CPOB. Either the IPA or the CPOB may then make recommendations to the Chief of Police regarding further investigation, processes, and dispositions. The IPA shall, in conformity with state and federal law, have the discretion to interview witnesses and have access to all La Mesa Police Department files as needed.

The Chief of Police will have 30 days after delivery of official recommendations to respond to the recommendations in writing.

The IPA and CPOB will have requirements for regularly reporting on complaints, investigations, and dispositions to the public.

4. Receiving complaints.

The draft ordinance contemplates that both the CPOB and the IPA may receive such complaints. Upon receipt of a complaint, the CPOB and IPA shall forward the complaint to the LMPD so that the LMPD may assign it to Internal Affairs and conduct its initial investigation, which the CPOB may choose to audit upon its completion. Should complaints be filed directly with the LMPD, the IPA will have timely access to the complaints so that the IPA and CPOB may monitor the status of all investigations and dispositions.

D. Additional oversight powers and duties.

In addition to overseeing audits of the investigations and dispositions of serious incidents and complaints of misconduct, the CPOB would play an important role in evaluating Police Department policies, practices, procedures, and training on a range of issues, including regular operations, trends in personnel decisions, de-escalation techniques, implicit bias training, and community-oriented policing. The CPOB will also examine alternatives to policing, crime prevention, and the role in public safety of various social services, including but not limited to those targeting mental health, alcohol and substance abuse, homelessness, and education in La Mesa. As part of its duties, the CPOB will be able to request and receive data from the LMPD on these issues.

The ordinance charges the CPOB with drafting public reports on these topics annually.

E. Impact of a CPOB on the Existing Personnel Appeals Board.

Although not directly asked by the City Council, some have wondered whether the City's existing Personnel Appeals Board (PAB), which conducts impartial and independent review of personnel matters, would be affected by the creation of a CPOB. As proposed, the CPOB would not—and could not, under existing state law—engage in any disciplinary action itself, and would therefore not conflict or overlap with the purview of the PAB.

II. What Other Cities of Similar Size Are Doing in Regards to Citizen Police Oversight Commissions

A. Models for Civilian Oversight of Law Enforcement.

Over the last several decades, civilian bodies tasked with the oversight of law enforcement can be generally classified into three categories: investigation-focused models, review-focused models, and auditor/monitor-focused models.¹ In the last two decades, a number of cities have developed hybridized forms of civilian oversight that incorporate different aspects of each of these models.

1. Investigation-Focused Model.²

Investigation-focused models operate entirely separately from the law enforcement agency. They are tasked with conducting independent investigations of complaints against police officers, and often have their own intake mechanism for receiving citizen complaints. Investigation-focused models can be more resource-intensive than other models of oversight, as they require appropriately-trained staff and the resources necessary to carry out their own investigations. The investigatory body may either completely replace the police internal affairs function, or conduct investigations parallel to those conducted by the police internal affairs division.

2. Review-Focused Model.³

In contrast to the investigation-focused model, in which oversight bodies carry out their own investigations, oversight bodies in the review-focused model tend to review the quality of completed police internal affairs investigations. They may make recommendations to police regarding their findings or recommend further investigation.

Review boards are generally composed of civilian volunteers, rather than paid staff. Review boards may also hold public meetings to collect community input and facilitate police-community communication, and to gather and review public concerns.

3. Auditing/Monitoring-Focused Model.⁴

The auditor/monitor-focused model emerged in the 1990s “as a type of political compromise to satisfy police and community concerns about bias and professionalism.”⁵ Rather than focus solely on individual investigations, auditor/monitor models tend to focus on systemic reform of police departments. To that end, they may review and examine police internal investigations and other law enforcement activity, such as policies, practices, or training, systematically, in order to make

¹ Joseph De Angelis, et al., *Civilian Oversight of Law Enforcement: A Review of the Strengths and Weaknesses of Various Models*, NATIONAL ASSOCIATION FOR CIVILIAN OVERSIGHT OF LAW ENFORCEMENT (September 2016.)

² *Id.* at pp. 7-9 (discussing the characteristics, strengths, and weaknesses of the investigation-focused model).

³ *Id.* at pp. 9-11 (discussing the characteristics, strengths, and weaknesses of the review-focused model).

⁴ *Id.* at pp. 11-13 (discussing the characteristics, strengths, and weaknesses of the auditor/monitor-focused model).

⁵ *Id.* at p. 12.

recommendations on policy and training. They may focus on examining patterns in complaint investigations, such as patterns in the quality of investigations, findings, and discipline.

B. Examples From Other Similarly Sized California Cities.

1. Novato (general law city) – pop. 55,000.

Investigatory – Police Advisory and Review Board

The City of Novato created its Police Advisory Review Board (Board) in its current form by resolution in 2007, with the purpose of creating a Board that allows for “community participation in Police Department policies, procedures, and practices,” that “may recommend the establishment of educational police/community relations programs,” and that “may, in certain cases, conduct investigations into citizens complaints.”⁶

While the Board possesses an independent investigatory power, Novato has chosen to limit its investigatory power to certain narrowly prescribed circumstances. First, it may hold hearings and conduct investigations “on citizens’ complaints concerning specific programs, policies and procedures of the Police Department and to make recommendations concerning these to the Chief of Police.” Second, it may, *with the authorization of the City Manager* receive, review, copy or investigate citizens’ complaints against individual police personnel only when certain criteria are met, including, that (a) a police department internal affairs investigation has already been completed; (b) the complainant has requested an investigation by the Board within thirty days after he or she is notified of the disposition of the internal affairs investigation; and (c) the City Manager determined that further investigation by the Board would serve the interests of fairness and due process. The Board may request that the City Council through the City Manager obtain documents and/or witness testimony through the exercise of its subpoena power, in furtherance of its investigatory efforts.

With respect to complaints, citizens may submit complaints against individual police personnel directly to the Board, but any such complaint will be submitted to the Police Department; the Board may not take any action on that complaint unless and until the City Manager authorizes action pursuant to the procedures set forth above. The Police Department is also required to provide to the Board a monthly summary of the citizen complaints filed against independent police personnel. The Board is required to provide an annual summary report to the City Council concerning all of its activities, including reporting on the complaints submitted to or investigated by the Board.

