

**Reese, Latasha**

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**Subject:** RE: Objections to Ordinance Establishing Community Police Oversight Commission and IPA

----- Forwarded message -----

**From:** Sonja Berndt <[redacted]@cityofpasadena.net>

**Date:** Mon, Sep 28, 2020 at 12:52 PM

**Subject:** Objections to Ordinance Establishing Community Police Oversight Commission and IPA

**To:** Tornek, Terry <[ttornek@cityofpasadena.net](mailto:ttornek@cityofpasadena.net)>, Hampton, Tyron <[thampton@cityofpasadena.net](mailto:thampton@cityofpasadena.net)>, Kennedy, John <[johnjkennedy@cityofpasadena.net](mailto:johnjkennedy@cityofpasadena.net)>, Wilson, Andy <[awilson@cityofpasadena.net](mailto:awilson@cityofpasadena.net)>, <[mmcaustin@cityofpasadena.net](mailto:mmcaustin@cityofpasadena.net)>, <[vgordo@cityofpasadena.net](mailto:vgordo@cityofpasadena.net)>, <[smadison@cityofpasadena.net](mailto:smadison@cityofpasadena.net)>, <[gmasuda@cityofpasadena.net](mailto:gmasuda@cityofpasadena.net)>

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

Please see attached letter of this date, with two additional attachments, raising concerns and objections to the current language of the ordinance establishing community oversight of the Pasadena Police Department as well as related councilmember suggestions. Thank you for your time and consideration.

Sincerely,  
Sonja K. Berndt, Esq. (retired)

10/05/2020  
Item 19

RECEIVED

SONJA K. BERNDT  
Pasadena, CA 91107

2020 OCT -5 AM 9:41

September 28, 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: Objections to Provisions in the Ordinance Creating a Community Police Oversight Commission (“Commission”) and Independent Police Auditor (“IPA”) (and Related Councilmember Proposals) That are Inconsistent with the Community’s Demand for Independence, Transparency and Accountability

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

On September 21, 2020, I sent a letter to you expressing my concerns about the proposed ordinance creating a Commission and IPA. I, and others, listened to the discussion of the proposed ordinance and, like Vice Mayor Hampton, became alarmed by the efforts of some councilmembers to weaken the ordinance substantially from what the community has demanded on several occasions. This letter is a response to the discussion at the September 21<sup>st</sup> meeting and is *in addition to* the concerns addressed in my September 21, 2020 letter.

For the reasons discussed below, the current language of the ordinance (as well as related proposals of certain councilmembers) creates an ineffective Commission and a *Dependent* Police Auditor, rather than an *Independent* Police Auditor. For example:

- The IPA's ability to observe the PPD's witness interviews and other activities is *dependent* on the PPD's own judgment that it is "feasible;"
- The IPA is *dependent* on the PPD's completion of its own investigation before he/she can commence his/her *limited role* in "reviewing" the PPD's own work, no matter how long the PPD takes to complete its own investigation;
- Under Councilmember Madison's proposal, the issuance of the IPA's or Commission's subpoenas would be *dependent* on first getting the City Council's approval; and
- Release to the public of the IPA's report on an officer-involved shooting could be *dependent* on the City Council's waiver of the attorney-client privilege, as discussed in more detail below.

Each councilmember has the right to be heard on his or her suggestions/proposals for the Commission and the IPA. But every member of the Council has a duty to analyze whether those suggestions/proposals will deliver effective civilian oversight of the PPD as the community has demanded. No councilmember can simply defer to another councilmember simply because the latter is an attorney. Some councilmembers have admitted their lack of knowledge about such things as subpoenas and attorney-client privilege. This is precisely why you must then seek input from experienced persons in the fields of civilian oversight and administrative investigations.

I have seen no publicly available information that would suggest any councilmember is experienced in the field of civilian oversight of police officers. Moreover, in determining the objectivity and effectiveness of Councilmember Madison's suggestions, while he is an attorney, councilmembers must consider the fact that his position from the outset has been that the Public Safety Committee is the appropriate body to provide oversight of the PPD in our City. Further, he has received very substantial campaign contributions and endorsements from the Pasadena Police Officers Association over the years. In determining what civilian oversight our City deserves, each councilmember must take into consideration the views of the entire city, not simply the views of a very small sector of it.

