



MAKING DEMOCRACY WORK

Policing Oversight and Policy Reform

PART 1—CITY OF SACRAMENTO

OCTOBER 2020

The League of Women Voters of Sacramento County

Community Policing Increases Public Safety

Community members and officers are safer when communities and police departments collaborate to co-produce and implement a vision of public safety for all members of a community, and when police officers treat people fairly and respectfully.

Police officers are public servants and must be deeply engaged with all members of the communities they serve to ensure safety for all.

That cannot be accomplished without strong relationships with, and accountability to, communities.

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EXECUTIVE SUMMARY

The mission of the League of Women Voters is to empower voters and defend democracy. We promote informed, active participation in government, work to increase the understanding of major public-policy issues, and influence public policy through education and advocacy.

In June 2019, the League of Women Voters of California (LWVC), our state League, adopted a policy position on Criminal Justice.¹ On the basis of this adopted position, LWVC supported and advocated for the passage of the California Act to Save Lives, 2019 (Assembly Bill 392, Weber). AB 392 became effective January 2020. The companion bill, SB 230 is due to be implemented by January 2021.

Given the tragic death of Stephon Clark when shot by Sacramento police, the League of Women Voters of Sacramento County² (LWVSC) was compelled to examine policing in Sacramento County. To begin our work, the LWVSC formed a committee to focus specifically on the policing-practice components of the LWVC's Criminal Justice Position and determine whether the Sacramento Sheriff's Department and the Sacramento Police Department (SPD) were complying with AB 392. Due to challenges in verifying the SPD's AB 392 compliance, we separated our work into two parts. This report represents Part 1—City of Sacramento.

The need to review and evaluate the SPD's policing policies and practices was magnified by the global outcry against anti-Black racism which arose after the police killing of George Floyd in Minneapolis, Minnesota, in May 2020. In our view, systemic racism compels every community to enact immediate and substantial reforms to re-envision public safety.

In preparation for this report, the LWVSC observed public meetings, reviewed policing policies and practices, studied areas for improvement, and developed recommendations for action. Specifically, we reviewed SPD's General Order 580.02 Use of Force revisions from the September 18, 2019, through September 17, 2020. This executive summary provides an overview of our findings and recommendations that highlight needed collective leadership on the city council, policing accountability, transparency and community engagement.

Most notably, these recommendations underscore those already made by the California Department of Justice (DOJ), and the city's Sacramento Community Police Review Commission (SCPRC). The report relies on input from key SPD staff members regarding AB 392 and, most significantly, findings the DOJ report (Phase II) released in July 2020. That report found, as did the LWVSC, that the SPD has made noteworthy improvements since the Stephon Clark shooting. There is more work to be done.

FINDINGS

SACRAMENTO HAS THE GOVERNANCE IT NEEDS TO EFFECTIVELY OVERSEE POLICE REFORM

There is a need for fundamental change in how the city develops policing policies and police reform. This change requires more substantive community engagement and collective city council leadership using its existing city charter. The city council has the organizational structure in place, i.e., independent oversight and effective reporting responsibilities, to put the necessary policing policy reform in motion now. It has an Office of Public Safety Accountability³ (OPSA) under its direct authority; the Sacramento Community Police Review Commission⁴ (SCPRC), whose advice and recommendations it has sought; a city manager, city attorney and city clerk under its direct authority. Most significantly, it has the authority to direct its city manager with the support of the city attorney to *implement* policies on policing.

Sacramento, along with the rest of the country, is at a crossroads. Unlike many other parts of the country, Sacramento has the means and now needs only the political will to change.

SACRAMENTO HAS TAKEN POSITIVE STEPS

It is significant that Mayor Darrell Steinberg and Police Chief Daniel Hahn asked the DOJ to review the city's use-of-force policies after Stephon Clark's death. The SPD appeared to have welcomed the review and has addressed a number of its recommendations. Chief Hahn has stated his intent to meet the highest standards within SPD: "We invited the California Attorney General to examine our agency because the Sacramento Police Department isn't interested in being good enough, or in narrowly complying with the laws and policies governing our work. We continue to seek ways to be a leader in law enforcement and to set an example of transparency, community involvement, and constant improvement."⁵

It is encouraging to note that the SPD is consulting with experts from well-respected academic institutions in California and nationwide, as well as the Center for Policing Equity. It is also encouraging that the city sought advice from Management Partners. The firm produced a government efficiency report and recommendations for the city in March 2020. Among other things, the report addressed police department overtime use and the effects of binding arbitration on costs.

The SPD also welcomed the LWVSC's review of their use-of-force policy and was willing to address our questions. We found, as did the DOJ, that the SPD is interested in improvement. For example, the SPD has implemented important changes in practices such as body-worn cameras and the release of recordings and information after use-of-force events.

Equally significant is the fact that the city council established the OPSA and the SCPRC, each with a direct reporting relationship to the city council. Both entities have the potential to enhance community-government collaboration in policymaking and in oversight.

SEVERAL AREAS NEED SIGNIFICANT IMPROVEMENT

The City of Sacramento has not gone far enough in implementing the letter and spirit of AB 392. If the broader DOJ recommendations were fully implemented, the SPD would make significant improvements in accountability, transparency, community involvement and serve as a model for other police departments.

SACRAMENTO IS NOT IN COMPLIANCE WITH PROVISIONS OF AB 392

AB 392 is state law. After the Stephon Clark shooting, the city asked the DOJ to review the SPD's use-of-force policies. Subsequently, the DOJ conducted extensive research and produced two comprehensive reports (Phase I & Phase II) specifically addressing use-of-force policies and recommending changes. The DOJ urges the SPD to incorporate specific use-of-force language from AB 392. The SCPRC provided similar recommendations based on its own analysis and submitted the reports to the city council. The LWVSC supports DOJ and SCPRC recommendations to comply with AB 392 use-of-force policies.

SPD has not, as of yet, adopted important recommendations to ensure compliance with AB 392. The City of Sacramento along with all other local agencies with law enforcement responsibilities must adopt a use-of-force policy, specifying that use of deadly force is only to be used when "necessary" under certain circumstances, as defined in AB 392, particularly when it comes to incidents involving an imminent threat. The Sacramento community needs to hear from its elected officials why noncompliance with this aspect of state law continues to exist.

We also found, as the DOJ did, that SPD's policing policies and procedures, generally, are not sufficiently clear to hold officers accountable if they engage in misconduct at the level of excessive use of force. In addition, these policies have still not benefitted from grassroots community stakeholder input.

THERE ARE WEAKNESSES IN THE CITY'S POLICING OVERSIGHT

City executives report directly to the city council. They need effective direction and leadership if they are to be held accountable for policing reform. The OPSA and the SCPRC—established by, and reporting to, the city council—provide the vehicle for effective and coordinated police oversight. Both provide the requisite communication with the city council and community members to enable the collaborative decision-making that Sacramentans are urging the city to undertake. These entities are not functioning to meet the promise of their potential.

The council can improve the governance process by enforcing the city council rules of procedure, and thereby providing the foundations for accountability, transparency, community engagement and making informed policy decisions. Following these rules of procedure when appearing before city commissions and ad hoc committees is just as important.

We observed SPD presentations before both the SCPRC and city council. These presentations addressed AB 392 compliance and responses to DOJ recommendations. In each presentation, the reports were oral; there was no written staff report with analysis and recommendations for policy action by the city council. The city council's rules of procedure require such reports to accompany staff presentations. This facilitates public participation and informed decision making.

Just as glaring in the alternative has been the treatment of the SCPRC's annual reports. In this instance, the reports contained asked-for advice and recommendations for council action, but the council accepted these reports on a "receive and file" basis.

ADDITIONAL POLICING REFORMS WOULD IMPROVE PUBLIC SAFETY

Although SPD Chief Hahn's efforts to reform policing have been commendable, some of the challenges he faces in making cultural, accountability, and transparency advances are embedded in systemic limitations that constrain him. They include but are not limited to the California Peace Officers Bill of Rights and the Sacramento Police Labor Unit Agreement, which can severely limit an officer's accountability for misconduct.

Another constraint to policing reform is the Lexipol contract. To support approval of that contract, city staff stated that some of the SPD's policing policies are extremely outdated. To remedy the situation, staff recommended, and the council approved, a contract with Lexipol rather than hiring staff to update and maintain policing policies.

Choosing to hire a private company such as Lexipol to develop policing policy is problematic. The city council needs to oversee the development of SPD policies, procedures and systems as a matter of course, but hiring out that development means the city council needs more rigorous oversight, either directly or through the SCPRC and OPSA. In either case, this oversight will be meaningless unless it involves the community at large. The city council should reconsider the Lexipol contract annually until it expires in October 2024.

RECOMMENDATIONS AND CONCLUSIONS

SACRAMENTO HAS THE OPPORTUNITY TO BE A LEADER IN RE-ENVISIONING PUBLIC SAFETY AND IMPLEMENT BEST PRACTICES

While SPD has been involved in several use-of-deadly force incidents, it is the Stephon Clark police killing that brought national attention to Sacramento. It was that police use-of-deadly

force that ignited support for the passage of AB 392. Sacramento needs to lead the way in compliance with this state law.

With implementation of these recommendations, Sacramento has an opportunity to re-envision public safety. Under the leadership of Chief Hahn, the City of Sacramento could be on the road to developing well-trained, healthy, culturally competent police officers who are compensated according to the qualifications they exhibit in the execution of their duties. This vision requires leadership and support from the city council.

Recommendations in this report support recommendations of others who have advised the Sacramento City Council on its policing policies such as the DOJ, the ACLU, the SCPRC and the city's consultant, Management Partners.

Highlights of key the LWVSC recommendations in this report include:

- Hold a public hearing on AB 392 and the city's use-of-force policies requiring a written staff report with analysis of how the exact language of AB 392 is incorporated into the use-of-force policies with a specific recommendation that the city council codifies AB 392.
- Hold a public hearing on DOJ recommendations relative to its investigation of SPD.
- Direct the city manager to enforce the city council rules of procedure concerning staff reports and require all staff reports relating to police matters to be in writing with analysis, an impacted-community statement, status and recommendations for council action in adopting resolutions or ordinances as necessary.
- Direct the OPSA director to submit an annual report to the city council for a public hearing on the OPSA's work.
- Take back management's right to hold employees accountable through hiring, retention, discipline, promotion and terminations from the collective bargaining process and adhere to existing personnel rules established by the city charter and ordinances.
- Adopt a policing model that includes integral and sustained community input specifically addressing the racial disparities in SPD's stops, arrests, and uses of force, in policing the Black community.
- In overseeing compliance with SB 230, direct the staff to implement a procedural justice program, such as the one used by the City of Oakland.
- Direct the city manager to provide a written staff report specifically analyzing Management Partners' March 2020 recommendations to address police excessive overtime and best practices, and options for removing binding arbitration from the city charter.

Policing Oversight and Policy Reform

INTRODUCTION

BACKGROUND

In 2017, the League of Women Voters of California (LWVC) formed a Criminal Justice Task Force to review criminal justice positions from Leagues across the country. Based on their research, the task force drafted a Criminal Justice Position for consideration at the LWVC's June 2019 biennial convention.

Delegates to the June 2019 convention adopted the draft position and established criminal-justice reform as a priority issue statewide. After the convention, the LWVC formed a statewide Criminal Justice committee to work on this priority.

The policing focus of the LWVC Criminal Justice position is as follows:

Policing Practices - constitutional policies and procedures established by law enforcement with input from the communities they serve

- Ensure that crime prevention and promotion of public safety are the primary roles of state and local law enforcement agencies.
- Build public trust and positive community relationships through police engagement with community members.
- Encourage community participation in the development of policing policy.
- Provide police accountability via independent citizen oversight of law enforcement and publicly available data on officer conduct.
- Disseminate information to the public about policing policies, recruitment, procedures for complaint/com commendation, and the rights and responsibilities of citizens and officers in interactions with each other.
- Provide sufficient psychological services and counseling to meet stress-related needs of police personnel.
- Staff police departments to reflect the diversity of the communities they serve, and establish recruitment efforts that reflect this principle.
- Train police to identify individuals with mental health conditions, disabilities, or substance abuse/addiction, so that officers will request support from appropriate

medical and mental health professionals, with the goal of diverting those individuals into treatment instead of jail.

- Require all officers to render first aid to people who have been injured as a result of police action.
- Conduct comprehensive background checks, to include such history as PTSD, domestic violence, sex offenses and affiliations with domestic terrorist groups, for all applicants to law enforcement positions.
- Establish de-escalation, by using time, distance, communications and available resources whenever it is safe to do so, and anti-bias training, and ensure that all staff are provided with this training.
- Authorize minimal use of force during police encounters with the public, and consider deadly force only when necessary to prevent imminent death or serious bodily injury.

In keeping with its criminal justice position, the LWVC supported and strongly advocated for the passage of Assembly Bill 392 (Weber). AB 392 regulates the use of deadly force in California.

AB 392 is commonly referred to as the “Stephon Clark Law,” as it was precipitated by the SPD’s tragic killing of Clark in 2018. Clark’s death ignited not only nationwide protests, but also fueled the Sacramento community’s growing activism around policing issues, especially the use of deadly force.

Governor Gavin Newsom signed AB 392 and, a companion bill, SB 230 into law in 2019. AB 392 went into effect on January 1, 2020, and SB 230 will go into effect in January 1, 2021. SB 230 requires the Commission on Peace Officer Standards and Training (POST) to establish uniform, minimum guidelines for SB 392’s use-of-deadly force policies, and to develop and provide training for law enforcement officers based on the new use-of-force requirements.

