



RESOLUTION NO. 2009-66

A RESOLUTION OF THE COUNCIL OF THE CITY OF  
FRESNO, CALIFORNIA, ESTABLISHING THE OFFICE  
OF INDEPENDENT REVIEW

**WHEREAS**, police officers are entrusted with an enormous amount of power and authority - the authority to deprive someone of his or her personal freedom based on an officer's sworn testimony and the authority to take someone's life under a given set of circumstances if the officer believes their life, or the life of another, is in jeopardy;

**WHEREAS**, members of the public who trust their police department are far more likely to report criminal activity and cooperate during police investigations;

**WHEREAS**, the importance and public benefit associated with this trust cannot be overstated;

**WHEREAS**, a lack of community trust can adversely impact community confidence in the Police Department and City Government that can result in unfavorable legal settlements and jury awards;

**WHEREAS**, the concept of an independent police auditor (IPA) has been studied and debated in Fresno for over ten years;

**WHEREAS**, previous proposals were based upon other IPA models in place in other cities;

**WHEREAS**, the current Policy Proposal for the Office of Independent Review, dated March 20, 2009 attached as Exhibit A, has been prepared specifically to address the needs and opportunities within the City of Fresno;

**WHEREAS**, the current proposal has been crafted with the understanding that our Fresno police officers are highly trained, capable people who strive to serve the

Adopted 3/24/09  
Approved 3/31/09  
Effective 3/31/09



public every day with professionalism *and* that the tremendous power and authority invested in them, along with the often harmful and life threatening situations in which we ask them to work, warrants some measure of independent review to protect our officers and to enhance the public's trust;

**WHEREAS**, the proposal was founded on the key principles of independence; fairness, integrity and honesty; transparency; participation of stakeholders; acceptance, cooperation and access; and obedience to legal constraints;

**WHEREAS**, by establishing an Office of Independent Review (OIR), the Mayor and City Council acknowledge that there are possible conflicts between transparency and mitigating potential financial risk to the City;

**WHEREAS**, the Fresno City Charter empowers the City Manager to oversee daily City administrative operations and the City Manager will delegate authority to the OIR sufficient to fulfill all their noted duties;

**WHEREAS**, the OIR will be responsible for auditing investigations, reviewing inquiry and complaint logs, identifying and monitoring trends and serving as a resource for both the Police Department and community;

**WHEREAS**, the City Manager and Police Chief will ensure adequate remedial responses are undertaken to address operational deficiencies noted by the OIR;

**WHEREAS**, the OIR shall produce an annual report which will provide transparent and accurate information about the overall performance of the department while protecting the confidentiality of the individual members of the police department and the public;



WHEREAS, the OIR will not conduct its own independent investigations of citizen complaints or allegations of employee misconduct and will be subject to all confidentiality and privacy laws;

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Fresno establishes the Office of Independent Review consistent with Exhibit A and finds that the value of enhanced openness and transparency is a higher policy priority than the potential incremental financial risk associated with the OIR.

\*\*\*\*\*

STATE OF CALIFORNIA )
COUNTY OF FRESNO ) ss.
CITY OF FRESNO )

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the 24th day of March, 2009.

AYES : Borgeas, Brand, Caprioglio, Xiong, Sterling
NOES : Dages, Perea
ABSENT : None
ABSTAIN : None

Mayor Approval: March 31, 2009
Mayor Approval/No Return: N/A, 2009
Mayor Veto: N/A, 2009
Council Override Veto: N/A, 2009

REBECCA E. KLISCH
City Clerk

BY: [Signature]
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY: [Signature]
JAMES C. SANCHEZ
City Attorney

March 25, 2009

Council Adoption: 3/24/09

Mayor Approval:

Mayor Veto:

Override Request:



TO: MAYOR ASHLEY SWEARENGIN

RECEIVED

FROM: REBECCA E. KLISCH, CMC  
City Clerk

2009 APR -1 AM 8:09  
CITY CLERK, FRESNO CA

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 3/24/09, Council adopted the attached Resolution No. 2009-66 entitled **Establishing an Office of Independent Review**, Item No. 9:30 A.M. – A-1, by the following vote:

Ayes	:	Borgeas, Brand, Caprioglio, Xiong, Sterling
Noes	:	Dages, Perea,
Absent	:	None
Abstain	:	None

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before April 6, 2009. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10<sup>th</sup> day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

\*\*\*\*\*

**APPROVED:**

**VETOED** for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)

\_\_\_\_\_  
\_\_\_\_\_

Ashley Swearengin, Mayor

Date: 3/31/09

**COUNCIL OVERRIDE ACTION:**

Date: \_\_\_\_\_

Ayes	:
Noes	:
Absent	:
Abstain	:



*Exhibit A*



**MAYOR ASHLEY SWEARENGIN**

**POLICY PROPOSAL**  
*for the*  
**OFFICE OF INDEPENDENT REVIEW**

**March 20, 2009**



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## ATTACHMENTS

1. Independent Police Auditor Study Commission Committee Roster  
(June 17, 2003)
2. National Association for Civilian Oversight of Law Enforcement  
NACOLE CODE OF ETHICS
3. Frequently Asked Questions (FAQs) About the OIA



**MAYOR ASHLEY SWEARENGIN**

**POLICY PROPOSAL**  
*for the*  
**OFFICE OF INDEPENDENT REVIEW**

*Protecting our Officers and Safeguarding the Public's Trust in Law Enforcement*

*"Police officers are entrusted with an enormous amount of power and authority - the authority to deprive someone of his or her personal freedom based on an officer's sworn testimony and the authority to take someone's life under a given set of circumstances if the officer believes their life, or the life of another, is in jeopardy. Members of the public who trust their police department are far more likely to report criminal activity and cooperate during police investigations. An independent police auditor (IPA) will increase and help to safeguard the level of public trust between the Fresno Police Department and the community. The importance of this trust cannot be overstated."*

--Jerry Dyer, Chief of Police  
City of Fresno

**Introduction**

The concept of an independent police auditor (IPA) has been studied and debated in Fresno for over ten years. As a new police chief in 2001, Chief Dyer sought the adoption of an IPA as a mechanism to secure and enhance the public's trust in the Fresno Police Department. In 2003, the Independent Police Auditor Study Commission was charged by Mayor Autry with exploring the various known models of IPAs and making a recommendation on its structure in the City of Fresno. The Study Commission was comprised of 16 members and included representatives of the Fresno Police Officers Association, Fresno Neighborhood Watch Association, Greater Fresno Area Chamber of Commerce, Human Relations Commission, Fresno West Coalition for Economic Development, Central California Criminal Justice Committee, One by One Leadership and other community members (*see attached roster*). In most of his budget proposals to the City Council beginning in 2002, Mayor Autry recommended the adoption of an IPA. Despite the extended evaluation and public debate, there has yet to be agreement on adopting an IPA in Fresno.



Unfortunately, the debate has been polarized and largely unproductive. Community advocates in favor of establishing an IPA have, at times, overstated their case, and a small minority of voices has even demonized our law enforcement personnel. Meanwhile, opponents have resisted the IPA despite the importance of safeguarding the public's trust in law enforcement.

This policy proposal has been crafted with the understanding that our Fresno police officers are highly trained, capable people who strive to serve the public every day with professionalism *and* that the tremendous power and authority invested in them, along with the often harmful and life threatening situations in which we ask them to work, warrants some measure of independent review to protect our officers and to enhance the public's trust.

With passage of this proposal, Fresno will join the ranks of all of the other cities in California with some form of independent review, including: Los Angeles, San Diego, Sacramento, Long Beach, Berkeley, Claremont, Davis, National City, Novato, Oakland, Richmond, Riverside, San Francisco, San Jose, Santa Cruz and Sausalito. Nationally, we will join the ranks of such cities as: Tucson, Denver, New Haven, Miami, Orlando, Honolulu, Boise, Chicago, Indianapolis, Iowa City, Baltimore, Detroit, Minneapolis, Kansas City, Omaha, Las Vegas, Albuquerque, New York, Syracuse, Cincinnati, Eugene, Portland, Philadelphia, Pittsburgh, Knoxville, Memphis, Austin, Houston, Salt Lake City, Seattle, Washington D.C., and many others.

