



City of Santa Ana
20 Civic Center Plaza, Santa Ana, CA 92701
Staff Report
November 1, 2022

TOPIC: Ordinance Establishing a Police Review Commission

AGENDA TITLE:

Adopt an Ordinance Establishing a Police Review Commission

RECOMMENDED ACTION

Introduce Ordinance for first reading establishing a Police Oversight Commission.

DISCUSSION

Background

June 12, 2020

Mayor Sarmiento, Mayor Pro Tem Bacerra, and Councilmember Penaloza add a councilmember requested item to direct staff to research police oversight and return to the City Council with an informational report.

September 15, 2020

Staff presents an informational report (history of police oversight, overview of models, subpoena authority, SAPD complaint process for allegations of police officer misconduct).

December 15, 2020

Staff presents an informational report (more details about subpoena authority, comparative analysis of California cities with police oversight, community feedback survey results).

September 7, 2021

Staff presents an informational report (analysis of Auditor/Monitor and Investigation-Focused models, examination of Berkeley, Oakland, Riverside, and Anaheim police oversight mechanisms, and eligibility criteria to serve on a police oversight board/commission).

October 5, 2021

The Mayor appoints Mayor Pro Tem Bacerra, Councilmember Hernandez, and Councilmember Lopez to the Police Oversight Ad Hoc Committee.

November 2021 - June 2022

The Police Oversight Ad Hoc Committee meets eight times to discuss police oversight and work on a draft ordinance.

July 29, 2022

The City Council holds a work study session to discuss police oversight and directs the City Attorney to prepare an ordinance.

October 18, 2022

The City Council directed the City Attorney to prepare an ordinance to establish a Police Oversight Commission (Exhibit 1). Below is a summary of the provisions of the ordinance.

Summary of Ordinance

Establishment and Purpose

- Establishes a Police Oversight Commission with an Independent Oversight Director.
- Police Oversight Commission's purpose: Improve transparency, increase the accountability of and public confidence in the SAPD, provide for an Independent Oversight Director to assist in reviewing the police complaint process, and provide a forum to review, evaluate, and make recommendations about police and public safety.
- Police oversight model: hybrid model that consists of elements of both the Auditor/Monitor and Investigation-Focused models.

Membership and Term

- Consists of seven members appointed by the City Council.
- Commissioners are fair and impartial, and represent the diverse social, economic, and political interests of the city.

Qualifications of Commissioners

- Be a Santa Ana resident.
- Cannot be a City official (elected or appointed) or employee.
- May be a retired peace officer or a peace officer who has separated from public service for at least five (5) years.

- Cannot be a practicing attorney, or member of a firm, who/that handles criminal or civil matters involving the SAPD.
- Upon further review of the draft ordinance, the SAPD has recommended the following as optional language to Section 2-662(e):
 - “In order to comply with the legal statute of confidentiality of police records, as set forth by the California Department of Justice, limited record checks will be required of Commissioners.”

Commissioner Confidentiality and Training

- Take an oath and execute a confidentiality agreement.
- Participate in a ride-along.
- Receive relevant training from independent third-party bodies/institutions.
- Attend NACOLE-sponsored training sessions (or similar).

Meetings

- Requires the Commission to meet when a sufficient number of Commissioners have been appointed to constitute a quorum.
- Requires at least monthly meetings.

Powers and Duties of the Commission

- Review, evaluate and make recommendations regarding SAPD’s policies, practices, and procedures.
- Develop strategies to promote positive police-community relations.
 - Advise the City Council, City Manager, and Police Chief on community relations issues involving the Police Department.
- Make disciplinary recommendations to the City Manager and City Council.
- Receive, hear, and review misconduct complaints, tort claims or lawsuits made against on-duty SAPD officers.
- Receive and discuss reports from the Independent Oversight Director.
- Direct the Independent Oversight Director to independently review and investigate misconduct complaints and subpoena witnesses.
- Authorize the Independent Oversight Director to audit complaint files and review policies.
- Review any MOU between the City and the police employee bargaining groups.
- Conduct public meetings to educate the community on the purpose of the Commission.
- Prepare and submit annual reports to the City Council.
- Perform other duties as requested by the City Council.
- The SAPD would like to add the following language to Section 2-665(e)[new language is underlined]:
 - “Direct the Oversight Director to independently review and investigate . . . [The remaining portion of this Section would remain the same.]
- The SAPD would like to add the following language to Section 2-665(f)[new language is underlined]:

- “The Oversight Director shall review and investigate . . . [The remaining portion of this Section would remain the same.]