At the September 21<sup>st</sup> meeting, no one challenged the suggestions of Councilmember Madison or the statements of Councilmember Gordo, also an attorney, regarding lack of legal authority for issuing subpoenas. In fact, their statements on that issue as well as others were referred to as "free legal advice"

*despite the fact that neither of them was asked to provide, or provided, any legal authority for their statements.*

In my over 31 years as an attorney with the Attorney General's Office, I conducted hundreds of civil and administrative investigations, issued hundreds of subpoenas and conducted innumerable oral examinations under oath/depositions. Further, I have no bias against law enforcement. I have represented correctional officers and correctional agencies and worked closely with law enforcement over several years in the Criminal Division of the Attorney General's Office.

To those who would respond that the City already has an attorney through the City Attorney's Office, respectfully, I am providing these comments and concerns because of my experience and not as legal advice given that my State Bar license is inactive in my retirement. Moreover, throughout the September 21<sup>st</sup> meeting, the City Attorney *sought the Council's direction so that her Office could draft an ordinance that is consistent with the Council's wishes.* Since the City Attorney defends the City and its police officers in police misconduct cases, the Council must provide direction to the City Attorney and heightened scrutiny of "the final product" to ensure that it will provide effective oversight of the PPD.

Respectfully, it is incumbent upon each councilmember either to diligently research the intricacies involved in the establishment of effective civilian oversight of law enforcement or to seek the input of persons experienced in that field if you have not done so already.<sup>1</sup> I had a conversation with LAPD Inspector General Mark Smith and he was very helpful. I encourage you or your staff to contact him.

**A. The Inadequate Scope of the IPA's Authority to Conduct Real-time Investigations is Inconsistent with the Public's Demand for Independence and Accountability**

The public has weighed in heavily on the side of allowing the IPA to conduct independent, real-time investigations of critical incidents, with the ability to issue subpoenas. But the ordinance limits the Commission's and IPA's scope of authority to "review and monitor" the PPD's own investigation, which renders the ability to issue subpoenas worthless. (Section 2.30.020, subd. A(8); section 2.60.110.) In what situation would the IPA/Commission need to issue subpoenas if

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<sup>1</sup> Just as the Council seeks and obtains expert advice in public health matters from our Director of Public Health, the Council should seek advice from experts in the field of civilian oversight of law enforcement, such as the National Association for Civilian Oversight of Law Enforcement ("NACOLE").

they are authorized only to “review and monitor” the PPD’s work? The ordinance’s narrow scope of authority is inconsistent with the independence the community has demanded and will be insufficient to provide accountability.

A critical aspect of witness interviews is how questions are posed. For example, if a witness is asked “Did you see anything in the victim’s hands, like a weapon or anything of that sort,” that would be improper because it is suggestive and can lead to incorrect responses. If the witness initially answers the question “yes,” but later tells the IPA “I’m really not sure what the victim was holding. I could not tell,” the witness’s later answer and credibility will be attacked. This is the reason to authorize the IPA to conduct independent real-time investigations.

Another aspect of the ordinance is that the IPA can be present for witnesses interviews the PPD conducts *only* “where feasible.” (Section 2.30.020, subd. A(8)(b).) Allowing the PPD to decide when to permit the IPA to observe interviews, etc. is inconsistent with independence and 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 Office of the Inspector General (“OIG”). (See Section III.)<sup>2</sup> The gathering of crime scene evidence and the way questions are posed to eyewitnesses are critical in making ultimate findings and conclusions.