The following pages detail the function, responsibilities, limitations, and procedures of an **Office of Independent Review (OIR)**. Much research and thought has been put into this policy proposal with the intention of moving our City beyond a decade of debate and analysis to the adoption of a responsible and well constructed approach to an Office of Independent Review (OIR).

We are grateful for the input we have received thus far from Fresno City Councilmembers, the Fresno City Attorney's Office, law enforcement officials from other cities with IPAs or other civilian oversight, professors of criminology, the Fresno Police Officers Association, community leaders, and the public at large.

### **Key Principles**

As a result of our work thus far, we have identified some key principles and concepts that would form the foundation of a successful Office of Independent Review and reflect our own philosophy and values:

***Independence*** - Independence is essential to the Office of Independent Review's role. The Independent Reviewer (IR) must exercise independent judgment, free of any real or perceived bending to the wishes of any stakeholders. Inherent in the concept is the benefit to the City and the community of "a fresh set of eyes and ears." True independence requires a partnership between the IR and the City administration. Independence is demonstrated by the impartiality of the IR's analysis and conclusions. It is affirmed by the open, accepting reception such work will receive by the City's elected and appointed officials. In other words, independence is not a function of to whom the IR reports; it is proven in how City government receives the IR's work product.



***Fairness, Integrity and Honesty*** - The IR must be impartial in word and deed, process and results. Even the appearance of partiality can undermine the IR's work and credibility. The IR must be candid with stakeholders and participants. A lack of honesty will impair an IR's ability to function.

***Transparency*** - The IR must provide an additional level of transparency for the Police Department. Therefore, the IR's own work product must be available to the community, to the extent permitted by law.

***Participation of Stakeholders*** - The IR must welcome the participation of all internal and external stakeholders. Both internal and external stakeholders must have access to the IR and the ability to offer input or seek assistance. A process that excludes any stakeholders is flawed and inherently lacking in fairness.

***Acceptance, Cooperation and Access*** - The City's administrators and managers must embrace the concept of the IR's independence. This encompasses permitting the role a degree of freedom to inquire and a willingness to evaluate the IR's work product with an open mind. In order to gain the maximum possible benefit from an Independent Reviewer, the City and its staff will cooperate with the IR and provide the access necessary for the job to be well performed.

***Obedience to Legal Constraints*** - The IR must obey all relevant laws and respect the rights of all stakeholders.

### **Guiding Concepts**

***More Than Just the "Avoidance of a Negative"***- The role of the IR can and should be an "affirmative positive" for all the stakeholders. The IR we envision will offer the opportunity to improve the quality of service to all stakeholders and increase their level of satisfaction. As well, the IR will enhance communication between stakeholder groups and offer the chance for better mutual understanding.

***Implementation of the OIR*** - This document represents an important milestone on the path to the creation of the OIR, but it is not, nor could it be, a comprehensive articulation of all the parameters. The implementation of the OIR may be further refined as it is implemented as a result of changes in organizational and community needs.

***Importance of the Selection Process*** - There is no substitute for a careful, circumspect selection process. As s/he will be provided access to highly confidential materials and to the City's senior decision makers, the IR must be deserving of a profound level of trust. Overly complicated or constraining rules on the IR are neither a substitute for picking the right person nor an adequate protection from picking the wrong one.



## **Appointing and Managing the Independent Reviewer**

Determining who will appoint and manage the IR has been the most difficult issue to resolve in the past and one of the biggest challenges to gaining agreement on adopting an auditor. A variety of models have been evaluated over the years, and each has their strengths and weaknesses. We have concluded that there is no perfect, "off the shelf" model given our strong mayor form of government and unique elements of the city charter. Therefore, while we have taken into account general "best practices," ultimately we are presenting an approach that best serves Fresno.