While enactment of these laws represented an important step in policing reform, the LWVSC and other advocates for police reform still have work to do to ensure these laws are enforced in Sacramento County.

In 2019, the League of Women Voters of Sacramento County (LWVSC) adopted criminal-justice reform as a high priority at the local level and established the LWVSC Criminal Justice committee (committee).

To assess the status of implementation, the committee launched a fact-finding investigation, beginning with the Sacramento Police Department (SPD). We consider the implementation of these laws as critical in the Sacramento County Sheriff’s Department as it is in the SPD. However, based on issues arising in the city, we decided to conduct two separate studies and issue two reports—addressing the city first and the county in a subsequent report.

We began the investigation by engaging some of our Observer Corps members to attend public meetings focusing on the Sacramento City Council and the Sacramento Community Police Review Commission. We conferred with community partners; interviewed local officials and representatives of the SPD; researched online information; analyzed legislation; and studied numerous documents, news articles, and scholarly works pertaining to policing policy, governance, and public safety. (Appendix A)

As we proceeded with the investigation, we became aware of the profound changes invigorating the Sacramento community. Individuals once wary of speaking out found their voice. Grassroots organizations mobilized around causes and called for change. We listened to their collective message.

Our energized public seek to have a meaningful say in their own governance, and rightfully insist on participating directly in the decision-making that impacts their lives. Marginalized communities are refusing to remain silent. They are demanding accountability from public officials, not mere promises.

These voices grew stronger after the death of George Floyd in May 2020. His death—under the knee of one officer and involving three others—was video-recorded and distributed worldwide. This disturbing use of lethal force against a Black man prompted a worldwide awakening regarding systemic racism, which now compels immediate and substantial reform.

Initially, our investigation focused exclusively on local implementation of AB 392 and SB 230. After listening to the community's collective voice, the committee broadened the scope of this report. We found that the implementation of laws could not be evaluated without considering the changes occurring locally. This broader view led us to examine additional policing policies and practices in Sacramento; the functioning of governmental entities and their relationship to the community; the need for government-community collaboration; the call for a more holistic view of public safety; and the consequences of failure to reform. We conclude with a discussion of effective leadership for our community and recommendations for change to create a community that is safe for all.

FINDINGS

Following the civil unrest and protests decrying anti-Black racism, the City of Sacramento quickly refocused its efforts to reform its use-of-force policies, and these efforts are continuing. We made every effort to keep this report current. Following are the findings of our research.

SACRAMENTO HAS THE GOVERNANCE IT NEEDS TO EFFECTIVELY OVERSEE POLICE REFORM

Sacramento’s council-manager form of governance enables elected and appointed officials to work together collaboratively. With city council members representing neighborhood districts, the mayor representing the entire city, and an appointed professional city manager to administer the city’s day-to-day business, city government is empowered—and expected—to lead. Elected officials are responsible for creating and implementing good policy; voters hold them accountable for their success or failure.

The Sacramento community demands that its leaders be accountable for the city’s policing at both the “back-end” and “front-end.” As described in “Changing the Law to Change Policing: First Steps,” “back-end accountability” requires adequately monitoring and reviewing practices to ensure compliance, and adjudicating and addressing violation.⁶ Also crucial is “front-end accountability,” where local government proactively anticipates and implements best practices in law enforcement policy and practice.

Accountability means to hold leadership accountable for acceptable and unacceptable performance. For example, when the city manager does not meet measurable performance results, based upon the policy objectives of the city council, there should be consequences. Such a structure is usually put in place in the form of annual performance reviews. In a council-manager system, a council super-majority can quickly remove a city manager. It is the voters who remove the city council. Measurable performance results also support transparency.

The following city government entities are in place to ensure accountability in policing.

SACRAMENTO POLICE DEPARTMENT

As a municipal agency, the SPD, is “part of the overall service program of a city and should complement, support, and assist in the service delivery of the other city departments.”⁷ Its policies and procedures are determined by the police chief and must be consistent with the law, and also with policies of the city manager and city council. Because police work primarily concerns maintaining order and providing services to the community, these matters “are clearly local concerns requiring responsiveness to the public and accountability to community

priorities.”⁸ The city council will answer to the electorate based on the SPD’s actions because SPD is not an independent service and must work closely with the community as well as other governmental entities.

ELECTED OFFICIALS

City Council: The mayor serves as one of nine members of the Sacramento City Council. The other eight members represent specific neighborhood districts of Sacramento. This system of governance gives a voice to residents of each neighborhood while the mayor, as chief influencer, works collaboratively with the entire city council to assure equity for all city residents and the best interests of the city as a whole.

As a policy-making body, the city council is responsible for and can exercise authority over SPD policy through the city manager who acts in an advisory capacity to, and at the pleasure of, the city council.

APPOINTED OFFICIALS

City Manager: The city manager, under policy direction of the city council, has supervisory responsibility over the chief of police. As such, the city manager has oversight authority for SPD policy implementation, procedures and practices. Pursuant to the City Charter Section 100 of Article VIII, upon recommendation by the chief of police, the city manager can demote, dismiss, suspend, or prefer charges against SPD employees. More importantly, the city manager is responsible to ensure all laws and ordinances are enforced. This final responsibility clearly extends to policies and practices of SPD.

The city manager has assigned an assistant city manager to oversee the Police, Fire, and Emergency Management Departments.

City Attorney: As legal counsel to the city government, the city attorney exercises authority and influence. The city attorney also represents the police department in civil litigation or secures outside counsel.

Chief of Police: The chief of police controls, manages, and directs all members of the police department. The chief also recommends members of the force “for demotion or dismissal” and “can prefer charges against any officer or member.”⁹

The chief of police exercises authority over the department through SPD’s general orders, the policies governing every aspect of the department’s operations and actions. The general orders incorporate legal decisions, best practices, and community input. They ensure a professional workforce and help employees act consistently with training and national standards.¹⁰

Office of Public Safety Accountability Director (OPSA): The city council appoints the OPSA director to help the city council perform the oversight authority granted in Section 34 of the city

charter. This section states, ". . .the city council or any duly appointed committee of the members of the council may make investigations into the affairs of the city government and the conduct of any department, office, agency, officer, or employee thereof." Under that authority, OPSA accepts, audits, and provides an independent review of complaints involving public safety employees, including police officers. The chair of the city council Governance and Policy Ad Hoc Committee is the policy contact for OPSA.¹¹

Sacramento Community Police Review Commissioners (SCPRC): This commission (1) provides community participation in policing policies and procedures, and (2) monitors the implementation, evaluation, and sustainability of city policing initiatives and programs.¹² Members of the city council appoint representatives to the SCPRC.

As set forth in the city code, the powers and duties of the SCPRC are as follows:

- The commission shall advise and make recommendations to the city council regarding police policy, procedures, and best practices, including those related to community relations, hiring, and training in best practices.
- The commission shall review quarterly reports prepared by the office of public safety accountability consistent with California Penal Code section 832.7(c), relating to the number, kind, and status of all citizen complaints filed against police department personnel, to determine whether there are patterns of misconduct that necessitate revisions to any police policy, practice, or procedure.
- At least annually to report and make recommendations to the mayor and the city council regarding the activities of the commission and the Sacramento Police Department's efforts to strengthen bias-free policing and community-police relations.¹³

THE SACRAMENTO COMMUNITY

Sacramento voters, through their role at the ballot box, have the ultimate influence and authority over the elected officials who are accountable for the policies, procedures, and employee actions of the SPD. Voters have typically held officials accountable at the "back end" of policing policy. However, they are becoming increasingly concerned with holding officials accountable for the "front-end" of policing policy as well.

Community members want to ensure that SPD complies with existing law and holds its officers to the standards of that law. At the same time, they insist that Sacramento leaders engage in proactive policymaking that is responsive to all voices of the community, including those who have been largely excluded in the past. These goals can be achieved only with community participation in the policymaking process. Without community involvement, SPD's policies and practices are not likely to fully meet the public safety needs of the community.

While much needs to be done, Sacramento is already on the path toward increased accountability. Sacramento's elected leaders have signaled their support of reform. A vibrant civil society is calling for active participation in the process of moving forward; and some institutional structures already provide a strong foundation for collaborative policymaking. Using evidence-based research, best practices recommended by policing experts, input from community members experienced with police, and cost-benefit analyses of different approaches—and carrying out these efforts with unprecedented transparency—Sacramento is ready for positive change.

THE CITY HAS TAKEN POSITIVE STEPS

THE CITY COUNCIL HAS RESPONDED QUICKLY TO RECENT EVENTS

George Floyd's killing and the ensuing civil unrest prompted the mayor to propose new programs to address mental illness and appropriate placement of public safety service calls, and an inspector general position in the OPSA. The council supported the proposals, approving the creation of a new 911 call center and a \$5 million social service program in the police department, and the establishment of an inspector general position within OPSA.

THE SPD HAS BEEN OPEN TO IMPROVEMENT

After the 2018 fatal shooting of Stephon Clark by members of the SPD, Attorney General Xavier Becerra announced that, at Chief of Police Daniel Hahn's request, the California Department of Justice (DOJ) would provide independent oversight of the SPD's criminal investigation of the shooting.¹⁴ The DOJ also agreed—at the request of Chief Daniel Hahn and Mayor Darrell Steinberg—to provide an independent assessment of SPD's use-of-force policies, training, and practices to identify possible ways to achieve safer outcomes for community members and officers alike. In its January 29, 2019, report,¹⁵ the DOJ stated: "Sacramento should be lauded for reaching out and voluntarily requesting assistance in this critical endeavor."¹⁶ We agree. This action, in response to a tragic event that left our community deeply shaken, demonstrates SPD's openness to improving its policies, practices, and relationship with the community it serves.

During its review of SPD, DOJ "found SPD personnel to be professional, thoughtful, and committed to making change" and to be "open, cooperative, and receptive to evaluation and improvement." DOJ noted as well that SPD staff "had already begun thinking strategically about how to improve systems internally and build relations externally."¹⁷ In meetings held with stakeholders during its Phase I review, DOJ found praise for SPD's community engagement efforts such as neighborhood Peace Walks and the Town Hall Meetings SPD held in late 2017. The DOJ noted the community's appreciation of information the SPD was making available to

the public on its website.¹⁸ DOJ's observations reflect well on SPD and give us reason to believe that SPD will continue to work with the community for the betterment of Sacramento.

In fact, DOJ found that SPD has already adopted some of the Phase I recommendations, according to the "Phase II" DOJ report issued in July 2020.¹⁹ For example, DOJ found that SPD's use-of-force policy, General Order 580.02, "appears to be an improvement from its previous version" while also noting that significant shortcomings remain.²⁰ Additionally, SPD suspended the use of carotid holds and deleted any reference to that use of force in June 2020, after Governor Newsom moved to ban the practice; however, DOJ recommended that SPD affirmatively de-authorize the practice as well.²¹

THE CITY COUNCIL RECOGNIZED THE NEED FOR INDEPENDENT OVERSIGHT OF SPD

Long before recent events, the city council established two entities, the Office of Public Safety Accountability and the Sacramento Community Police Review Commission. These entities can function independently from the city staff, including the SPD, and can support each other in an effort to keep accountable individuals at all levels informed about issues associated with the SPD and the community it serves.

Office of Public Safety Accountability (OPSA): In 1999, the city council established the Office of Police Accountability to monitor the investigation of complaints regarding SPD.²² In 2004, the city council changed its name to Office of Public Safety Accountability (OPSA) and expanded its responsibilities to include complaints concerning the Sacramento Fire Department.²³ OPSA accepts, audits, and independently reviews complaints involving public safety officers, including police officers.²⁴ To increase OPSA's independence from SPD, the city council moved supervisory responsibility from the city manager (who also supervises SPD) to the city council.²⁵

Sacramento Community Police Review Commission (SCPRC): In 2015, the city council established the SCPRC to provide community participation in making recommendations and reviewing policing initiatives and programs.²⁶ The SCPRC has the power to "advise and make recommendations to the city council regarding police policy, procedures, and best practices, including those related to community relations, hiring, and training."²⁷ The SCPRC is required to review quarterly reports from OPSA consistent with Penal Code § 832.7, subdivision (c), and to report annually to the city council "regarding the activities of the commission and the Sacramento Police Department's efforts to strengthen bias-free policing and community-police relations."²⁸ The city council appoints eleven members to the SCPRC, each serving a four-year term.²⁹ The SCPRC is required to hold at least nine meetings per year.³⁰

The OPSA and the SCPRC—both established by and reporting to the city council—provide the foundation for effective, coordinated police oversight, and for the two-way communication with the city council, and for the community participation and collaborative decision-making that Sacramentans are urging the city to undertake.

SEVERAL AREAS NEED SIGNIFICANT IMPROVEMENT

THE SPD IS NOT IN COMPLIANCE WITH AB 392

AB 392 is the law: Governor Gavin Newsom signed AB 392 into law on August 19, 2019. The law became effective on January 1, 2020. Known as Stephon Clark’s law, AB 392 amended California Penal Code Section 835a to limit peace officers’ use of deadly force. Under this law, deadly force can only be used when an officer “reasonably believes, based on the totality of circumstances,” that deadly force is “necessary” to:

- “Defend against an imminent threat of death or serious bodily injury to the officer or to another person”; or
- “Apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.”³¹

The law defines “deadly force” as any force that “creates a substantial risk of causing death or serious bodily injury.”³² It defines an “imminent threat” as one where a reasonable officer, based on the totality of the circumstances, would believe “that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person.”³³ The law clarifies that “[a]n imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.”³⁴

Guidance from California’s Attorney General recommends conforming to the law: According to existing law, the California Attorney General has “direct supervision over every district attorney and sheriff and over other law enforcement officers as may be designated by law, in all matters pertaining to the duties of their respective officers” and “may require any of said officers to make reports concerning the investigation, detection, prosecution, and punishment of crime in their respective jurisdictions as to the Attorney General may seem advisable.”³⁵

On May 20, 2020, California Attorney General Xavier Becerra issued an Information Bulletin to Executives of State and Local Law Enforcement Agencies³⁶ concerning AB 392, and its companion training bill, SB 230 and its policy mandates.³⁷ The bulletin specifies all elements of AB 392 that law enforcement agencies must comply with and states that the law applies to all

peace officers. Although this bulletin was issued to executives, ultimately elected officials are accountable for ensuring that state policy mandates are implemented through the county executive or city manager.