There was also discussion at the September 21<sup>st</sup> Council meeting that, even if the IPA can attend witness interviews, he or she can only listen and not participate. This is dubious for the following reason: many, many months later, the IPA will issue his/her report on whether the PPD’s own investigation was “complete, thorough, objective, and fair.” (Section 2.30.020, subd. A(8)(c).) The IPA could conclude that the PPD’s own investigation was not “complete, thorough, objective, and fair” because questions posed to witnesses were suggestive (“leading”), third party interviews that should have been conducted were not, etc. And then what? Did the conclusion that the PPD’s investigation was defective make a difference in the result? How is this question answered if the IPA did not conduct his or her own investigation and was not permitted to ask questions of witnesses? How is

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<sup>2</sup> I have attached LAPD OIG policies and authority, which I received from Inspector General Smith. He advised me that he can provide the signed policies if necessary.

this effective oversight if the IPA's ultimate report simply concludes the PPD's investigation was inadequate and unfair and it should do a better job next time?

Under Section 2.30.020, subdivision A(8)(b) of the ordinance, the IPA will have access to police department personnel complaints and investigations, but no authority to conduct interviews of any persons, including police officers, who are/were employed by the City at the relevant point in time. This section was discussed in my September 21, 2020 letter. No one questioned this provision at the September 21<sup>st</sup> meeting. What is the purpose of this exceptional restraint on the ability of the IPA to conduct an investigation? The inability to conduct interviews of, or issue subpoenas to, police officers is inconsistent with independence, transparency and accountability.

**B. The Proposal that IPA/Commission Subpoenas be Issued Only with City Council Approval is Inconsistent with Independence and Accountability and, If Adopted, Would Result in a Conflict of Interest**

At the September 21<sup>st</sup> Council meeting, the Council decided that the details regarding subpoenas will be handled by resolution approved by the City Council at a later date. Councilmember Madison proposed that subpoenas be issued by the IPA and/or Commission only if the City Council first approves them. This is problematic for several reasons. First, as you know, generally speaking, a public entity has a duty to defend an employee/former employee and to pay the judgment (or settlement amount) assessed against an employee/former employee for an injury arising out of an act or omission within the scope of his or her employment. (Gov. Code, § 825.) Also, when the family of a victim of an officer-involved shooting files a wrongful death case, it usually names the police officer as well as his/her employer as defendants.

If, as suggested, the Commission's/IPA's subpoenas must first be approved by the City Council when the Council is already aware of the City's potential liability, there is a conflict of interest. Would the City Council approve a subpoena sought by the IPA if that might uncover evidence that will harm the City's defense in a wrongful death case? Beyond the conflict of interest problem, requiring the City Council to approve subpoenas results in unnecessary delays and advance notice to the subjects of the subpoena. This can result in destruction of documents and witness tampering.

At the September 21<sup>st</sup> Council meeting, there was also discussion about seeking enforcement of a subpoena if the witness fails to comply. As you are aware, there

must be a mechanism in the ordinance to enforce subpoenas. Additionally, in California, the recipient of a subpoena may file a motion to quash which commences a process by which to obtain compliance, normally through court action. (*See* Code Civ. Proc., §1987.1.) There were suggestions that the City Council should play a significant role on issues of noncompliance, including motions to quash. This suggestion is problematic because it creates the same conflict of interest as the City Council's approval of subpoenas. Instead, the process for enforcing subpoenas should avoid the Council's direct involvement. (*See*, for example, Gov. Code §§12588, 12589.)

The ordinance also requires the subpoenas to be issued by the City Clerk under the seal of the City and the chief of police causes the subpoenas to be served. This was discussed in my September 21, 2020 letter. These requirements are exceedingly problematic and unnecessary. For the Commission 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. Instead, the subpoenas should be served like subpoenas in civil cases. The City Attorney proposed to take this requirement out stating that it was permissible to do that. Councilmember Gordo insisted that the impediments be kept, stating that the Commission and IPA would not have legal authority to issue subpoenas. No one asked for the legal authority for his statement and no one asked the City Attorney to come back to the Council after researching the issue.