It is critical that the IR be independent and non-political. In the past, discussions about independence have been framed entirely in the IR's reporting structure. However, as we continued to explore the alternatives, we came to recognize that independence is less about those structural reporting issues than it is about appropriate empowering authorization from the City's elected and appointed officials.

In order to provide the IR with the necessary access to City records, comply with State personnel laws and the Peace Officers Bill of Rights, and report findings to his/her appointing authority, there are only two alternatives for the IR to report: the City Manager or the City Attorney. In response to some Councilmember and stakeholder concerns, we attempted to formulate a structure whereby the IR reported to the City Attorney. However, after thorough consultation with knowledgeable experts, we are now satisfied that such a structure would represent a compromise of some of our core principles and is unworkable. As the City Attorney has verified, having an IR report to him would pose a serious conflict of interest. The City Attorney has an attorney-client relationship with the Police Department; this would substantially impair his ability to appropriately supervise the IR.

Therefore, the IR will report to the City Manager. This is the most common reporting structure for IRs. Because the Chief of Police and his department also report to the City Manager, this (a) ensures departmental cooperation, (b) ensures access to records and department employees while ensuring confidentiality, and (c) reinforces the City's unity of command structure. We recognize the gravity of stakeholder concerns in the past about the IR reporting to the City Manager and will create a mechanism wherein conflicts between an IR and a City Manager are resolved.

Additionally, and in keeping with our key principles, IRs will be hired with the participation of the Mayor, the City Council, the Chief of Police and community stakeholders. The City Manager shall form an advisory panel including: the Chief of Police, the Fresno Police Officers Association President, three representative community members, the City Council President and the Mayor of the City of Fresno. In the event that a City Manager chooses to terminate an IR, the termination would be conducted consistent with the City Charter and personnel laws.

## **Role and Responsibilities of the IR**

The duties of the Office of the Independent Review (OIR) include:

- **Audit Investigations Conducted by Internal Affairs (IA)** – A primary function of the OIR will be to audit personnel investigations. The OIR will mandatorily audit the following investigations:



- Use of force investigations (including officer involved shootings);
- Investigations of in-custody deaths;
- Collisions during pursuits that result in serious injury or death; and
- Complaints involving alleged bias relating to gender, race, ethnicity, religion, age, sexual orientation or disability.

The investigations subject to discretionary audit will include those involving:

- All other collisions during pursuits;
- Claims of retaliation for filing complaints against police officers; and
- Any other complaints.

These discretionary audits may be conducted on the OIR's own initiative, as a result of citizen requests or requests submitted by the Chief of Police, division commander, or officers.

In mandatory audits, the OIR may choose to be involved in the investigation process as an *observer* (not an additional investigator) from the initial callout until the investigation is completed. Once the investigation is completed, it will be audited by the OIR.

As a result of conducting each audit, the OIR will prepare an audit report. The reports will focus on evaluating the investigation's adequacy and thoroughness, as well as the quality and accuracy of the investigation report

The OIR will attempt to resolve any concerns about an investigation at the lowest level, starting with the investigating sergeant and thereafter up the chain of command. Ultimately, if merited, the OIR may discuss concerns with the Chief of Police, and then the City Manager. In any event, every OIR audit will result in an audit report. Audit reports will be forwarded to the City Manager and City Attorney and shall be written in a manner as to ensure compliance with all personnel and confidentiality laws.

