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Agenda Item: ID17-334 (2:00 P.M.#1)

Date: 3/16/17

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FRESNO CITY COUNCIL

CITY CLERK, FRESNO CA



Supplemental Information Packet **Agenda Related Item(s) – ID17-334 (2:00 P.M.#1)**

Contents of Supplement: 3 Attachments – Bylaws; Policy Proposal for the Office of Independent Review (OIR); and a PowerPoint Presentation

Item(s)

Resolution of Support for the creation of a Citizens' Public Safety Advisory Board (CPSAB) and related changes to the Office of Independent Review (OIR)

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

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CITY CLERK, FRESNO CA



MAYOR LEE BRAND

POLICY PROPOSAL
for the
OFFICE OF INDEPENDENT REVIEW

Adopted as Amended March 16, 2017

MAYOR LEE BRAND
POLICY PROPOSAL
for the
OFFICE OF INDEPENDENT REVIEW

Protecting our Officers and Safeguarding the Public's Trust in Law Enforcement

"Police officers are entrusted with an enormous amount of power and authority – the authority to deprive someone of his or her personal freedom based on an officer's sworn testimony and the authority to take someone's life under a given set of circumstances if the officer believes their life or the life of another is in jeopardy. Members of the public who trust their police department are far more likely to report criminal activity and cooperate during police investigations. An independent police auditor will increase and help to safeguard the level of public trust between the Fresno Police Department and the community. The importance of this trust cannot be overstated."

--Jerry Dyer, City of Fresno Chief of Police

Introduction

The Office of Independent Review (OIR) was initially established by Council Resolution No. 2009-66 effective March 31, 2009. Almost 8 years later, on March 16, 2017, Mayor Lee Brand is establishing a Citizens' Public Safety Advisory Board (CPSAB) to serve in an advisory capacity to the OIR. The addition of the CPSAB requires enhancements and changes to the OIR policy.

Both of these policies been crafted with the understanding that our Fresno police officers are highly trained, capable people who strive to serve the public every day with professionalism and that the tremendous power and authority invested in them, along with the often harmful and life threatening situations in which we ask them to work warrants some measure of independent review to protect our officers and to enhance the public's trust.

To be fully effective, police agencies require the highest level of public confidence and officer credibility throughout the community they serve. The OIR has provided ongoing, independent feedback to the Chief of Police, Mayor, City Council and the community to help address issues impacting public support and cooperation.

The Fresno Police Department is a highly-trained professional police agency with 804 sworn officer positions. Department personnel make over 600,000 citizen contacts each year. These range from responses to 911 calls and arrests of criminal suspects to traffic stops and special events patrols. Citizen inquiries or complaints arising from contacts with police are handled by the department's own Internal Affairs Division.

The OIR provides for an impartial analysis of Internal Affairs investigations by a neutral third party. The Citizens' Public Safety Advisory Board will review many of the OIR's

audits and use them as the basis to develop pro-active recommendations to the Police Department to enhance public trust and officer safety.

The following pages detail the additional functions, responsibilities and procedures Mayor Brand is making to the Office of Independent Review. Much research and thought has been put into these policy proposals with the intention of improving Fresno's responsible and well-constructed approach to these issues.

We are grateful for the input we have received from Councilmembers, the City Attorney's Office, Chief Jerry Dyer, the Fresno Police Officers Association, the Mayor's Advisory Council, community leaders and the public at large.

Key Principles in the Establishment of the Office of Independent Review

Here is a recap of the key principles and concepts that formed the foundation of the City of Fresno's Office of Independent Review (OIR) and will continue in the future:

Independence – Independence is and has been essential to the OIR's success. The OIR must exercise independent judgment, free of any real or perceived bias. Inherent in the concept is the benefit to the City and the community of "a fresh set of eyes and ears." True independence requires a partnership between OIR and the City administration. Independence has been demonstrated by the impartiality of the OIR's analysis and conclusions. The addition of the Citizens' Public Safety Advisory Board extends those connections to our entire community.

