CITY OF SAN JOSÉ STUDY SESSION

Independent Oversight of San José Police Department

Led by the Office of the Independent Police Auditor
January 16, 2018

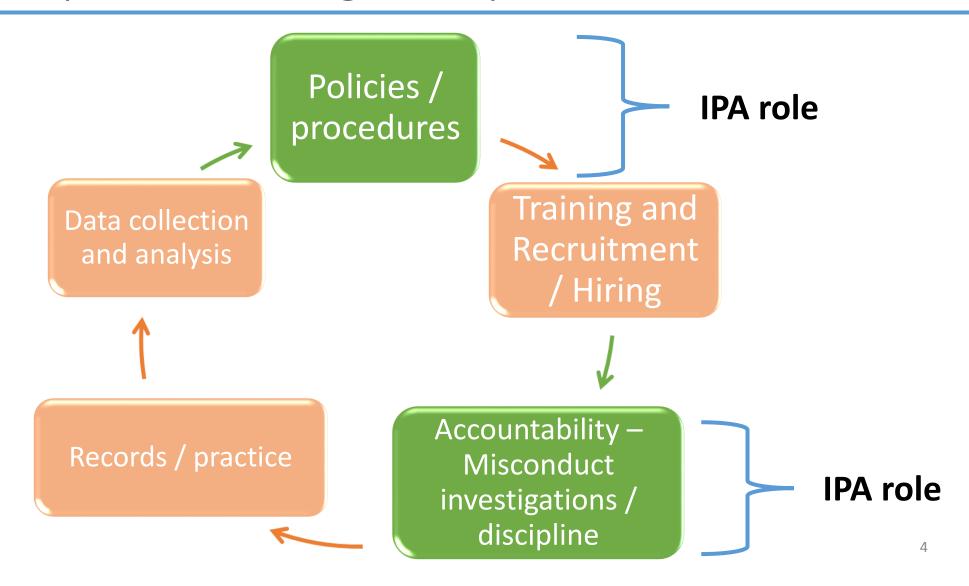
Overview: Structure of Study Session

- 1. IPA presentation 15 minutes
 - a. IPA model and goals
 - b. IPA roles and responsibilities
- 2. IPA and panel of practitioners: Possible expanded authorities
 - a. Auditing 30 minutes
 - b. Records 25 minutes
- 3. SJPD 20 minutes
- 4. Questions from Councilmembers 45 minutes
- 5. Public comments 45 minutes

Summary of Independent Oversight Models

- Inspector General: Broad access to records / systemic reviews of patterns
- Auditor / monitor: Review Internal Affairs' misconduct
 IPA
- Investigatory: Independent investigations of specific incidents (vs. auditing internal investigations)
- Citizen boards and commissions: Volunteers, public meetings
- Hybrids: Agencies that combine one or more of the above

Scope of oversight of police functions



IPA's Goals

- Ensure the process for addressing misconduct complaints is effective and reliable
- Promote transparency and accountability
- Strengthen relationship between SJPD and the community
- Promote constitutional policing / respect for civil rights
- Risk management / help prevent systemic issues or crisis in accountability or trust

History of IPA

- 1993: IPA Office established through city ordinance.
 - Limited IPA auditing authority to IA investigations of citizen complaints
- 1996: Voters amended City <u>Charter</u> to establish IPA as a permanent arm of the city government.
 - Reiterates limitations on auditing
 - Appointment / removal of IPA director
 - Does not discuss access to documents unrelated to auditing
- 1999: Ordinance amended to provide IPA with access to SJPD review panel for officer-involved shootings, including documents

Roles and Responsibilities: Overview

- Independence
- Outreach
- Reporting
- Policy making
- Complaints of officer misconduct
- Auditing Internal Affairs investigations
- Access to records outside of Internal Affairs



Roles and Responsibilities: Independence

IPA Independence

Independent of police department command structure

Appointment term – four years

Super-majority vote to remove IPA – 10 City Council members; due process

IPA makes staffing decisions

Roles and Responsibilities: Outreach

Goals of outreach:

- 1. Inform the community about the complaint process (charter)
- Listen and respond to broader community concerns, e.g., through policy recommendations

Outreach methods:

- 1. Town halls, listening sessions, community meetings
- 2. Website, social media
- 3. IPA Advisory Council (IPAAC)
- Media

Roles and Responsibilities: Reporting

Requirement (per ordinance)

