

Agenda Report

May 13, 2024

TO: Honorable Mayor and City Council
FROM: Michele Beal Bagneris, City Attorney/City Prosecutor
SUBJECT: PROPOSAL FROM COMMUNITY POLICE OVERSIGHT COMMISSION AND INDEPENDENT POLICE AUDITOR FOR CHARTER AMENDMENT TO ALLOW INDEPENDENT POLICE AUDITOR TO HAVE INPUT IN SWORN POLICE OFFICER PERSONNEL MATTERS

RECOMMENDATION:

This report is intended to provide information to the City Council regarding a proposed Charter amendment from the Independent Police Auditor (IPA) and Community Police Oversight Commission (CPOC), to allow the IPA to have input in sworn police officer personnel matters.

No formal action is required at this time, but the City Council may give direction to staff as desired.

BACKGROUND:

This Agenda Report provides the IPA's and CPOC's March 2024 recommendation regarding a proposed Charter amendment, in response to the City Council's September 2023 request to them. The discussion on this agenda item is limited to the proposed Charter amendment, as it relates to sworn Pasadena police officers – not non-sworn Pasadena Police Department employees, since the primary concerns expressed are related to police officers.

1. Background on Proposed Charter Amendment from CPOC and IPA

In September 2023, while discussing proposed topics for possible 2024 Charter amendments, the City Council passed a motion requesting that the IPA and CPOC look at “the issue of police oversight” with the “IPA to provide a report to CPOC and then to the Public Safety Committee or the City Council to discuss whether or not there should be a strengthening of oversight.”

The CPOC's current authority and scope is established in Chapter 2.60 in the Pasadena Municipal Code. Similar to the current limitations of the IPA, Section 2.60.110 states

that the CPOC must “refrain from (a) directly or indirectly taking active participation in personnel matters; (b) taking personnel actions; (c) using records developed to take personnel actions; and/or (d) directing that action be taken on police department employees.”

At the December 7, 2023 CPOC meeting, IPA Richard Rosenthal proposed an option for enhanced oversight in the City of Pasadena. His presentation was not a comprehensive review of all oversight models that exist, but instead a specific recommendation based on his time in Pasadena that he believed to be worthy of consideration by the CPOC and the City Council. IPA Rosenthal’s report reviewed the differences between models of oversight where the IPA provides after-the-fact reviews, and, separately, where direct input is provided by the IPA during police personnel matters. IPA Rosenthal suggested that the CPOC consider the recommendation of changing the form of police oversight to allowing the IPA¹ to have direct input during personnel matters of Police Department employees.

At its January, February, and March meetings, the CPOC considered this proposal and discussed other CPOC-focused enhancements to the oversight model. These discussions included a presentation by the National Association of Civilian Oversight of Law Enforcement (NACOLE) to better understand all oversight models and best practices.

On March 7, 2024, the CPOC approved a motion to recommend the following:

1. Enhance the authority of the IPA by allowing the IPA to give recommendations and actively weigh in during personnel investigations (instead of upon the completion of investigations); and
2. Create more accountability and transparency in the complaint handling process, with a dedicated staff person to serve in this capacity on behalf of the Commission.

IPA Rosenthal agrees with the CPOC recommendation #1, which proposes to allow the IPA to provide input during personnel investigations – that approach would require an amendment to the City Charter, as it is a departure from the Council-Manager form of government, as will be discussed below.

As to CPOC recommendation #2, staff believes that the CPOC’s staffing request pertaining to complaint handling can be considered by the Council through the budget process, as a Charter amendment is not necessary to address the recommendation. Since a Charter amendment is not needed for recommendation #2, as it is not as time

¹ Some police oversight frameworks use various titles, such as Independent Police Auditor, Independent Police Monitor, and Inspector General. In some models, they perform solely an audit function, in others, they also have input. For example, even those who solely perform audits are sometimes referred to as a monitor. What is important for the Council’s consideration of this information item is the structure, not title of the person providing police oversight.

sensitive, this report does not comprehensively address that recommendation, which can be considered by the Council at another time.

2. Framework for Agenda Item

Staff suggests the Council limit its discussion on this agenda item to CPOC's recommendation #1, further refined to focus on oversight of sworn Pasadena police officers. The CPOC and IPA have authority for police oversight, generally, as set forth in the Municipal Code – and the Municipal Code does not limit that oversight to sworn PPD employees. However, in view of a November 2024 election, and the need for the Council to submit any ballot measures (which would include Charter amendments) in less than three months (no later than August 8, 2024), staff suggests limiting the discussion to possible IPA input over personnel matters of sworn PPD employees (i.e., police officers).

3. Staff Discussion of Impact of Proposed Charter Amendment

The proposed Charter amendment, stating CPOC recommendation #1 another way, would permit the IPA to have direct input in sworn police officer personnel matters, such as whether to impose discipline, and the amount of discipline. The IPA's comments, if in writing, would be considered a part of the police officer's personnel file. In order to accommodate this recommendation, an amendment to the Charter is needed, and likely the Municipal Code, to correspond to any Charter amendment. The reason a Charter amendment is needed is that CPOC recommendation #1 would be a departure from the Council-Manager form of government established in the Charter. The IPA reports to the City Council, pursuant to Pasadena Municipal Code Section 2.30.020(A)(8), and the IPA would be providing direct input in (and not just auditing) sworn police officer personnel matters.