- **Review Inquiry and Complaint Logs** - The OIR will review the Police Department inquiry forms and complaint logs approximately monthly to identify unresolved inquiries and any trends in allegations that may require follow up or further action. The OIR will review these inquiries to determine whether any should have been investigated as a complaint of misconduct rather than addressed as an inquiry. The Police Department will follow up as appropriate. The OIR will work with Internal Affairs to identify areas that may be appropriate for data collection based on regular review of the inquiry and complaint logs.
- **Identify and Monitor Trends** – The OIR will have access to and monitor the Fresno Police Department's "Early Alert" system, as well as demographic data on traffic stops and other incidents, to identify and monitor trends along with specific responses for remedial actions to address these trends.
- **Serve as a Community Resource** – Community members want to be assured that the process is thorough, fair and without bias. The OIR will make presentations to community groups, professional organizations, neighborhood associations, the media, schools, and participants in the Citizen's Police Academy to educate the community and to solicit suggestions on strengthening the partnership between the community and the Police



Department. The OIR will provide information to community members about its role and the process by which complaints are received and investigated. Constituents may initiate contact with the OIR that can be informal inquiries concerning police policies, questions about the complaint process, or community members who want to share their opinions or concerns, but do not necessarily want to file a formal complaint.

The OIR will have blank Complaint and Commendation forms available and can receive completed forms from community members for forwarding to the Police Department's Internal Affairs unit. The OIR will maintain brochures, pamphlets and other materials to assist citizens seeking information concerning the complaint process, as well as how to commend Police Department employees.

- **Serve as a Resource for Police Officers and Managers** - The OIR shall also serve as a resource for police officers and managers for consultation regarding recommendations for changes to policies. Any recommendations for policy changes will be justified based on an analysis of internal trends and data, and community and professional standards, including procedures used in police departments of similar size and demographic parameters. In addition, the OIR will make presentations to newly hired police officers during their final stages of orientation to provide them with information about residents' perspectives of law enforcement and insight into the most common types of constituent complaints.
- **Produce an Annual Report** – The OIR will produce an annual report that will be transmitted, through the City Manager, to the Mayor, City Council, Chief of Police and public. The annual report shall be posted on the City's website and shall be made available to members of the public in multiple languages. The annual report will include information on the number and types of complaints by category; the number of complaints sustained; the number of complaints that are unfounded, not sustained and exonerated; the number of complaints where the complainant failed to cooperate in the investigation; an analysis of trends and patterns, along with remedial actions taken such as policy changes, training enhancement, and equipment modifications made in response to trends. The report will provide transparent and accurate information about the overall performance of the department while protecting the confidentiality of the individual members of the police department and the public.

In addition, during the first two years, the IR will produce interim reports at the six month mark.

### **Limitations on the OIR**

- **No Unauthorized OIR Investigations** – While the OIR will have the authority to review all personnel investigations, **it will not conduct its own independent investigations of citizen complaints or allegations of employee misconduct.**

Complaints from community members that are received by the OIR will be forwarded to the Police Department's Internal Affairs unit and will be guided through the process according to existing Police Department protocol. The Internal Affairs unit will perform the investigation. Internal Affairs will send the complainant a confirmation letter or will make direct contact acknowledging receipt of the complaint and will give a brief description of the investigative process. In those instances where an investigation is initiated, complainants will be provided



with a Citizen's Complaint Receipt by Internal Affairs that includes the case number assigned to the complainant, the date the complaint was taken and the name of the assigned investigating Sergeant.

- **Ensuring Confidentiality** - We understand that respecting and ensuring the privacy and confidentiality of police officers and their personnel records is of the utmost importance. The IR will have delegated authority from the City Manager to undertake his or her duties. The IR will conduct himself or herself in a manner consistent with all relevant laws and confidentiality practices. Personnel matters are generally classified confidential. In such matters, neither the City Manager nor the OIR would be allowed to disclose any information to any individual or entity not authorized by policy or law, including disciplinary actions resulting from complaints.
- **Communication Protocol** - The OIR will not make public comments revealing or based upon the content of confidential personnel materials without the authorization of the City Manager. This restriction does not prevent the OIR from reporting any concerns to the City Manager, the Chief of Police or the City Attorney. In the interests of enhancing public understanding, the City Manager may authorize the OIR to report on specific incidents with personal identifiers removed, as long as confidentiality laws are not violated.
- **No Attorney-Client Privilege** – The OIR will not have an attorney-client relationship with any of the stakeholders, including the City, the Police Department, City Employees, or Complainants.