Annual public reports to City Council

Statistical analysis: Complaints by category, complaints sustained, the actions taken

Analyze trends and patterns

Make policy recommendations

Roles and Responsibilities: Policy Making

IPA makes policy recommendations based on:

- 1. IPA's review of investigations of complaints (charter)
- 2. Community concerns
- 3. Public policy

Additional informal IPA involvement in policy making:

- 1. SJPD is required to respond to IPA policy recommendations
- 2. IPA reviews some draft policy changes
- 3. IPA reports status of previous year's policy recommendations

Roles and Responsibilities: Citizen complaints

Authority / Requirement

Any person may file a complaint about officer misconduct

Complaints address **police officer** misconduct

Updates regarding progress of the IA investigation are provided to complainant upon request

Roles and Responsibilities: Auditing

IPA audits IA's misconduct investigations of citizen complaints to determine if the investigation is complete, thorough, objective, and fair

Authority / Requirement	SJ IPA ordinance
Number of complaints to be reviewed annually	 ALL use of force complaints are reviewed At least 20% of all other complaints are reviewed
Civilian interviews	May interview
Officer interviews	May attend interviews and suggest questions
Appeal process re IA determination	Shall ask Chief to direct further investigation / analysis
Appeal process re Chief's determination	Shall ask City Manager to direct further investigation / analysis

Introduction of IPA/monitor panelists

Authority	BART (2010)	Denver (2005)	Sonoma (2016)	San José (1993)
INDEPENDENCE				
Term of appointment			X	X
Super-majority to remove director				X
MISCONDUCT COMPLAINTS: Anyone may file			X	X
AUDITING IA'S MISCONDUCT INVESTIGATIONS				
Can sit in on IA interviews		X		X
Audits Department-Initiated Investigations		X	X	
Audits IA investigations of ofcr-involved shootings		X	X	
RECORDS: Access to use of force records	X	X		

Expanding IPA Authority: Overview

- 1. AUDITING: IPA's authority to review Internal Affairs investigations of potential officer misconduct / officer's compliance with policy absent a citizen complaint
 - Department-Initiated Investigations
 - Officer-involved shootings
- 2. RECORDS: IPA's access to use-of-force records for systemic review of patterns and trends (e.g., officers' reports, body-worn camera footage)

Expanded IPA Authority: Auditing

Type of IA investigation (per Duty Manual)	Current IPA auditing authority	Charter change required?
Citizen complaint re any alleged misconduct	Full access (per charter)	N/A
Department-Initiated Investigations (DIIs) (SJPD-generated IA cases)	None	YES
Officer-involved shootings and other deadly force where no complaint filed	None	YES
Other in-custody deaths, where no complaint filed	None	YES

NOTE: The Charter LIMITS IPA access to IA investigations of complaints 16

Auditing: Department-Initiated Investigations

Overview of Department-Initiated Investigations (DIIs):

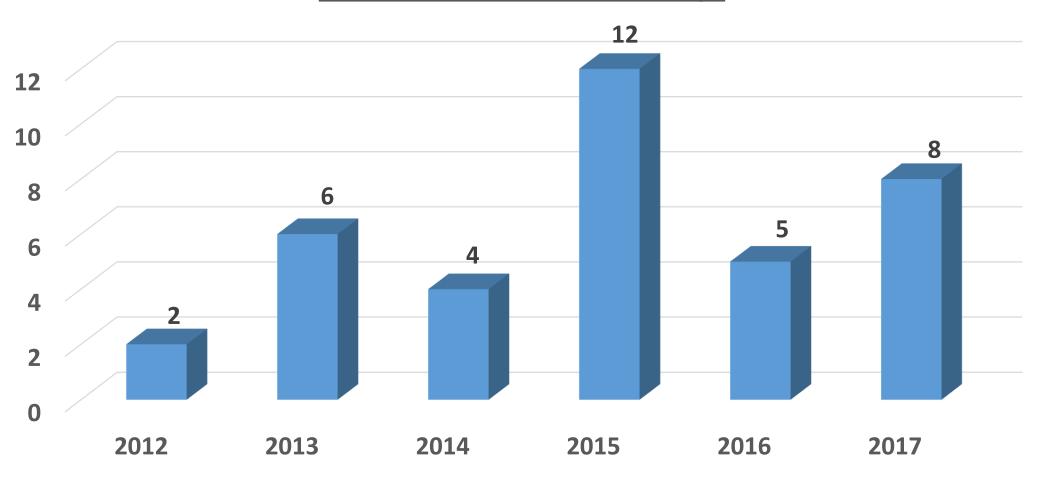
- 33 DIIs in 2016: No use of force cases
- 20 DIIs "sustained": Nine were CUBO cases
- Examples of DII cases that were unfounded, exonerated, or not sustained include:
 - "Investigation into concerns of possible on-duty, alleged sexual assault by an unknown officer"
 - "Officer's family member alleged the officer made criminal threats to a family member"
 - "Officer alleged that his supervisor created a hostile work environment and consumed alcohol while on duty"