2. National City (general law city) – pop. 61,000.

Investigatory/Review – Community and Police Relations Commission

The National City Community and Police Relations Commission (Commission) was created in order to provide a forum for citizens to voice their concerns, to examine police practices and policies “as they pertain to conduct issues,” and “to identify opportunities to ameliorate adversity between the National City Police Department and citizen complainants.”⁷

⁶ City Council of the City of Novato, Res. No. 72-07, available at <https://www.novato.org/government/boards-commissions-committees/police-advisory-and-review-board>.

⁷ National City Mun. Code, section 16.04.050 (Ord. No. 2013-2381, § 1, 2-5-2013.)

While the Commission appears to possess independent investigatory powers, based on its own chairperson's description of its work to the Task Force, it does not tend to use its full investigatory powers, and instead functions more like a review body. For example, while section 16.04.060 of the National City Municipal Code empowers the Commission to "[r]eceive and monitor or investigate citizen complaints regarding police conduct," and to "[c]onduct investigations and hold public hearings," in practice, the Commission does not conduct investigations itself, but instead reviews investigations previously conducted by the Police Department.⁸ The Commission provides notes from its reviews of investigations to the Police Department Internal Affairs department, which stay with the Internal Affairs records. The Commission does not publish any public reports arising out of its investigations, aside from an annual report of its activities, findings, and recommendations that does not contain any specifics from its investigations. The Commission may make recommendations on police policy issues.

Despite section 16.04.060's provision that the Commission shall "[r]eceive ... citizen complaints," citizen complaints are filed with the City rather than the Commission itself. The Commission is empowered to "[r]equest and receive supplemental information from the police department regarding citizen complaints..."

3. Santa Cruz (charter city) – pop. 65,000.

Independent Police Auditor

In the early 2000s, Santa Cruz replaced its Citizen Police Review Board with an Independent Police Auditor (IPA) who reports jointly to the City Manager and City Council, and who meets regularly with the Council's Public Safety Committee. The IPA is tasked with providing independent reviews of the citizen complaint process and reviewing and making recommendations regarding Police Department policies and practices.⁹

Specifically, the IPA is responsible for reviewing the Police Department's Internal Affairs investigations, any officer-involved shootings, and Police Department policies and procedures. The IPA may also conduct independent investigations of citizen complaints. Unlike the predecessor Citizen Police Review Board, the IPA has full access to the Police Department's Internal Affairs (IA) investigations, including personnel files.

Citizens are directed to submit comments or complaints to the Police Department rather than the IPA; a supervisor from the Department's Professional Standards Unit is assigned to conduct a formal investigation of each complaint. The final investigation is forwarded to the IPA, who reviews the investigation for thoroughness, objectivity, and to ensure that the evidence supports the finding. The IPA is not charged with publishing regular reports, but does write reports on all major IA

⁸ Presentation of National City Commission Chair Candy Morales at the July 15, 2020 meeting of the La Mesa Citizen Public Safety Oversight Task Force.

⁹ *Independent Police Auditor*, City of Santa Cruz, <https://www.cityofsantacruz.com/government/city-departments/police/community-policing/independent-police-auditor>.

investigations—about seven or eight per year—and makes recommendations ranging from how the investigations should be conducted to training issues that need to be addressed.¹⁰

4. Palo Alto (charter city) – pop. 67,000.

Independent Police Auditor

Palo Alto established its Independent Police Auditor program in 2006. In December 2019, the City Council approved another three-year contract with a third-party contractor to continue to provide independent police auditing services.¹¹

The IPA is charged with reviewing and assessing “for objectivity, thoroughness, and appropriateness of disposition” citizen complaint investigations of misconduct and internal affairs investigations, and making recommendations to the Police Chief.¹² Since its launch, the IPA has produced 23 reports with 125 matters sent to the IPA for review between 2006 and 2018, including 31 taser deployments, 73 complaints from members of the public, and 21 internal affairs investigations.¹³

While community members may submit complaints directly to the IPA, the Chief of Police remains responsible for overseeing the Department’s employee complaint process. The Chief reviews every complaint and either must agree with the determination made by the supervisor investigating the complaint, or send the complaint back for further action.

The IPA meets with the City Manager and Police Chief once a quarter, and the City Council twice a year, to discuss issues.

5. Davis (general law city) – pop. 69,000.

Hybrid Independent Police Auditor / Police Accountability Commission (DPAC)

In 2006, Davis created a part-time Independent Police Auditor position. Davis has charged the IPA with reviewing the Police Department’s investigation of personnel complaints and interacting with community members and organizations.¹⁴ Since 2018, when the Davis City Council voted to create a two-prong police oversight structure consisting of a Police Accountability Commission

¹⁰ *Transparency and Accountability in Community-Oriented Policing*, City of Santa Cruz, <https://www.cityofsantacruz.com/government/city-departments/police/community-policing/community-oriented-policing-tradition/community-oriented-policing-transparency-accountability>.

¹¹ This contract explicitly excludes from the scope of the IPA’s auditing purview investigations of internal conflicts between Police Department auditors for the first time. See Gennady Sheyner, *New police auditor contract to exclude internal conflicts within Department*, Palo Alto Weekly, Dec. 13, 2019, <<https://www.paloaltoonline.com/news/2019/12/13/new-police-auditor-contract-to-exclude-internal-conflicts-within-palo-alto-police-department>>.

¹² Independent Police Auditor, City of Palo Alto, <https://www.cityofpaloalto.org/gov/depts/pol/auditor.asp>.

¹³ City of Palo Alto Office of the City Manager, Independent Police Auditor’s Report for First Half of 2018 and Supplemental Report from the City Manager, March 16, 2020.

¹⁴ Independent Police Auditor, City of Davis, <https://www.cityofdavis.org/city-hall/police-department/administration/independent-police-auditor>.

(Commission) in addition to the IPA, the IPA has also been charged with auditing Police Department policies, procedures, and training.