Fairness, Integrity, and Honesty – The OIR must be impartial in word and deed, process and results. Even the appearance of partiality can undermine the OIR's work and credibility. The OIR must continue to be candid with stakeholders and participants. A lack of honesty will impair an OIR's ability to function.

Transparency – The OIR must provide an additional level of transparency for the Police Department. Therefore, the OIR's own work product has been made available to the community, to the extent permitted by law.

Participation of Stakeholders – The OIR must continue to welcome the participation of all internal and external stakeholders. Both internal and external stakeholders have access to the OIR and the ability to offer input or seek assistance.

Acceptance, Cooperation and Access – The City's administrators, managers and policymakers must continue to embrace the OIR's independence. This means continuing to permit the OIR the necessary freedom to inquire and a willingness to evaluate the OIR's work product with an open mind. In order to gain the maximum possible benefit, the City and its staff will continue to fully cooperate with the OIR.

Obedience to Legal Constraints – The OIR must obey all relevant laws and respect the rights of all stakeholders, including the Public Safety Officers Procedural Bill of Rights, also known as POBRA.

Roles and Responsibilities of the OIR:

The duties of the Office of the Independent Review (OIR) include:

- Meet monthly with the Chief of Police;
- Meet monthly with the Fresno Police Officers Association;
- Attend all meetings of the CPSAB and act as the liaison between the Police Department and the CPSAB;
- The OIR shall monitor and/or audit the following areas:
 - Audit investigations conducted by Internal Affairs;
 - Audit personnel investigations;
 - Monitor and audit officer-involved shooting investigations;
 - Monitor and audit use of force investigations;
 - Monitor and audit investigations of in-custody deaths;
 - Monitor and audit collisions during pursuits that result in serious injury or death; and
 - Monitor and audit complaints involving alleged bias relating to gender, race, ethnicity, religion, age, sexual orientation or disability.
- The OIR shall also do the following:
 - Respond to officer-involved shooting scenes when available; and
 - Attend officer-involved shooting review committee meetings;
- The OIR may also, in its discretion, monitor and/or audit:
 - All other collisions during pursuits;
 - Claims of retaliation for filing complaints against police officers; and
 - Any other complaints.

These discretionary audits may be conducted on the OIR's own initiative, as a result of citizen requests or requests submitted by the Chief of Police, division commander or officers.

In mandatory audits and/or monitoring, the OIR may only choose to be involved in the investigation process as an *observer* (not an additional investigator) from the initial callout until the investigation is completed. Once the investigation is completed, it will be monitored and audited by the OIR according to the above.

As a result of conducting each audit, the OIR will prepare an audit report. The reports will focus on evaluating the investigation's adequacy and thoroughness, as well as the quality and accuracy of the investigation report.

The OIR will attempt to resolve any concerns about an investigation at the lowest level, starting with the investigating sergeant and thereafter up the chain of command. Ultimately, if merited, the OIR may discuss concerns with the Chief of Police and then the City Manager. In any event, every OIR audit will result in an audit report. Audit reports will be forwarded to the City Manager and City Attorney and shall be written in a manner as to ensure compliance with all personnel and confidentiality laws.

- Review Inquiry and Complaint Logs – The OIR will review the Police Department inquiry forms and complaint logs monthly to identify unresolved inquiries and any trends in allegations that may require follow up or further action. The OIR will review these inquiries to determine whether any should have been investigated as a complaint of misconduct rather than addressed as an inquiry. The Police Department will follow up as appropriate. The OIR will work with Internal Affairs to identify areas that may be appropriate for data collection based on regular review of the inquiry and complaint logs.
- Identify and Monitor Trends – The OIR will have access to monitor the Fresno Police Department's "Early Alert" system, as well as demographic data on traffic stops and other incidents to identify and monitor trends along with specific responses for remedial actions to address these trends.
- Serve as a Community Resource – Community members want to be assured that the process is thorough, fair and without bias. The OIR will make presentations to community groups, professional organizations, neighborhood associations, the media, schools and participants in the Citizen's Police Academy to educate the community and to solicit suggestions on strengthening the partnership between the community and the Police Department. The OIR will provide information to community members about its role and the process by which complaints are received and investigated. Constituents may initiate contact with the OIR that can be informal inquiries concerning police policies, questions about the complaint process or community members who want to share their opinions or concerns, but do not necessarily want to file a formal complaint.
- The OIR will have blank Complaint and Commendation forms available and can receive completed forms from community members for forwarding to the Police Department's Internal Affairs unit. The OIR will maintain brochures, pamphlets and other materials to assist citizens seeking information concerning the complaint process, as well as how to commend Police Department employees.