### **Staffing the Office of Independent Review**

To fulfill the roles and responsibilities outlined above, it is recommended that the Office of the IR be staffed with three full time employees: (1) the Independent Reviewer, (2) a Community Outreach Specialist, and (3) an administrative assistant.

Councilmembers have raised concerns in the past about the potential for the OIR to grow as staff is assigned additional tasks never intended when the program was created. This, of course, would result in increasing costs for taxpayers. **Therefore, the total staffing for the Office of Independent Review will not exceed three full-time employees for a four-year period following its inception.** After the initial four years, staffing levels for the OIR would be evaluated by the City Manager. Changes to the staffing levels would require Council approval.

Complete job descriptions will be developed for each position. The following paragraphs are an overview of the types of skills required to fill the positions.

- **Independent Reviewer (IR)** - The IR will be responsible for reviewing investigations, reviewing inquiry and complaint logs, identifying and monitoring trends in the Police Department and serving as a resource for police officers and managers (see "Role and Responsibilities of the IR" above). We recommend that the IR be a licensed attorney and may be either a City employee or an independent contractor. The job skills required for the IR shall include experience and knowledge of police procedures, personnel issues, penal codes, relevant case law and court decisions, and the procedural protections provided to officers pursuant to the Peace Officer's Bill of Rights.



The IR must be a person who is fair and impartial, possessing analytical skills to comprehend complex investigations. S/he must be a person of extreme integrity who understands the importance of confidentiality and has the demonstrated ability to navigate complex investigations in a fair and unbiased manner. S/he must be willing to adhere to a code of ethics, such as that prescribed by the National Association for Civilian Oversight of Law Enforcement (*see attached*) and should not be influenced or coerced. The City should require the IR to disclose relationships which might create a conflict of interest and, in particular, relationships and communication between the IR, elected officials, and any internal or external stakeholders, which would call into question conflicts, influence or attempts to corrupt the process.

- **Community Outreach Specialist (COS)** - The Community Outreach Specialist will work at the direction of the IR and will be responsible for informing and educating members of the community about the existence of the OIR and the process by which complaints are received and investigated. The Community Outreach Specialist will make presentations to community groups, professional organizations, neighborhood associations, the media, schools, participants in the Citizen's Police Academy and other groups and will also solicit suggestions on strengthening the partnership between the community and the Police Department. The Community Outreach Specialist will also be responsible for providing customer service to constituents as they access the OIR with questions or concerns. S/he will also be responsible for producing the annual report at the direction of the IR. The Community Outreach Specialist must have a demonstrated ability to work well with a wide diversity of groups with differing viewpoints and backgrounds.
- **Administrative Assistant** - The Administrative Assistant will work at the direction of the IR to support the administrative needs of the office, the COS and the IR. The assistant must have a demonstrated ability to work well with the public and the necessary office skills to process and organize a variety of documents in a professional setting. The Administrative Assistant shall be a person of extreme integrity who understands the importance of confidentiality.

### **Budget**

The creation of the Office of the Independent Review within the City Manager's Office will require additional funding allocated to the City Manager's Office. A realistic assessment of the total cost for the Office of the Independent Review is expected to be approximately \$285,000 in Year One allocated as follows:

<b><u>Personnel Costs</u></b>	<b><u>Salary</u></b>	<b><u>Benefits</u></b>
Independent Reviewer	\$115,000	\$ 25,000
Community Outreach Specialist (start 1/1/10)	\$ 35,000	\$ 10,000
Administrative Assistant	\$ 39,000	\$ 11,000
<b>Total Personnel Costs</b>		<b>\$235,000</b>



### Non-Personnel Costs

Rent (off site) (start 1/1/10)	\$ 13,500	
Operations & Maintenance	\$ 20,000	
Annual Report	\$ 4,000	
Public Confidence Survey	\$ 12,500	
<b>Total Non-Personnel Costs</b>		\$ 50,000
<b>TOTAL FOR YEAR ONE</b>		<b><u>\$285,000</u></b>

The total budget for Years 2-4 will not exceed \$360,000 per year.