The Commission is charged with carrying out a number of duties in coordination with the IPA, including developing a community outreach plan, identifying and prioritizing topics for the IPA to audit (i.e., police department policies, procedures, and training), reviewing the IPA's reports on misconduct complaints and recommending, for the IPA's further consideration, further analysis of complaints or the complaint process, providing input on the IPA's reports, and assessing the work of the IPA.¹⁵

The IPA may take personnel complaints from people who do not feel comfortable going directly to the Police Department, though any complaints submitted via the IPA will be forwarded to the Police Department for formal resolution. The IPA appears to make reports on at least an annual basis, in coordination with the Commission, containing information relating to misconduct complaint investigations and trends; recommendations concerning improvements to the Police Department's policies, procedures, or trainings; and results of audits.

III. The Difference Between Citizen Police Oversight Commissions in General Law Cities and Charter Cities

A. Overview of Powers in a California General Law City.

A general law city—that is, a city without its own charter—is bound by the general laws of the state. The California Constitution, however, recognizes the authority of cities and counties to make and enforce within their borders “all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” (Cal. Const., art. XI, § 7.) Under this provision, a local government's police power is as broad as the state legislature's, and a city or county may act to protect the welfare of its residents. (*Candid Enterprises v. Grossmont Union High School Dist.* (1985) 39 Cal.3d 878, 885.) It is generally recognized that this constitutional provision authorizes the exercise by cities of police power equal to that of the state even in matters of statewide concern (such as the rights and protections provided to peace officers under Gov. Code, section 3300 *et seq.*), so long as local regulations *do not conflict* with general state laws. (13 Cal.Jur.3d CONSTITUTIONAL Law § 145.)

A general law city therefore has the power to form a police oversight body under its police powers **to the extent it does not create a conflict between local and state law**. A conflict between a local and state law arises only if local legislation “duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.” (*City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, 743.) Section IV.A, below, examines specific state laws that limit the powers of an oversight body in a general law city.

B. Overview of Powers in a California Charter City.

California cities organized under charters are able to create police oversight bodies with more power than those in a general law city. In contrast to general law cities, a city charter can provide that

¹⁵ Police Accountability Commission, City of Davis, <https://www.cityofdavis.org/city-hall/commissions-and-committees/police-accountability-commission>.

the city may make and enforce all ordinances and regulations related to “municipal affairs,” subject only to the restrictions and limitations provided in the charter. (45 Cal.Jur.3d Municipalities § 13, citing Cal. Const. art XI, § 5, subd. (a).) Article XI, section 5 of the California Constitution explicitly states that a city charter may provide for “the constitution, *regulation, and government* of the city police force...” (*Id.*, subd. (b), emphasis added.)

This authorization has been interpreted as “broad enough to embrace charter provisions fixing the personal qualifications of the police force, the time they may serve, and the manner and conditions of their removal.” (45 Cal.Jur.3d Municipalities § 456, citing *People ex rel. Black v. Bailey* (1916) 30 Cal.App. 581.) “The organization, maintenance, and operation of a police department by a chartered city is a municipal affair; as such, it is not subject to the control of the legislature.” (*Id.*, citing *Brown v. City of Berkeley* (1976) 57 Cal.App.3d 223.) Section IV.B provides examples of the types of powers an oversight body could have in a charter city.

IV. Solutions That Can Be Achieved Under Each Type of Government and Within State and Local Laws and Policies

A. Solutions That Can Be Achieved in a California General Law City.

In creating a police oversight board, a general law city must not contradict existing state law. The following are state laws that constrain the powers and form of an oversight body in a general law city.

1. Government Code section 38630, stating that the police department of a city is under the control of the chief of police.

Government Code section 38630 states that “[t]he police department of a city is under the control of the chief of police.” The City Council therefore cannot create a police oversight body that exerts “control” over the police department, as such a body would conflict with section 38630. Control likely includes any actions related to discipline, or requiring the implementing of policies, procedures or practices.

The powers of a *review* or *auditing* focused model would likely not rise to the level of “control.” A police oversight body with the power to review or audit—and even to make non-binding recommendations regarding—a police department’s internal investigations, disciplinary decisions, and policies, procedures, and practices would not create a conflict with existing state law as it would leave all true “control” with the Chief of Police.

Other permissible powers and responsibilities that likely would not rise to the level of “control” of the police department include: (i) overseeing and assessing an Independent Police Auditor; (ii) receiving citizens’ complaints and passing them along to LMPD or an Independent Police Auditor; (iii) community outreach efforts; (iv) holding regularly-scheduled meetings and providing notice and an opportunity for community input; (v) studying and recommending changes and improvements to policy, procedure, or training; (vi) reviewing any reports by an Independent Police Auditor on misconduct complaints; (vii) requesting and analyzing LMPD data; and (viii) issuing non-confidential, periodic public reports on LMPD practices, policies, trainings, and internal investigations and dispositions of complaints of misconducts.

If choosing to create an oversight body in the investigation-focused model, a general law city council must ensure that the body's investigatory powers do not conflict with the police chief's power to "control" the department under section 38630, or intrude on any rights guaranteed police officers by POBRA (*see* Part IV.A.3). Practically, this means that an oversight body could carry out independent investigations of citizen complaints and make, but not require or enforce, recommendations as a result of its investigations. It also would not be able to make or enforce any disciplinary decisions as a result of its investigations. There is of course also a question of *what* the oversight body might investigate. Typically, investigation-focused models have an independent process for the intake, as well as the investigation, of complaints filed against police officers by citizens. An investigation-focused oversight body would also need some mechanism by which it could obtain from LMPD the materials necessary to carry out an investigation of complaints (*see* Part IV.A.2.).

2. Government Code sections relating to a city council's subpoena power.

Government Code section 37104 states that the "legislative body may issue subpoenas requiring attendance of witnesses or production of books or other documents for evidence or testimony in any action or proceeding pending before it." Section 53060.4, subdivision (a), states in relevant part that the "legislative body of a city . . . may delegate to a . . . city official or department head its authority to issue subpoenas . . . in order to enforce any local law or ordinance" Subdivision (b) of that section states that the "Legislature finds and declares that these provisions do not constitute a change in, but are declaratory of, existing law."

