



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 11/03/2020

ITEM NO: 10

DATE: October 27, 2020
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Implement the Following Police Reforms:

- a. Authorize the Town Manager to establish an Independent Police Auditor function;
- b. Work with the County of Santa Clara Regarding Responses to Mental Health and Homeless Calls for Service;
- c. Add a Limit Dated (Two Years) Community Service Officer Position to the Police Department to Respond to Non-Emergency Calls at an Annual Cost of Approximately \$148,000 and Authorize a FY 2020/21 Expenditure Budget Adjustment in the Amount of \$68,461 from Available General Fund Capital/Special Projects Reserve; and
- d. Acknowledge the Timeline for Police Stop Data Availability and Transparency

RECOMMENDATION:

Implement the following Police reforms:

- a. Authorize the Town Manager to establish an Independent Police Auditor function;
- b. Work with the County of Santa Clara regarding responses to mental health and homeless calls for service;
- c. Add a limit dated (two years) Community Service Officer to the Police Department to Respond to non-emergency calls at an annual cost of approximately \$148,000 and authorize a FY 2020/21 expenditure budget adjustment in the amount of \$68,461 from available General Fund Capital/Special Projects Reserve; and
- d. Acknowledge the timeline for Police stop data availability and transparency.

BACKGROUND:

Since late May after the murder of George Floyd by Minneapolis Police, the Town has received considerable public input regarding the Town's Police budget and ideas for potential Police

Reviewed by: Assistant Town Manager, Police Chief, Town Attorney, and Finance Director

BACKGROUND (continued):

reforms. Input has been provided via email, and public comment at the General Plan Update Advisory Committee and Council meetings. In addition, the Town held a community workshop on September 8 facilitated by retired Judge LaDoris Cordell to discuss potential reforms. All of this input and additional public testimony were considered by the Town Council on September 15 for an agenda item regarding potential Police reforms. After discussion, the Council unanimously approved four motions to direct staff to:

- Pursue a model of police oversight and authorize the Town Manager to work with Judge Cordell to develop ideas to be reported to Council;
- Explore mental health and social services options and to report findings to Council;
- Investigate the use of non-sworn personnel including ramifications for staffing and budgeting and to report findings to Council; and
- Pursue increased transparency and data accessibility by the public, including reporting stop statistics and apples-to-apples data comparisons with other jurisdictions, and to report findings to Council.

This report responds to the Council direction and requests Council action to proceed with implementation in all four areas.

DISCUSSION:

Independent Police Auditor Function

As directed by the Town Council, the Town Attorney and I have been working with Judge LaDoris Cordell to determine an appropriate approach for a jurisdiction of our size to establish an independent, objective, fair, and transparent review process of citizen and internal complaints regarding the conduct of sworn Police Department personnel. If it is the preference of the Council, the process could apply to all Police personnel. Attachment 1 details the proposed Independent Police Auditor approach which consists of selecting approximately five qualified investigators who would serve on a rotating basis to independently investigate complaints submitted by the public or Town employees.

The Town would promote the IPA function and the Town's commitment to independent, thorough, and fair review of all complaints via social and print media. The complaint form would be available at the Town Clerk's website and in the Clerk's Office, instead of our current practice of it being available solely on the Police Department website.

Attachment 1 describes the review process for each complaint and the role of the Town Attorney in overseeing the work of the independent investigator. Once the investigation is complete to the satisfaction of the Town Attorney, the Police Chief would determine the appropriate discipline of the Officer.

DISCUSSION (continued):

Every year, the Town Attorney would compile the summaries of the complaints and findings (without names or confidential information) prepared by the rotating investigators into an Annual IPA Report. This would be submitted to the Town Council, posted on the Town's website, and made available to anyone who requests it. The Mayor may choose to agendize the report for discussion by the entire Council. Judge Cordell will be participating in the Council meeting on this item.

Coordination of Mental Health Response with the County

The Santa Clara County Police Chiefs Association is fully aware of the scope and impact of responding to community members in mental health crisis, including many of the homeless population. It is widely agreed that Police Officers, even those who have undergone Crisis Intervention Training are not the best option for offering appropriate assistance in these situations.

