

**CITY COUNCIL MEETING
TUESDAY, NOVEMBER 5, 2019**

PRESENTATIONS

ITEM 5 – RPT 19-047

**RESPONSE TO CITY COUNCIL REFERRAL:
HAYWARD POLICE DEPARTMENT USE OF
DEADLY FORCE – INDEPENDENT
INVESTIGATIONS**



HAYWARD POLICE DEPARTMENT
Use of Deadly Force – Independent
Investigations

Summary



- June 4, 2019 – Council approved referral memorandum
- Directed staff to evaluate and report on investigative options external to HPD
- Specific to incidents involving an OIS resulting in a fatality
- If an external investigative policy is adopted, the OIS of Agustin Gonzalez would be included within policy framework

Background



- OIS incidents across the nation have led to increased calls for transparency
- Newly implemented legislation in California
- SB 1421 – Records disclosure anytime an Officer discharges firearm at a person
- AB 748 – Disclosure of video and audio recordings any time an Officer discharges firearm at a person

Background (cont.)



- HPD meets or exceeds nationally recognized best practices in policing
- Achieved accreditation through CALEA in 2011 and annually since then
- Careful evaluation of all policies, procedures, practices
- Evaluators certified through CALEA and are from other parts of the country
- HPD's participation in this process is voluntary

Background (cont.)



- HPD use of force policy in place, which includes use of deadly force
- Policy meets nationally recognized CALEA standards
- Policy reflects standards set forth under California law
- Policy reflects standards set forth in newly adopted legislation (AB 392 and SB 230)

Background (cont.)



- Additional voluntary transparency measures have been taken by HPD
- Creation of a Community Advisory Panel (CAP)
- CAP will allow community and HPD to engage in dialogue regarding key community issues, including OIS and use of force
- Strengthen relationships through respectful, inclusive exchange of ideas

Investigative Models



- Investigation by the Alameda County District Attorney's Office (in place)
- Investigation by plaintiff's attorney(s) during civil lawsuit process (in place)
- Investigation by the State DOJ/AG
- Investigation by an independent auditor
- Investigation by a civilian review board or police commission

Current Investigative Model



- Concurrent investigations by HPD and Alameda County District Attorney's Office (3 separate investigations)
- HPD – criminal investigation into actions of involved subject(s)
- HPD – administrative investigation into actions of Officers (policy compliance)
- DA's Office – criminal investigation into the actions of Officers

Current Investigative Model



- **PROS:**
 - Established protocol w/framework in place
 - Protocol followed by all agencies in Alameda County
 - Nationally recognized as a best practice by CALEA
 - Investigations by well-trained, experienced professionals
 - No additional cost
 - Provides for accountability

Current Investigative Model



- **CONS:**
 - Perception by some these investigations are not independent or are biased (because a relationship exists between HPD and the District Attorney's Office within the criminal justice system)

Civil Lawsuit Model



- **PROS:**
 - Established protocol w/framework in place
 - Plaintiff has access to evidence/documents related to OIS
 - Plaintiff's attorney(s) can depose witnesses, including involved Officers
 - Plaintiff can present own experts, narrative, context regarding OIS
 - Truest form of an independent investigation
 - Provides for accountability

Civil Lawsuit Model



- **CONS:**
 - Lengthy process, which takes time (sometimes years) to complete

State DOJ/AG Model



- **PROS:**
 - Established protocol w/framework in place
 - Investigations by experienced, well-trained law enforcement professionals
 - No direct relationship w/in the criminal justice system
 - Could improve trust between HPD and community
 - Provides an additional layer of accountability

State DOJ/AG Model



- **CONS:**
 - Potential financial impact to City (could vary based upon complexity of incident)
 - Does not supersede District Attorney's political or legal authority
 - DOJ/AG could decline request

Independent Auditor Model



- **PROS:**
 - Established models in place in other agencies
 - Liaison between HPD and community
 - Liaison between HPD and City Council
 - Could improve trust between HPD and community
 - Provides an additional layer of accountability

Independent Auditor Model



- **CONS:**
 - Significant financial impact to City (creating and funding a new position)
 - Average number of HPD OIS incidents would not justify the position
 - Perception by some the position would not be independent as it would be within HPD
 - Could raise City Charter conflict regarding independence and authority

Civilian Review Board Model



- **PROS:**
 - Established models in place in other agencies
 - Liaison between HPD and community
 - Liaison between HPD and City Council
 - Could improve trust between HPD and community
 - Provides an additional layer of accountability

Civilian Review Board Model



- **CONS:**
 - Significant financial impact to City (depends on model – CRB member compensation, training, etc.)
 - Legal challenges from labor groups
 - Inconsistent results and recommendations have minimized their value
 - Average number of HPD OIS incidents would not justify CRB

Civilian Review Board Model



- **CONS:**
 - Investigations or recommendations could be made by CRB members with no investigative experience
 - Underlying agendas or pre-conceived notions about HPD could influence outcomes

Staff Recommendation



- City Council adopt a policy which directs the City Manager to request an investigation by the DOJ/AG whenever an HPD OIS results in a fatality

Questions & Discussion



ITEM 6 – PH 19-089

**ADOPT A RESOLUTION OF INTENTION TO
INTRODUCE AN ORDINANCE APPROVING AN
AMENDMENT TO THE CONTRACT BETWEEN
THE CITY OF HAYWARD AND THE CALIFORNIA
PUBLIC EMPLOYEES RETIREMENT SYSTEM
("CALPERS") FOR LOCAL SAFETY - POLICE
EMPLOYEES AND AUTHORIZING THE CITY
MANAGER TO EXECUTE THE CONTRACT**

Adopt a Resolution of Intention – Approve Contract Amendment with CalPERS

Maria Hurtado, Assistant City Manager
November 5, 2019

Background

- **On July 9, 2019** Council approved the extension and amendment of MOU between City and HPOA for July 1, 2018 to June 30, 2024.
 - **ONE OF THE TERMS:** Addition of an enhanced Pre-Retirement Option 2W Benefit for Safety Police Employees in HPOA.

Addition

- **Pre-Retirement Option 2W Death Benefit***
 - Provides monthly allowance = to amount employee would have received had he/she retired under a service retirement and elected Option 2W.
 - Option 2W:
 - reduces highest payable benefit (Unmodified Allowance) but provides a lifetime of monthly benefits to designated beneficiary.

*Applies to BOTH HPOA & HPMU

Next Steps

Complete CalPERS Contract Amendment Process.

- **Dec. 3, 2019:** Public Hearing on Final Reading and Adoption of Ordinance
- **Jan. 2, 2020:** Effective Date of Ordinance
- **Jan 6, 2020:** Effective Date of Contract Amendment

Recommendation

- Adopt a Resolution of Intention to introduce an Ordinance approving an amendment to the City of Hayward's contract with CalPERS for Local Safety – Police Employees and
- Authorizing the City Manager to execute the contract.

Questions

