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CITY OF PASADENA

September 21, 2020

Mayor Terry Tornek,
Vice Mayor Tyron Hampton
Councilmember Victor Gordo
Councilmember John Kennedy
Councilmember Steve Madison
Councilmember Gene Masuda
Councilmember Margaret McAustin
Councilmember Andy Wilson
Pasadena, CA
(By email)

Re: City Council Meeting September 21, 2020, Agenda Item Number 15 – Proposed Ordinance Creating a Community Police Oversight Commission (“CPOC”) and Independent Police Auditor (“IPA”)

Dear Mayor Tornek, Vice Mayor Hampton, and Members of the City Council:

This letter addresses the proposed ordinance creating a CPOC and IPA, agenda number 15 for the City Council meeting on September 21, 2020. I would appreciate your review and consideration of the concerns expressed below related to the proposed ordinance.

As we have all heard through comments and letters at public meetings, independence, transparency, and accountability are paramount to the public in creating civilian oversight of the Pasadena Police Department (“PPD”). I am certain you are striving for the best possible oversight available to the City at this time. While it may not be possible to resolve all of the issues discussed below without a charter amendment, I believe most of the issues can and should be resolved before any ordinance is approved. The ordinance, as currently drafted, tilts too far toward the interests of law enforcement at the expense of independence, transparency, and accountability.

With all of that said and, with an appreciation for the work completed thus far by the City Attorney's Office, I discuss my questions and concerns below using the section references of the proposed ordinance under consideration.

Section 2.60.030 – Membership – Appointment and terms.

Both sections A and C refer to members from “the non-profit community.” That phrase is awkward and not defined. Does this require persons who are members of a formally organized/incorporated nonprofit such as an Internal Revenue Code section 501(c)(3)? Hopefully not, because there are community-based organizations that are not formally organized that would be excluded. Furthermore, “non-profit community” members need to be representatives of community-based organizations that are actively engaged in addressing issues related to civilian oversight of law enforcement such as use of force, racial profiling, best practices, and the like. Members of organizations whose mission is not germane to the issues upon which the CPOC would deliberate would not be appropriate appointees to the CPOC.

Subsection D is problematic. If commissioners have to be concerned that their deliberations and decisions must be tempered for fear of removal “at the pleasure of the City Council,” the commissioners are not independent. They are beholden to the City Council. Respectfully, this provision should allow for removal of commissioners only “for cause.”

2.60.040 – Qualifications, orientation, and training.

Subsection B states that members should have an interest in strengthening community-police relations. Members also need to affirm that they have an interest in providing oversight of the PPD. There would be no rational reason to appoint a person to a commission that has oversight jurisdiction of the PPD who does not believe in civilian oversight of the PPD.

Subsection C precludes from serving on the Commission, practicing attorneys who handle, or are members of firms or entities that handle criminal or civil matters involving the police department. Unless that provision is narrowed to attorneys who have *pending matters* involving the police department, there is no rational reason for this blanket disqualification. It would seem that attorneys who are expert in civil rights, policing best practices, etc. would provide welcome expertise to the CPOC. The “Ordinance Fact Sheet” on Agenda Item Number 15 notes on page 2, paragraph 2, that this only precludes appointments of practicing attorneys

if they or their firm/entity have *pending* criminal or civil cases involving Pasadena police officers. So perhaps the absence of the word “pending” in this subsection of the proposed ordinance is an unintentional oversight.

Subsection C also fails to disqualify police officers/former police officers or their family members as well as members of the Pasadena Police Officers Association from serving on the CPOC. Such persons likely have pro-police bias, whether explicit or implicit, and will be perceived by the community as having a conflict of interest in serving on the CPOC. They should be disqualified from serving.

Subsection E provides that the appointed commissioners must receive at least 30 hours of training in relevant subject matters “facilitated by the police department.” While the police department may facilitate sessions on PPD policies and procedures, it should not be choosing and facilitating other sessions on such topics as equity training, civil liberties, and the like. Perhaps the ACLU or the National Association for Civilian Oversight of Law Enforcement (“NACOLE”) could provide training on those subjects. The training required of commissioners needs to be balanced and not skewed in favor of the PPD right from the start.

2.60.070 – Meetings – Records.

Subsection B notes that a quorum “shall be a majority of the commission seats filled by the city council.” This is ambiguous because of the word “filled.” Does this mean just the seats appointed from each of the seven city council districts, or does it mean a majority of the total (11) members appointed by the City Council, including the “non-profit community” members? It should be made clear that a quorum is a majority of the 11 members appointed.