For the last two years, Chief Decena has represented the County Chiefs in a working group that meets on a monthly basis with the Director and other representatives from Santa Clara County Behavioral Health Services as well as Santa Clara Valley Medical Center Emergency Psychiatric Services. The focus of the meetings is to facilitate the deployment of mental health professionals in field response to individuals in crisis and promote a multi-disciplinary approach to ensuring these individuals get ongoing assistance to prevent recurrence.

Behavioral Health Services has struggled to hire the necessary number of clinicians to staff the two primary programs: Mobile Crisis Response Teams (MCRT-Mental health workers on-call to respond to field situations with law enforcement or resulting from calls from the public) and Psychiatric Emergency Response Teams (PERT-Pairing a clinician with a specially trained Police Officer to work in the field as a team and respond to all mental health calls for service). MCRT is finally fully staffed with eleven clinicians who are available Monday through Friday, 8:00 a.m. to 8:00 p.m. PERT is still in development, hiring the necessary clinicians and training the partner Police Officers.

The Town has recently been using the MCRT program and has found the partnership effective. Given the recent strides with the County, staff recommends that we continue the partnership and support the County's efforts to strengthen the programs.

Use of Non-Sworn Personnel for Response to Non-Emergency Calls for Service

Use of non-sworn personnel to respond to non-critical calls for service is already in place with the Community Service Officer (CSO) Intern program. CSO Interns are part-time employees,

DISCUSSION (continued):

typically college students, who perform a variety of field assignments and administrative duties that do not require the legal authority of a sworn police officer.

The Department is proposing to expand the program by creating an additional full-time CSO position that would absorb additional duties and serve as a lead position for the part time CSO's. Principal duties of the full time CSO may include: response to non-hazardous calls for service; report writing and follow up of specified low-level property crimes and other non-criminal related incidents; parking and vehicle abatement program oversight and enforcement; traffic control duties; crime prevention activities; and other law enforcement services and duties as required. The estimated cost for salary and benefits for the full time CSO is \$148,000 annually.

Transparency and Data Access

Implementation of the newly purchased RIMS Computer Aided Dispatch/Records Management System (CAD/RMS) over the last month will allow the Department to comply with the requirements of Assembly Bill 953: Racial and Identity Profile Act of 2015 (RIPA) by the specified deadline of 2023. RIPA mandates that each state and local agency that employs peace officers shall annually report to the Attorney General data on all stops conducted by that agency's peace officers for the preceding calendar year. The data include time, date, and location of the stop; reason and resulting action of the stop; perceived race or ethnicity, gender and approximate age of the person stopped (based solely on observation as officers are disallowed from requesting the information); etc.

Since all California law enforcement agencies are required to adhere to the same parameters for data collection, creating apple-to-apple comparisons with other jurisdictions throughout the County will be greatly simplified.

The Department has already begun to collect stop data in an abbreviated form (perceived race; gender and approximate age) and this will be collated for presentation to the Town Council and the public by July 2021. The information will then be posted to the Department's website and augmented with future annual reporting periods.

CONCLUSION:

Implementation of the four reforms would continue to demonstrate the Town's commitment to transparency as well as investing in a highly skilled and compassionate Police Department that provides exceptional services to the Los Gatos and Monte Sereno communities.

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SUBJECT: Implement Police Reforms

DATE: October 27, 2020

COORDINATION:

Preparation of this report was coordinated with the Town Attorney, Police Chief, Finance Director, and Human Resources Director.

FISCAL IMPACT:

The Independent Police Auditor function has fiscal implications. Based on past experience with independent investigations, each investigation may cost from \$5,000 to \$30,000 depending on the nature of the complaint. At the time of the approval of the contracts with the independent investigators, the Council will be asked to take appropriate budget actions to augment the Town Attorney's budget to cover potential expenses.

The Community Service Officer position also has fiscal implications of approximately \$148,000 per year. As a limited dated position for two years, the Town will have the flexibility to assess our budget capacity in future years. To create this position now, the Council is being asked to take a budget action to utilize \$68,461 available in the Town's Capital/Special Projects Reserve to cover the anticipated fiscal impact for the remainder of FY 2020/21. Funding to support the second year of the limited dated position will be incorporated into the proposed FY 2021/22 Operating Budget for Council consideration.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.