In addition to incorporating the term and meaning of “necessity,” DOJ urges SPD to adopt AB 392’s definition of “imminent” when “describing the threat of death or great bodily harm required to justify using deadly force.” Adopting this definition, DOJ adds, would “clarify the circumstances in which deadly force is justified and make SPD’s use-of-force policy more consistent with POST’s training on California’s deadly-force standard.”³⁸

The committee understands the city attorney has assured the SPD that its use-of-force policy is in compliance with the law. This assurance contrasts with the findings of the DOJ, ACLU and the committee. The contrast is disturbing.

The committee found significant shortcomings in SPD’s current use-of-force policy: Over several months, the committee met or talked with representatives of the SPD to understand how the SPD developed its use-of-force policies. We reviewed both DOJ reports (Phase I and Phase II) and reviewed the SPD’s policies independently to determine compliance with AB 392.

We acknowledge the SPD’s efforts to comply with AB 392. It was evident that the policies emphasized certain aspects of AB 392 throughout the document, e.g., valuing the sanctity of life, as directed by the SPD chief. In some cases, the policies have to be revised to be more consistent with AB 392.

The committee found SPD’s most recent use-of-force policies³⁹ still do not comply with AB 392. The following DOJ recommendations still apply: “SPD’s use of force-related policies should more clearly define and describe when force is, and is not authorized; create standards that more clearly define and build upon minimum legal requirements; and more clearly and consistently articulate a commitment to protecting the sanctity of life and de-escalation.”

The committee finds the September 17, 2020, SPD use-of-force policies and procedures are inconsistent and unclear just as they were in the September 18, 2019, version. In some instances, the updated use-of-force policies are even more ambiguous.

To be clear, the most current use-of-force policies fail to incorporate the exact language of AB 392. Not doing so would be an injustice not only to the community but to Sacramento police officers who want to obey the law. This use-of-force policy places the city at great risk of another Stephon Clark or similar illegal, excessive use-of-force incident, and the city will be the accountable party.

Of particular concern is use of the term “perceived.” In one instance, General Order 580.02 (GO 580.02), page 1, paragraph 3, states, “A peace officer shall consider the principles of proportionality in looking at the totality of the circumstances by weighing the severity of the

offense, the reasonably *perceived* level of resistance and the need for apprehension prior to the utilization of force. [emphasis added]” The term “reasonably perceived” is extremely subjective. The SPD’s proportionality policy needs to set a higher standard.

In another instance, using the term “perceived” expressly alters the definition in the law. Specifically, the definition of “Totality of the Circumstances” on page 2, paragraph 3 (GO 580.02), states, “TOTALITY OF CIRCUMSTANCES – All facts known to, *or perceived by*, the peace officer at the time, including the conduct of the officer and the subject leading up to the UOF [use of force].” (emphasis added) By contrast, the definition in Section 835a(5)(e)(3) states, “‘Totality of the Circumstances’ means all facts known to the peace officer at the time, including the conduct of the officer and the subject up to the use of *deadly* force.” (emphasis added)

The inclusion of the phrase “or perceived by” completely redefines “Totality of Circumstances” as it is meant to apply to *deadly* force, negating the purpose of the definition in Penal Code Section 835a(5)(e)(3). The distinction is critical. AB 392 uses the phrase “totality of circumstances” only with respect to the use of *deadly* force. SPD uses the same phrase to justify use of force generally.

Another major concern is SPD’s definition of “imminent threat” which addresses the use of force, generally. Use of the term “imminent threat,” as defined in SPD’s use-of-force policies, seems to include any (presumably) illegal act, e.g., threatening to break a window. AB 392 defines an “imminent threat” [Penal Code Section 835a (e)(2)] as one that would “immediately cause death or serious bodily injury.” The law uses the definition to clarify when the use of *deadly* force is justified.

Paragraph 3 of the use-of-force policies states that, “When making UOF decisions, a peace officer should be mindful that subjects may be physically or mentally incapable of responding to police commands” This policy statement should be more clearly defined, giving the subject the degree of seriousness it deserves and presented as training material as its entire separate general order or policy and procedures.

The Use of Force Review Board, General Orders 580.01 (Referenced on page 15, paragraph p) needs to have community input and should be formally adopted by city council resolution if not by a city ordinance to include review of all use-of-force incidents on a monthly basis, analyzed and reported to the SCPRC and OPSA, with an annual report to the city council at a public hearing.

There are other aspects of the updated use-of-force policies that are problematic, and none of use-of-force policies has been vetted by the community.

POLICYMAKERS HAVE MISSED OPPORTUNITIES TO BRING SACRAMENTO INTO COMPLIANCE WITH AB 392

The DOJ reviewed SPD's policies at the city's request: In its Phase I Report, DOJ provided numerous comments on SPD's use-of-force policy. Recommendation 4, on page 19 of the report states: "The Use of Force policy should better define and explain the requirement that force be used only when necessary" and added that in SPD's policy "the concept of necessity is not described, defined, or explained in a specific or comprehensive way."

DOJ included examples of language from other police departments' use-of-force policies to clarify the recommendation. The Cleveland Division of Police requires that officers "use force only as necessary, meaning only when no reasonably effective alternative to use of force appears to exist." The Seattle Police Department requires that its officers "use physical force only when no reasonably effective alternative appears to exist."⁴⁰ Had SPD implemented DOJ's recommendation by using suggested language, Sacramento could have been close to complying with AB 392 even before the legislation was passed.

In its Phase II report, DOJ updated its findings and recommendations based on the progress SPD had made since its Phase I report.

The SCPRC provided similar advice based on its own analysis: Another opportunity to adopt language more consistent with AB 392 arose soon after the DOJ submitted its Phase I report. On March 26, 2019, the Sacramento Community Police Review Commission (SCPRC) presented its 2018 Annual Report to the city council.⁴¹

The SCPRC submitted a second Annual Report to the city council on December 10, 2019; the report included a recommendation that would have brought the SPD into compliance with AB 392: adopt the "necessary" standard for use of force included in AB 392 and include a definition for use of force (Summary of Recommendations in Appendix C) In fact, the recommendations of the 2019 Annual Report would have satisfied the "necessity" requirement of AB 392.

The city council has another opportunity to publicly address its use-of-force policies: SB 230, known as the training bill, goes into effect January 1, 2021. This bill requires law enforcement to train officers according to AB 392's use-of-force policies. Rather than leaving it up to the SPD to develop policies for compliance, again without public input, the city council should schedule a public hearing on compliance with this law as well.

With the city council's policy guidance, there is an opportunity to further develop cultural competency within SPD and help bridge the trust gap with the community by establishing a "Procedural Justice" program using the City of Oakland as a model. The Oakland program

requires that each sworn officer participate in the program annually to assure that effective community engagement skills are always sharp.

THERE ARE WEAKNESSES IN THE CITY'S POLICING OVERSIGHT

The committee finds that although Sacramento has the official procedures and institutions in place for oversight and for intra-governmental and community collaboration, the council has failed to take the necessary steps to realize the potential. Unenforced expectations, communication breakdowns, undefined responsibilities, lack of support, and exclusion of community stakeholders from decision-making explain many of these failures and point to remedies that leaders can put in place immediately.

The city has not enforced rules that would enhance accountability and transparency: The City Council Rules of Procedure; Chapter 4.1 requires city staff to prepare well-written reports and provide accompanying documents on all agenda items in accordance with the agenda format and preparation schedule. Accountability and transparency suffer when leadership does not demand such performance. We have observed a number of instances where enforcing its rules of procedures would have enlightened the council and the community about the significance of the issues in this report.

The council has permitted important policing-policy matters, which are of vital concern to the community, to be placed on the city council agenda with nothing more than an oral report by city staff. For example,

- At a July 2020 city council meeting, SPD staff made an oral report on DOJ's two reports to the SPD with no written report with analysis, implementation status, and plans for completion. One city council member made a specific request of the SPD to provide follow-up written documentation concerning an aspect of the oral presentation that was promised within a week. We see no evidence of that follow up.
- The council has accepted SCPRC annual reports, also of vital concern to the community, on a "receive and file" basis. Those reports specifically call for policy action on the part of the city council.
- The council relied on the opinion of a deputy police chief to explain why the "necessary" use-of-force language contained in state law would be illegal for the city to adopt. The public still does not understand how the City of Sacramento refused to comply with state law as the attorney general recommended. The city council needs to direct city staff to change the use-of-force policy to comply with AB 392.

City governance can improve if the council expects enforcement of its rules of procedure that can hold city staff more accountable, provide for greater community transparency and create an environment for making better policy decisions.

The city has neither adequately supported nor effectively used the SCPRC: In preparing for this report, the committee reviewed SCPRC annual reports and other documents, attended SCPRC meetings, and conducted interviews with SCPRC Chairs to assess the strengths and weaknesses of the SCPRC. (See Figure 1. Committee Observations of SCPRC meetings)

In its observations of SCPRC meetings, the committee found:

- SCPRC made recommendations in the 2018 Annual Report presented to the city council but received no feedback nor indication of any action taken in response.
- SCPRC members expressed frustration that SPD’s September 2019 use-of-force policy did not incorporate all recommendations from their ad hoc committee work.
- SCPRC members expressed frustration that they were unable to meet with SPD staff to adequately discuss the use-of-force policy and their recommendations related to it.
- The city attorney assigned to staff SCPRC could not answer questions related to the policy nor the SCPRC’s role and responsibilities.
- SPD staff attending the SCPRC meetings were unprepared to answer questions regarding the new use-of-force policies nor have authority to do so. The commissioners asked the assigned city attorney and SPD representative to address whether adopted use-of-force policies complied with AB 392.
- Presentation was made to SCPRC on December 9, 2019 meeting, at which time commissioners learned their Annual Report would be presented at the city council meeting the next day,
- All SCPRC members expressed frustration about not being able to have a public discussion about their recommendations before the city council.
- The role and relationship between the OPSA and SCPRC is unclear.

Figure 1. Committee Observations of SCPRC meetings

We find the commissioners are taking their responsibilities seriously and striving to carry out their duties to the standard that the community expects. The commissioners face unnecessary obstacles in trying to do so.

- The SCPRC is inadequately staffed and has no clear point of contact to facilitate communication with city staff or, by extension, the city council. For example, during the time the OPSA directorship was vacant, the SCPRC’s points of contact included the Government Ethics and Transparency Administrator and the city clerk, as well as interim and permanent OPSA directors.
- Mandated OPSA reports to SCPRC provide SCPRC-requested data but without analysis to make the data meaningful. For example, reports of citizen complaints could help the commission evaluate the SPD’s performance and suggest policy reforms, but, without a robust staff analysis of the data, discussion of the information is unproductive.

- Commissioners describe difficulties getting on the city council’s agenda, in part, because they depend on OPSA staff to secure a place on the agenda. Vacancies in OPSA leadership have made that avenue unworkable. Individual commissioners have asked the city council and the city clerk to place SCPRC recommendations on the agenda, both of which have been unsuccessful. This administrative neglect leaves SCPRC with the sense that their work in representing the community is being minimized or ignored by the city council.
- When the SCPRC finally secures a place on the agenda, their work is not adequately acknowledged or acted upon by the city council. Their reports are included on the consent calendar rather than as items for discussion and voting by the council. The reports have included significant, community-based recommendations for complying with AB 392; developing general orders, training, and community engagement plans concerning mental health issues in policing; creating a diversity plan for SPD; and developing SPD’s policy on body-worn cameras.
- The SCPRC’s presentations to the council have been sidelined without prior notice. At the December 10, 2019, city council meeting, for instance, the city attorney pre-empted the SCPRC’s presentation of recommendations for AB 392 compliance. The city attorney assured the city council that SPD complied with state law, although attorney-client privilege prevented the city’s written opinion from being shared with the public. Instead of also allowing the SCPRC’s recommendations to be heard along with the city attorney’s opinion, the mayor committed to facilitating a meeting with SPD and SCPRC to resolve their conflicting views. While SPD has orally explained why AB 392 necessary force is not included in its policies, it has not provided a written report so that the community can digest the rationale for not complying with state law.
- To our knowledge, the mayor’s facilitation has not yet occurred or been scheduled. Neither has there been further outreach to, nor input from the community, regarding compliance with AB 392. Had SCPRC been afforded a timely opportunity to present its recommendations, and the community given the opportunity to advocate for them, Sacramento might now be in compliance.
- By the time the new Chair of the SCPRC was finally able to present the 2019 Annual Report and Recommendations on July 1, 2020, AB 392 was in effect. Despite the city attorney’s confidential opinion, Sacramento fails to comply fully with the law, according to the California Department of Justice, the ACLU of Northern California and the committee.