Appointment of the Independent Oversight Director

- Authorizes the appointment of Independent Oversight Director with the following powers and duties:
 - Conduct investigations when directed by the Commission after receiving a complaint, tort claim, or lawsuit.
 - Request and review citizen complaints, use of force reports, and other pertinent documents.
 - Conduct audits and investigations in a fair, objective, impartial, and ethical manner, in compliance with POBR, and prepare written reports (in compliance with state law).
 - Discuss findings in strict compliance with state laws.
- Budget and support.
 - Requires that the City Manager recommend a budget for the Commission as part of the annual budget process.

Access to Police Department records, data and reports

- Commission and Independent Oversight Director shall have access to police department records, data and reports.

Rules and Records

- Rules and records are to be developed by the Commission, in consultation with the Independent Oversight Director and City Manager.

Differences between 10/18 Draft and 11/1 Final Version

At the October 18 meeting, the City Attorney received direction from a majority of the City Council to make the following changes to the draft ordinance presented at the October 18 meeting and return to the City Council with a final ordinance incorporating those changes. The ordinance (Exhibit 1) and ordinance summary above reflect those changes, and the changes are highlighted below:

- **Qualifications of Commissioners (sec. 2-662):**
 - Allow peace officers who have been separated from their governmental entity/employer for at least five years to serve on the Commission.
 - Allow no more than one peace officer at a time to serve on the Commission.
 - Remove the prohibition on government employees.
- **Various: Add “subject to...” Language**
 - Sec. 2-665(e), (f), (l), Sec. 2-666(d), Sec. 2-668, and Sec. 2-669: Add “subject to the restrictions under state laws”
- **Powers and Duties of the Police Oversight Commission (sec. 2-665)**
 - Of the menu items presented at the October 18 meeting, select the first subsection (b).

- Authorize the Commission to receive, hear, and review misconduct complaints.
 - Allow receipt of anonymous complaints.
 - Allow complaints to be filed/submitted within 180 days of the alleged misconduct by a Santa Ana Police Officer or within one year from person(s) who are incapacitated due to health and/or who have been incarcerated (provided that sufficient proof is provided of such incapacitation and/or incarceration).
 - Authorize the Commission to make disciplinary recommendations to the Police Chief and/or the City Manager when misconduct is sustained.
 - All discipline ultimately imposed on any peace officer must comply with all federal, state and local laws.
 - Adds that complaints, tort claims, or lawsuits can be received, regardless of where or how it is filed.
- **Access to Police Department Records, Data, and Reports (sec. 2-668)**
 - Authorize the Commission and Independent Oversight Director to have access to all police department records, subject to all federal, state, and local laws.
 - Require all data legally disclosed to the California Department of Justice and/or any other federal or state law enforcement agency be concurrently provided to the Commission and the Independent Oversight Director.

Next Steps

If the first reading of the ordinance is approved, the ordinance will return for a second reading and adoption at the November 15 meeting. If approved at the November 15 meeting, the ordinance will become effective 30 days thereafter.

Staff has begun negotiations with the National Association for Civilian Oversight of Law Enforcement (“NACOLE”) to engage them by means of a professional services agreement to assist with preparation of an implementation plan, implementation, and training relating to the Police Oversight Commission. Staff will return to the City Council at a subsequent meeting with details relating to the implementation plan.

ENVIRONMENTAL IMPACT

There is no environmental impact associated with this action.

FISCAL IMPACT

As part of the FY 2022-23 Budget, the City Council appropriated \$1 million for police oversight. These funds are available for expenditure during FY 2022-23 in the General Non-Departmental budget (account no. 01105015-62302).

EXHIBIT(S)

1. Ordinance

Submitted By: Kristine Ridge, City Manager

Approved By: Kristine Ridge, City Manager