Attachment:

1. Independent Police Auditor Function

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Independent Police Auditor Complaint Process

Purpose: To establish an independent, objective, fair, and transparent review process of citizen and internal complaints regarding the conduct of sworn Police Department personnel.

Process:

- 1. Select 4 to 5 qualified professionals to perform the services of an Independent Police Auditor (IPA) on a rotating basis.**
 - a. The Town issues a Request for Qualifications (RFQ) with the intention of selecting approximately five consultants. The RFQ process would occur every five years or on a schedule consistent with the Town's procurement procedures.
 - b. Qualifications include, but are not limited to, retired/former City Attorneys and/or attorneys with expertise in employment law, criminal procedure, and the Public Safety Officers Procedural Bill of Rights. Retired Police Command Officers who conduct Police agency investigations as a bona fide business would also be eligible to apply.
 - c. Candidates need to demonstrate that they have no connection to the LGMSPD and its staff; document their ability to work efficiently and effectively to investigate complaints thoroughly, objectively, and promptly; and prepare reports of their investigation methods, facts, and findings presented in a consistent format developed by the Town. All candidates would need to provide at least three references.
 - d. The Town Attorney and a Town-designated outside expert [e.g. Judge LaDoris H. Cordell (ret.)] will review all candidate submittals, determine if interviews are necessary, conduct the interviews, and select the rotating investigators. The Chief of Police may review all submittals and provide comments to the Town Attorney and outside expert for their consideration in the interview and selection of rotating investigators.
 - e. The Town will enter into a contract with each investigator in the role of the Town's IPA, clarifying that the Town intends to rotate the complaint work to various investigators to balance workload, ensure independent review, and maintain timely performance. Work of the investigators is overseen by the Town Attorney. Investigators will be paid for the work completed to the satisfaction of the Town. Poor performance in terms of timeliness, thoroughness, or other factors will result in removal from the list of rotating investigators.

- 2. Promote the Independent Police Auditor function and the Town's commitment to independent, thorough, and fair review of all complaints.**
 - a. Update the online complaint form to ensure it is user friendly and clarify that complaints are directed to the Independent Police Auditor and not the Police Department.
 - b. Move the complaint form from the Police Department website to the Town Clerk's website (Maintain a link to complaint form on the Police website for residents who may navigate to the Police site.)
 - c. Produce hard copies of the complaint form and make them available at the Clerk's Office.

- d. Promote outreach about the complaint form and the complaint process to the public using social media, print media, flyers, and other methods.

3. Implement a consistent, fair, thorough and independent analysis of all citizen and internal (Town staff member/Police Department personnel) complaints.

- a. All complaints are submitted to the Town Clerk.
- b. Complaints will fall under the following classification system:
 - i. Policy Complaint: A Policy Complaint is defined as a complaint in which a sworn Officer took action that was in compliance with policies and procedures, but for which the complainant believes the policy is inappropriate or invalid. In these cases, there is no indication a complaint is made specifically against the Officer taking the action.
 - ii. Conduct Complaint: A Conduct Complaint is defined as a complaint in which a complainant files an allegation against a sworn Officer, which if true would indicate the Officer violated (1) any local, state, or federal law or, (2) any Department policy or procedure, and where such actions could result in the involved Officer receiving disciplinary action.
 - iii. Non-Misconduct Concern: After receiving a complaint alleging misconduct by a sworn Officer, a preliminary investigation by the IPA may indicate that the allegations did not involve a violation of (1) any local, state or federal law or, (2) any Department policy or procedures. Such a complaint will be re-categorized as a Non-Misconduct Concern, meaning it does not meet the criteria outlined in the definition of a Conduct Complaint. Recategorizing complaints as Non-Misconduct Concerns allows the Department to track issues that may indicate a need for training for sworn personnel and/or community outreach/dialogue.
 - iv. Exceptional Clearance Complaint: When the initial investigation of a complaint reveals that the misconduct alleged in the complaint did not occur, based on immediately available evidence and/or recorded media, the complaint is categorized as an Exceptional Clearance Complaint. The investigator completes formal written documentation of the incident using the designated report format to explain why the case was cleared exceptionally.
 - v. Incomplete: A matter in which the complaining party either refuses to cooperate or becomes unavailable after diligent follow-up investigation. In such matters, the IPA may further investigate the matter depending on the seriousness of the complaint. If there is not the availability of sufficient independent evidence to continue, the complaint will be classified and found Incomplete