- Serve as Resource for Police Officers and Managers – The OIR shall also serve as a resource for police officers and managers for consultation regarding recommending changes to police policies. Any recommendations for policy changes will be justified based on an analysis of internal trends and data and community and professional standards, including procedures used in police departments of similar size and demographic parameters. In addition, the OIR will make presentations to newly hired police officers during their final stages of orientation to provide them with information about residents' perspectives of law enforcement and insight into the most common types of constituent's complaints.
- Produce an Annual Report – The OIR will produce an annual report that will be transmitted, through the City Manager, to the Mayor, City Council, Chief of Police and public. The annual report will be posted on the City's website. The annual report will include information on the number and types of complaints by category; the number of complaints sustained; the number of complaints that are unfounded, not sustained and exonerated; the number of complaints where the complainant failed to cooperate in the investigation; an analysis of trends and patterns, along with remedial actions taken such policy changes, training enhancement and equipment modifications made in response to trends. The report will provide transparent and accurate information about the overall performance of the department while protecting the confidentiality of the individual members of the police department and public.
- Participate with the Citizen's Police Advisory Board, as directed by the City Manager, including sharing appropriate information, receiving the Board's recommendations, and reporting the Board's findings and recommendations to the City Manager on a quarterly basis.

Limitations on the OIR

- No unauthorized OIR Investigations – While the OIR will have the authority to review all personnel investigations; it will not conduct its own independent investigations of citizen complaints or allegations of employee misconduct.

Complaints from community members that are received by the OIR will be forwarded to the Police Department's Internal Affairs unit and will proceed through the process according to existing Police Department protocol. The Internal Affairs unit will perform the investigation. Internal Affairs will send the complainant a confirmation letter or will make direct contact acknowledging receipt of the complaint and will give a brief description of the investigative process. In those instances where an investigation is initiated, complaints will be provided with a Citizen's Complaint Receipt by Internal Affairs that includes the case number assigned to the complainant, the date the complaint was taken and the name of the assigned investigating Sergeant.

- Ensuring Confidentiality – We understand that respecting and ensuring the privacy and confidentiality of police officers and their personnel records is of the utmost importance. The OIR will have delegated authority from the City Manager to undertake his or her duties. The OIR will conduct himself or herself in a manner consistent with all relevant laws and confidentiality practices. Personnel matters, including information protected under POBRA, are classified as confidential. In such matters, neither the City Manager nor the OIR are allowed to disclose any information to any individual or entity not authorized by policy or law, including disciplinary actions resulting from complaints.
- Communication Protocol – The OIR will not make public comments revealing or based upon the content of confidential personnel materials without the specific written authorization of the City Manager. The restriction does not prevent the OIR from reporting any concerns to the Mayor, City Manager, the Chief of Police or the City Attorney. In the interests of enhancing public understanding, the City Manager may authorize the OIR to report on specific incidents with personal identifiers removed, as long as confidentiality laws are not violated.
- Access to Information – The OIR will not have access to City privileged attorney-client communication, both orally and in writing.

Staffing the Office of Independent Review

To fulfill the roles and responsibilities outlined above, it is recommended that the OIR be staffed with two full-time employees: (1) Independent Reviewer; and (2) an Administrative Assistant.

Complete job descriptions will be developed for each position. The following paragraphs are an overview of the types of skills required to fill the positions.