**C. Unless the Ordinance Expressly Precludes Assertion of Attorney-Client Privilege, the IPA's Final Report Could be Withheld from the Public**

In my September 21<sup>st</sup> letter, I raised the concern that the IPA's final reports could be shielded from the public simply by asserting that they are privileged under the attorney-client privilege (assuming the IPA is an attorney or law firm). I suggested the problem could be alleviated by expressly providing that there is no attorney-client relationship between the IPA and either the Commission or the City Council or, in the alternative, any applicable attorney-client privilege is waived for communications between the IPA and the Commission and between the IPA and the City Council. There seemed to be confusion at the September 21<sup>st</sup> meeting about why this is critical and a statement was made that the ordinance "could be interpreted as not the case."

Under Evidence Code section 954, a client does not need to disclose any confidential communications between himself/herself and his/her attorney that

takes place within the attorney-client relationship. And, *the client may also prevent the attorney (or another third party) from disclosing such confidential communications.* ***Given that this is state law,*** the ordinance must expressly provide that there is no attorney-client relationship between the IPA and the Commission or the IPA and the City Council. 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 Commission and between the IPA and the City Council. (Evid. Code, § 912.) Otherwise, the Council could insist that its updates from the IPA be held in closed session or could assert attorney-client privilege to prevent the IPA from disclosing to the public his/her report on a critical incident that is not favorable to the City's position in pending litigation.

**D. Any Proposal that Pasadena Should Adopt the Los Angeles County Inspector General Model for Oversight of the PPD Should be Rejected Because that Model Does Not provide the Independence, Transparency and Accountability Our Community Has Demanded**

During discussions of civilian oversight of the PPD, Councilmembers Madison and Gordo have suggested that the City adopt the oversight model of the Los Angeles County Office of Inspector General ("OIG"). I have attached a comparison of the two models on a few key points. The LA County model has very real and substantial drawbacks as compared to the LAPD model:

- (1) Unlike the LAPD OIG, the LA County OIG cannot issue its own subpoenas without first getting approval from the Board of Supervisors, the Los Angeles County Sheriff Civilian Oversight Commission, or the Probation Oversight Commission to issue them. As discussed above, this is problematic from a conflict-of-interest point, causes undue delays, and potentially injects politics into the IPA's ability to conduct a thorough investigation.
- (2) Unlike the LAPD OIG, the LA County OIG cannot initiate its own investigations without having to first meet and confer with the Sheriff or Chief Probation Officer and afford them 30 days to respond.
- (3) The LAPD OIG procedures provide for "real-time," independent investigation.
- (4) The LA County OIG's reports to the Board of Supervisors are public only to the extent they do not contain privileged or confidential matters. Significantly, the IG is required to be an attorney and "shall serve as special counsel to the Board of



Supervisors and have an attorney-client relationship with the Board of Supervisors when requested by the Board to provide privileged legal advice pertaining to a claim, lawsuit, or matter giving rise to significant exposure to litigation arising out of the actions" of the county's law enforcement officers. This means anything in a report that is deemed to be privileged because of the attorney-client relationship, can be withheld from the public. The LAPD OIG has no attorney-client relationship with the Board of Police Commissioners so information would not be withheld on that basis.

### **E. Conclusion**

Our community has demanded an ordinance that provides effective civilian oversight of the PPD, one that results in independence, transparency and accountability. If you heard our City Clerk read the many hours' worth of public comments at multiple City Council meetings and Public Safety meetings, this would be clear to you.<sup>3</sup> The current wording of the ordinance fails to provide any of these essential elements. Councilmember Gordo advised that the community needs to understand that the Commission and IPA are of "limited jurisdiction" and there are "limits imposed by law." I am unaware of any legal authority, including sections 411 and 604(j) of the City Charter, that precludes the suggestions set forth in this letter or other suggestions you received from B.R.E.A.T.H.E Justice 365, by letter dated September 19, 2020.<sup>4</sup> I urge you to consider our concerns and to amend the ordinance accordingly, and approve procedures related to subpoenas that take into consideration the suggestions herein. Thank you.

Sincerely,

/s/

Sonja K. Berndt, Esq. (Retired)

Cc: Michele Bagneris, City Attorney  
Attachments.

