

October 14, 2022

Mayor Sarmiento and City Councilmembers  
20 Civic Center Plaza  
Santa Ana, CA 92701  
[ecomment@santa-ana.org](mailto:ecomment@santa-ana.org)

*Via Email*

RE: Santa Ana Police Oversight Commission and Agenda Item 22

Dear Mayor Sarmiento and City Councilmembers,

ACLU of Southern California and Chispa write to respond to the October 18, 2022 City Council agenda item 22, “Police Review Commission Draft Ordinance Discussion,” and Exhibit 1. We commend the City Attorney’s willingness to meet with community-based organizations to discuss our policy recommendations. We also commend the City Council for directing city staff to examine the Police Oversight Ordinance drafted and supported by community-based organizations. We are concerned, however, that the policy language of Exhibit 1 profoundly differs from the model policy that was discussed by the City Council on July 29, 2022, supported and written by community-based organizations. **The Exhibit 1 policy language will establish an oversight model that largely mirrors the City of Anaheim’s Police Review Board, which a majority of this council and the community have rightly labeled as insufficient.** The Police Oversight Ad Hoc Committee previously recommended a hybrid investigation-focused and auditor/monitor-focused model of police oversight. The policy language of Exhibit 1 will fail to accomplish the Ad Hoc Committee’s recommendation and the City Council’s goal to establish an effective police oversight model. We cannot support the ordinance as written unless the fundamental police oversight provisions, listed herein, are included in the policy. **We urge the City Council to introduce pivotal amendments to establish an effective police oversight commission.**

**Structural Failures of Exhibit 1 Policy Language**

As previously stated, an ineffectual and powerless police oversight model will be far more detrimental to the residents of Santa Ana than simply not having any police oversight, as it will give the false impression that meaningful accountability and investigation into police misconduct is occurring and potentially stall more effective reform methods. This is not acceptable for Santa Ana residents who largely prefer investigation-focused and auditor-focused models.<sup>1</sup>

1. ***Fails to establish commission independence.*** The National Association for Civilian Oversight of Law Enforcement (NACOLE) defines an investigatory oversight model as "allow[ing] for investigations to be conducted by the oversight agency and does not rely

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<sup>1</sup> Kpetman, Roxana. (2021, August 3). “Santa Ana to Host Virtual Forum on Police Oversight.” *The Orange County Register*. <https://www.ocregister.com/2021/08/03/santa-ana-to-host-virtual-forum-on-police-oversight/>

on investigators from within the police department."<sup>2</sup> The Exhibit 1 policy language will not establish an investigatory police oversight commission. Rather, the language will effectively establish a police *review* commission with an auditor. The language also fails to establish meaningful independence from the police department, as the Chief of Police or his designee are required to attend all regular and special meetings of the commission. The investigations and deliberations of the police oversight commission must be independent from the Santa Ana Police Department (SAPD). We can no longer afford to continue to allow a closed system in which only police command staff and officers have any direct responsibility or control over the outcome of complaints from community members. An independent police oversight commission operates outside of the control, purview, or influence of police command staff.

2. ***Limits the scope and ability for public complaints.*** The policy language severely limits the scope of complaints and the timeframe by when the public can submit complaints. Under the stated model, the commission can only review complaints submitted to the commission, not the police department. The complaint must be submitted by the impacted person within 120 days of the incident. These limitations substantially obstruct the public from addressing police misconduct. By placing the onus for complaints on the impacted person within a specific timeframe, the City will effectively block oversight into complaints from witnesses and third parties. The timeframe is unduly burdensome, especially for people who have been harmed by police misconduct. Moreover, the policy inappropriately bars anonymous complaints, preventing people who wish to protect their privacy from seeking redress. The language also unnecessarily limits the subject of complaints submitted to the commission to serious uses of force, sexual assault, serious dishonesty, and discrimination.
3. ***Fails to establish access to police department records.*** The policy language fails to address the commissions' access to police records. To effectuate meaningful oversight, the commission must be guaranteed complete and prompt access, *subject to state laws*, to all SAPD documents, information, and testimony relevant to their investigations. The policy language does not include provisions outlining the communication between the commission and SAPD. The commission must have the ability to subpoena witnesses and documents, including police disciplinary documents, communications, video and audio footage.
4. ***Lacks disciplinary authority.*** The policy language similarly fails to address the commission's role in recommending accountability for officers that engage in misconduct. The commission must be explicitly authorized to provide disciplinary recommendations to the Police Chief and Internal Affairs division of SAPD before the statute of limitation expires. Finally, the language must authorize the commission to recommend disciplinary policy guidelines to the Police Chief, Internal Affairs Division, and City Council.
5. ***Diminishes the capacity of commission membership.*** As written, the commission membership requirements and qualifications will undermine the police oversight model.

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<sup>2</sup> "FAQs." National Association for Civilian Oversight of Law Enforcement. Accessed October 14, 2022. <https://www.nacole.org/faqs>.

Specifically, the commission members are not guaranteed to represent the city's diversity. Moreover, the language fails to include commissioner qualifications to ensure effective police oversight including a background in human resources, management, policy development, auditing, law, investigations, social services, civil rights, and civil liberties. Moreover, the language excludes employees of *all* municipal agencies and their immediate family members. This exclusion is overly broad and prevents qualified candidates from being appointed to the commission.

### **Fundamental Police Oversight Policy Provisions and Our Recommendations**

It is imperative that the City of Santa Ana establish a comprehensive, effective, and fully funded police oversight model with a clearly defined scope and authority to prevent, intervene, and investigate police misconduct and violence. For this reason, we urge the City Council to pay the greatest attention to and adopt amendments pertaining to the following policy provisions.