The committee finds that Sacramento decision-makers underuse and undervalue the SCPRC. The city must empower SCPRC to do its work according to its mandate and must also ensure the SCPRC has a platform for discussing its work with the city. SCPRC brings community views to elected officials who might not otherwise have the opportunity to hear them, we believe the SCPRC's reports and recommendations merit a city council hearing and vote. Furthermore, to be more effective, the SCPRC must be well staffed and assured of a consistent point of contact for communication with the city council. We hope that having a permanent OPSA director will resolve these weaknesses.

The SCPRC needs to improve communication among its members and with the community and the city: To be most effective in its role as a bridge from the community to the city council, and to provide the oversight specified in the city code, the SCPRC is afforded a high level of independence in carrying out its duties. Nevertheless, because of the SCPRC's links to the community, the commissioners should be more transparent with respect to community engagement. Specifically, the SCPRC should address the following questions:

- With whom do commissioners meet before they make decisions?
- How often do they hold community meetings or “town hall” discussions?
- What community groups do they regularly engage with?
- How do they incorporate community views into their recommendations?
- What other resources do they consult in their decision-making?

In our view, commissioners should give thorough reports of their community engagement, as well as detailed reports of their ad hoc activities, at SCPRC meetings.

The SCPRC has been deficient in how they communicate among themselves and with the community to date. As one example, the SPD convened a Use of Force committee and invited the Chair to serve as a member. It is not clear how the Chair, in his capacity as a member of the SPD committee, seeks input from other commissioners or engages impacted communities for their input to the SPD committee. To our knowledge, the SCPRC has not collaborated with or otherwise engaged the community on community policing matters for more than a year.

The SCPRC needs to act on information it receives and call for further information if what it receives is insufficient to justify action. At its August 2020 meeting, the majority of the SCPRC showed no inclination to even discuss a report the new OPSA director submitted on civilian complaints filed against SPD. This is a subject clearly within the SCPRC's area of oversight. A representative from the LWVSC, in a public comment, noted that the SCPRC would need to obtain more substance and analysis in the report for there to be a productive discussion. Had there been no public comment, it is hard to imagine how the public could perceive any

difference between SCPRC's handling of OPSA's report and the city council's handling SCPRC's reports.

The National Association for Civilian Oversight of Law Enforcement offers advice for cities like Sacramento that are learning how to get the most benefit from a civilian oversight body:

To create a new civilian oversight mechanism, or to reorganize or strengthen an existing one, communities must first consider a series of important questions and make key decisions; each decision will guide and inform future ones. A community, which includes the public, police, police labor and management, key policy and decision makers, and grassroots or community-based organizations, among others, must clearly define its goals and what it hopes to accomplish with oversight.⁴²

While members of the SCPRC are hardworking and committed volunteers, there is room for more strategic planning and collaboration with the stakeholder community. In fact, defining goals and desired accomplishments would be a beneficial exercise for city officials and commissioners alike.

The Director of the Office of Public Safety and Accountability (OPSA) could provide critical support to the Sacramento Community Police Review Commission: As discussed earlier, OPSA accepts, audits, and provides an independent review of complaints involving public safety employees, including police officers. To grant OPSA greater independence from SPD, in July 2017, the city moved the supervision of OPSA from the city manager to the city council.⁴³

According to its website, OPSA's mission is "to improve the relationship between the city's public safety departments and the community they serve." It adds: "We promote trust, transparency and accountability through independent and impartial oversight of complaints related to public safety employee misconduct." The website also includes information about the SCPRC, stating that the commission provides "a venue for community participation in reviewing police department policies, practices, and procedures."⁴⁴

The relationship between OPSA and the SCPRC is logical and well-founded. The council could enhance this relationship by recognizing the benefits of their collaboration. What is spelled out on the website is not always fulfilled in actuality. Working collaboratively, these two organizations could improve their mutual effectiveness.

The committee met with an interim director of OPSA, reviewed documents, looked at the OPSA website, and interviewed two SCPRC Chairs for this assessment. In reviewing the OPSA director's job description, the committee found no reference to the SCPRC. This was surprising, given the relationship described on the OPSA website. Formalizing the relationship between OPSA and the SCPRC in the OPSA director's job description would clarify the relationship between the two entities and ensure consistent OPSA support for the SCPRC.

The OPISA director is responsible for monitoring ongoing investigations and reports on complaints filed regarding both police and fire departments; and coordinating OPISA activities with these departments, as well as the offices of the mayor, city council, city attorney, community leaders, and general public, as appropriate. Adding a responsibility to coordinate with and support the SCPRC would be logical and would clarify the relationship.

The director also ensures OPISA and citywide compliance with applicable laws, ordinances, codes, and policies. This responsibility reflects an area of mutual interest between OPISA and the SCPRC. The two organizations could provide mutual support when practical.

The director of OPISA reports to the council. This relationship provides a logical means of support for the SCPRC in arranging presentations to the city council and communicating with officials from the SPD and other areas of city government. OPISA “functions with complete and necessary independence,” which is also required for the SCPRC in carrying out its oversight.

Under city ordinance Section 2.22.050, the OPISA director is afforded broad access to information. The ordinance states that city departments, offices, and employees “shall provide the office of public safety accountability access to all sources of information, property, and personnel relevant to the performance of the office’s duties under this chapter unless restricted or prohibited by law.” Having access to information can also offer support to the SCPRC as specific information is needed.

As reported in the previous section, the SCPRC needs more thorough and robust reporting from OPISA staff. The committee believes that providing analysis along with data will benefit OPISA as well as SCPRC.

The city council hired a permanent OPISA director in June 2020. We hope the incumbent, LaTasha Watson, Ph.D., has the opportunity to apply her education and abilities to collaborate effectively with the SCPRC and the community in safeguarding the public trust. While in the process of writing this report, the committee met with Dr. Watson. We believe we have begun a productive relationship.

The Office of Public Safety Accountability should work with SPD to clarify roles and responsibilities and improve procedures: In its Phase I report, DOJ recommended that SPD establish a complaint classification system that would account for the seriousness of the offense. DOJ noted that:

Allegations of misconduct that are classified as inquiries or OPISA complaints are investigated informally, and do not trigger the same tracking and documentation requirements as citizen or department complaints, which are investigated formally. Citizen and Department complaints must be documented on a Citizen Department Complaint Form (SPD 332) and must be forwarded by an employee’s chain of command

to Internal Affairs. Internal Affairs then enters that information into a central database known as IA Pro, and that information is linked to the officer who is the subject of the complaint. After a formal investigation takes place, one of four possible findings is rendered by the Chief of Police, and the complainant is required to be informed of the disposition of the investigation. Citizen and Department Complaints are also required to be forwarded to OPSA to determine if they will conduct an audit of the investigation...

This creates a universe of complaints that are handled informally and never tracked by Internal Affairs. Consequently, there is no single, reliable, and central repository for complaints made by the community.⁴⁵

The DOJ states that, “SPD should enter into a memorandum of understanding (MOU) with OPSA regarding its role and responsibilities.” Because OPSA’s main responsibility is to “independently accept, monitor and investigate complaints of misconduct,” SPD should encourage community members to contact OPSA and, on its personnel complaints web page, should “(1) describe what OPSA is; and (2) identify OPSA as a separate avenue for making personnel complaints.”⁴⁶

We agree that an MOU between SPD and OPSA regarding OPSA’s role in the complaint process would clarify the complaint process internally and externally. Currently, OPSA generally classifies the complaints it receives as “inquiries,” and OPSA investigates the inquiries informally. Because OPSA appears to classify complaints by allegation type rather than complaint type, the numbers OPSA reports can be confusing, i.e., what OPSA is and is not formally investigating, and how OPSA resolved complaints. DOJ notes that the public would benefit from OPSA and SPD using the same classification and categorization scheme to provide consistency in reporting.⁴⁷

In addition to clarifying its responsibility in handling complaints, OPSA could use the signing of the MOU to undertake additional community outreach toward fulfilling its role.

SPD’s process for developing use-of-force policies provided virtually no opportunity for public participation: The committee requested written documentation of how the SPD developed its use-of-force policies. SPD responded that there was no “white paper” nor any other written material to document the process for developing the use-of-force policies (General Orders 580.02).⁴⁸

The Deputy Chief who responded to our request was very cooperative and welcomed review and feedback. He described the process as follows:

- In February 2018, the deputy chief overseeing SPD’s training convened a committee (SPD committee) to align field training and academy training, and to resolve discrepancies in real-world application, with the goal of making the field experience and academy training consistent.

- In July 2018, the SPD committee’s purpose expanded following the officer-involved shooting death of Stephon Clark. Its purpose was broadened to focus on foot pursuit and use of force.
- The SPD committee used the DOJ Phase I report, AB 392 legislation, “21st Century Policing” and the International Chief of Policing.⁴⁹
- The SPD committee consisted primarily of SPD staff. However, the then-current SCPRC chair participated and conveyed input from the ACLU. Deputy Chief Risley met with then-current SCPRC chair regarding its use-of-force policies several times during the process.
- After the initial drafting by the SPD committee, the review commenced with the Professional Standards Unit, then was sent to the SPD union, to the city attorney representing the police department, and to the SPD chief for final approval. (Note: Chief Hahn was briefed orally on a monthly basis throughout the review of drafts. He conveyed the goal of making sure that the sanctity of life and de-escalation flows throughout the policy.)
- Some SCPRC recommendations were incorporated into the policy. However, there were differences of opinion between SCPRC and SPD which SPD did not reconcile.
- The SPD committee concluded that the SPD need additional resources to track changes in laws and prepare clear policies and procedures to keep staff apprised. In October 2019, the city contracted with a private company, Lexipol, to provide the resources need to organize and improve SPD’s general orders.⁵⁰

The LWVSC notes that the only community participation in this process involved occasional meetings with the SCPRC chair. The SPD held no town hall meetings or otherwise engaged with the full community to receive its input as the use-of-force policy was revised. On December 9, 2019, an SPD deputy chief presented an oral report to SCPRC regarding compliance with AB 392. The committee requested a copy of the presentation, but the deputy chief was unable to provide written documentation of her presentation. She referred the committee to the deputy who was in charge of the committee overseeing the use-of-force policy and compliance with AB 392.

SPD has received invaluable advice regarding institution-related policies and practices that go beyond use of force: For its Phase II report, the DOJ conducted an incident-level review of SPD’s use of “less-lethal” use of force, and provided associated findings and recommendations. DOJ also provided an assessment of SPD’s accountability systems, including policies and practices related to:

- recruitment, hiring and retention
- officer discipline
- early intervention
- data management and
- bias prevention

DOJ notes that its Phase II review:

. . . concluded prior to the widespread demonstrations against police violence that were triggered by the deaths of George Floyd, Breonna Taylor, Rayshard Brooks and others, in May and June of 2020. The DOJ urges SPD, and all California law enforcement agencies that were involved in protest-related activities, to: (1) conduct a prompt and detailed inquiry and after-action assessment of their personnel's conduct in response to these demonstrations over the death of George Floyd and other incidents involving police violence against African-Americans; and (2) report the results of these assessments to their communities.

While SPD has made policy improvements since 2018, such as foot pursuit, body-worn cameras and the recent ban on carotid chokeholds, there is continued resistance to resolving police culture and oversight problems within the City of Sacramento.

Despite being informed by both the SCPRC and the DOJ, that the city does not fully comply with AB 392, the city council has not made any effort to demonstrate to the community and provide the DOJ with written documentation that affirms compliance.

Although the mayor promised to discuss SCPRC recommendations with SPD, the city council and the SCPRC, that discussion is not in the works, and we are unaware of any intention to hold a public hearing in which the City Council can act on specific policy recommendations.

ADDITIONAL POLICING REFORMS WOULD IMPROVE PUBLIC SAFETY

Although Chief Hahn's efforts to reform policing have been commendable, the challenges he faces in making culture, accountability, and transparency advances are also embedded in systemic limitations that constrain him. They include, but are not limited to, the California Peace Officers Bill of Rights and the Sacramento Police Labor Unit Agreement, which can severely limit the city's ability to hold an officer accountable for misconduct.

It is up to the city council to navigate through these limitations so that city policies drive public safety rather than permitting SPD staff and the labor union to do so. Our study found that the city council could improve in this area.

- **Defining Public Safety:** Public safety is the state in which the public is both safe and well. Policing practices that promote public safety for both police officers and the communities they serve provide community safety.
- **Community Engagement:** Engaging the community as a stakeholder in developing policing policies can help strike a balance that keeps both officers and the community safe. SPD needs to consult with the impacted Black community in Sacramento.
- **Safer working conditions for police officers:** Excessive overtime presents a significant risk to both officers and the community. Excessive overtime can compromise officers' decision making as well as their health and well-being.
- **Racial disparities in policing:** In view of this summer's civil unrest over anti-Black racism in communities throughout the country, and the racial disparities in SPD's stops, arrests, and uses of force, the council must address these disparities.

Police Union Contracts: We acknowledge and support police officers' right to unionize to protect their employment interests, but police-union contracts have given rise to related problems for public safety. The problems also affect policymaking, budgetary decisions and accountability.

A union negotiates on behalf of employees, seeking reasonable compensation, better working conditions, and job protections. In the private sector, employers need skillful employees to keep their businesses running, and employees need profitable employers, so they remain employed.

The employer-employee relationship is different in the public sector. In this case, the employer (local government/taxpayers) is bound by fiscal constraints because it must balance a budget. However, public officials may have conflicting interests, such as the need to secure the support of politically powerful public unions in order to raise enough money to win elections. As a consequence, bargaining between these parties can lead to inappropriate limits on accountability and discipline related to misconduct, which affect transparency and overall public safety in our communities.

Police unions have used their political power to promote statutory protections that also impede accountability, such as mandating time delays before officers can be questioned after critical incidents, and limitations on punitive action if an investigation is not completed within a specific time frame.