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<sup>3</sup> During the reading of public comments at live-streamed City Council meetings, the camera is on the City Clerk reading the comments instead of on councilmembers. Having the camera on councilmembers would demonstrate to the public that you are listening to public comments.

<sup>4</sup> If any of the suggestions made herein trigger the Meyers-Millias-Brown Act, please meet and confer with the affected bargaining unit(s) to remove that impediment.

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LOS ANGELES BOARD OF POLICE COMMISSIONERS 2009 OCT 5 AM 9:41

**POLICIES AND AUTHORITY  
RELATIVE TO THE INSPECTOR GENERAL**

**PREAMBLE:**

The creation of the Office of Inspector General was a key recommendation of the 1991 Independent (Christopher) Commission, which was strongly embraced by the Board of Police Commissioners and police reform advocates. In 1995, the voters of Los Angeles overwhelmingly agreed in passing Charter Amendment 3, and this pivotal Christopher Commission reform recommendation became a reality by the creation of an Inspector General, independent of the LAPD's self-policing Internal Affairs Division, empowered to audit, investigate and oversee the Department's internal disciplinary process.

Subsequently, in June 1999, the voters enacted a new Charter which codified the direct reporting by the Inspector General to the Board, and expanded the powers of the Inspector General to include the ability to initiate and conduct investigations of the Department, unless directed by the Board of Police Commissioners to cease an investigation.

Section 573 of the Charter provides that the Inspector General shall carry out his/her duties "...under the rules established by the Board of Police Commissioners . . ."

Accordingly, the following rules are hereby established by the Board. All rules previously established by the Commission pertaining to the work responsibilities of the Inspector General are hereby repealed.

**I. DIRECT REPORTING**

The Inspector General shall report directly to the Board of Police Commissioners for all purposes.

**II. DEFINITION OF TERM "INSPECTOR GENERAL"**

As used in Sections III through X herein, excluding IX (B), the term "Inspector General" shall include employees of the Office of the Inspector General.

**II) III. DUTY TO PROVIDE ACCESS TO DEPARTMENTAL RECORDS AND INFORMATION**

Employees of the Department have an affirmative duty to cooperate fully with the Inspector General and to provide complete, unrestricted and prompt access to inspect and/or photocopy all Los Angeles Police Department records accessible to the Board, including reports, audits, reviews, plans, projections, documents, files, contracts, memoranda, correspondence, data or information on audio/video computer tape/disc or other materials of the Department, including ongoing and in-progress matters. The Inspector General is not required to articulate to the Department any reason or rationale for any specific request, or obtain prior Board approval for requests as described herein.

No Department protocols restricting access to Department records or information shall be applied to the Inspector General. When inspecting or photocopying Departmental records or evidence maintained by the Department, the Inspector General shall follow the same protocols pertaining to chain-of-custody, preservation of integrity of physical evidence and confidentiality applicable to Department personnel.

When requesting materials from an in-progress crime investigation, the Inspector General shall coordinate all activities with the Officer In Charge in a manner which does not interfere with or compromise the investigation.

**II) IV. ACCESS TO PERSONNEL**

In order to carry out the duties of the office, the Inspector General shall have prompt access to any employee of the Los Angeles Police Department, subject to limitations imposed by law or collective bargaining agreement. The Inspector General shall also have prompt access to any member of the Board of Police Commissioners and the Board's staff.

**II) V. CONFIDENTIALITY OF COMPLAINANTS AND WITNESSES**

The Inspector General shall not disclose the identity of a complainant or witness without the individual's consent, unless such disclosure is unavoidable in order to investigate an allegation effectively or is otherwise required by law or the City Attorney's Office, provided, however, that the Inspector General shall disclose the identity of such individual to the Board of Police Commissioners, upon request. The Office of the Inspector General is not afforded an absolute privilege protecting conversations with complaining persons or witnesses, as a

matter of law. Accordingly, any individual who requests anonymity from the Inspector General shall be accurately informed of the inability to guarantee anonymity.