2.60.110 – Purpose and functions.

Subsection A notes that the purpose of the CPOC is “to enhance, develop and strengthen community-police relations.” Respectfully, I disagree. As noted in the Agenda Report dated July 27, 2020, our community is calling for civilian oversight of the PPD “to create more trust between the Department and all segments of the community that it serves and to provide a formal mechanism to obtain community input into policing issues.”

Subsection B(6) notes that the CPOC receives reports from the IPA regarding critical incidents and other matters. What is not stated is that these reports *are available for public inspection unless specifically precluded by law*. And the phrase “unless specifically precluded by law” needs to expressly exclude

withholding the reports on the basis of any purported attorney-client privilege. It needs to be clear that the IPA, if a member of the State Bar or law firm, ***is not acting as attorney for the CPOC, the City Attorney, or the City in general.*** Somewhere in the ordinance, there must be an express statement that there is no attorney-client relationship between the IPA and the CPOC, the City Attorney or the City in general. ***In the alternative, there must be an express statement that the attorney-client privilege, if applicable, is waived as to any and all communications between the IPA and the CPOC, the City Attorney or the City in general.*** (Evid. Code § 912.) Otherwise, the IPA's reports, including on critical incidents, could be withheld from the public ***in their entirety*** based on attorney-client privilege. That would be inconsistent with the transparency the community has demanded. This exclusion of attorney-client privilege as a basis for withholding information from the public needs to be made clear in subsection 9 as well. Attorney-client privilege cannot be used to hide the IPA's reports from the public.

Subsection B(7) severely limits the ability of the CPOC to weigh in on PPD personnel matters. According to the "Ordinance Fact Sheet" included on Agenda Item 15, this is due to Charter limitations that establish Pasadena's Council-Manager form of government. Respectfully, this needs to be addressed as a Charter amendment in the 2022 election cycle. In the meantime however, the CPOC should be able to provide recommendations on personnel matters, which needs to be expressly stated in this subsection. In fact, the "Ordinance Fact Sheet" notes that the CPOC's duties would include reviewing ***and providing input on*** a variety of matters including personnel matters.

Subsection B(8) has a number of very substantial problems.

- First, this subsection states that the CPOC can administer oaths and issue subpoenas "to carry out the commission's functions, to the extent permitted by law." But the CPOC's functions as listed in section 2.60.110 are almost exclusively limited to "review and monitor," which renders the ability to issue subpoenas worthless. What would be the need to issue subpoenas if the CPOC's scope of authority is simply to "review and monitor" the PPD's work?¹

¹ While the CPOC's stated duties also include receiving the IPA's reports on critical incidents, there is no provision in the ordinance for the IPA to independently conduct investigations of

- Second, this subsection states that subpoenas cannot be issued to persons who are/were employed by the City at the relevant point in time. This would mean the CPOC/IPA could not subpoena for examination any of the officers or investigators or other staff involved in a police shooting who is/was an employee of the City when the shooting occurred and during the aftermath. What is the purpose of this exceptional restraint on the ability of the IPA to conduct an investigation? While the ordinance states on the bottom of page 6 that the IPA will have unimpeded access to all police department personnel *complaints and investigations*, the IPA has no ability to subpoena or even interview PPD personnel involved in the critical incident. This is inconsistent with independence, transparency and accountability.
- Third, the proposed ordinance states that the CPOC can issue a subpoena for the production of records “other than personnel records.” This needs to be amended to provide for the production of records “to the extent permitted by law.” I am unaware of the legal basis for the proposed ordinance’s blanket prohibition against subpoenaing *any and all* personnel records.
- Fourth, the proposed ordinance states that the subpoenas must be issued by the City Clerk under the seal of the city and the chief of police causes the subpoenas to be served. These requirements are exceedingly problematic and unnecessary. Civil subpoenas in this State are routinely issued without a seal and are served by a process server or other person. For the CPOC and IPA to be truly independent, they need to be able to conduct investigations of critical incidents, etc. without telegraphing their investigatory activities to the police department.² Instead, subpoenas should be served like subpoenas in civil cases.

2.60.120 – Subpoenas.

Subsection A(6) notes that subpoenas shall include a notification to the served party that “if the information is not produced, the department will apply to the city

critical incidents which again, renders the ability to issue subpoenas worthless. This substantial drawback is discussed below.

² As an example of the potential harm, a witness might advise the IPA that he/she has critical information related to allegations of excessive use of force, but wants the “cover” of a subpoena in order to come forward. Due to this provision, the IPA will not be able to subpoena the confidential witness without revealing his/her identity to the City Clerk and to the Police Chief.

council for an appropriate order or other remedy.” This must have been copied from some department manual because the word “department” is unexplained.

