

To: Charter Amendment Committee
From: Stephen Downing, et al
Subject: Comment, Analysis and Recommendations relative to Agenda Item 2 (22-0658) to establish a Police Oversight Commission and add a Director of Police Oversight position.

Comment, Analysis and Recommendations

The current draft for a Charter amendment to strengthen civilian oversight of the LBPD erodes - rather than improves- the citizen oversight authority currently assigned to the Citizen Police Complaint Commission.

As written, the current Citizen Oversight Commission (CPCC) is completely neutered and the proposed amendment strengthens nothing.

The transparency promised in the reconciliation resolution is completely absent.

The Director's authority - as currently proposed - is a toothless functionary who will prepare shelf studies.

There is no mention of what happens if the Director finds flaws.

The Director has no authority to write and publish an independent report, as is the case with the inspector general model that has been adopted by many cities.

The provision to restrict investigations into certain matters outside the defined scope of police operations “Upon request of the city manager” is highly limiting to an effective oversight authority.

The “oversight” function appears to be transferred to City Management and turns the citizen commissioners into nothing more than PR pawns and “public educators” for city hall.

A major reason the CPCC is a failure is because of the city manager’s veto power.

Rather than having complete real-time access to LBPD cases and documents, the Police Oversight Director will have access only to "relevant" records.

Who decides what is and is not relevant?

Past practice has been either the City Manager

or the City Attorney deciding those issues and the decision was rarely in favor of transparency.

As written, the entire proposal seems pointless because all the power is left in the hands of the City Manager, who we know ignored the majority of CPCC recommendations in the past - and most recently - failed to properly adjudicate investigations related to high level command misconduct.

The reporting structure and job responsibilities of the Director position are vague, giving the opportunity for City Management to define as they see fit after the election.

A complete, detailed job description should be provided before this amendment goes to the ballot.

Comparison to City Auditor

The City Charter currently gives the City Auditor significant powers through the following two provisions:

- “The City Auditor shall be the general auditor of the City and of every department, commission and office thereof. The City Auditor shall have

the authority to conduct performance audits of City departments, boards, commissions and offices.”

- “In the performance of his or her duties, the City Auditor shall have timely access to all City records, including but not limited to financial records, contracts, documents, systems, files, property and other internal records, unless restricted or prohibited by law.”

In essence, the City Auditor can audit whatever or whomever she pleases, and can access any and all City records.

Based on the powers afforded to her by the City Charter, the City Auditor can perform all of the functions proposed for the Police Oversight Director duties (and, clearly, a whole lot more).

Unfortunately, the incumbent City Auditor Laura Doud – who makes the final decision to identify the audits that her auditors and investigators pursue – has steered clear of auditing the Police Department during most of her time in office.

According to Doud’s website, Doud’s office has issued a total of 137 reports of audits, studies

and reviews since her election in 2006. However, for the past 16 years, Doud has produced only 3 audits related to the Police Department:

- 2020 - Police Evidence Control Section Performance Audit
- 2015 - Police & Fire Public Safety Dispatcher Overtime Audit
- 2007 - Long Beach Police Efficiency Study (Doud outsourced this study to an outside consulting firm: Public Financial Management)

The two more recent audits have dealt with peripheral support functions in the Police Department.

Doud has steered clear of the department's core enforcement operations and its internal affairs system investigations in spite of the fact that the LBPD consumes the largest piece of the city budget.

The City Auditor has vast powers and authority. On the other hand, the proposed powers and responsibilities of the Police Oversight Director,

as well as the reporting structure, are very limited, highly vague, non-transparent, absent civilian oversight and limited to:

- Review only IA's intake of complaints.
- Investigate various issues only upon request of the City Manager or designee.
- Review all major use of force incidents, but the scope and objectives of such review are undefined.
- Prepare an annual report on statistical trends and special reports that are not identified or defined.
- Have access to only "relevant" Police Department records and data, not "all" records and data. It is unclear how "relevant" is defined and by whom.
- It is unclear to whom the Police Oversight Director reports. The Mayor and City Council appoints and has the power to fire the Director. The Police Oversight Commission only advises the Director. The City Manager requests certain investigations to be performed by the Director.
- While the Commission provides "input" on the Director's audit priorities, who has the authority to establish the annual audit plan?