## **VI. PROTECTION AGAINST RETALIATION**

It is the policy of the Department that employees are free to contact the Inspector General or respond to queries from the Inspector General without having to fear that their employment might be adversely affected. An employee's contact with the Inspector General may play no role in any future employment action towards the individual by the Department. Retaliation by adverse employment action or harassment against employees who provide information to the Inspector General is an intolerable violation of Department policy and undermines the effectiveness of oversight efforts of the Inspector General by threatening the continued flow of information. However, the protections of this section shall not apply when the contact was made or the information was disclosed with knowledge that it was false or with willful disregard for its truth or falsity.

The Board, the Inspector General and all Department supervisors shall be vigilant in protecting from reprisal or threat of reprisal any individual who discloses any information to the Inspector General.

In the event the Inspector General concludes that there is reason to believe retaliation against an individual has occurred, the Inspector General shall:

- (1) conduct an investigation and forward the findings to the Police Commission upon completion; and
- (2) promptly forward a personnel complaint (except a complaint of misconduct regarding the Chief of Police) to the Commanding Officer of the Internal Affairs Group or promptly request the Board to make a determination whether notice to the Internal Affairs Group should be delayed.

## **VII. SUBPOENA POWER**

In order to carry out the duties of office, the Inspector General shall have the power to subpoena witnesses, administer oaths or affirmations, take testimony and compel the production of such books, papers, records and documents as may be deemed relevant to any audit, inquiry or investigation undertaken. The Inspector General shall notify the President of the Police Commission of the issuance of a subpoena prior to its

service.

## **VIII. REPORTS TO THE BOARD OF POLICE COMMISSIONERS**

On a monthly basis, or as otherwise directed by the Board, the Inspector General shall advise the Board of Police Commissioners in closed session of the status of pending audits, projects and investigations. Beginning in the year 2001, the Inspector General shall submit a written or oral annual report to the Board of Police Commissioners during open session providing an overview of the Department's internal disciplinary process.

## **IX. RULES PERTAINING TO INVESTIGATIONS CONDUCTED BY THE INSPECTOR GENERAL**

### **A. Definition of Investigation**

As used herein, "investigation" means inquiry and examination of documents, financial records, evidence, crime scenes or persons, and excludes the routine, passive review of Department produced reports, files or investigations. The mere intake of a personnel complaint is not an investigation as defined herein.

### **B. Overall Power Of Inspector General To Initiate Investigations Of The Department**

The Inspector General is empowered to initiate and conduct investigations of the Department, without limitations as to the type of activity of the Department, including ongoing and in-progress matters, unless directed by the Board of Police Commissioners to cease an investigation.

### **C. Limitation On Access To Records Of The Inspector General**

The Inspector General is not obligated to provide access by the Department to files of the Office of the Inspector General unless ordered to do so by the Board or required by law.

### **D. Activities of the Inspector General Pertaining To Department Employees**

The Inspector General is empowered to conduct investigations of individuals employed by the Department.

The Inspector General shall promptly forward any new personnel complaint

made known to the Inspector General (except a complaint of misconduct regarding the Chief of Police) to the Commanding Officer of the Internal Affairs Group or promptly request the Board to make a determination whether notice to the Internal Affairs Group should be delayed. In forwarding matters to Internal Affairs, the Inspector General shall disclose the identity of an eye-witness (i.e. percipient witness) to misconduct, unless the Inspector General promptly requests the Board to make an individualized determination that disclosure is not necessary in order to investigate the allegation effectively.

The Inspector General shall notify the Board of Police Commissioners of the commencement of any new investigation during the Inspector General's next monthly status report.

When interviewing Department employees who are reporting misconduct, the Inspector General shall advise the Department employees that a report to the Inspector General does not satisfy their obligation to report misconduct to a supervisor pursuant to Department Manual 3/815.05.

**E. Investigation of Individuals Not Employed By The Department**

The powers of the Inspector General contained in the City Charter do not encompass the power to conduct investigations of individuals not employed by the Department. The Inspector General may, however, engage in oversight of the Department's investigations of such individuals. In the event the Inspector General receives a report of criminal activity within the jurisdiction of the Department, the Inspector General shall promptly forward all material information made known to the Inspector General to the appropriate Department investigative unit.