Subsection B notes that the recipient of a subpoena may file a motion to quash the subpoena with the CPOC. And then what? Under the California Code of Civil Procedure, the recipient of a subpoena may file a motion to quash, but that simply commences a process by which to obtain compliance, normally through court action. (*See* Code Civ. Proc., §1987.1.) The mechanism by which the CPOC/IPA would enforce subpoenas is missing from the proposed ordinance.

Section 4. Pasadena Municipal Code, Title 2, Chapter 2.30, Section 2.30.020

There are a number of problems with the suggested amendments of this code provision related to the scope and authority of the IPA. First, Subdivision A(3) states that the City Attorney has “charge and control” of all outside counsel engaged to advise the City Council unless otherwise provided by law. If the IPA is to be a member of the State Bar or law firm, it must be made clear that the City Attorney has no “charge and control” over the IPA. Otherwise there would be a substantial conflict of interest since the City Attorney defends the PPD and its officers.

Second, Subdivision A(8) sets forth the duties of the IPA which fail to expressly include conducting real time, independent investigations. The IPA only *reviews* all categorical uses of force by police department personnel to assess whether the police department’s own investigation was complete, thorough, objective, and fair. Likewise, the IPA only *reviews* investigations of personnel complaints of bias-based policing. This narrow scope of authority is inconsistent with the independence the community has demanded and will not result in effective oversight. The IPA needs to be able to conduct his/her own investigations, in real time, to ensure independence and accountability, and not simply review the PPD’s work.³

Third, Subdivision A(8)(b) notes that the IPA will have unimpeded access to “all police department personnel complaints and investigations thereon,” but does not include access to police department personnel for interviews and/or oral examination under oath pursuant to subpoena. Further, this subsection allows the IPA to be present to observe the PPD’s briefings, interviews conducted and

³ See attached addendum for hypotheticals showing why it is necessary for the IPA to conduct his/her own investigations to ensure independence and accountability.

deliberations only “where feasible.” So apparently, it is left up to the PPD to determine if the IPA may be present for any of these activities. This is inconsistent with transparency. The IPA should be authorized to attend PPD witness interviews, crime scene investigations, etc. during the immediate aftermath of an officer-involved shooting in a manner that does not interfere with, or compromise, the investigation. This is the standard used by the LAPD Inspector General’s Office. The gathering of crime scene evidence and the way questions are posed to eyewitnesses are critical in making ultimate findings and conclusions. Once an eyewitness’s statement is taken, he/she can later be impeached with that statement.

Fourth, subdivision A(8)(f) states that the IPA will issue public reports and give public presentations only regarding “police department operations.” This needs to expressly include all categorical uses of force and complaints of bias-based policing. Further, while the issuance of public reports is limited to “to the extent permissible under applicable law,” that provision needs to expressly exclude attorney-client privilege as a basis for withholding reports from the public. There needs to be an express statement that there is no attorney-client relationship between the IPA and the CPOC, the City Attorney or the City in general. In the alternative, there must be an express statement that the attorney-client privilege, if applicable, is waived as to any and all communications between the IPA and the CPOC, the City Attorney or the City in general. (Evid. Code § 912.)

Fifth, subdivision A(8)(h) needs to include making recommendations for personnel actions for the reasons stated above in discussing the CPOC’s duties. (*See* response to 2.60.110, subsection 7, above.)

Sixth, the IPA needs to have authority to issue subpoenas to City employees and should not be required to have them issued with a seal of the City or served by the chief of police. (*See* response to 2.60.11, subsection 8, above.)

Seventh, the IPA must be able to subpoena the production of records to the extent permitted by law.” I am unaware of the legal basis for the proposed ordinance’s blanket prohibition against subpoenaing *any and all* personnel records.

Eighth, there is no provision for obtaining compliance with a subpoena issued by the IPA. There needs to be an enforcement mechanism similar to, or the same as, Code of Civil Procedure section 1987.1.

Ninth, in order to ensure transparency, attorney-client privilege must be excluded as a basis upon which to withhold information from the public.

Thank you again for your time and consideration in reviewing this letter.⁴

Sincerely,

/s/

Sonja K. Berndt, Esq. (Retired)

Cc: correspondence@cityofpasadena.net

⁴None of the information in this letter should be construed as legal advice as my California State Bar status is “inactive” in my retirement.