4. Council-Manager Form of Government, as Expressed in the Charter and Municipal Code

Most of the over 480 cities in California, including Pasadena, use a Council-Manager form of government. In this model, the City Council sets policy, passes ordinances, approves projects and programs, and adopts the annual budget. The City Manager implements the policies, advises the City Council, makes recommendations on City Council decisions, formulates the budget, and oversees the administration and management of staff and resources.

One aspect of the Council-Manager form of government is that it enables the Council to hold a limited number of officials accountable for the City's administration. The Charter allows the City Council to make "inquiry" into administrative matters under the City Manager. However, the City Council may not "attempt to influence or to direct any subordinates of the City Manager." Charter Section 411(B). Further, the City Council has delegated the Chief of Police, subject to the City Manager's approval, the "authority

... to adopt rules and regulations for the administration and discipline of officers and employees of the department.” Pasadena Municipal Code Section 2.295.030.

Because of the way the Charter establishes the Council-Manager form of government, a Charter amendment would be needed if the Council desired to allow the IPA to have direct input in (and not just auditing) sworn police officer personnel matters. In particular, with the IPA reporting to the Council (as currently provided by ordinance), if the IPA were to have input in sworn police officer personnel matters, that would be tantamount to the Council having input in such personnel matters – which would “influence” Police Department staff, and they are subordinate to the City Manager.

5. Examples of Current Police Oversight in Other Cities

Staff surveyed a number of California cities that have not recently been or are not currently under federal consent decrees, to assess whether direct input from an independent person (inspector general, police auditor, police monitor, or the like) is authorized. The cities of Anaheim, Burbank, Sacramento, San Jose, and Santa Monica do not expressly authorize direct input in police personnel matters. On the other hand, the cities of Berkeley, Long Beach, and San Diego do authorize direct input in police personnel matters.

6. Collective Bargaining

If the Council were to submit a Charter amendment to Pasadena voters, the collective bargaining requirement under the Meyers-Millias-Brown Act (MMBA), which gives public sector employees the right to collective bargaining, likely applies. In short, the City would be required to meet and confer with labor unions "prior to arriving at a determination of policy or course of action" on matters affecting the "terms and conditions of employment." We believe that a Charter amendment allowing the IPA with direct input in sworn police officer personnel matters would likely be subject to the MMBA's collective bargaining requirements. Additionally, such process would need to be conducted in good faith, and concluded, with all affected labor unions, by the time the City Council votes to place a Charter Amendment on the ballot. One court summarized the process of complying with MMBA before submitting ballot measures to the voters as follows:

The portions of the Elections Code and Government Code that pertain to the procedures through which cities may amend their charters do not provide for a particularly expedient process. Undoubtedly, adhering to a requirement that cities must also consult in good faith with recognized employee organizations under [MMBA] adds an additional hurdle. It does not, however, render it impossible for cities to propose charter amendments that raise issues that are subjected to the duty to consult in good faith under the MMBA. And it does not justify ignoring the requirements of the MMBA.

City of Palo Alto v. Public Employee Relations Board, 5 Cal. App. 5th 1271, 1300 (2016).

7. Options

This agenda item is for information only, and Council can direct that staff return with a future agenda item for action, if desired.

Option A. The City Council could request that staff bring back a future agenda item, proposing a Charter amendment for the November 2024 election, somewhat along the lines of what the CPOC and IPA have proposed, limited to the IPA's input in personnel matters involving sworn police officers. For this to occur, collective bargaining would have to be completed before the August deadline for submitting a measure to voters for the November 2024 election. The timing of collective bargaining is not entirely within the control of staff or City Council, so while staff and City Council would use best efforts, there is no guarantee of completing it within this time frame.

Option B. The Council could instruct staff to continue discussions with the CPOC and IPA over a possible Charter amendment, but for a future election.

Option C. The Council could give general direction to the City Manager to consider approaches to police oversight, such as retaining a consultant to provide direct input in police officer personnel matters. For example, if the City Manager or Chief of Police were to utilize a consultant, that would not require a Charter amendment. It may still (possibly) require collective bargaining under MMBA (especially if the consultant were providing direct input in personnel matters), but at least a Charter amendment would not be required. This approach would be somewhat similar to the use of independent reviews of police matters on certain critical incidents in Pasadena over the past 15 years.

FISCAL IMPACT:


The IPA is a contract position. If the City Council were to place a measure on the ballot amending the Charter to allow for a form of oversight where the IPA were actively providing input in sworn police officer personnel investigations, the current budget of \$150,000 per year for auditor services could significantly increase.

Respectfully submitted,



Michele Beal Bagneris
City Attorney

Prepared by:



Amanda Fowler
Principal Administrative Analyst



Javan N. Rad
Chief Assistant City Attorney