Auditing: Department-Initiated Investigations

Considerations as to whether IPA should audit Department-Initiated Investigations (DIIs):

	Against expanded authority	For expanded authority
Transparency	SJPD publishes summaries of all Department-Initiated Investigations, per Council direction	SJPD summaries are vague
Accountability	Most Department-Initiated Investigations are "sustained"	No independent scrutiny of findings or discipline issued
Data	Department-Initiated Investigations are a small number of the overall incidents / IA investigations	Numerous incidents involve serious misconduct
Force	Department-Initiated Investigations include very few uses of force	More DIIs of uses of force may now take place under new policy on Command- Level review of serious uses of force





Allegations / outcomes in 2016 audited complaints:

	Arrest / detention	Bias	Courtesy	CUBO	Force	Procedure	Search / seizure	Total	%
Sustained	0	0	2	1	1	32	1	37	5%
Total	97	59	120	29	116	302	49	772	100%

IPA pushed back in nearly a third of use-of-force cases and ultimately disagreed or had concerns in nearly a fifth of such cases

Overview of 2017 officer-involved shootings (eight total):

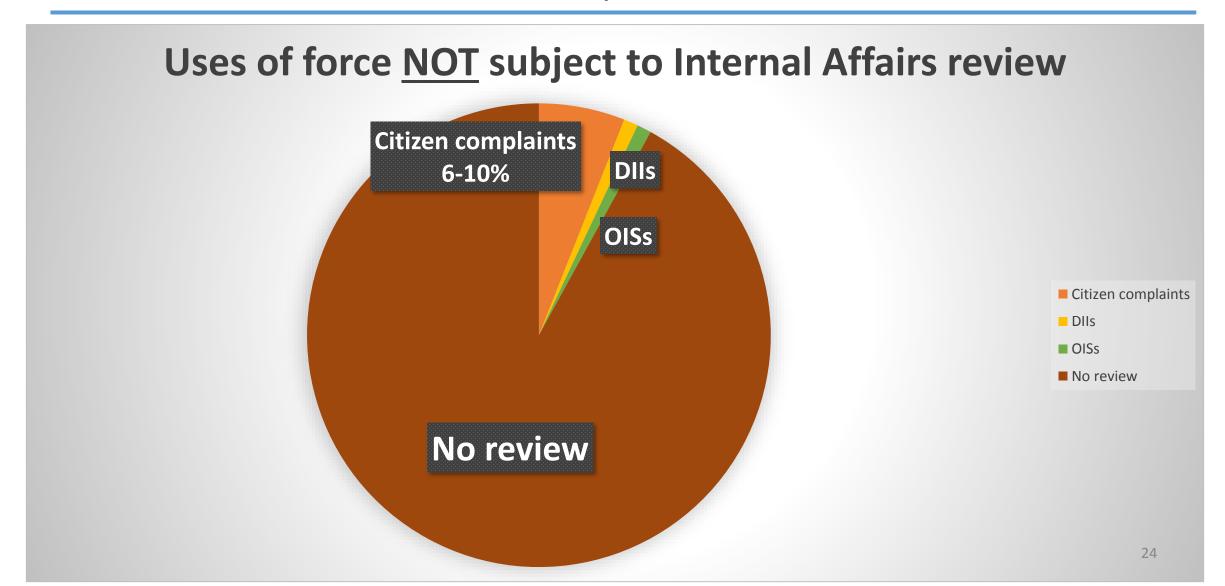
- Citizen complaints: On one of the incidents
- Fatalities: Four of the shootings were fatal
- Race: At least five appear to involve persons of color
- Suspect's weapon: None indicated in one; axe; vehicle; two involved a knife; caulking gun and vehicle; two involved firearms
- Mental health: Six reportedly involved individuals in mental health crisis