While the City of Sacramento has many rights enumerated in its labor agreement with its police union, other rights are incorporated by reference in the phrase, "exclusivity of rights in accordance with and subject to applicable laws, civil service and other regulations, and provisions of this agreement."⁵¹ These applicable laws and/or regulations can impact the investigation and discipline of law-enforcement officers, as well as the recording, retention, and

availability of disciplinary records in personnel files. This excerpt from the Public Safety Officers Procedural Bill of Rights⁵² is an example:

3304 (d) Except as provided in this subdivision and subdivision (g), no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct

According to Campaign Zero, problems with this bill include:

- Disqualifying misconduct complaints that are submitted too many days after an incident occurs or if an investigation takes too long to complete
- Preventing police officers from being interrogated immediately after being involved in an incident or otherwise restricting how, when, or where they can be interrogated
- Giving officers access to information that civilians do not get prior to being interrogated
- Limiting disciplinary consequences for officers or limiting the capacity of civilian oversight structures and/or the media to hold police accountable
- Requiring cities to pay costs related to police misconduct including giving officers paid leave while under investigation, paying legal fees, and/or the cost of settlements
- Preventing information on past misconduct investigations from being recorded or retained in an officers personnel file

Campaign Zero identified two California cities, Fremont and Long Beach, that appear to have imposed accountability on their police units, as they have on other public employees, through their labor union contracts. (See nixthe6.org)

In general, police are also shielded from civil liability for wrongdoing, and it is often taxpayers who pick up the tab to compensate victims of law enforcement malpractice. According to the *Sacramento Bee*, in three settlements alone, between June 2019 and the present, Sacramento paid a minimum of \$8.1 million in police misconduct settlements.⁵³ This figure does not include the legal and administrative costs necessary to prepare for and to address these suits. To the best of our knowledge, all costs are paid out of the city budget, not by insurance company coverage.

A March 29, 2018, *New York Times* article reported there is a better policy, fairer to taxpayers, with the side benefit of creating incentives for police to avoid hurting innocent people. Like police, doctors have a difficult and stressful job that sometimes involves making life-or-death decisions quickly and under conditions of uncertainty. Unlike police, doctors do not expect taxpayers to pay for their mistakes. Instead, doctors carry professional liability insurance to

defend them against malpractice claims and to protect them from financial ruin by paying out damage awards to successful plaintiffs.

There is yet another approach that many California cities utilize when misconduct leads to tragedy. It is insurance carried by the city. Insurance companies are exceptionally good at identifying risk so this option is not available to cities that are unable to eliminate high-risk employees. This may be the circumstance in Sacramento.

Police Work, Safety and Efficiencies: What does a typical police officer’s workday look like? The June 10, 2020, *New York Times* article “How do Police Actually Spend Their Time”⁵⁴ pointed to “unbundling” police from some of their duties, as well as redirecting funding to hiring civilian workers to address calls related to homelessness or mental illness, drug overdoses, minor traffic problems and similar disturbances. (See Figure 2.)

SPD Typical Shift by an Officer: Time Spent	
Responding to Non-Criminal Calls	32%
Traffic	19%
Proactive Policing	18%
Property Crime	12%
Medical or other	9%
Other Crime	7%
Violent Crime	4%

Figure 2: source, [New York Times](#)

The #Unbundle concept, first coined by music entrepreneur Trevor McFedries, is best thought of, not as an alternative to defunding, but as a framework for evaluating what modern police do during a shift—and how disentangling could make cities safer places for everyone. The reporters reviewed several cities in terms of activities during a typical shift by an officer, including SPD.

How the police spend their time is important to the discussion of their safety. This is particularly true when it comes to working overtime. Overtime inefficiencies reduce officer productivity, as increased physical, mental and emotional stress can compromise the decision-making ability of workers. This is especially true when having to make split-second, life-and-death decisions that law enforcement officers encounter. Overtime has a detrimental impact on a public safety workforce resulting in fatigue, on-duty injuries, and increased incidents of sick leave.

The use of overtime in public sector organizations is common, particularly within functional areas where there is great fluctuation in regular workloads or in turnover rate, which results in vacant positions. These fluctuations make it more difficult to right-size the number and level of

positions required for the workload. Accordingly, most public sector agencies budget for overtime, yet try to manage it carefully.

In its March 2020 report, *Citywide Innovation and Efficiency Assessment, Potential Strategies*,⁵⁵ Management Partners cited various efficiency measures that the city could effectively institute. Public safety functions already represent more than half of the city’s general fund expenditures (projected at 55% in FY 2019-20). The growing overtime costs in these departments pose an even larger burden on the budget and limit the resources available for other vital programs.

- Police leadership generally felt comfortable that they receive the information necessary to understand and track overtime. For example, they receive data from their department’s finance staff regarding individual employee’s use of overtime. Police leaders say this allows them to drill down and understand what they spend. The expenditures in FY2017-18 were still 348% above the overtime budget (See Figure 3).
- According to Management Partners, unplanned and uncontrolled overtime costs exceeded \$21 million, 92% of which are attributable to the public safety departments. The assessment further states that the problem of unplanned and uncontrolled overtime has persisted for at least the last ten years and has become more significant over time.
- In late 2019, salary ranges were increased 3.5% for the classification of police officer position. Despite the depressed COVID-19 economy and many government employees forced to take salary decreases, this classification will receive another 3.5% increase.

OVERTIME EXPENDITURES FY 2017-18			
General Fund	Budget	Actual	Over
Fire	\$3,322,314	\$16,039,880	\$(12,737,566)
Police	\$2,759,717	\$9,609,718	\$(6,850,001)

Figure 3:

As supported in the Management Partners report, converting some sworn positions to civilian positions can reduce public safety costs. Cross-training fire and police personnel is something the city could consider to relieve overtime job stress.

Proportionality in Law Enforcement: George Floyd was killed—in broad daylight and on camera —by a Minneapolis Police Field Training Officer. In response to civil unrest following Floyd’s unjustifiable death, Mayor Steinberg proposed, among other things, to add a position of Inspector General under the supervision of the OPSA director. This will support “back-end accountability.” Several city council members also announced proposals in response to that tragic event.

Enforcement of petty laws that disproportionately affect poor and marginalized communities will always provide excuses for police to confront otherwise peaceful people. This plays a part in increasing the incidence of police brutality and the killing of Black males at the hands of law enforcement:

- In the case of George Floyd, it was the report of an alleged counterfeit \$20 bill that led his deadly police encounter on May 25, 2020.
- Two years earlier in Sacramento, it was an alleged car break-in combined with a cell phone being mistaken for a gun that was instrumental in passage of AB 392.
- On April 17, 2017, an SPD officer was caught on video throwing a man to the ground and beating him. The incident began when the officer stopped the man for jaywalking.⁵⁶

The California Attorney General's 2019 Crime Report shows Latino and Black people are arrested for marijuana-related charges even though marijuana has been legalized in California. Most of the arrests are young people, ages 20-29, and Black females in this age group represent the highest number of female arrests of any race.

Public Safety Binding Arbitration: Currently, when the city's police union has a dispute with pay, benefits and working conditions that cannot be resolved in bargaining, it moves to an Arbitration Board, whose decision is binding. The board is neutral, but a city often concedes to the union before arbitration is set to begin, according to the Management Partners report. Fearful of the dynamics of the arbitration process, cities concede to agreements that are more costly and leave fewer dollars available for other services.

In a June 2020 interview with *The Sacramento Bee*,⁵⁷ the head of the Sacramento Police Officers Association said, "binding arbitration provides an important 'level playing field' in bargaining, especially because officers cannot strike. It is the citizens of the City of Sacramento that have benefited the most from the labor peace that arbitration has brought our community." SPOA President Timothy Davis said, "The process of arbitration has only been rarely used to resolve police contracts, but its existence has helped both sides to be reasonable in their requests, resulting in negotiated rather than arbitrated contracts."

The March 2020 Management Partners report, *Citywide Innovation and Efficiency Assessment, Potential Strategies*, recommends the City of Sacramento consider evaluating the feasibility of placing a charter amendment on the ballot to remove the requirement for binding arbitration for sworn police and fire personnel and cites the following concerning binding arbitration.

Articles XVIII and XIX of the city charter provide for binding arbitration for sworn police and fire personnel. Binding arbitration removes the final authority for determining salaries, benefits and other conditions of employment from directly elected representatives and vests it in the hands of a third party without direct financial

responsibility for managing the public's money. Police and Fire personnel costs represent more the 50% of city's General Fund budget. An arbitrator looks only at the prevailing practices of other public agencies and does not consider the city council's prerogative to establish priorities for core services and service levels and for the expenditure of public funds that reflect a balance of services to the community.

Sacramento has been to binding arbitration twice. In a 2000 arbitration with the police union, the city settled many significant cost issues including enhanced retirement benefits out of fear that the result of arbitration would be worse. In 2004 the city went to arbitration with the fire union and generally prevailed. The reality of binding arbitration is that the employer, fearful of the dynamics of the arbitration process, will often concede and enter into agreements that are more costly and result in fewer dollars available to provide other services.

Binding arbitration is used by a relatively small number of charter cities in California and is no longer used by General Law cities pursuant to a 2003 state Supreme Court decision. Additionally, the peer cities of San Jose and Stockton referenced in our 2010 report presented charter amendments to repeal binding arbitration, both of which have been approved by local voters. Other cities including Palo Alto, San Luis Obispo and Vallejo have also successfully repealed their charter provisions for binding arbitration.

Lexipol Contract Services: In 2019, the SPD entered into a five-year contract (estimated at \$481,975) with Lexipol to provide a policy manual and training.⁵⁸ According to that contract, Lexipol will provide a policy manual stressing that, "Legally defensible, up-to-date policies are the foundation for consistent, safe public safety operations and are key to lowering liability and risk." Lexipol also will provide daily training bulletins that consist of "2-minute training exercises." Lexipol's services also include policy updates as a result of their continual review of "state and federal laws and regulations, court decision and evolving best practices." The contract services also include information management systems.

The issue justifying the approval of the Lexipol contract states, in part, that, "The SPD has well over 200 policies, and an audit conducted in 2018 revealed that at least 30% of those policies are extremely deficient in updates, showing that those policies were last updated in the 1990's or first decade of 2000's." This statement describes a disturbing and prolonged condition, rather one that has recently developed. Hiring out policing policy and training development to address a longstanding, systematic problem to Lexipol does not address the root cause of that problem and may create a whole new set of problems.

As a for-profit company, it is natural that Lexipol would want to safeguard its proprietary interest in its processes and materials. Best practices for the development of law enforcement

policies prescribe an open and inclusive process. The process by which Lexipol generates its manuals is opaque, with little to no guidance about the context of its prescriptions.⁵⁹

The following problems frustrate any opportunity for an open and inclusive process:

- The process by which Lexipol generates its manuals is opaque, with little to no guidance about the context of its prescriptions.⁶⁰
- Lexipol personnel have opposed reform efforts because of the potential effect on liability and risk to law enforcement agencies and personnel.⁶¹
- Lexipol's retention of copyright can constrain departments that want to share and exchange materials to encourage best practices.⁶²
- Lexipol's daily training program appears to focus on reducing liability rather than promoting best practices.⁶³

Contracting with Lexipol potentially conflicts with many of the reform efforts that foster trust, the policing practices that promote safety for both law enforcement officers and the communities they serve, collaboration between government and community throughout the criminal justice system, reliance on evidence-based research in decision-making about law-enforcement programs and policies.

There has been no provision for proactive public input into the development of the Sacramento's use-of-force and other policing policies. Policing policies appear to be made in reaction to extreme public pressure. Reacting to policy failures, rather than conducting an ongoing community review of policing policies, contributes to a culture of "warrior cops" who are strangers to the communities they patrol, and who burst into neighborhoods like they were on enemy turf. This, instead of creating a culture of "guardian cops" who partner with the community to prevent crime; maintain order; make residents feel safe; and work with social services professionals when interacting with the homeless, mentally ill, and alcohol and drug addicted members of the public. Although the mayor's revamp of the 911 Call Center is a step in the right direction, it is not clear the additional \$5,000,000 allocated to the police department budget will be used to engage the community in program development.

COSTS OF SACRAMENTO'S FAILURE TO REFORM CONTINUE TO MOUNT

The most obvious "costs" of the failure to address policing policies are the lives lost and damaged by avoidable, law-enforcement violence. According to the SPD website, officers have shot 14 suspects since April 2016. Seven of those shootings ended in the suspect's death. One of those killed was Stephon Clark, whose cell phone officers mistook for a gun, and whose shooting launched Sacramento's effort to reduce SPD's use-of-force incidents, including use of deadly force.⁶⁴ The losses of those most immediately affected, the families of those

unnecessarily killed or harmed, are incalculable. We cannot overemphasize the effect upon, and the grief of, the community as a whole from these incidents.

This community-wide grief often takes the form of anger and distrust toward law enforcement. As a result, community members are less likely to cooperate with police, which makes law enforcement less effective and leaves the community—and police officers—less safe. An August 2020 report from the United States Conference of Mayors notes the importance of trust in the relationship between law enforcement and the community. The report states, “the public must have a reason to trust the police, as public approval and acceptance are the basis of effective policing.”⁶⁵ A community that does not trust its police cannot feel safe. This absence of safety is an incalculable cost to the community and its police officers.