A city council of a general law city is a legislative body with the power to compel by subpoena the attendance of witnesses or the production of records in proceedings before it. (Gov. Code, § 37104.) A police oversight body may therefore rely on the City Council's subpoena power to carry out its audits or investigations by requesting that the City Council request certain documents or witnesses, should the Council choose to comply with the request.

Whether a police oversight body in a general law city can hold independent subpoena power is less clear. Under Government Code, section 53060.4, a legislative body may delegate its subpoena power to any *city official* or *department head*. Whether members of a police oversight board would qualify as city officials – or its chair as a department head – are questions of both statutory interpretation and fact, depending on the nature of the roles. The Task Force is unaware of any court that has considered the question of whether a general law city council can delegate its subpoena power to a police oversight board under section 53060.4.¹⁶ As a result of the uncertainty in the law on this

¹⁶ There is some precedent, however, for delegation of subpoena power to police oversight boards by a charter county, and the reasoning in that precedent might apply to a general law city. In *Dibb v. County of San Diego* (1994) 8 Cal.4th 1200, a California court of appeal upheld the right of the San Diego County Board of Supervisors to delegate its subpoena power to a civilian oversight board. While its holding was reached in the context of a charter county (rather than a general law city), the question turned on an analysis of meaning of "county officer" – language that is similar to that of section 53060.4, which permits the delegation of subpoena power to "county or city officials." The court faced the question of whether the Citizens Law Enforcement Review Board ("CLERB") were "county officers" within the meaning of the California Constitution, such that a county's charter could confer "powers or duties" on them. After summarizing the relevant case law, the court concluded that "the CLERB possesses the essential attributes of county officers: They are appointed under the law for a fixed term of office and delegated a public duty to investigate specified city complaints against county

issue, the Task Force does not recommend a delegation of subpoena power to the oversight body, but does recommend including a clause in the enacting code provisions that the oversight body may request, when needed, that the City Council issue a subpoena using its inherent subpoena power.

3. The Public Safety Officers Procedural Bill of Rights Act (POBRA).

Regardless of whether a city is a general law or charter city, it must not violate the rights provided to police officers under the Police Officers Bill of Rights Act (POBRA). (Gov. Code, §§ 3300, *et seq.*) POBRA sets forth a list of basic rights and protections that must be afforded all police officers by the public entities that employ them, and is a catalog of the minimum rights the state legislature has deemed necessary to secure stable employer-employee relations. (*Quezada v. City of Los Angeles* (2014) 222 Cal.App.4th 993, 1003.) These rights include, among others, limits on, and guidelines for, investigations and interrogations of public safety officers in connection with disciplinary proceedings (Gov. Code, § 3303); the right to an administrative appeal and a one-year statute of limitations for investigations (*id.*, § 3304); the right to notification of adverse comments placed in his or her personal file and the right to comment thereon (*id.*, §§ 3306-3306). POBRA thus explicitly pre-empts local legislation affecting police officers' rights during investigations and relating to their personnel files. The City Council's legislation enacting a police oversight body must not conflict with any of these rights or protections.

POBRA applies to independent investigations conducted by an oversight body with investigatory powers. In *Berkeley Police Assn.*, a court of appeal rejected the City of Berkeley's argument that POBRA did not apply to its review commission's proceedings. The court held that when police officers were made to appear for interrogation or a factfinding hearing by their employer – and under penalty of disciplinary sanction, as was the case in Berkeley – this was “tantamount to being subjected to interrogation by the officer's ‘commanding officer or [another] member of the employing public safety department’” under Gov. Code, section 3303. (*Id.* at p. 410.) The court also noted that the second requirement for section 3303 to apply – “that the police chief or city manager can take disciplinary authority against an officer based on [review commission] findings” was satisfied, as the city had taken the position that the police chief could take disciplinary action “based in whole or in part” on the commission's findings. (*Ibid.*)

As mentioned above, a conflict may arise between state and local law where local legislation “. . . enters an area fully occupied by general law, either expressly or by legislative implication.” (*City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, 743.) We do not think the state legislature has manifested an intent to “fully occup[y]” the area of *police oversight* such that the City of La Mesa is precluded from creating a police oversight body.¹⁷ (*Ibid.*)

sheriff and probation department employees, and to make recommendations to the board of supervisors.” (*Id.* at p. 1213.) While the analysis in *Dibb* might be persuasive to a court trying to determine whether members of a police oversight board are “city officials” such that section 53060.4 permits a general law city council to delegate subpoena power to them, *Dibb* arose in the context of a charter county and is not binding precedent.

¹⁷ While the state legislature has recognized that the rights and protections provided to police officers constitute a matter of statewide concern (Gov. Code, § 3301) such that the Public Safety Officers Procedural Bill of Rights Act (POBRA) impliedly, if not explicitly, preempts any local legislation affecting peace officers' rights and

Moreover, courts are generally “reluctant to infer legislative intent to preempt a field covered by municipal regulation when there is a significant local interest to be served that may differ from one locality to another.” (*Id.* at p. 744, internal quotations omitted.) Local ordinances are also generally permissible where they complement or supplement state law, or where state law expressly allows supplementary local legislation – as POBRA does here. Thus, a general law city has the power to create a police oversight body to the extent that, in doing so, it does not *duplicate* or *contradict*,¹⁸ or intrude on areas pre-empted by, existing state law.

4. Penal Code, § 832.7: Personnel records; confidentiality; discovery; exceptions; records relating to discharge of firearm, sexual assault, or dishonesty by peace officer or custodial officer available for public inspection; complaint disposition notification.

As a general matter, an oversight body cannot rely on the California Public Records Act to obtain police personnel records. While the public generally has a right to access and inspect government records under the California Public Rights Act (Gov. Code, § 6250 *et seq.*), Government Code, section 6254, subdivision (f) exempts certain records relating to police conduct from those disclosure requirements. (See, e.g., Gov. Code, § 6254, subd. (f).) While the police department may nevertheless provide such records to an oversight body or independent police auditor, the oversight body and independent police auditor remain bound by confidentiality provisions of the general law.