The **Independent Reviewer (IR)** will be a full-time position filled by a local resident.

The IR will be responsible for reviewing investigations, reviewing inquiry and complaint logs, identifying and monitoring trends in the Police Department and serving as a resource for police officers and managers (see **Role and Responsibilities of the OIR** above). The job skills required for the IR shall include experience and knowledge of police procedures, personnel issues, penal code, relevant case law and court decisions and the procedural protections provided to officers pursuant to the Public Safety Officers Procedural Officer's Bill of Rights (POBRA). In addition to general law enforcement experience and/or membership in the California Bar Association, there should be a preference for someone with experience in local, front-line law enforcement situations often encountered by the Fresno Police Department.

The IR must be a person who is fair and impartial, possessing analytical skills to comprehend complex investigations. S/he must be a person of extreme integrity who understands the importance of confidentiality and has the demonstrated ability to navigate complex investigations in a fair and unbiased manner. S/he must be willing to adhere to a code of ethics, such as that prescribed by the National Association for Civilian Oversight of Law Enforcement and should not be influenced or coerced. The City shall require the OIR to disclose relationships which might create a conflict of interest and, in particular, relationships and communication between the OIR, elected officials and any internal or external stakeholders which would call into questions conflicts, influence or attempts to corrupt the process.

The IR will also be responsible for informing and educating members of the community about the existence of the OIR and the process by which complaints are received and investigated. S/he will make presentations to community groups, professional organizations, neighborhoods associations, the media, schools, participants in the Citizen's Police Academy and other groups and will also solicit suggestions on strengthening the partnership between the community and the Police Department. S/he must have a demonstrated ability to work well with a wide diversity of groups with differing viewpoints and backgrounds.

Administrative Assistant – The Administrative Assistant will work at the direction of the IR to support the administrative needs of the OIR. The assistant must have a demonstrated ability to work well with the public and the necessary office skills to process and organize a variety of documents in a professional setting. The Administrative Assistant shall be a person of extreme integrity who understands the importance of confidentiality. The Administrative Assistant, working in conjunction with the City Clerk, shall serve as the Clerk of the CPSAB and will act as Secretary of those board meetings and shall maintain files and records of the CPSAB.

Budget

It is the Mayor's expectation that current budget allocations for the OIR are sufficient to fund the duties assigned through this policy.

Office Location

The Office of the Independent Review will be supplied City office space not in the Police Department in order to accommodate constituents who may not be willing to go directly to a police facility for information, to ask questions or to file a complaint.

Expected Outcomes/Measures of Success

In conjunction with the CPSAB, the OIR will develop performance standards and metrics to determine the effectiveness of both. These performance standards and metrics will be subject to the approval of the City Manager and the Mayor prior to their acceptance and use.

A thorough, independent evaluation of the OIR will be conducted every other year to determine whether the office is meeting its objectives.

Conclusion

These policy proposals were developed with the understanding that Fresno police officers are highly trained, capable people who strive to serve the public every day with professionalism and that because of the tremendous power and authority invested in law enforcement, independent audits of investigations to protect our officers and maintain the public's trust is a substantial ongoing benefit to the people of the City of Fresno.

The policy proposals for amending the OIR and the addition of the CPSAB are not being made with the unrealistic expectation that constituent complaints will cease to exist or even decrease because of independent audits in the short- or mid-terms. There will always be complaints and, in fact, an increase in initial complaints is expected due to these changes to the Office of Independent Review and the addition of the Citizens' Public Safety Advisory Board. The primary role of the OIR is to ensure that complaints are thoroughly and appropriately investigated and that the community has trust in the process. If administered correctly, the OIR will help protect our officers by enhancing policies, procedures and training for the Fresno Police Department and strengthening police-community relations.

The successes of the OIR and the CPSAB will be measured in a number of ways, including, but not limited to: results from public surveys on attitudes toward the Police Department, reductions in the number of complaints filed against the department, effectiveness of working relationship between the OIR and Police Department personnel, reduction in costs for legal services, judgments and settlements and ultimately, a safer city.