This is especially true in Black and Brown communities, where the presence of police may signal fear more than safety. Even before the killing of George Floyd, Black Americans voiced a lack of trust in the police. For example, a January 2020 Washington Post/Ipsos poll of 1,088 Black Americans found that 83% said they didn’t trust police “to treat people of all races equally.”⁶⁶ A Yahoo News/YouGov poll taken in May found 91% of Black Americans don’t believe white people and Black people receive equal treatment from the police, and a Monmouth University study found 87% of Black Americans believe police are more likely to use excessive force against Black people.⁶⁷ Finally, a recent Pew survey conducted in June found that 64% of Black men say they have been stopped unfairly by police.⁶⁸

SPD data from 2013 to 2018 reinforces locally why lack of trust exists: that Blacks were involved in a disproportionate percentage of SPD use-of-force incidents when compared to the distribution of races and ethnicities within Sacramento’s population. Blacks were arrested at greater frequency than other groups, and Black motorists were stopped and searched more frequently than other groups, even though searches of Black motorists were less likely to yield contraband from such searches; and Black and Latino motorists were more likely to be stopped for driving infractions for which officers have greater enforcement discretion.⁶⁹

As previously noted, the disparate enforcement of petty laws, including many traffic stops, often leads to use-of-force incidents that threaten otherwise peaceful people. Under such circumstances, the community’s lack of trust in SPD is an unfortunate but understandable cost that will increase with delayed reform.

City leadership’s failure to consult with community members about policies that vitally affect their community further erodes trust. Policing policy is an area where such erosion continues to occur. For many in Sacramento’s Black and Brown communities, being left out of policymaking decisions that vitally affect their life leaves them feeling marginalized and disrespected. Even if the policymaker intends to be helpful, neglecting to ask for the input of those who will be most affected undermines the development of mutual respect and trust.

Failing to ask for community participation in policymaking often leads to misguided, short-sighted, and ineffective policy. In policing, inferior policy can lead to tragic results, as our communities have too often experienced. Engaging community members for their opinions and suggestions about how best to police their neighborhoods—for the safety of residents and police officers alike—will give policymakers the benefit of knowledge and experience they could not otherwise attain. Including community participation in law enforcement policymaking is a reform that Sacramento can no longer afford to delay.

Finally, the monetary costs of these tragedies continue to mount. These costs are also borne by the entire community. As previously stated, the city has paid out at least \$8 million in settlements since June 2019 in response to law enforcement misconduct.⁷⁰ Taxpayers bear all costs associated with these settlements. These costs, along with the growing SPD budget, leave the community frustrated about the unavailability of needed funding for chronically underserved communities as well as for mainstream neighborhoods that need affordable housing, potholes filled, adequate school facilities, and maintained neighborhood parks. People eventually become skeptical that this funding will ever materialize. The loss of trust that occurs when promises have been repeatedly unfulfilled is difficult to regain.

CONCLUSION

The City of Sacramento is a model of racial diversity for the state of California (by some measures, the most diverse state in the Union). There is a real opportunity for the city to take the negative press and adverse community reaction associated with the Stephon Clark shooting to become a model of what it means to embrace diversity and ensure quality life, liberty and justice for all of its residents. This requires leadership from the top.

It is clear that the city council has not exercised its authority to ensure the city, as an organization, is accountable to its residents by employing the existing city charter and city ordinances at its disposal. Exercising council authority means providing direction to the city manager, city attorney, city clerk and the director of the Office of Public Safety and Accountability, direction that reflects the community's needs. It means exercising its authority to establish, evaluate and enforce measurable accountability standards for city employees, including its police department. It means, through the city manager, providing policy direction for the police chief in his efforts to re-imagine policing in Sacramento.

AB 392 was precipitated by the tragic killing of Clark by the Sacramento Police Department in 2018. Clark's death not only ignited nationwide protests, but it also fueled the Sacramento community's growing activism around policing issues—especially the use of deadly force. Yet the George Floyd police killing took activism to another level.

Implementation of AB 392 is a major impetus for this report. Sacramento should be a model for other police departments in California. Stephon Clark's death was caused by a tragic, completely avoidable mistake. Embracing both the letter and the spirit of AB 392 is a significant part of achieving some justice for the Stephon Clark family and for others especially traumatized by excessive use of deadly force. The fact that use-of-force incidents disproportionately impact the Black community must be addressed.

While Blacks represent only 13% of the Sacramento population, over 43% of use-of-force incidents involve Blacks. We will know there is real change underway when general orders addressing policing practices don't focus solely on legal protections for the officer; but enlarge the sphere of conduct to include officers in and of the community with the rights and obligations to civilians in the forefront.

Ultimately, elected leaders and law enforcement are accountable to the people of Sacramento. We acknowledge that police officers are entitled to due process, just as other city employees, are. However, police officers are significantly different from other workers—they carry weapons and have the ability to deprive people of life and liberty. Thus, police officers must meet a higher standard of accountability.

We also acknowledge that police officers face higher risks than most other city employees do—they face a higher probability of being injured or killed while on duty. The public-safety objective is neither officer safety nor community safety, they should be one and the same. Protecting bad employees makes both police officers and the community less safe.

Amidst calls to “defund the police,” the city must become a part of a collaborative process to examine how our diverse community envisions public safety, and to identify the means needed to realize that vision. This entails a holistic view that considers the well-being of both our neighborhoods and law enforcement. The leaders of Sacramento must work with community members to ensure both “front-end” and “back-end” accountability.

Much needs to be done, but Sacramento is on the path forward. With leadership voicing support for change, and a vibrant and vocal community calling for action, what the city needs is an inclusive collaborative process to begin.

RECOMMENDATIONS

This report supports recommendations of others who have advised the Sacramento City Council on its policing policies, including the DOJ, the ACLU, the SCPRC and the city's consultant, Management Partners. It also relies on observations and research conducted by the League of Women Voters of Sacramento County.

The LWVSC makes the following recommendations to the city council:

USE EXISTING GOVERNANCE TO DIRECT POLICING POLICY REFORM

- A. Direct the city manager to observe and enforce city council rules of procedure concerning staff reports and require all staff reports relating to police matters to be in writing with analysis, an impacted-community statement, status and recommendations for council action in adopting resolutions or ordinances as necessary.
- B. Establish compliance with AB 392 as a matter of public policy. Hold a public hearing on AB 392 and the city's use-of-force policies requiring a written staff report with analysis of how the exact language of AB 392 is incorporated into the use-of-force procedures with a specific recommendation that the city council codifies AB 392 as city policy.
- C. Hold a special public hearing on DOJ recommendations relative to its investigation of SPD and policy actions to be adopted by the city council and an annual public hearing to address policing policy reforms.
- D. Establish a Mental Health, Substance Abuse and Homeless Commission to reduce criminalization and risks associated with these social conditions so that policing time and budgets are appropriately allocated to requisite expert resources.
- E. Ask the SCPRC to review policing practices aimed at erasing racial disparities in policing and sworn officer representation within the department.
- F. Address recommendations with budgetary implications from *Citywide Innovation and Efficiency Assessment, Potential Strategies* report.

CREATE AN ENVIRONMENT FOR MEANINGFUL COMMUNITY INVOLVEMENT AND TRANSPARENCY

- A. Respond to SCPRC's advice and recommendation by:
- Convening a public hearing on SCPRC annual recommendations, as a standard practice with a detailed staff report outlining SPD implementation plans and adopting policy recommendations by city council resolution, ordinance or city charter.
 - Directing the city manager to allocate resources and facilitate access to SPD staff sufficient for SCPRC to carry out charge.
 - Requiring the city attorney to assign staff sufficiently knowledgeable and skilled to independently advise the SCPRC in executing its responsibilities.
 - Requiring the OPSA director and/or the inspector general to serve as liaison to SCPRC
 - Asking the SCPRC to carry out duties by conducting community outreach in its role to advise and recommend on police policies and practices.
 - Asking the SCPRC to review and act on reports relating to all citizen complaints filed against SPD personnel, to determine any patterns of misconduct that necessitate revisions to police policy or practice.
- B. Direct the OPSA Director to convene a roundtable to create a broad public safety and accountability mission that addresses economically depressed era of COVID-19, leveraging administrative, human resource and technology systems.
- C. Establish a Racial Equity Commission with emphasis on erasing racial disparities in city policies and budget expenditures for racial equity, and requiring SPD budgetary expenditures, as approved by the city council, include a racial-impact analysis.
- D. Establish a subcommittee of the Sacramento Youth Commission to address policing and public safety issues, including at least eight appointments recommended by community criminal justice activists, staffed by Director of Violence Prevention.
- E. Convene, at least biannually, townhall meetings with SPD chief, the OPSA and the SCPRC, stakeholders, criminal justice social reform advocates, impacted community and residents on use-of-force policies and community-oriented policing; issue an annual report for city council meeting discussion and action on recommendations.

REMOVE BARRIERS TO PEACE OFFICER ACCOUNTABILITY FOR MISCONDUCT

- A. Take back management’s right to hold employees accountable through hiring, retention, discipline, promotion and terminations from the collective bargaining process and adhere to existing personnel rules established by the city charter and ordinances.
- B. Adopt a community-policing model that includes integral and sustained community input that specifically addresses the racial disparities in SPD’s stops, arrests, and uses of force, in policing the Black community.
- C. Incorporate the City of Oakland’s Procedural Justice Program police officer training model as part of addressing compliance with SB 230.
- D. Direct the city manager to provide a staff report specifically analyzing Management Partners’ recommendations to address police excessive overtime and best practices, and identifying options for removing binding arbitration from the city charter.
- E. Direct the city manager to provide the city council with a comprehensive staff report on SPD’s compliance with new state and federal law, annually or as required by applicable law.
- F. Direct the city manager to provide the city council with an annual report on work performed by Lexipol and any material changes in policing that may require city council policy approval.
- G. Consider whether to continue the Lexipol contract annually and, if so, how to restrict Lexipol’s involvement in development of policing policy without the benefit of broad community input and city council approval.
- H. Evaluate the feasibility of a city charter amendment to remove the requirement for binding arbitration for police if labor contract negotiations are not successful in adding accountability for police misconduct.

APPENDIX A—PRINCIPLE SOURCES; CITY & COMMUNITY CONTACTS

PRINCIPLE SOURCE DOCUMENTS

Changing the Law to Change Policing: First Steps (https://law.yale.edu/sites/default/files/area/center/justice/document/change_to_change_final.pdf)

Final Report of the President’s Task Force on 21st Century Policing (https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf)

California Department of Justice, *Sacramento Police Department Report & Recommendations* (<https://oag.ca.gov/system/files/attachments/press-docs/spd-report.pdf>)

California Department of Justice, *Review of Sacramento Police Department Report & Recommendations Phase II* (https://oag.ca.gov/system/files/attachments/press-docs/SPD%20Report%20Phase%20II_0.pdf)

Management Partners, *Citywide Innovation and Efficiency Assessment, Potential Strategies* (<https://www.cityofsacramento.org/-/media/Corporate/Files/Auditor/IBA-Reports/Citywide-Innovation-and-Efficiency-Assessment.pdf?la=en>)

Ingrid V. Eagly and Joanna C. Schwartz, “Lexipol: The Privatization of Police Policymaking,” *Texas Law Review* 96, no. 891 (2018): 930-934. (<https://texaslawreview.org/lexipol/>)

CITY AND COMMUNITY CONTACTS

Sacramento Police Department Staff

- Police Chief Daniel Hahn
- Deputy Chief Lester
- Deputy Chief Risley
- Administrative Chief Rudy Chan

Office of Public Safety and Accountability

- Director, Francine Tournour
- Interim Director, Kevin Greene
- Dr. LaTasha Watson

City Clerk’s Office

- Assistant City Clerk, Wendy Clock-Johnson

City Council Ad Hoc Governance Committee

- Chair, City Councilman Larry Carr and staff

Sacramento Community Police Review Commission

- Chair, Mario Guerrero (Presentation to League Criminal Justice Reform Committee)
- Former Chair,
- Member, Jay King

Observation of SCPRC meetings

Showing Up For Justice (SURJ) –

Justice2Jobs - Lynn Berkely-Baskin

BAPAC

NCNW

BWOPA

ACLU – Sacramento Chapter

APPENDIX B—SUMMARY OUTLINE OF AB 392 & SB 230

Source: California Attorney General Bulletin No. 2020-DLE-10 Dated 5/20/20

OVERVIEW OF AB 392

1. Deadly Force Can Only Be Used When an Officer Reasonably Believes that Such Force Is Necessary, and Only Under Certain Circumstances

- a. Under AB 392, an officer’s use of deadly force is justified only when the officer reasonably believes, based on the totality of the circumstances, that deadly force is “necessary” to:
- b. “Defend against an imminent threat of death or serious bodily injury to the officer or to another person”; or
- c. “Apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.” Where feasible, officers must, prior to the use of force, make reasonable efforts to identify themselves as such and warn that deadly force may be used.

(Pen. Code, § 835a, subd. (c)(1)(A) and (B).) AB 392 defines “deadly force” as any force that “creates a substantial risk of causing death or serious bodily injury.” (Pen. Code, § 835a, subd. (e)(1).)

2. “Imminent” Threats Are Ones that “Must Be Instantly Confronted And Addressed.”

Under AB 392, an “imminent” threat is one where a reasonable officer, based on the totality of the circumstances, would believe “that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person.” (Pen. Code, § 835a, subd. (e)(2).) “An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.” (*Ibid.*).

3. The Evaluation of Whether an Officer “Reasonably Believes” That Deadly Force Is “Necessary” is Based on the “Totality of the Circumstances”

Under AB 392, an officer’s decision to use force is evaluated “from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions

when officers may be forced to make quick judgments about using force.” (Pen. Code, § 835a, subd. (a)(4).)