For example, police officer’s personnel records and the information obtained from those records generally “are confidential and shall not be disclosed in any criminal or civil proceeding,” subject to certain exceptions. (Penal Code, § 832.7, subd. (a).) While this section does “not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, *conducted by a grand jury, a district attorney’s office, or the Attorney General’s office*” (emphasis added), it does not provide an analogous exception for investigations carried out by a citizen oversight body. (See, e.g., *Berkeley Police Assn. v. City of Berkeley* (2008) 167 Cal.App.4th 385, 394 [citing line of appellate cases holding that section 832.7 establishes a general condition of confidentiality for police records regardless of the context in which those records are sought].)

In *Berkeley Police Assn.*, a court of appeal held that Penal Code, section 832.7, subdivision (a) applied in the context of a city’s civilian police review commission’s independent investigative process for citizen complaints. The court held that Penal Code, section 832.7 “does not make it a

protections, it does not reflect an intent by the legislature to fully occupy the field of police discipline and oversight. Rather, POBRA itself explicitly contemplates additional local action. For example, POBRA does not flesh out the disciplinary proceedings that a peace officer may be subject to by a local police department, but merely ensures that a peace officer has certain rights in those proceedings. (See, e.g., § 3304.5 [“[a]n administrative appeal instituted by a public safety officer under this chapter shall be shall be conducted with the *rules and procedures adopted by the local public agency.*”], emphasis added.)

¹⁸ Local legislation is “contradictory” to general law only when it either directly requires what a state statute forbids, or prohibits what a state statute demands. As long as it is reasonably possible to comply with both the state and local laws, no inimical conflict will be found. (*Inland Empire Patients Health and Wellness Center, Inc.*, *supra*, 56 Cal.4th at p. 743.)

necessary condition for confidentiality to apply that the officer whose records are sought be involved in a disciplinary proceeding. It is sufficient that he or she be *the subject of a citizen complaint* without regard to whether disciplinary action is involved.” (*Id.* at p. 401, emphasis in original.)

In creating a police oversight body, the City Council must be mindful that the records and findings of the body may be protected from disclosure to the public under Penal Code, section 832.7, subdivision (a), both as “records maintained by any state or local agency pursuant to section 832.5” and as “personnel records.” In *Berkeley Police Assn.*, the court found that public hearings on citizen complaints by Berkeley’s review commission would necessarily violate section 832.7, subdivision (a) “by disclosing information ‘obtained from’ confidential records, including the identity of officers who are subject to complaints and the content of investigative files and memoranda compiled by [the review commission investigators] before the hearing.” (*Id.* at p. 405.)

However, in 2019, the state legislature passed a bill amending section 832.7 in order to make available to the public under the CPRA a limited subset of personnel records potentially relevant to an investigation or audit. These records include those relating to the report, investigation, or findings of: (i) an incident involving the discharge of a firearm at a person; (ii) an incident in which the use of force by an officer against a person resulted in death, or in great bodily injury; or any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer engaged in sexual assault involving a member of the public. (Penal Code, § 832.7, subd. (b)(1).) A police oversight body would not appear to be subject to the same strict confidentiality requirements when investigating and reporting on such incidents.

* * *

As noted above, despite these limitations, a general law city still has considerable flexibility in creating a robust police oversight body, as none of these limitations would preclude the body from efforts such as investigations or audits resulting in recommendations; recommendations as to policies, procedures, practices, and trainings; efforts to increase transparency of law enforcement operations and investigations; receiving and tracking complaints of misconduct; and serving as a liaison between the police department and the public.

The Task Force has considered all of these limitations in designing the proposed CPOB.

B. Solutions That Can Be Achieved in a California Charter City.

Because charter cities are limited primarily by what is in their charters, they are less restricted by state statutes. Thus, while Government Code section 38630 prohibits oversight bodies in general law cities from exerting “control” over the Police Department, a charter city’s oversight body may, subject to the limitations contained in its charter, have additional powers over its police department. (*Brown v. City of Berkeley* (1976) 57 Cal.App.3d 223, 236 [Government Code section 38630, which provides that the “police department of a city is under the control of the chief of police,” applies only to general law cities and not charter cities].) Depending on the form of its charter, an oversight body in a charter city may be able to directly subpoena witnesses and documents from the police department,

could almost certainly take disciplinary action against individual officers,¹⁹ and even require the implementation of policies and practices in the police department. California courts have, in a number of instances, considered the proper scope of the powers and duties delegable to a police oversight commission by a city council in a charter city, holding the following.

- A charter city’s police oversight commission may have subpoena power. (*Brown, supra*, 57 Cal.App.3d at p. 236 [holding that provision of Berkeley charter providing that “every member of any board or commission provided for in this Charter, shall have the power . . . to issue subpoenas” was not pre-empted by Gov. Code, section 37104, which restricted subpoena power to a city’s legislative body].)
- A charter city’s police oversight commission may, depending on that city’s charter, have ongoing involvement in the formation of the policies, practices, and procedures of the police department. This included the power to investigate those policies, practices, and procedures, and to make recommendations. (*Brown, supra*, 57 Cal.App.3d at p. 233. [“The power to organize and maintain the police department” specifically granted in the charter to the city council “connote the power of the council to have an ongoing involvement in the formation of the policies, practices, and procedures of the police department.”].)
- Charter cities are still bound by Penal Code, section 832.7, which establishes a general condition of confidentiality for police personnel records regardless of the context in which they are sought. (*Berkeley Police Assn. v. City of Berkeley* (2008) 167 Cal.App.4th 385, 394.) A charter provision that provides an oversight body with subpoena power “does not (and may not) supersede general law governing privileges or confidentiality of records.” (*Dibb v. County of San Diego* (1994) 8 Cal.4th 1200, 1210, fn. 5.)
- Even in charter cities, Penal Code, section 832.7 has the effect of prohibiting public hearings on citizen complaints, which would necessarily “disclos[e] information ‘obtained from’ confidential records, including the identity of officers who are subject to complaints and the content of investigative files and memoranda compiled by [the review commission investigators] before the hearing.” (*Berkeley Police Assn., supra*, 167 Cal.App.4th at p. 405.)
- POBRA “was not intended to ‘interfere with a charter city’s right to regulate peace officers’ qualification for employment, or the causes for which they may be removed. . . . Nor was the Act intended to abrogate the powers granted charter cities by article XI, section 5 of the California Constitution. . . .” (*San Diego Police Officers’ Assn. v. City of San Diego Civil Service Com.* (2002) 104 Cal.App.4th 275, 281 [quoting *Binkley v. City of Long Beach* (1993) 16 Cal.App.4th 1795, 1806].) However, a charter city is obligated to apply POBRA to its hearings. (*Berkeley Police Assn., supra*, 167 Cal.App.4th 385.)