Nowhere in the document is the identification of who (the Director or others) is responsible for establishing the overall purpose and goals, the actual job responsibilities, and performance metrics of the Director position.

It is unclear whether this is a new job classification, or an existing one (such as Management Analyst) with a working title of "Police Oversight Director" attached to it.

It is unclear whether the Director will have the support of assigned staff, and a sufficient budget. It is also unclear whether such staff will work directly under the Director, or are actually employees in the City Manager's Office.

Subpoena powers are not included as they are in the CPCC Charter. If the new Director is going to have the power to investigate OIS's and other major use of force events, that office is going to have to rely on the testimony and cooperation of medical personnel, civilian witnesses, the County Medical Examiner and the like to insure the department's investigation is thorough, searching, objective and trustworthy.

If they chose not to cooperate, there needs to be

an enforcement mechanism where a court would order the witness to attend or produce documents.

The Director nor the commission have the authority to direct needed policy change that become glaringly evident in the Director's investigations and it is clear from past performance that the City Manager does not perform that function, thus the LBPD - as admitted- has no policy or procedures manual that guides the work and procedures of its internal affairs functions or the chain of command review process that follows.

The proposed amendment does not address the historical refusal of the City Manager to punish bad behavior within LBPD.

The annual reports, interim reports, case-by-case adjudications etc. mean nothing because the City Manager has traditionally demonstrated little backbone in his adjudication of complaints that should properly be adjudicated by the chief of police acting within a policy framework established by a civilian oversight commission who has hire/fire authority over the chief.

Those holding the position of City Manager over the past two decades have proven themselves weak and ineffective as adjudicators, disciplinarians and formulators of internal policy to guide the internal investigation, review and adjudication processes.

There is also no evidence that the City Manager has ever attempted to reconcile the failure to sustain officer wrongdoing with a jury verdict against the City. No one in the city is even required to perform that function.

Long Beach would be wiser to use the current model that the City of L. A. Implemented via a citizen commission following the Rodney King scandal.

There is a great deal of transparency and accountability built into the Los Angeles model.

In that model the civilian commissioners have policy authority, the chief of police - who manages the police department - has disciplinary authority and the Inspector General - as hired and supervised by the civilian oversight board- has the authority to inspect and audit all police operations without limit, formulate policy,

enforce policy and make public the reports that follow.

This should be the aim of police/civilian oversight in Long Beach.

We look forward to the Charter Committee making the changes necessary to achieve a more effective oversight model in lieu of the one currently proposed - or as an alternative - to start over with a citizen blue ribbon commission to study and recommend a better model for our city than that which is currently on the table.

Sincerely,

Stephen Downing

Resident CD 3, LAPD Deputy Chief, (ret)

Please Note: The foregoing comment, analysis and recommendations represents and includes the cumulative input - as consolidated and written by Stephen Downing - from:

Tom Barham, LASO Lieutenant (ret), and
Constitutional Rights Attorney

Thomas Beck, Civil rights Attorney

Greg Buhl, Head Research Analyst, CheckLBPD

Joseph Gunn, LAPD commander (ret), former Assistant Los Angeles Deputy Mayor overseeing LAPD operations and former Executive Director for the Los Angeles Board of Police Commissioners.

Alex J. Norman, DSW, Professor Emeritus, UCLA Luskin School of Public Affairs

Ian Patton, Executive Director, Reform Long Beach

Lou Reiter, Co-Director Legal and Liability Risk Management Institute.

Joseph Rouzan, former LAPD commander and director for the City of Los Angeles Business Source Program, former VP and Chief of Staff for the Brotherhood Crusade and former general manager of both the Baldwin Hills Crenshaw Plaza and Hawthorne Malls