Considerations as to whether IPA should audit Internal Affairs' investigation of shootings, deaths, and deadly force:

Against expanded authority	For expanded authority
District Attorney's Office investigates and publishes a detailed report on every fatal officer-involved shooting (OIS)	 DA conducts only a criminal investigation (IA does its own investigation) DA publishes only regarding <i>fatal</i> incidents SJPD and DA co-lead the investigation
IPA has some access to documents on shootings for the policy review session	90-day review session pertains only to policy, not officer misconduct; sessions are closed/confidential
SJPD issues a press release about every officer-involved shooting	The press releases are issued before a full investigation occurs and often describe circumstances or use language that indicates the shooting was justified
	Responsive to community concerns regarding the most serious incidents, strengthens focus on accountability

Auditing: Comparison to other IPAs

Authority	Charter change?	BART	Denver	Sonoma	San José
AUDITING					
Audits Department- Initiated Investigations	YES	X	X	X	
Audits IA investigations of officer-involved shootings	YES	X	X	X	



What does access to records mean?

- 1. Officers' police reports, including use of force response reports
- 2. Supervisor's use-of-force investigation report, including photos
- 3. Body-worn camera footage of use of force
- 4. Body-worn camera footage of supervisor's investigation, including interviews with officers and suspect
- 5. Command-level review memos

L 2605.5 - COMMAND OFFICER RESPONSIBILITY BY USE OF FORCE CATEGORY (Oct. 2017)

- Category I Use of Force: "Supervisors shall investigate"
- Category II Use of Force: Command officer responds to the scene, documents, and may direct transmittal of Command Review memo for review by Chief or Assistant Chief.
 - E.g., TASER, impact weapons, OC spray.
- Category III Use of Force: "The command officer shall complete and submit a Command Review memorandum . . . up the chain of command"
 - E.g., impact weapon or projectile impact weapon to the head; kicks to the head; four or more officers use force; bone fracture; dog bite; carotid restraint; loss of consciousness; hospital admission.
- Category IV: "Officer-involved incidents," e.g., shootings

NOTE: IPA does not have access to these Command Review memos.

Access to records for systemic review: Critical Incident Review

"The police auditor shall participate in the police department's review of officer involved shootings." (Ordinance)

Authority / Requirement

Notification: IPA is notified of an incident, can respond to the scene and be briefed by IA Commander

Review panel: IPA can participate in shooting review panel. **IPA is provided with pertinent documents.** The purpose of the panel is to determine whether training or equipment needs exist or if changes to SJPD policies are warranted.

NOTE: As with access to these shooting-related documents, access to other records would be unrelated to auditing misconduct investigations. The CHARTER does not speak to such access.

Access to records for systemic review: Purposes

How does greater access enhance IPA's oversight?

- Transparency / reporting: Allows IPA to analyze trends and patterns
- Policy: Aids IPA policy making role through trend / pattern analysis
- Outreach: Aids IPA responsiveness to community suggestions / concerns
- Accountability: IPA can flag incidents that should receive additional review by SJPD

Considerations as to whether IPA should have additional access to records:

Against expanded authority	For expanded authority
Data: SJPD has recently published comprehensive quantitative data / data "dashboard" regarding use of force	 Data will be quantitative / aggregate, not narrative Much of the data published at SJPD discretion No independent review of reliability of data
New policy on high-level review of serious uses of force (Categories I-IV)	New policy on high-level review of serious uses of force could change; limited to most serious force
Oversight: IPA has been effective in policy, outreach, and reporting functions	Much larger set of records aids in IPA's policy, outreach, and transparency/reporting roles

Expanded IPA authority: Resources

Can the IPA take on these additional responsibilities?

- IPA already undertakes substantial data analysis IPA would shift to using broader dataset rather than just the complaint data
- IPA could have discretion in evaluating which Department-Initiated Investigations to audit (e.g., those that are exonerated or unfounded)
- IPA currently audits 100% of citizen complaints, though it is required to audit only 20% of all non-force complaints

Summary of possible additional authorities

Authority	Charter change?	BART	Denver	Sonoma	San José
AUDITING					
Audits Department-Initiated Investigations	YES	X	X	X	
Audits IA investigations of officer-involved shootings	YES	X	X	X	
RECORDS: Access to use of force records	?	X	X		