¹⁹ Although no court has directly addressed it, it is likely that this would be permissible as long as it did not contradict the city’s charter and if the discipline was imposed in a way that was consistent with the requirements of POBRA.

C. Whether a General Law City Could Create a More Powerful Oversight Body Through a Ballot Measure.

Although not directly included in the City Council’s charge to this Task Force, there has been considerable discussion as to whether the City could create a stronger oversight body by enacting the body through a ballot measure as opposed to a resolution or an ordinance. The answer is no. Voters do not have any more power to delegate to a police oversight body than a city council, so a police oversight body gains nothing in terms of the powers it could have if its enacting ordinance is passed by voters as an initiative measure on the ballot instead of by the City Council. The only advantage of enactment by initiative is that it would render the police oversight body more permanent.²⁰ However, if the City Council is ready to act, local ordinance would be the most efficient path to enacting a police oversight body.²¹ To alleviate concerns over the permanence of the establishment of the oversight body, the Task Force recommends that the City Council establish the CPOB and IPA with an ordinance creating a new chapter in the La Mesa Municipal Code rather than with a simple resolution.

²⁰ Under Elections Code, section 9217, “[n]o ordinance that is . . . adopted by the voters, shall be repealed or amended except by a vote of the people, unless provision is otherwise made in the original ordinance.” By contrast, a city council’s power to enact ordinances carries with it the power to amend or repeal them. (*Blotter v. Farrell* (1954) 42 Cal.2d 804.)

²¹ Regardless, it is too late to place a measure on the ballot in 2020. In order to put a proposition on the November 3, 2020 general election ballot, the City Council would have had to pass an ordinance or resolution submitting the proposition to the ballot by August 7, 2020. (Elec. Code, § 9222 [“The election shall be held not less than 88 days after the date of the order of election.”].)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LA MESA, CALIFORNIA, ADDING CHAPTER 2. __ TO THE LA MESA MUNICIPAL CODE FOR THE PURPOSE OF CREATING A COMMUNITY POLICE OVERSIGHT BOARD AND INDEPENDENT POLICE AUDITOR

WHEREAS, the City Council, in order to strengthen police-community relations, foster trust, increase transparency, respond to public demand, and build accountability, wishes to create an independent Community Police Oversight Board;

WHEREAS, on October 8, 2019, the City Council unanimously established a Citizen Public Safety Oversight Task Force (the “Task Force”) to serve as an advisory body to the City Council charged with conducting specific research and making recommendations to the City Council;

WHEREAS, the Task Force has met regularly since its formation and has researched (1) what a citizen police oversight committee would look like in La Mesa; (2) what other cities of similar size are doing in regards to citizen police oversight commissions; (3) the difference between citizen police oversight commissions in general law cities and charter cities; and (4) solutions that can be achieved under each type of government and within state and local laws and policies; and

WHEREAS, as a result of that research, the Task Force has recommended the formation of a Community Police Oversight Board and the retention of an Independent Police Auditor substantially similar to that in this Ordinance;

NOW, THEREFORE, THE CITY COUNCIL DOES ORDAIN AS FOLLOWS:

SECTION I: Title 2 of the La Mesa Municipal Code is hereby amended to add Chapter 2.__, entitled “Community Police Oversight Board,” to read as follows:

Sections:

- | | |
|-----------------|---|
| 2.__.010 | Creation and purpose. |
| 2.__.020 | Appointment and qualifications of members. |
| 2.__.030 | Terms of office. |
| 2.__.040 | Officers. |
| 2.__.050 | Meetings. |
| 2.__.060 | Compensation. |
| 2.__.070 | Budget. |
| 2.__.080 | Bylaws and procedures. |
| 2.__.090 | Training. |
| 2.__.100 | Powers and duties. |

- 2.__.110 Public reports.**
2.__.120 Independent Police Auditor.
**2.__.130 Requirement of cooperation by the La Mesa Police Department and
all other City employees and officials with the CPOB.**
2.__.140 Severability.

2.__.010 Creation and purpose.

(a) There is hereby permanently created the Community Police Oversight Board (hereinafter referred to as the “CPOB”). The purpose of the CPOB is to advise the Chief of Police, Mayor, City Council, and City Manager on the administration of the La Mesa Police Department.

(b) The CPOB shall function as a means of community participation and oversight by directing and reviewing audits, and by reviewing and recommending policies, practices and programs designed to bring about community policing that is sensitive, effective, and responsive to the needs of the City and its residents.

(c) The CPOB shall promote and encourage open communication and cooperation between the La Mesa Police Department and residents of the City, recognizing that policing the City of La Mesa is a shared responsibility. The CPOB shall also develop and make recommendations directed toward informing the community of its rights and responsibilities when coming into contact with police officers.

2.__.020 Appointment and qualifications of members.

(a) The CPOB shall consist of eleven (11) voting members appointed by the Mayor in consultation with one other City Council member and confirmed by the City Council. All voting members of the CPOB shall be residents of the City of La Mesa. The CPOB voting members shall include:

- one (1) representative from each of the four (4) beat areas of the City,
- one (1) representative of a La Mesa faith-based community,
- one (1) representative of the La Mesa business community,
- one (1) adult employee or designee of Helix Charter High School,
- one (1) adult employee or designee of the La Mesa-Spring Valley School District,
- one (1) young adult between the ages of 18 to 30,
- one (1) advocate for people experiencing homelessness, substance abuse, mental health or other social issues, and
- one (1) senior aged 62 or older.

