

under investigation or review and order of the court. If misconduct is determined to have occurred in the officer-involved shooting investigation, an internal affairs investigation is initiated.

In cases involving shootings by police officers, the LADA conducts an independent investigation of the circumstances to determine if the shooting was lawful. The LADA's investigation does not concern itself with evaluating department policies or practices, only the lawfulness of the use of force. In the LADA's investigation, the findings of the investigation are disclosed to the agency and the public. The City should anticipate receiving the results of that investigation in approximately three months or longer.

In this case, the Pasadena Police Department has also invited the FBI to independently investigate the shooting. The FBI investigation may be used by the Department of Justice to file criminal and/or civil charges. There is no way to know when we would get the results of the FBI investigation, as they have been known to take at least one year to complete.

B. Additional Outside Independent Investigation

The City may hire an "outside investigator" to review the officer involved shooting which resulted in the death of Maurice Clark. Such an investigation would be classified as an "internal affairs investigation" governed by Penal Code section 832.7. Such investigations are confidential and may not be disclosed without compliance with Evidence Code section 1043. Any investigation conducted by the police officer's employing agency into the conduct of said officer, on or off-duty, would be considered the investigation of a complaint against him.

Pursuant to the provisions of the California Police Officers' Bill of Rights, Government Code section 3301 et seq., the officer would be entitled to all of the rights guaranteed under that section, including, but not limited to the following: the right to a representative, the right to refuse to be interviewed without being advised of his rights under *Miranda* and *Lybarger*, the right to have an attorney / representative present during the interview and the right to review any prior statements made by him in the Department's internal affairs investigation. He would also be entitled to a complete copy of the investigation.

C. Possible Types of Independent Investigations

There are basically three types of "independent investigations." The first would be an independent review of the investigations conducted by the Pasadena Police Department, the LADA's investigation and the FBI. This is considered a "paper review" of the facts, as determined by one or more of the identified agencies.

The Los Angeles Sheriff's Department (LASD) has established a "paper review" of internal affairs and use of force / officer-involved-shootings by the Office of Independent Review. The Office of Independent Review is composed of seven attorneys. The head attorney was selected by the County Board of Supervisors. This group reviews the investigation and makes

recommendations as to additional investigation, discipline, training and practice and policy revisions. The Office of Independent Review has agreed to conduct such a paper review upon our request or we could hire an attorney (or attorneys) to conduct such a paper review independent of the Sheriff's Department.

The second type of investigation would expand the "paper review" type of investigation to supplement the information related in the underlying investigations with additional interviews, collection of evidence and forensic services.

The third type of investigation would be a complete re-investigation of the incident. This would involve interviews of witnesses, the search for new witnesses, and collection and re-evaluation of forensic evidence.

II. SELECTION OF THE INVESTIGATOR

The selection of the primary investigator is critical to the perception of the independence and validity of the investigation. The investigator should be someone who has not been associated with the Pasadena Police Department and who will be viewed as independent of the influence of the City and its agencies.

The primary investigator will need both legal and police expertise. He/she will need the assistance of trained investigators and forensic personnel. He/she will need the ability to review Department personnel files, internal investigations, and access to City personnel.

The investigators will need to sign confidentiality agreements with regard to information received and/or reviewed.

III. POTENTIAL BENEFITS AND CONCERNS RELATED TO AN ADDITIONAL OUTSIDE INVESTIGATION

Some of the possible benefits and potential areas of concern with the City conducting a further independent internal affairs investigation (independent investigation) include the following:

- * A third party review of information would provide an additional level of investigation which may result in more assurance that all aspects were investigated.
- * The community may have a greater comfort level that an investigation was completed which was not influenced by the City or any law enforcement agency.
- * Training and Police Department policy issues regarding officer involved shootings may be disclosed which may lead to internal modifications of investigative procedures.
- * The independent investigation will be conducted as an internal affairs investigation subject to the provisions and limitations of the California Police Officers' Bill of Rights.

- * The independent investigation will be confidential and information contained within the investigation may not be disclosed by the City absent consent of the officer or court order.
- * The officer under investigation will be entitled to a copy of the entire independent investigation.
- * The officer under investigation may disclose the investigation, or portions of the independent investigation, however, the City may not do so absent a court order.
- * The independent investigation will undoubtedly result in inconsistent statements from interviewees as a result of press coverage, previous interviews with attorneys and/or investigators, the passage of time and other influences.
- * Potential liability -- The disclosure of information contained in the independent investigation may result in litigation by the officer and/or his union to prevent such disclosure. The officer and/or his union may seek to obtain a writ of mandate and attorney's fees for violation of Penal Code section 832.7. It is unclear if the disclosure of information contained in the independent investigation to the public would create a private cause of action of invasion of privacy.
- * If the investigative report is determined to be discoverable in litigation, it may contain information that would not have otherwise been available to potential plaintiffs and which could be detrimental to the City's defense in a civil action.


IV. PRIOR INDEPENDENT INVESTIGATION

City records reflect that only one such independent investigation has been conducted in the City. In 1986, the then Chief of Police, Jim Robenson, requested that the City Council authorize an independent investigation be conducted regarding an incident involving Michael Zinzun. Apparently, Chief Robenson felt that the investigation should be conducted by an independent party so that there would be no perception that the investigation was biased. At the council's direction, Edwin Wilson, Jr., an Oakland, California, attorney and his private investigator conducted a complete independent internal affairs investigation of the incident and reported back to the Chief of Police and the City Council in closed session. A public report was made to the City Council which discussed how the investigation was conducted but not the information obtained during the investigation.

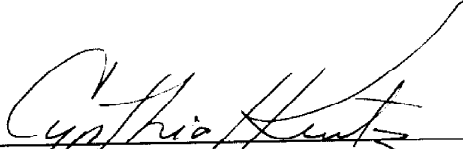
FISCAL IMPACT:

Based on the information known at this time, it is estimated that the cost for an additional independent investigation's cost could range from approximately \$50,000 for a "paper review" to \$200,000 or more, for a complete review, depending on the number of interviews, evidence collection and forensic testing conducted.

Respectfully submitted,


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Concurrence:


Cynthia J. Kurtz, City Manager