In considering the totality of the circumstances, AB 392 provides that the conduct of the officer *and* the subject leading up to the use of deadly force is relevant. The statute states that the “totality of the circumstances” includes “all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.” (Pen. Code, § 835a, subd. (e)(3).)

The Legislature further amended Penal Code 835a to state that uses of force are to be “evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers.” (Pen. Code, § 835a, subd. (a)(3).)

4. Officers May Not Use Deadly Force Against Persons Who Pose a Danger Only to Themselves

AB 392 prohibits the use of deadly force against persons based only on the danger they pose to themselves. (Pen. Code, § 835a, subd. (c)(2).)

5. AB 392 Recognizes a Peace Officer’s Right to Self-Defense if Using Objectively Reasonable Force

AB 392 recognizes that an officer may need to use objectively reasonable force to “effect the arrest or to prevent escape or to overcome resistance” from a person being arrested. (Pen. Code, § 835a, subd. (d).) In these circumstances, AB 392 does not require officers to “retreat or desist from their efforts by reason of the resistance or threatened resistance of the person being arrested.” (*Ibid.*) However, the statute still encourages the use of “tactical repositioning” or other de-escalation tactics in responding to resistance. (*Ibid.*; *see also* Pen. Code, § 835a, subd. (a)(2).)

6. AB 392 Applies to All Peace Officers

AB 392 applies to all “peace officers,” a very broad category that essentially includes all officers in any state or local public safety agency whose primary duty is to enforce the law. (Pen. Code, § 830 et seq.) This means that AB 392’s requirements are applicable to the officers in each of the county sheriff’s departments; city, transit agency, and school and university police departments; and all state and local law enforcement and correctional officers, among others defined in the Penal Code. (*Ibid.*)

7. Other Amendments to the Penal Code by AB 392

AB 392 further amended Section 835a of the Penal Code to include:

- a. The Legislature’s declaration that law enforcement’s use of force is a “serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life.” (Pen. Code, § 835a, subd. (a) (1).)
- b. The Legislature’s intent that peace officers use “deadly force only when necessary in defense of human life,” and accordingly, that officers use “other available resources and techniques,” such as tactical repositioning or de-escalation, if it is “reasonably safe and feasible to an objectively reasonable officer.” (Pen. Code, § 835a, subd. (a) (2).)
- c. The Legislature’s finding that people with physical, mental health, developmental, or intellectual disabilities “are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from peace officers.” (Pen. Code, § 835a, subd. (a)(5).)

OVERVIEW OF SB 230 – EFFECTIVE JANUARY 1, 2021

1. SB 230 Requires Each Agency to Adopt and/or Maintain a Standard Use of Force Policy That Includes Required Elements and is Accessible to the Public

SB 230, which was passed shortly after AB 392, requires law enforcement agencies to adopt a use of force policy containing 20 specified elements by January 1, 2021, and to make this policy accessible to the public. (Gov. Code, § 7286, subds. (b), (c).) The 20 specified elements are:

- a. A requirement that officers utilize deescalation techniques, crisis intervention tactics, and other alternatives to force when feasible.
- b. A requirement that an officer may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance.
- c. A requirement that officers report potential excessive force to a superior officer when present and observing another officer using force that the officer believes to be beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances based upon the totality of information actually known to the officer.
- d. Clear and specific guidelines regarding situations in which officers may or may not draw a firearm or point a firearm at a person.

- e. A requirement that officers consider their surroundings and potential risks to bystanders, to the extent reasonable under the circumstances, before discharging a firearm.
- f. Procedures for disclosing public records in accordance with [Penal Code] Section 832.7.
- g. Procedures for the filing, investigation, and reporting of citizen complaints regarding use of force incidents.
- h. A requirement that an officer intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject.
- i. Comprehensive and specific guidelines regarding approved methods and devices available for the application of force.
- j. An explicitly stated requirement that officers carry out duties, including use of force, in a manner that is fair and unbiased.
- k. Comprehensive and specific guidelines for the application of deadly force.
- l. Comprehensive and detailed requirements for prompt internal reporting and notification regarding a use of force incident, including reporting use of force incidents to the Department of Justice in compliance with [Government Code] Section 12525.2.
- m. The role of supervisors in the review of use of force applications.
- n. A requirement that officers promptly provide, if properly trained, or otherwise promptly procure medical assistance for persons injured in a use of force incident, when reasonable and safe to do so.
- o. Training standards and requirements relating to demonstrated knowledge and understanding of the law enforcement agency's use of force policy by officers, investigators, and supervisors.
- p. Training and guidelines regarding vulnerable populations, including, but not limited to, children, elderly persons, people who are pregnant, and people with physical, mental, and developmental disabilities.

- q. Comprehensive and specific guidelines under which the discharge of a firearm at or from a moving vehicle may or may not be permitted.
- r. Factors for evaluating and reviewing all use of force incidents.
- s. Minimum training and course titles required to meet the objectives in the use of force policy.
- t. A requirement for the regular review and updating of the policy to reflect developing practices and procedures.

(*Ibid.*) SB 230 also requires the [Commission on Peace Officer Standards and Training](#) (POST) to establish uniform, minimum guidelines for these new use of force policies, and to develop and provide training for law enforcement officers based on the new use of force requirements. (Pen. Code, § 13519.10.) POST trainings, including its training on AB 392, are available on the POST website at: <https://post.ca.gov/>.

APPENDIX C—SUMMARY OF SCPRC RECOMMENDATIONS TO THE CITY COUNCIL

2018 Report recommendations (See [City Council Report dated March 26, 2019 Discussion Item 25](#)):

1) Accountability and Transparency

- Use of Force Policy – Revise SPD policy on use of force to allow the use of deadly force (including firearms) only as a last resort and when reasonable alternatives have been exhausted or are not feasible to protect public and officer safety.
- Use of Force Data Collection and Sharing

2) Diversity

- Planning to include developing a long-term comprehensive sustainable diversity and culture change plan- with measurable goals and outcomes that addresses gender issues and institutionalized racism. In regard to the latter, the plan should specifically address historic systemic racial issues between the police and people of color, particularly African-Americans.
 - Recruitment
 - Hiring
 - Retention
 - Training
 - Miscellaneous

2019 Report recommendations (See [City Council Report December 10, 2019 Consent Item 02](#)):

1) Use of Force

- Adopt the “necessary” standard for use of force included in AB 392 – Weber and include a definition for Use of Force.
- Duty to render aid
- D-escalation
- Foot Pursuit
- Reporting
- Overall language - “guardian mindset versus warrior mindset”

2) Mental Health

- General Orders and Training
- Community engagement
 - 3. Body Worn Cameras (BWC)
- The program was fully implemented in March of 2017 and its policy, equipment, community concerns, and other feedback has not been evaluated to determine the program's effectiveness and any need for improvement.
- Community recommendation: BWC should always be on and recording to ensure transparency and accountability.
- Law enforcement officers should not have the discretion to turn the cameras off, unless authorized by a supervisor.
- Community recommendation: Solidify the release of BWC footage, within 30 days of a critical incident.

SCPRC Ad Hoc Committee other recommendations for language improvements

APPENDIX D—ALTERNATIVE ACCOUNTABILITY LANGUAGE FOR POLICE UNION CONTRACTS

City of Fremont: 2019-2021

SECTION 5: CITY RIGHTS

The City reserves, retains and is vested with any management rights not expressly granted to the Association by this Agreement, the Personnel Rules or the Employer- Employee Relations Policy. These City rights include but are not limited to the right to:

- 5.1 Determine and modify the organization of City government and its constituent work units.
- 5.2 Determine the nature, standard, levels and mode of delivery of City services.
- 5.3 Determine the methods, means, number and kind of personnel by which services are provided.
- 5.4 Impose discipline subject to applicable law and the provisions of this MOU.
- 5.5 Relieve employees from duty because of lack of work or lack of funds or for other legitimate reasons subject to the Personnel Rules.

Nothing in this Section shall relieve the City of its obligation to meet and confer on the impact of the exercise of rights enumerated in this Section.

City of Long Beach: LBPOA 2019-2022

Section VI - City Obligations and Responsibilities

A. City Obligations

In order to ensure that the City shall continue to carry out its public safety functions, programs, and responsibilities to the public imposed by law, and to maintain efficient public safety service for the citizens of Long Beach, the City continues to reserve and retain solely and exclusively all rights of management, except as specifically vested to the Association by this Agreement, regardless of the frequency of use, including those rights and responsibilities set forth by law including but not limited to the following rights:

1. To manage the Police Department and determine policies and procedures and the right to manage the affairs of the Department.
2. To take into consideration the existence or nonexistence of facts, which are the basis of the management decision in compliance with State law.
3. To determine the necessity, organization, implementation, and termination of any service or activity conducted by the City or other government jurisdictions and to expand or diminish police services.

4. To direct, supervise, recruit, select, hire, evaluate, promote, transfer, discipline, discharge, terminate, demote, reduce, suspend, reprimand, withhold salary increases and benefits for disciplinary reasons, or otherwise discipline employees in accordance with City, Department, and/or Civil Service Rules and Regulations.
5. To determine the nature, manner, means, extent, type, time, quantity, quality, standard, and level of police services to be provided to the public.
6. To require performance of other public safety services not specifically stated herein in the event of emergency or disaster, as deemed necessary by the City.
7. To lay off employees of the Police Department because of lack of work or funds or under conditions where continued work would be inefficient or ineffective.
8. To determine and/or change the police facilities, methods, technology, equipment, operations to be performed, organizational structure, and allocate and assign work by which the City police operations are to be conducted.
9. To determine methods of financing.
10. To plan, determine, and manage the Department's budget, which includes but is not limited to, the right to contract or subcontract any work or operations of the Police Department.
11. To determine the size and composition of the Police Department work force, assign work to employees of the Police Department in accordance with requirements determined by the Police Department and to establish and require compliance to work hours and changes to work hours, work schedules, including call back, standby and overtime, and assignments, except as otherwise limited by this agreement, or subsequent agreements.
12. To establish and modify goals and objectives related to productivity and performance programs and standards, including but not limited to quality and quantity, and require compliance therewith.
13. To determine qualification, skills, abilities, knowledge, selection procedures and standards, job classification, job specifications, and to reallocate and reclassify employees in accordance with City, Department, and/or Civil Service Rules and Regulations.
14. To determine the issues of public policy and the overall goals and objectives of the Police Department and to take necessary action to achieve the goals and objectives of the Police Department.
15. To hire, transfer intra- or inter-division, promote, reduce in rank, demote, reallocate, terminate, and take other personnel action in accordance with City, Department, and/or Civil Service Rules and Regulations.

16. To determine policies, procedures, and standards for recruiting, selecting, training, and promoting employees.

17. To establish, implement, and/or modify rules and regulations, policies and procedures related to productivity, performance, efficiency, personal appearance standards, code of ethics and conduct, safety and order, and to require compliance therewith.

18. To maintain order and efficiency in police facilities and operation.

19. To restrict the activity of an employee organization on City facilities and on City time except as set forth in this Agreement.

20. To take any and all necessary steps and actions to carry out the service requirements and mission of the City in emergencies or any other time deemed necessary by the City and not specified above.

B. Impact of City Obligations

Where required by law, the City agrees prior to implementation to meet and confer with the Association over the impact of the exercise of a right of management upon the wages, hours, and terms and conditions of employment on unit members

unless the impact consequences of the exercise of a right of management upon unit members is provided for in this Memorandum of Understanding, City or Civil Service Rules and Regulations, or Departmental Rules and Regulations.

C. Authority of Third Party Neutral - City Obligations

All rights of management, powers, authority and functions, whether heretofore or thereafter exercised, shall remain vested exclusively with the City. No third party neutral shall have the authority to diminish any of the rights of management which are included in this Agreement, exclusive of a competent court having subject matter jurisdiction.

Section VII - Intent of the Parties

It is the intent of the parties hereto that the provisions of this MOU shall supersede all prior written agreements. It is understood by and between the parties that the intent as set forth herein shall be to cover the wages, hours and working conditions of the employees represented by the Association.

It is agreed that there exists within the Police Department, personnel policies and procedures, general orders, departmental policies and rules and regulations. Except as specifically modified by this MOU, these rules and regulations, and policies and any subsequent amendments thereto shall be in full force and effect during the term of this MOU. Before any new or subsequent amendments to these policies or departmental rules and regulations directly affecting wages, hours and terms and conditions of employment are implemented, the City,

through the Police Chief, shall meet in accordance with Government Code Section 3500 et seq., with the Association regarding such changes. However, the existing provisions of the Salary Resolution and Personnel Ordinance that apply to employees represented by the Association shall remain in full force and effect during the term of this Agreement unless otherwise modified by this MOU.

APPENDIX E—RESPONSE TO CIVIL UNREST AND ANTI-BLACK RACISM PROTESTS

SACRAMENTO MAYOR STEINBERG’S PROPOSED SYSTEMIC POLICE REFORM⁷¹

Independent Review

A new Inspector General working in the City’s Office of Public Safety Accountability would have full independence and the authority to investigate officer-involved shootings and use-of-force incidents that resulted in serious bodily injury or death.

- Authority would include ability to interview witnesses
- The Inspector General would be paid out of the City’s general fund and would not be connected to law enforcement
- Inspector General would make findings on whether department policies were violated and whether officers should be disciplined or terminated.
- Findings would be presented to the public, the city council and the SCPRC.
- Inspector General’s findings would have to be made public BEFORE City manager could make decisions on officer termination or discipline.
- Police Commission would be empowered to take the Inspector General’s findings and make its own public recommendation on officer discipline or termination.