(b) The CPOB shall create an internship program for La Mesa residents currently enrolled in high school or college and between the ages 16 and 22, inclusive, through which students may serve as temporary, non-voting CPOB members.

(c) The Mayor and City Council shall strive to appoint CPOB members who reflect a diverse representation of the community and include individuals with diverse backgrounds, experiences, economic status, interactions with law enforcement, and beliefs. No one shall be excluded from the CPOB because he or she has a criminal record.

(d) No current police officers or members of their immediate family may serve on the CPOB but the CPOB shall regularly include participation from the Chief of Police or his or her designees in CPOB meetings as described in section 2.__.050, subdivision (b).

2.__.030 Terms of office.

(a) The term of each member of the CPOB shall be for two years, but the terms of not more than six (6) members shall expire in any year. Therefore, when the initial eleven (11) members are selected, five (5) of them shall be randomly chosen to serve an initial one-year term and the remaining six (6) shall serve an initial two-year term. No members shall serve for more than four consecutive full terms. For this purpose, the initial one-year terms in this paragraph shall be considered full terms. After four consecutive full terms, an interval of two years must pass before a member is eligible to be reappointed. The expiration date of all terms shall be December 31, but each member shall serve until his or her successor is duly appointed and qualified.

(b) A member may resign before the expiration of a term with written notification to the chairperson of the CPOB and the Mayor.

(c) Members of the CPOB serve at the pleasure of the City Council and may be removed from office by a majority vote of the Council. The CPOB may recommend to the City Council that a member be removed for reasons including but not limited to: (1) misuse of position as a CPOB member, (2) misuse of police-issued documents, (3) misconduct that impedes the member's ability to serve as an effective and impartial CPOB member, (4) unexcused absences from at least three consecutive meetings, (5) violation of the Code of Ethics of the National Association for Civilian Oversight of Law Enforcement (NACOLE), or (6) conflict of interest.

(d) Upon receipt of notification of resignation or upon a Council vote of removal, the position shall be considered vacant and eligible for the Mayor, in consultation with one other City Council member, to appoint the replacement followed by confirmation by the City Council for the remainder of that term.

2.__.040 Officers.

During January of each year, the CPOB shall elect one of its members as chairperson and one as vice-chairperson who shall each hold office for one (1) year and until their respective successors are elected. No officer shall be eligible to immediately succeed himself or herself more than once in the same office. Officers shall be elected no later than the second meeting of the CPOB following its appointment.

2.__.050 Meetings.

(a) The CPOB shall hold its first meeting within thirty days after all of its members have been appointed and confirmed. At the first meeting, and again at the first meeting of each calendar year, the CPOB shall set the time and place of regularly scheduled meetings. The CPOB shall meet at least monthly, but during the first year after the CPOB is created, the CPOB shall meet at least every two weeks. All CPOB meetings are subject to the Brown Act.

(b) In the interest of upholding and modeling a positive relationship between the citizens of La Mesa and the La Mesa Police Department, the La Mesa Chief of Police or his or her designee shall be invited as a guest to attend the beginning of all public meetings of the CPOB and, as the first order of new business, be placed on the agenda to comment or report on any matters under consideration by the CPOB.

2.__.060 Compensation.

Members of the CPOB shall serve without compensation, provided that the City Council may authorize the reimbursement of reasonable expenses incurred by the members in the performance of their duties.

2.__.070 Budget.

Funding for an independent auditor, expenses to communicate with the public, and, from time to time as needed, outside legal support shall be provided upon approval from the City Council. Additionally, the City Manager and City Council shall provide appropriate funding for staff and clerical support including an executive director upon request and upon a showing of need by the CPOB. If needed, the executive director will be interviewed by the CPOB and recommended to the City Council for final approval.

2.__.080 Bylaws and procedures.

The CPOB may adopt bylaws and operating procedures from time to time, which shall be approved by the City Council, provided that if any provision of such bylaws or operating procedures conflicts with this Chapter 2.__., this chapter shall prevail.

2.__.090 Training.

The City Manager and City Attorney shall provide appropriate funding for introductory training of new CPOB members as well as continuing education for all members. Training shall be developed in consultation with the National Association for Civilian Oversight of Law Enforcement's (NACOLE) Recommended Training for Board and Commission Members and shall cover all of the following, but not be limited to:

- (a) The ordinance establishing the CPOB;
- (b) Laws governing local public records and public meetings, confidentiality, police officer rights, arrestee rights, excessive force;
- (c) Police practices and procedures around stops, arrests, use of force, detention, large-scale protests and marginalized communities; and
- (d) Confidentiality training for the purpose of reviewing personnel or other documents that are protected by privacy laws.

2.__.100 Powers and duties.

To effectuate its purpose, the CPOB shall, in compliance with the California Public Safety Officers Procedural Bill of Rights Act (Gov. Code, §§ 3300 et seq.), Government Code section 38630, Government Code section 37104, Penal Code section 832.7, and all other applicable state and federal law:

- (a) Independently receive, register, and deliver to the Chief of Police, in compliance with state and federal law, all complaints against officers of the La Mesa Police Department regarding allegations of misconduct.
- (b) Automatically initiate and review audits prepared by the Independent Police Auditor of all investigations and dispositions of incidents of use of force, accidental discharge of weapons, officer-involved shootings, officer-involved deaths, or officer-involved interactions resulting in serious bodily injury.
- (c) Have the power at its discretion to initiate and review audits prepared by the Independent Police Auditor of the Internal Affairs investigations and dispositions of any complaints of misconduct by the La Mesa Police Department or its officers.
- (d) Make recommendations, in coordination with the Independent Police Auditor, to the Chief of Police regarding further investigation, processes, and dispositions.

(e) From time to time, as deemed necessary by the CPOB if the Independent Police Auditor and the CPOB are denied access to any files or witnesses, request in writing that the City Council issue subpoenas pursuant to its inherent subpoena power under State law to compel production of the requested files or witnesses to the Independent Police Auditor and CPOB.