ADDENDUM

Sample hypotheticals showing why the IPA needs to be able to:

- **conduct his/her own independent, real-time investigation;**
- **with the ability to subpoena witnesses (including City employees) and documents; and**
- **without requiring notice to the City Clerk and the Police Chief**

Hypothetical 1: A whistleblower in the PPD advises the IPA that he/she has critical information related to allegations of excessive use of force, but wants a subpoena as “cover” in order to come forward. The IPA will not be able to subpoena that PPD witness under the proposed ordinance because he/she is a City employee. Further, under the proposed ordinance, the IPA would have to reveal the identity of the whistleblower to the City Clerk and to the Police Chief, which blows the confidentiality of the whistleblower.

Hypothetical 2: The IPA is told of a crucial civilian witness who was not interviewed by the internal affairs investigator. The IPA calls the witness on the telephone, but the witness refuses to be interviewed because he/she is fearful of police retaliation. Under the proposed ordinance, the IPA could not subpoena the reluctant witness without revealing his/her identity to the City Clerk and to the Police Chief.

Hypothetical 3: Critical eyewitness to an officer-involved shooting is also shot and is dying in the hospital. Internal affairs investigator negligently or intentionally fails to interview the witness in time before he dies. After the investigation, internal affairs investigator gives the file to the IPA without any statement from the eyewitness to the shooting, who is dead.

Hypothetical 4: IPA suspects lack of truthfulness of officer witness due to “code of silence.” The IPA has no ability to force the officer to testify under penalty of perjury because he/she is a City employee.

Hypothetical 5: IPA suspects possible intimidation of civilian eyewitness and wants to take the eyewitness’ oral examination under oath outside the presence of law enforcement personnel to ascertain whether the witness’s statement was coerced.

Hypothetical 6: Certain documents given by internal affairs to the IPA are back-dated or altered in another way. Those documents are given to the IPA, but the IPA does not know the documents were altered because the IPA is only reviewing the PPD's own work.

Hypothetical 7: Even though the IPA did not conduct his/her own investigation, he/she somehow ascertains certain documents were not provided by internal affairs. The IPA asks for them, but is told the documents do not exist (even though they existed when the IPA made the request, but were destroyed after the request). The IPA cannot issue subpoenas for testimony of PPD personnel to determine the circumstances surrounding the possible destruction of evidence because they are City employees.

Martinez, Ruben

From: Helen Shi Stafford < >
Sent: Sunday, September 20, 2020 10:01 PM
To: PublicComment-AutoResponse
Subject: Public comment for Sept 21st City Council Meeting

CAUTION: This email was delivered from the Internet. Do not click links or open attachments unless you know the content is safe.

Dear City Council Members,

As a Pasadena resident who is deeply concerned about police oversight, especially following the death of Anthony McClain, I am requesting that the ordinance for creating the Community Police Oversight Commission specifically seek members that represent the communities of Pasadena that are most deeply affected by policing, namely Northwest Pasadena and Black and Latino residents. I noticed that there is no mention of this representation in the current ordinance.

Thanks,
Helen Shi Stafford, MD
Resident of the 7th District

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Sent from Gmail Mobile

09/21/2020
Item 15

B.R.E.A.T.H.E. JUSTICE 365

September 19, 2020
Pasadena Mayor and City Council

RE: The Ordinance Amending Various Provisions of the Pasadena Municipal Code Creating (A) A Community Police Oversight Commission; and (B) An Independent Police Auditor

Dear Honorable Mayor and City Council,

Thank you for all of the positive efforts you have put forth to create impactful community oversight of the Pasadena Police Department. We are excited about the recent unanimous vote, and how far we, as a City, have progressed on the subject of police oversight. We are also grateful to the City's Staff for its hard work.

The proposed ordinance is on the path to becoming a powerful police oversight ordinance. While the ordinance has many excellent aspects, it is concerning in some crucial ways. We have identified concerning areas of the ordinance, and provided viable solutions below.

Please do not misconstrue the recommendations provided within this letter as counterproductive or utilize them as a tool to undermine the substantial progress the City Council is making. Rather, information presented is done so in an effort to strengthen the oversight body in key ways.

Our diverse team of Pasadena-based professionals painstakingly drafted this letter to provide our unique insight. We ask that you take the time to review our feedback, in its entirety, and implement its recommendations to strengthen the ordinance, and bring empowered community police oversight to Pasadena.

Key Terms:

- The Community Police Oversight Commission is referred to as "Commission" or "Oversight Commission"
- The Independent Police Auditor is also referred to as "IPA"
- The Term "Oversight body" refers to the combination of the Commission and IPA as a unit for oversight.