Redefining the duties and functions of our police officers

- Police would no longer respond to calls that did not involve the commission of a crime
- Responsibility would be shifted over a 24-month period (July 2022) to a new City corps of non-law enforcement responders
- City would conduct 60-day evaluation of the number and percentage of calls currently handled by the Sacramento Police Department that are unrelated to the commission of crimes.
- Funding equal to the cost of handling that volume of calls would be shifted to new responder unit over a 24-month period.
- Immediate appropriation of \$5 million from the general fund to launch the new no-law enforcement responder unit

Updating use-of-force policies

- Council to review and act upon recommendations from Police Commission

- Council to review and act upon any recommendations from the State Department of Justice its 2019 review of the department that have not been implemented.
- City staff to review the Eightcantwait.org model recommendations for police policies and procedures and report back to the city council on whether Sacramento complies with all eight polices, and if not, what needs to be changed.

GOVERNOR NEWSOM'S RESPONSE

In June 2020, Governor Gavin Newsom (Newsom) announced his support for new policing and criminal justice reforms, as well as eliminating the teaching of the strangle hold, a practice that has been left to police agencies in the past. To help with police reform Newsom appointed a 30-year police veteran, Ronald Davis who served with both Oakland and East Palo Alto police departments and civil rights leader Lateefa Simon. Their job is to listen to community members and bring police reform ideas to the governor's desk.

Newsom stated, "Carotid hold that is literally design to stop people's blood from flowing into their brain. That has no place any longer in 21st century."

NEW STATE LEGISLATION

SB 731 (Bradford): This bill would disqualify a person from being employed as a peace officer if that person has been convicted of, or has been adjudicated in an administrative military, or civil judicial process as having committed, a violation of certain specified crimes against public justice, including falsification of records, bribery, or perjury. The bill would require law enforcement employing peace officers to employ only individuals with a current, valid certification or pending certification. (Died; last amended in the Assembly 08/25/20)

AB 2054 (Kamlager): This bill will establish the Community Response Initiative to Strengthen Emergency Systems (C.R.I.S.E.S) Act Pilot program which will promote community-based responses to local emergency situations. This will help reduce the reliance on police and instead gives more power to localized communities. (Vetoed; 09/30/20)

SB 773 (Skinner): This bill states the intent of the Legislature to enact legislation that would revise 911 systems so when an incident involves an issue of mental health, homelessness, and public welfare, the calls are directed to the appropriate social services agency and not to law enforcement. (Died; last amended in the Assembly 07/27/20)

AB 1196 (Gipson): This bill would prohibit a law enforcement agency from authorizing the use of a carotid restraint or a choke hold, as defined. (Chaptered; 09/30/20)

SB 776 (SKINNER): This bill would make every incident involving use of force subject to disclosure. This bill would remove the requirement that a complaint relating to sexual assault or dishonesty be sustained following investigation in order to be subject to disclosure. The bill

would require records relating to sustained findings of wrongful arrests and wrongful searches to be subject to disclosure. The bill would also require the disclosure of records relating to an incident involving prejudice or discrimination on the basis of specified protected classes. (Died; last amended in the Assembly 08/30/20)

ENDNOTES

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- ² League of Women Voters of Sacramento County, <https://my.lwv.org/california/sacramento-county/about-league-women-voters-sacramento-county> [<https://perma.cc/9UQV-BW7K>].
- ³ Office of Public Safety Accountability, <https://www.cityofsacramento.org/OPSA>
- ⁴ Sacramento Community Police Review Commission, <https://www.cityofsacramento.org/Clerk/Legislative-Bodies/Boards-and-Commissions/Sacramento-Community-Police-Commission>
- ⁵ California Department of Justice Releases Report Analyzing Use of Force Policies and Procedures within the Sacramento Police Department, <https://oag.ca.gov/news/press-releases/california-department-justice-releases-report-analyzing-use-force-policies-and>
- ⁶ Barry Friedman et al., *Changing the Law to Change Policing: First Steps*, https://law.yale.edu/sites/default/files/area/center/justice/document/change_to_change_final.pdf [<https://perma.cc/JY2A-7JT8>] (last accessed Oct. 4, 2020).
- ⁷ The League of California Cities, Understanding Your City’s Departments, <https://www.cacities.org/Resources-Documents/Education-and-Events-Section/New-Mayors-Council-Members/2020-Session-Materials/2020-New-Mayors-Council-Members-Resource-Guide/11-Understanding-Your-City-s-Departments> [<https://perma.cc/X4U5-D93H>] (last accessed Oct. 4, 2020) (providing a resource guide to Mayors and Council Members so that they are informed about each city department by describing the department’s responsibilities and relationship to the council.)
- ⁸ The League of California Cities, Understanding Your City’s Departments, <https://www.cacities.org/Resources-Documents/Education-and-Events-Section/New-Mayors-Council-Members/2020-Session-Materials/2020-New-Mayors-Council-Members-Resource-Guide/11-Understanding-Your-City-s-Departments> [<https://perma.cc/X4U5-D93H>] (last accessed Oct. 4, 2020) (providing a resource guide to Mayors and Council Members so that they are informed about each city department by describing the department’s responsibilities and relationship to the council.)
- ⁹ Sacramento City Charter Article VIII § 100.
- ¹⁰ Sacramento Police Department Website, <https://www.cityofsacramento.org/Police> [<https://perma.cc/M657-T6NQ>] (last accessed Oct. 4, 2020).
- ¹¹ Policy #007 adopted under Resolution #2018-0259, 06-26-2018.
- ¹² Chapter 2.110 of the Sacramento City Code in 2015.
- ¹³ An Ordinance Deleting and Adding Chapter 2.110, and Amending Section 2.40.030, of the Sacramento City Code, Relating to Establishment of the Sacramento Community Police Review Commission, Ord. 2016-0055 §2, SACRAMENTO CITY COUNCIL, (Adopted Nov. 29, 2016), <http://qcode.us/codes/sacramento/revisions/2016-0055.pdf> [<https://perma.cc/2TBL-PHXN>].

¹⁴ California Department of Justice Steps in to Provide Independent Oversight of Investigation into the Shooting Death of Stephon Clark, PRESS RELEASE, OFFICE OF CA ATTORNEY GENERAL XAVIER BECERRA, (Mar. 27, 2018), <https://oag.ca.gov/news/press-releases/california-department-justice-steps-provide-independent-oversight-investigation> [<https://perma.cc/F7TL-UBTY>].

¹⁵ California Department of Justice, Sacramento Police Department Report & Recommendations, termed “Phase I report” in this document.

¹⁶ California Department of Justice, Sacramento Police Department Report & Recommendations Phase I (2019), 3.

¹⁷ California Department of Justice, Sacramento Police Department Report & Recommendations Phase I (2019), 4.

¹⁸ California Department of Justice, Sacramento Police Department Report & Recommendations Phase I (2019), 74.

¹⁹ California Department of Justice, Sacramento Police Department Report and Recommendations <https://oag.ca.gov/system/files/attachments/press-docs/spd-report.pdf> [<https://perma.cc/T2KE-BPLH>] (2019), 5.

²⁰ California Department of Justice, Review of Sacramento Police Department Report & Recommendations Phase II (2020), 39.

²¹ California Department of Justice, Review of Sacramento Police Department Report & Recommendations Phase II (2020), 31.

²² City of Sacramento Office of Public Safety Accountability, Annual Report (2016), 6.

²³ Id.

²⁴ Id.

²⁵ City of Sacramento Ordinance No. 2016-0054 added chapter 2.22 to the Sacramento City Code, <http://qcode.us/codes/sacramento/revisions/2016-0054.pdf> [<https://perma.cc/RR63-VR3D>] (Nov. 29, 2016).

²⁶ City of Sacramento Ordinance No. 2016-0055, § 2. Added chapter 2.110 to the Sacramento City Code, http://www.qcode.us/codes/sacramento/view.php?topic=2-2_110-2_110_010&frames=on [<https://perma.cc/8T4A-LA38>].

²⁷ Sacramento City Code § 2.110.030, http://www.qcode.us/codes/sacramento/view.php?topic=2-2_110-2_110_030&frames=on [<https://perma.cc/4A4Y-5GNS>].

²⁸ Pen. Code § 832.7 (c).

²⁹ Sacramento City Code §2.110.040.

³⁰ Id.

³¹ Pen. Code, § 835a, sub. (c)(1)(A) and (B).

³² Pen. Code § 835a, subd. (e)(1).

³³ Pen. Code, § 835a, sub. (e)(2).

³⁴ *Ibid.*

³⁵ Cal. Const. Art. V, Sec. 13.

³⁶ Edward Medrano, Chief, Reminder of Legislation Regarding Use of Deadly Force by Law Enforcement and Training and Policy Mandates Effective January 1, 2021, Information Bulletin, Ca Dept. of Justice, Div. of Law enforcement, (May 20, 2020), https://oag.ca.gov/sites/all/files/agweb/pdfs/info_bulletins/2020-dle-10.pdf [<https://perma.cc/B648-8YMR>].

³⁷ Chapter 285, Statutes of 2019

³⁸ California Department of Justice, Review of Sacramento Police Department Report & Recommendations Phase II (2020), 41.

³⁹ SACRAMENTO POLICE DEPARTMENT GENERAL ORDERS, 580.02, USE OF FORCE, 9/17/20, <https://www.cityofsacramento.org/-/media/Corporate/Files/Police/Transparency/GO/Section-500/GO-58002--Use-of-Force-91720.pdf?la=en>

⁴⁰ California Department of Justice, Sacramento Police Department Report & Recommendations Phase I (2019), 19-20.

⁴¹ Ord. 2016-0055 § 2.

⁴² *Guidebook for the Implementation of New or Revitalized Police Oversight*, NATIONAL ASSOCIATION FOR CIVILIAN OVERSIGHT OF LAW ENFORCEMENT, <https://www.nacole.org/search?q=guidebook> [<https://perma.cc/B4BT-4DW3>] (last visited Oct. 8, 2020).

⁴³ City of Sacramento Office of Public Safety Accountability, Annual Report (2016), 7.

⁴⁴ City of Sacramento Office of Public Safety Accountability, <http://www.cityofsacramento.org/OPSA> [<https://perma.cc/R4E4-6F6X>] (last accessed Aug. 18, 2020).

⁴⁵ California Department of Justice, Sacramento Police Department Report & Recommendations Phase I (2019), 69-70.

⁴⁶ *Id.* 72.

⁴⁷ *Id.* 73.

⁴⁸ Use of Force, General Order 580.02, Sacramento Police Department, (June 8, 2020) <https://www.cityofsacramento.org/-/media/Corporate/Files/Police/Transparency/GO/Section-500/GO-58002-Use-of-Force-6820.pdf?la=en> [<https://perma.cc/Y2L4-LMKE>] (explaining that the purpose of the order is to “outline procedures for the use and the application of force, as well as the procedures for after-force medical care and for the reporting, investigation and review of incidents after an application of force).

49 <https://www.theiacp.org/about-iacp>

50 As a strong advocate for the passage of AB 392, the League was aware that Lexipol campaigned to defeat AB 392.

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52 Public Safety Officers Procedural Bill of Rights Act, https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=4.&title=1.&part=&chapter=9.7.&article=

53 Theresa Clift, “Sacramento pays settlement to Black man tackled by officer for leaving his car running,” *The Sacramento Bee* (June 30, 2020), <https://www.sacbee.com/news/local/article243905507.html>.

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55 Management Partners, *Citywide Innovation and Efficiency Assessment, Potential Strategies* (<https://www.cityofsacramento.org/-/media/Corporate/Files/Auditor/IBA-Reports/Citywide-Innovation-and-Efficiency-Assessment.pdf?la=en>)

56 Anita Chabria, “Man beaten by Sacramento cop after jaywalking stop settles his case for more than money,” *The Sacramento Bee* (April 6, 2018) (<https://www.sacbee.com/news/local/article208138724.html>)

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60 *Ingrid V. Eagly* and Joanna C. Schwartz, “Lexipol: The Privatization of Police Policymaking,” *Texas Law Review* 96, no. 891 (2018): 930-934.

61 *Ingrid v. Eagly* and Joanna C. Schwartz, “Lexipol: The Privatization of Police Policymaking,” *Texas Law Review* 96, no. 891 (2018): 891-976.

62 *Ingrid V. Eagly* and Joanna C. Schwartz, “Lexipol: The Privatization of Police Policymaking,” *Texas Law Review* 96, no. 891 (2018): 891-976.

63 *Ingrid V. Eagly* and Joanna C. Schwartz, “Lexipol: The Privatization of Police Policymaking,” *Texas Law Review* 96, no. 891 (2018): 934-935.

⁶⁴ “Officer Involved Shootings (And Other Incidents of Force Resulting in Injury or Death”, City of Sacramento, <https://www.cityofsacramento.org/Police/Transparency/Officer-Involved-Shootings> [<https://perma.cc/JA9G-UHR7>] (last accessed Oct. 4, 2020) (providing information for what the process for investigation of these serious incidents).

⁶⁵ The United States Conference of Mayors, *Report on Police Reform and Racial Justice*, 5 (Aug. 2020), https://www.usmayors.org/wp-content/uploads/2020/08/20.55.USCM_.Police-Reform.Report.MEC_.pdf [<https://perma.cc/CAN7-LGRH>].

⁶⁶ Sean Collins, “The systemic racism black Americans face, explained in 9 charts,” *Vox* (June 17, 2020), <https://www.vox.com/2020/6/17/21284527/systemic-racism-black-americans-9-charts-explained>.

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⁶⁸ *Id.*

⁶⁹ California Department of Justice, *Review of Sacramento Police Department Report & Recommendations Phase II* (2020), 44-45.

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