**F. Activities At Active Crime Scene**

When conducting activities at an active crime scene, the Inspector General shall coordinate all activities with the Officer In Charge of the crime scene in a manner which does not interfere with or compromise the integrity of the crime scene or the Department's investigation.

**X. REFFERAL OF CRIMINAL MATTERS TO OTHER AGENCIES**

The Inspector General's powers do not include the independent power to refer criminal matters to outside law enforcement or prosecutorial agencies. In the event that the Inspector General determines it is appropriate to provide law enforcement officials in agencies outside of the Los Angeles Police Department with information or evidence

relating to criminal acts, the Inspector General shall notify the Chief of Police of the Inspector General's recommendation. In the event the Chief of Police fails to respond or fails to make the referral, then the Inspector General shall notify the Board of Police Commissioners of the Inspector General's recommendation, to enable the Board to determine whether to instruct the Chief of Police to make such referral. In the event of a conflict of interest involving the Chief of Police or the Chief of Police fails to comply with the Commission's instruction to refer a particular matter to an outside agency, the Commission may, in its discretion, make such referral or instruct the Inspector General to do so on its behalf.

## XI. PUBLICATION

The document shall be promptly distributed by the Chief throughout the Department in the form of a Special Order and shall be printed in the 2001 edition of the Los Angeles Police Department Manual.

Dated: November 21, 2000

Motion by

Raquelle de la Rocha

Seconded by

Herbert F. Boeckmann, II

	Ayes
	Nays

11/21/00

(Prepared September 9, 2020, by Sonja K. Berndt, Esq. [retired]. Nothing in this outline is intended to impart any legal advice nor should it be construed as such as my State Bar license is inactive in retirement.)

## **I. (City of Los Angeles) Los Angeles Police Department Inspector General**

### **LA City Charter: Sec. 573. Inspector General.**

The Inspector General shall report to the Board of Police Commissioners and shall have the same access to Police Department information as the Board of Police Commissioners. The Inspector General shall have the power and duty to:

- (a) under rules established by the Board of Police Commissioners, audit, investigate and oversee the Police Department's handling of complaints of misconduct by police officers and civilian employees and perform other duties as may be assigned by the board;
- (b) conduct any audit or investigation requested by majority vote of the board;
- (c) initiate any investigation or audit of the Police Department without prior authorization of the Board of Police Commissioners, subject to the authority of the board by majority vote to direct the Inspector General not to commence or continue an investigation or audit;
- (d) keep the board informed of the status of all pending investigations and audits; and
- (e) appoint, discharge, discipline, transfer and issue instructions to employees under his or her direction.

### **Some Key Points of City of Los Angeles OIG<sup>1</sup>**

- The Office of the Inspector General's role within the City of Los Angeles is to support the Board of Police Commissioners and the public by providing information and analysis regarding the conduct and performance of the LAPD.
- Beginning in 2000, the OIG's new powers include the authority to initiate any audit or investigation of the LAPD without prior approval of the Police Commission, guaranteed access to all Department information and documents, and the power to subpoena a witness at will.

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<sup>1</sup> From <https://www.oig.lacity.org/>



- The Use of Force Section oversees the LAPD’s investigation and review of all serious use of force incidents.
  - This oversight is conducted in “real time,” beginning with attendance at the scene of an incident and continuing through to the final adjudication of the case.
  - Use of Force Section staff responds to the scene of all LAPD officer-involved shootings and other serious uses of force.
  - At the scene, the OIG representative ensures the integrity of the initial investigation process. This includes ensuring that the investigation is being conducted in accordance with all Department policies and procedures.
- In the days following an incident, an OIG representative attends a preliminary presentation by Department investigators.
  - At this phase of the investigation process, areas of potential concern are identified that the OIG will closely monitor as the investigation proceeds.
  - The OIG monitors investigations by evaluating investigators’ work at each step of the process and working with those investigators to ensure a comprehensive, objective investigation.