1. General Principles

1. Oversight Commission Goals

1. The Purpose of the Community Police Oversight Commission must include **Improving Transparency, Accountability, and Building Public Trust in the Police Department.**
 1. Only by doing this, can we begin to engender **Public Trust** and thereby Improve **Police-Community Relations.**
 2. The City Ordinance must be amended to state this.

2. Oversight Commission Composition

1. The composition of the Commission will determine its effectiveness.
2. To fulfill the stated purpose of improving community-police relations, membership must consist of people dedicated to police oversight, and most impacted by troubled police-community relations.
3. We look forward to robust, transparent debate with community input when future efforts are undertaken to establish, by Resolution, the policy for Commission member appointment.

3. Commission & IPA Authority

1. The Oversight Commission and IPA must be granted police department access and investigatory authority, to the maximum extent permitted by law, in order to fulfill their duties and achieve their purpose.

2. This requires specifically vesting the IPA with the **authority to Conduct Real-Time, Independent Investigations** while simultaneously monitoring and observing the police department's actions, investigations, and correspondence.
 1. Without Investigatory Authority, the oversight body lacks the power to assert the accountability and transparency communities with poor police relations earnestly seek.
 2. This is discussed further in Section 10 of this letter.
4. **Power to Make Disciplinary Recommendations**
 1. If the Commission is to be effective, it must be authorized to make disciplinary **recommendations**, at a minimum.
 2. These recommendations can be directed to the City Manager, Police Chief, City Council, and/or the Community, as the law permits.
 3. We have elaborated on this, including how it pertains to City Charter Section 411(B) in Section 7(4) of this letter.
5. **Community Transparency**
 1. The Commission has potential to dramatically improve police-community relations, but must be permitted to regularly share its findings with the community, to the extent permissible by law.
 1. Maintaining as confidential those matters which are not legally bound by confidentiality laws, and engaging the public only once annually create the perception of secrecy, which further erodes public trust.
 2. Frequent, transparent community communication will be key to the success of the Commission.
2. **Membership — Appointment and Terms (Ordinance Section 2.60.030)**
 1. The Ordinance states that a separate resolution shall establish the policy for Commission member appointment. We anticipate thorough, transparent, public debate when that time comes. We have included our perspective here in the event that the subject is discussed by the City Council before anticipated (2.60.030(A)(5)).
 2. Prioritize Commission appointment to African Americans, as well as Northwest and Central Pasadena residents
 1. The 2016 "Community Perceptions of Policing in Pasadena" study by Liza Graziano, PhD found that¹:
 1. "African American residents perceived police misconduct to be a problem at over **twice** the rate of Asian and White residents for all types of misconduct"
 2. "**Northwest** residents held significantly more negative views of police effectiveness than residents in the other community service areas."
 3. "Over half (55%) of White residents felt the police were very responsive compared to a little over a quarter of Latinos (26%) and Asians (29%) feeling the same, while **only 16% of African Americans felt police were very responsive.**"
 4. "While **Northwest** residents had more **negative perceptions of police misconduct** than all of the other community service areas, **Central** residents also had more negative perceptions."
 5. Credence can be given to these perceptions based upon the following data from the study:
 1. Only 7% of White residents stopped by police were also searched, while 3% experienced use of force.
 2. In contrast, about **25%** of both African American and Latino residents stopped by police experienced being **searched** and **use of force**.
 3. Residents living in Central and Northwest Pasadena were searched at significantly higher rates:
 1. **58%** of residents searched lived in the Northwest Service Area.
 2. **30%** of residents searched lived in the Central Service Area.
 2. If a pinnacle goal of creating the Community Police Oversight Commission is to "enhance, develop, and strengthen community-police relations," it follows that **those communities suffering from the worst community-police relations must comprise a majority (>50%) of Commission membership.**