- c. Upon receipt, copies of the complaint are sent to the Town Attorney, Town Manager, Human Resources Director, and Chief of Police.
 - i. The Chief of Police will direct the Support Services Captain or designee to collect all relevant evidence related to the complaint (reports, video footage, audio recordings, Computer Aided Dispatch printouts, etc.)
 - ii. The Chief of Police determines if the Officer who is the subject of the investigation should be placed on administrative leave during the investigation in consultation with Town Attorney and Human Resources Director.
- d. The Town Attorney selects an investigator from the list of IPA contractors to conduct an independent investigation into the complaint with any necessary parameters, such as timeline for completion.
- e. The IPA contacts the complaining party (by phone preferably), introducing himself/herself as the Independent Auditor for this complaint and outlines the process. This contact is followed by a short letter on his/her own firm's letterhead with the same content.
- f. After consulting with the Town's Human Resources Director regarding appropriate content, the IPA sends formal written notice on his/her own firm's letterhead to the affected Officer informing them of the complaint, investigation process, and other information. All interaction between the IPA and the affected Officer will occur within the parameters outlined in California Government Code Section 3300-3312: Public Safety Officers Procedural Bill of Rights Act.
- g. The IPA conducts the investigation by interviewing the complaining party, the Police Officer named in the complaint, and others as appropriate; reviewing body camera and in-car video; and reviewing other relevant materials.
- h. The IPA writes a report, documenting type of complaint, the methods used to investigate the complaint, the facts pertaining to the complaint, findings associated with each element of the complaint, and rationale for the findings.
- i. The IPA report is submitted to the Town Attorney and Human Resources Director to ensure the facts support the findings.
- j. Once the IPA report meets the approval of the Town Attorney and if any of the allegations are sustained, it is submitted to the Chief of Police to determine appropriate discipline.
 - i. If after reviewing the report and its findings, the Chief of Police disagrees with the findings, the Town Attorney will consider the Chief's concerns and determine if the investigator needs to do additional work to substantiate the findings.
 - ii. In the event that professionals disagree on the findings, the Town Attorney may ask another investigator to evaluate the facts, materials, and methods and determine its own independent conclusions/findings. The second IPA analysis must be prepared to the satisfaction of the Town Attorney consistent with the procedure for the first independent analysis. If the second IPA report results in a different set of findings, the Town Attorney will determine which analysis stands.

- iii. The Chief of Police will determine the appropriate discipline for the Officer based on the findings. Discipline may need to be coordinated with the Human Resources Director to ensure appropriate appeal/Skelly rights of the employee
- iv. The Chief of Police will notify the Officer of the intended discipline and offer appropriate appeal rights.
- k. The IPA writes a letter on his/her own firm's letterhead informing the complaining party of the completion of the investigation and the findings of the investigation. Confidential information will not be provided.
- l. If the allegations are not sustained, the IPA writes a letter on his/her own firm's letterhead informing the affected Police Officer of the completion of the investigation and the findings. Confidential information will not be provided.
- m. The IPA writes a brief summary of the complaint (the nature of the complaint and key "facts" with no names or sensitive information provided), investigation steps, and findings for inclusion in an annual report to the Town Council and community regarding the work of the IPA.

4. Provide an Annual IPA Report to the Town Council and the community to foster transparency and accountability.

- a. The Town Attorney compiles the summaries from the IPA investigators into an Annual IPA Report.
- b. The Annual IPA Report is submitted to the Town Council, posted on the Town's website, and made available to anyone who requests it. The Mayor may choose to agendize the report for discussion by the entire Council.

5. Updates to this process may be done as needed by the Town Manager, consistent with other Town procedures.