## **II. Los Angeles County Inspector General**

### **6.44.190 - Office of Inspector General.**

The Office of Inspector General ("OIG") is created in the Department of the Board of Supervisors to promote constitutional policing and the fair and impartial administration of justice, and to facilitate the Board of Supervisors' responsibility without obstructing the Sheriff's criminal investigative function. The OIG's scope includes matters relevant to the policies, procedures, practices, and operations of the Sheriff's and Probation departments (collectively, the "Departments"). In accordance with Government Code section 25303, the OIG shall have access to all Departments' information; documents; materials; facilities; and meetings, reviews, and other proceedings necessary to carry out the OIG's duties under this section.

The Los Angeles County Sheriff Civilian Oversight Commission ("COC") and Probation Oversight Commission ("POC") (collectively, the "Commissions") shall supervise and evaluate all work performed by the Inspector General that is done at

their respective requests. The Executive Officer of the Board of Supervisors shall supervise and evaluate both the Commissions and the Inspector General.

**Some Key Points of LA County OIG:**

**Authority to Investigate:**

The OIG shall have the authority to investigate matters involving the Departments, employees of the Departments, or any other entity or service provider regarding matters within the authority of the Commissions in the following circumstances:

(1) When requested by, or with authorization of, the Sheriff or the Chief Probation Officer (CPO), as appropriate;

(2) When the Inspector General makes a factually based determination that such investigation is necessary and appropriate; provided, however, that the Inspector General shall, when appropriate, first meet and confer with the Sheriff or CPO or the Sheriff or CPO's staff for their respective departments and afford the applicable department the reasonable opportunity to respond (not to exceed 30 calendar days) before the OIG conducts an investigation pursuant to this subpart; or

(3) When the Board of Supervisors or the COC or POC makes a formal request to the Inspector General.

**Subpoenas:**

The OIG may issue subpoenas for records, documents, information, or testimony when directed to do so upon action by the Board of Supervisors or the COC or POC and administering oaths to effectuate any subpoenas issued under this section.

**Reports:**

The Inspector General shall serve as an agent of the Board of Supervisors and the Commissions and shall make regular reports to the Board of Supervisors and to each Commission on the appropriate department's operations. Such reports to the Board of Supervisors shall be public reports, except to the extent they relate to confidential personnel or otherwise privileged matters or contain confidential juvenile, medical or mental health records, or protected health information.

The OIG shall work under the direction of the Inspector General, who shall be a member of the State Bar of California. The Inspector General shall serve as special counsel to the Board of Supervisors and have an attorney-client relationship with

the Board of Supervisors when requested by the Board to provide privileged legal advice pertaining to a claim, lawsuit, or matter giving rise to significant exposure to litigation arising out of the actions of the Departments or their personnel.

The Inspector General shall also serve as special counsel to the Commissions and have an attorney-client relationship with the Commissions consistent with the attorney-client relationship the Inspector General has with the Board of Supervisors.

## Martinez, Ruben

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**From:** Jill Shook <  
**Sent:** Saturday, October 03, 2020 11:01 PM  
**To:** Tornek, Terry; Gordo, Victor; Morales, Margo; Masuda, Gene; Andy Wilson; Tyron Hampton; Kennedy, John  
**Cc:** Jomsky, Mark; PublicComment-AutoResponse; PublicComment-AutoResponse; sonja.berndt19@gmail.com  
**Subject:** re : Objections to Ordinance Establishing Community Police Oversight Commission and IPA  
**Attachments:** Objections re Proposed Ordinance Establishing Commission and IPA.pdf; LAPD OIG Policies and Authority.pdf; Comparison of LA City OIG v. LA County IG.pdf

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

Dear Honorable Mayor and City Council,

Please take note of the excellent and thoughtful letters with careful research regarding the Police Civilian board. Sonja Berndt is part of our team. We highly respect her intelligence and sensitivity to what we feel people are saying loud and clear in our community. Please let me know if you have received this and for any feedback you may have. Thank you!

*Jill Shook*

10/05/2020  
Item 19