3. Define the term “**non-profit community**” (2.60.030(A)(3)).
 1. The non-profit community organizations and the individuals they select for the Commission should demonstrate **interest** in and **dedication to police oversight** and strengthening police-community relations.
 2. The Pasadena Police Officers Association and other police unions are non-profit labor organizations. Due to clear conflicts of interest, such organizations must be explicitly excluded from the Commission.
3. **Qualifications, Orientation & Training (Ordinance Section 2.60.040)**
 1. Stipulate that members must demonstrate and affirm interest in and dedication to **police oversight**, as well as strengthening community-police relations (2.60.040(B)).
 1. **Prevent those against police oversight** from joining the Oversight Commission.
 2. Indicate that attorneys handling “pending” matters involving the police department are ineligible to serve (2.60.040(C)).
 1. This language (found in page 2, paragraph 2 of the Ordinance Fact Sheet) is more appropriate, and less restrictive of potentially qualified and experienced Commission members.
 3. Expressly state that current and former **police department and police union employees**, their family members, representatives, appointees, and anyone acting on their behalf will be **restricted** from serving on the Oversight Commission.
 1. Police influence of the Commission already exists in the form of ride-alongs and training. Furthermore, the Police Chief and City Manager ultimately have the final say in Police Department policies and disciplinary action.
 2. Communities most impacted by police in Pasadena, unequivocally, *will not* trust an Oversight Commission comprised of police, police department employees, police union members or any of their representatives.
 4. **Maintain the 90 day window** for appointees to complete training (2.60.040(E)).
 1. This is appreciated as it creates a level playing field for Commission applicants.
 5. Ensure that members receive a broad range of **training in civil liberties, civil rights and equity**, in addition to **broad scope** coverage of policing and the prison system.
 1. In American society, police have been glorified through television dramas and movies. While the selfless sacrifice of police officers is to be highly commended, many Americans do not fully grasp the impact of policing on citizens and vulnerable communities.
 2. To address these disparities in the Commission:
 1. Each police ride-along should be accompanied by a prison visit to show a portion of the impact and a contrasting viewpoint of arrests.
 2. Each weapons training exercise or lecture should be accompanied by corresponding de-escalation training exercises or lectures to demonstrate the full breadth of options available to police.
 3. **Mandate that an organization, such as the ACLU, with expertise in the subjects, facilitate civil liberties, civil rights and equity training, not the police department (2.60.040(E)(2)).**
6. **Meetings — Records (Ordinance Section 2.60.070)**
 1. Clarify the definition of “**quorum**” in 2.60.070(B).
 1. As written, the definition of quorum is interpreted as a majority of City Council-appointed Commissioners rather than a majority of **Commission members** (some of whom may have been appointed by community organizations)
 1. Failure to clarify here runs the risk of potential obstruction by council appointees (by means of absence) who are not fully committed to police oversight; this could impede Commission work.
 2. Further, as written, the definition of quorum may stoke unnecessary and harmful dissension between council appointees and non-profit organization appointees.
7. **Purpose and Functions (Ordinance Section 2.60.110)**
 1. **Explicitly include: To Improve Transparency, Accountability, and to Build Public Trust in the Police Department in the Commission’s purpose** (2.60.110(A)).

1. Only by specifically targeting these goals can the Commission “enhance, develop, and strengthen community-police relations.”
2. Amend 2.60.110(B)(4) to read “monitor, **receive reports from the police department**, and publish statistics on police uses of force, personnel complaints, and outcomes within the police department.”
 1. Explicitly grant the Commission access to these police department reports to minimize ambiguity and avoid potential access barriers.
3. Expressly state that the Commission will **publicly disclose** reports regarding critical incidents, police department policies, and other matters received from the IPA, to extent permissible by law (2.60.110(B)(6)).
 1. Transparently informing the public is crucial to the effectiveness of the Commission in engendering public trust and improving police-community relations.
4. **Remove the phrase, “directing that action be taken on police department employees” from 2.60.110(B)(7).**
 1. If the Commission is truly to be effective, it must be authorized to make **disciplinary recommendations**, at a minimum.
 1. City Charter Section 411(B) prohibits the Mayor and City Council from attempting to influence or to direct any subordinates of the City Manager. The IPA and Oversight Commission are neither Mayor nor City Council.
 2. If the argument is made that the Commission and IPA, by virtue of City Council appointment, serve as representatives of the council, Section 411(B) does not prohibit the police oversight body from making disciplinary recommendations directly to the City Manager, the City Council, or in the form of reports to the community.
 1. The language of the Ordinance implies otherwise, and must be clarified.
 3. If removing the aforementioned phrase requires meeting and conferring with the police union, please do so, and be as transparent about meeting outcomes as the law permits.
 4. **We recognize that some concerns may be best addressed by Charter Amendment in the 2022 election cycle; but, for now, to the extent legally permitted by the Charter, please grant the Oversight Commission and IPA the power to make disciplinary *recommendations*. This will be key to building public trust and improving community-police relations.**
 1. As written, the IPA would investigate and the Commission would deliberate on cases only to provide the public with a report concluding in “We find that Officer X acted in violation of Policy Y.” Period. End of Report.
 2. This will not be acceptable to the community demanding police oversight and accountability.
 3. The Commission must be empowered to make disciplinary recommendations such that community reports may indicate, for instance, “We find that Officer X acted in violation of Policy Y. As such, we recommend Action Z be taken.”
 2. Experts in police oversight actually recommend that oversight boards operate with a pre-negotiated disciplinary matrix with a range of disciplinary options for officer misconduct, to which the police chief is bound, unless the oversight body made a clear investigatory error ². Here, we are simply advocating for the oversight body to be granted authority to make disciplinary recommendations.
 3. Without the ability to even *recommend* disciplinary actions, the Oversight Commission is less powerful than even a Complaint Board. This is not what the public has demanded.
5. **Remove the phrase “other than personnel records” from (2.60.110(B)(8)). This should be replaced with “to the extent permitted by law.”**
 1. Personnel records may prove critical to the Commission’s effective functioning ability.
 2. If the Commission views a particular personnel file as **crucial** to their investigation, the City Ordinance should not **preclude** the Commission from taking necessary legal recourse to obtain the personnel file.