(f) Develop a program for the mediation of complaints, in coordination with the Chief of Police and with the assistance of resources such as National Conflict Resolution Center or other similarly qualified experts.

(g) Regularly review and make recommendations, relying on the expertise and assistance of the Independent Police Auditor as needed, as to La Mesa Police Department's:

- (1) policies, procedures, practices, and training as to regular operations;
- (2) policies, procedures, and practices as to hiring and promotions;
- (3) policies, procedures, practices, and training as to internal investigations of misconduct;
- (4) initial and in-service trainings in de-escalation techniques, human relations instruction, and implicit bias training;
- (5) policies, procedures, practices, and training as to community-oriented policing; and
- (6) any and all other areas of policing or La Mesa Police Department policies, procedures, practices, and training that the CPOB finds appropriate for review.

(h) Study, develop, and recommend strategies to the Chief of Police, Mayor, City Council, and City Manager regarding alternatives to policing in crime prevention, and the role in public safety of various social services, including but not limited to those targeting mental health, alcohol and substance abuse, homelessness, and education.

(i) Develop and recommend, in conjunction with the Chief of Police, Mayor, City Council, and City Manager, education programs regarding policing in La Mesa and community outreach events such as townhall meetings, forums to communicate information about neighborhood watch programs, or events designed to encourage safety and emergency preparedness.

(j) Request and review data from the La Mesa Police Department as needed to effectuate its powers and duties. Such data may include, but is not limited to data regarding police use of force; demographics of individuals stopped, searched, or arrested; demographics of La Mesa Police Department officers and staff; officer training and qualifications; criminal proceedings; and civil lawsuits and administrative claims.

(k) Consult with City staff and the City Council in drafting the Request for Proposal for the Independent Police Auditor and in evaluating the proposals. Once every two years, the

CPOB shall evaluate the performance of the Independent Police Auditor and provide a written evaluation to the Mayor and City Council.

2.__.110 Public reports.

(a) The CPOB shall draft and issue public reports regarding the issues described in 2.__.100, subdivisions (g)(1) – (g)(5) and (h) annually. An annual report may be in the form of an update from a previous year's report. The CPOB may issue additional public reports as it deems appropriate.

(b) The CPOB shall, in conjunction with the Independent Police Auditor, provide semi-annual public reports to City Council and City Manager on the number and types of complaints reviewed and the CPOB's responses, investigative findings, analysis of police data, police progress on CPOB recommendations and other updates relevant to the mission of the CPOB.

(c) All public reports shall omit or redact any confidential or privileged information as defined by State law.

2.__.120 Independent Police Auditor.

(a) The City shall retain the services of an Independent Police Auditor. The Independent Police Auditor shall have the authority to review and assess for objectivity, thoroughness, and appropriateness of disposition citizen complaint investigations of misconduct and internal affairs investigations associated with the La Mesa Police Department and make recommendations regarding those investigations to the Chief of Police. The essential functions and duties of the Independent Police Auditor shall be to:

- (1) Receive citizen complaints of police misconduct directly and deliver them to the Chief of Police and the CPOB;
- (2) Timely receive copies of all complaints of police misconduct received directly by the La Mesa Police Department;
- (3) Automatically review and assess for objectivity, thoroughness, and appropriateness the investigations and dispositions of all incidents of use of force, accidental discharge of weapons, officer-involved shootings, officer-involved deaths, or officer-involved interactions resulting in serious bodily injury;
- (4) Review and assess for objectivity, thoroughness, and appropriateness the Internal Affairs investigations and dispositions of any complaints of misconduct by the La Mesa Police Department or its officers at the request of the CPOB, regardless of how the complaint was received;
- (5) Provide reports of each investigation and disposition to the CPOB upon completion;

- (6) Make recommendations to the CPOB and Chief of Police regarding further investigation, processes, and dispositions;
- (7) Meet with the City Manager, Chief of Police, and City Council upon request, but at least annually, to discuss the Independent Police Auditor's observations, concerns, and recommendations;
- (8) Meet with the CPOB once per quarter to discuss the Independent Police Auditor's observations, concerns, and recommendations; and
- (9) Assist the CPOB at the CPOB's request in the auditing and assessment of the issues described in section 2.__100, subdivisions (g) and (h).

(b) As part of his or her essential functions and duties, the Independent Police Auditor shall, in conformity with state and federal law, have the discretion to interview witnesses and have access to all La Mesa Police Department files.

(d) The Independent Police Auditor shall serve at the pleasure of the City Council and may be removed by a majority vote of the Council.

2.__.130 Requirement of cooperation by the La Mesa Police Department and all other

(a) The La Mesa Police Department and all other City of La Mesa employees and officials shall, except as expressly prohibited by law and to the extent authorized by the City Manager, respond promptly to any and all reasonable requests for information, interviews, data, or records for the purpose of enabling the CPOB to carry out its powers and duties. Any confidential information, including any documents pertaining to Internal Affairs complaints or investigations obtained by the CPOB from the La Mesa Police Department, shall remain confidential and shall not be disclosed to the public.

(b) The Chief of Police shall, within 30 days of delivery of any recommendations of any kind by the Independent Police Auditor or CPOB, respond in writing to both the Independent Police Auditor and the CPOB regarding further investigation, processes, and dispositions of any complaints or investigations. The Chief of Police may request the City Manager for a single 30-day extension to respond to any recommendations upon a showing of good cause.

2.__.140 Severability

If any section, division, sentence, clause, phrase or portion of this chapter is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, the portion shall be deemed a separate, distinct and independent provision, and the holdings shall not affect the validity of the remaining portions of this chapter.

SECTION 2: This ordinance shall be effective 30 days after its adoption and the City Clerk shall certify to the adoption of this Ordinance and cause the same to be published at least once in the East County Californian/La Mesa Forum within 15 days of its adoption.

INTRODUCED AND FIRST READ at a regular meeting of the City Council of the City of La Mesa, California, held the ____th day of _____ 2020, and thereafter PASSED AND ADOPTED at a regular meeting of said City Council held the ____th day of _____ 2020 by the following vote, to wit:

@@@@

APPROVED: _____, City Attorney

DRAFT