#### ***Independent Investigatory Authority***

The commission must have authority to investigate serious incidents, such as use of force *whether or not someone has filed a complaint*. The commission must have the authority to receive, investigate, hear, make findings, and recommend action regarding all complaints filed against members of SAPD, including but not limited to:

1. All incidents of in-custody deaths or serious injury (Category I incidents).
2. Use of force, including force involving physical techniques or tactics, chemical agents, or weapons.
3. Police Department pursuits that result in collision or injury.
4. Misconduct and public complaints including, but not limited to, excessive use of force, dereliction of duty to intercede during a use of force incident, abuse of authority, coercion, verbal abuse (including, but not limited to, slurs relating to race, ethnicity, religion, gender, sexual orientation, and disability), and discriminatory behavior.
5. Civil rights violations including, but not limited to, unlawful stop or arrest, improper search or seizure of either individuals or property, unlawful denial of access to counsel, and interference with First Amendment assemblies, association, or expression.
6. Conduct that bears on the credibility of officers or demonstrates moral turpitude, including perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence.
7. Criminal conduct involving theft, bribery, racketeering, trafficking, sexual assault, or domestic violence.

The commission must also have the authority to regularly review and potentially investigate high-risk police activities such as stops, arrests, and searches, as well as high risk programs including the Major Enforcement Team, Gang Suppression Unit, and other units within the SAPD Investigations Bureau. Importantly, the commission must have access to independent legal counsel to advise on their work and duties.

The policy must clearly establish the investigatory responsibilities of the Commission. NACOLE identifies investigatory-model duties to include the following:

1. Identify the relevant police policy or policies that, if supported by evidence, constitute the basis of the complaint and allegations.
2. Conduct interviews of witnesses including civilian witnesses, police witnesses.
3. Gather evidence including photographs, sound and video recordings, receipts, and documents relevant to the complaint.
4. Prepare an investigative report identifying the witnesses interviewed and summaries of their testimonies; weigh the evidence and credibility; identify any gaps in the investigation due to lost or unavailable documents, unavailable or uncooperative witnesses, etc.
5. Make recommendations or findings as to whether the evidence supports the allegation(s). In some oversight systems, the agency has the authority to recommend and/or impose discipline.

### ***Police Oversight Commission Qualifications***

We urge the creation of a commission composed of diverse community leaders with the knowledge and experience to effectuate meaningful oversight of SAPD. We urge the council to support a commission appointed by the city council with the following qualifications:

1. To the extent practicable, appointments to the commission shall be broadly representative of Santa Ana's diversity and shall include members with knowledge and/or experience in the fields of human resources practices, management, policy development, auditing, law, investigations, social services, civil rights, and civil liberties.
2. Appointments to the commission shall be representative of the communities most affected by and with the most frequent contact with the Police Department.
3. Federal immigration status and criminal convictions shall not be considered in the appointment of the commission.

Current and former sworn law enforcement officers should be excluded from commission membership. Immediate family members of law enforcement officers: spouse, registered domestic partner, or dependent children should also be excluded from commission membership. Finally, current or former employees, contractors, officials or representatives of an association representing sworn peace officers, must not be eligible to serve on the commission.

If former law enforcement officers are permitted to serve on the commission, we believe the following minimum guardrails must be adopted:

1. Former law enforcement officers shall not be eligible to serve until they have been retired for at least five (5) years.
2. Former law enforcement officers must have occupied a managerial rank within their department.
3. Former law enforcement officers must not have been employed by a law enforcement agency in Orange County.
4. Former law enforcement officers must be limited to only one (1) commission membership appointment to ensure the commission is represented by majority civilians.

### ***Access to Police Department Documents and Records.***

The commission must have unfettered access to all relevant SAPD files, documents and records, *except as otherwise prohibited by law*, in addition to all files and records of other City departments and agencies. The commission must have access to the records necessary for their investigations and audits. Any relevant records held by the police department that can be shared in a *discretionary manner* must be proactively disclosed to the commission in the discharge of their duties.

### ***Power to Issue Disciplinary Recommendations***

The ordinance passed by the City Council must explicitly authorize the commission to deliver disciplinary *recommendations* to the Police Chief and Internal Affairs division of SAPD. An independent investigation will be meaningful only if its findings inform the basis for deciding possible disciplinary actions. The commission must play a role in officer discipline.

### ***Commission Transparency and Reporting***

The commission must be required to conduct public meetings on SAPD's policies, practices, procedures, customs, orders, collective bargaining agreements, programs, training, and annual budget. The commission must also be authorized to issue recommendations to the City Council on the aforementioned subjects.

### ***Police Department Transparency and Reporting***

One of the essential functions of police oversight is increased transparency. The commission must have access to police department data to inform their work. Per Assembly Bill 71 (2014) SAPD is mandated by state law to annually submit data to the California Department of Justice (DOJ) on use of force incidents that resulted in serious bodily injury, death, or discharge of a firearm. Under AB 953 (2015), SAPD is mandated to report a) all vehicle and pedestrian stops and b) citizen complaints alleging racial and identity profiling to the DOJ. Use of force and racial and identity profiling are matters of great concern for the police commission. Because SAPD is issuing reports to the DOJ, we urge the City Manager and City Council to mandate the Police Department issue an annual written report summarizing use of force and racial and identity profiling data to the commission.

It is imperative that the City of Santa Ana build an effective police oversight model to help avert future unjustified use of deadly force against civilians, hold police officers accountable for misconduct, and intervene to resolve systemic problems within the Santa Ana Police Department.

Sincerely,  
ACLU of Southern California and Chispa

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