3. Expecting the Oversight Commission to respectably hold the police department accountable while **blinding** them to all personnel files is not reasonable and breeds community contempt, mistrust and further damage to the police-community relationship.
4. Oath abiding Commission members must be **trusted** and **enabled** to fulfill their duties.
6. **Eliminate the phrase “not employed by the City at all relevant times” from 2.60.110(B)(8).** As written, this hamstring the Commission by precluding the attendance and testimony of the very police officers they are tasked with overseeing.
 1. The Commission and IPA cannot be deemed “**independent**” if they are completely *dependent* upon police-department obtained statements and testimony.
 2. Furthermore, the **lack of subpoena authority** for police department employees diminishes chances **whistleblowers** will speak out on matters of grave importance.
 1. This is key to the accountability sought by the community.
7. Engage a **subpoena service agency** (*not the police chief*) to serve Commission and IPA subpoenas (2.60.110(B)(8)).
 1. This is customary in many legal practices. Any person over age 18 can serve a subpoena.
 2. Designating this role to the police chief directly undermines the **independence** and **integrity** of the Oversight Commission and IPA, and justly propagates public mistrust.
 3. If not mandated by City Charter, **remove the requirement that the City Clerk issue subpoenas under the seal of the City** in 2.60.110(B)(8), for the same aforementioned reasons.
8. Clarify that communications between the IPA and either the City, Police Department, City Council or the Commission are *not* subject to **Attorney-Client Privilege** in 2.60.110(B)(9).
 1. Expressly state that the IPA does **not** have an attorney-client relationship with either the City, Police Department, City Council or the Commission.
 1. This prevents unnecessary withholding of information from the public.
9. In addition to its comprehensive annual report, the Commission should publish **quarterly** reports on its website analyzing complaints, demographics of complainants, status and findings of investigations and actions taken as a result, to the extent permitted by law.
8. **Subpoenas (Ordinance Section 2.60.120)**
 1. **Define** the subsequent process that occurs when a subpoena recipient files a motion to “**quash**” a subpoena.
 1. Typically, such a motion would trigger action in the court system.
 2. As written, a recipient could file a motion to quash an IPA subpoena, simply not comply, and that would be the end of it. This undermines accountability.
9. **City Attorney Duties (Ordinance Section 4(A))**
 1. Revise the City Attorney’s powers and duties to specify the **independent nature** of the IPA (Section 4(A) (3)).
 1. If the IPA is to truly be independent, the City Attorney cannot “have charge and control” of it.
 2. Due to conflicts of interest arising from the IPA and Commission’s task of overseeing the police department, which the City Attorney defends in legal matters, and the current placement of the IPA within the City Attorney’s office, the IPA’s independent functionality warrants **clear distinction**.
 3. Further, it must be clearly stated that there is **no attorney-client relationship** between the IPA and either the City, City Council or the Commission,
 1. This ensures the IPA and Commission are fully capable of exhibiting **community transparency**, to the extent permitted by law.
10. **Independent Police Auditor Duties (Ordinance Section 4(A)(8))**
 1. Specifically designate the IPA’s **authority to Conduct Real-Time, Independent Investigations**, in addition to monitoring and observing the police department (Section 4(A) (8)(b)(c)).

1. As currently written, the IPA can only **review** cases after the police department has completed them.
 1. **Using this principle, if the IPA was functioning today, s/he still may be prohibited from investigating and reviewing Christopher Ballew's November 2017 excessive force complaint because, even in 2020 council meetings, the Chief Assistant City Attorney continues to inform the City Council that the matter is still under investigation.**
 1. This is problematic because, with passing time, **memories fade, people die, and documents disappear.**
 2. The IPA's ability to assess whether or not the police department's investigation was "complete, thorough, objective, and fair" becomes increasingly unworkable with each passing day.
 2. Empowering the IPA with Real-Time Investigatory Authority also **aids the police** department in counterbalancing the conflict of interest arising from investigating a member of its own department.
 3. Failing to grant independent, parallel investigatory power falls short of providing accountability and building public trust.
 2. **Eliminate** the phrase, "**where feasible,**" and **obligate** the police department to grant unobstructed access to briefings, interviews and deliberations as described in Section 4(a)(8)(b), including immediately following critical incidents.
 1. This legal loophole will, undoubtedly, hinder the IPA's access to vital information.
 3. To ensure transparency and access, the police department must be **obligated to inform** the IPA and Commission Chair immediately (within one hour via IPA and Commission Chair cell phone and email) upon receiving notification of an ongoing police matter falling within the IPA and/or Commission's jurisdiction.
 4. The IPA and Commission Chair must be immediately **notified** (within one hour via IPA and Commission Chair cell phone and email) by the police department and required to send an investigator to the scene of all police shootings and in-custody deaths.
 5. The IPA must be empowered to interrogate officers less than 48 hours after an incident where deadly force is used.
 6. The IPA must be **explicitly granted** unhindered access to crime scenes, witnesses and files with **penalties** for non-compliance.
 7. **Remove the phrase, "directing that action be taken on police department employees" from Section 4(A)(8)(h).**
 1. **The experienced, investigatory arm of the oversight body must not be restricted to merely compiling information.**
 2. Rather, the IPA should have power to make disciplinary recommendations, at least to the Oversight Commission. See also Section 7(4) of this letter.
 3. Stipulate that the IPA does **not** have an attorney-client relationship with either the City, Commission, City Council or Commission (Section 4(A)(8)(j)).
 1. As such, the IPA, City, City Council and Oversight Commission are prohibited from invoking attorney-client privilege, which ensures greater community transparency.
- 11. Fiscal Impact**
1. The Fiscal Impact in the Ordinance Fact Sheet should also reflect the funding of accessible **office** locations and hours, **outreach**, and **public education materials**. This includes, but is not limited to:
 1. Accessible Office Location
 2. Website (creation and maintenance)
 3. Brochures (creation and adequate printing for wide community distribution)
 2. **Commissioner Stipend**
 1. The hard work, time, training, research and commitment demands on this Commission will be unparalleled.
 2. Commission members should be compensated, at a minimum, for out-of-pocket expenses incurred during the performance of Commission duties.

3. We recommend providing monetary compensation of at least \$100 per Oversight Commission Member per meeting attended.
4. Please expressly state that Oversight Commission members will receive a stipend.

12. Public Access and Reporting

1. To adequately serve the community, citizens must be able to file complaints with the oversight body easily.
2. Attention must be given to the manner in which the public is able to access and file complaints with the Oversight Commission.
 1. Community members should be given a broad range of complaint filing options including online, in-person, email, phone or fax.
 2. The Commission should also be granted access to all complaints filed with the police department.
 3. A Commission Office should be established in a central location, and remain open during hours accessible to people who work or study full-time (e.g. evening hours once weekly and weekend hours once monthly).
3. The Commission should post quarterly reports on its website summarizing its activities including:
 1. Number and types of complaints received, basic facts about complaints, disposition of complaints and disciplinary outcome, to the extent permitted by law, and while maintaining privacy.

13. Independent Police Auditor Selection

1. The IPA selected to serve Pasadena will be a critical component of the police oversight body.
2. The IPA selection process must, therefore, be transparent and subject to public feedback and approval, to the extent permissible by law.

Thank you for listening to our concerns and for your efforts to provide powerful community police oversight in Pasadena.

Respectfully Submitted,

The B.R.E.A.T.H.E. Justice 365 Team

A Pasadena-based collective of physicians, attorneys, executives, educators, clergy, activists, parents and everyday citizens united for equity in policing.

References

1. Liza Graziano. "Community Perceptions of Policing in Pasadena." <https://www.cityofpasadena.net/wp-content/uploads/sites/28/Survey-Results-Community-Perceptions-of-Policing-in-Pasadena.pdf?v=1597644000142> (2016).
2. Udi Ofer, Getting it Right: Building Effective Civilian Review Boards to Oversee Police, 46 Seton Hall Law Review, 1033-1062 (2016).

Disclaimer: Nothing in this letter should be construed as legal advice.