**Ensuring Revenue Neutrality** - To ensure this proposal is revenue neutral, the following reductions will be made:

Elimination of City Stewards Program	\$100,000
Elimination of Communications Outreach/City Publicist	\$120,000
Reduction in Cost of Customer Satisfaction Surveys	\$ 40,000
Elimination of Non Profit Grant Writing Program*	\$100,000

*\*The Mayor's Office is working with the program manager to identify other sources of funding to backfill the elimination of City general funds.*

### Office Location

The Office of the Independent Review will require an off-site office to accommodate constituents who may not be willing to go directly to a police facility for information, to ask questions, or to file a complaint.

### Expected Outcomes/Measures of Success

It is difficult to find comprehensive, quantitative data to validate the effectiveness of independent audits of law enforcement. However, we have sought guidance and input from experts on quantitative measures of success of OIRs. In response, we have routinely heard this argument: ***"It is just common sense that getting good, independent feedback allows you to deal with problems early on and it will always reduce risks and liabilities in the long run."***

That is, in fact, what the Los Angeles Sheriff Department experienced according to Merrick Bobb, the former police monitor for the LASD and founding director of the Police Assessment Resource Center: In the 2003 St. Louis University Public Law Review, Merrick reports: ***"During the past ten years of outside, independent monitoring and reporting, the total docket of excessive force cases on file against the LASD has dropped from a high of 381 cases in fiscal year 1992-1993 to a low of 70 cases in fiscal year 1998-99. The amounts paid out in settlements and judgments of excessive force cases dropped from a high of \$17 million in fiscal year 1995-1996 to a low of \$1.62 million in fiscal year 1997-1998."***



We believe it is extremely important to adopt specific and realistic performance metrics for the Office of Independent Review and will do so before the office commences operation. Baseline measurements will be established to be compared against measurements collected on an annual basis to determine the effectiveness of the office. The measurements will include, but are not limited to:

- Number of use of force occurrences (including officer involved shootings);
- Number of in custody deaths;
- Number of collisions during pursuits that result in serious injury or death;
- Number of complaints involving gender, race, ethnicity, religion, age, sexual orientation of disability;
- Total dollar amount paid out each year by the City resulting from civil suits filed against the City for police misconduct cases; and
- Public satisfaction with the Fresno Police Department.

### **Evaluation of the Office of Independent Review**

A thorough, independent evaluation of the OIR will be conducted at the end of its 4<sup>th</sup> year of operation to determine whether the office has met its objectives and to ensure it has not strayed from its original intent and purpose. The results of the evaluation should be reviewed in open session of the City Council. The City Council will vote to continue or not to continue the operations of the OIR based on review of the objective performance measures, including stakeholder satisfaction. In addition, a public review will be held at the 2 year mark to consider refinements to the program if necessary.

### **Conclusion**

Establishing an independent police auditor has been a politically volatile subject in Fresno for too long. As stated above, this policy proposal was developed with the understanding that Fresno police officers are highly trained, capable people who strive to serve the public every day with professionalism and that because of the tremendous power and authority invested in law enforcement, independent audits of investigations to protect our officers and maintain the public's trust is warranted.

This policy proposal for establishing the Office of Independent Review is not being made with the unrealistic expectation that constituent complaints will cease to exist or even decrease because of independent audits in the short- or mid-term. There will always be complaints and, in fact, an increase in initial complaints is expected due to the establishment of the Office of Independent Review. The primary role of the OIR is to ensure that complaints are thoroughly and appropriately investigated and that the community has trust in the process. If administered correctly, the Independent Reviewer for the City of Fresno will help protect our officers by enhancing policies, procedures, and training for the Fresno Police Department and strengthen police-community relations.



# ATTACHMENT 1

# INDEPENDENT POLICE AUDITOR STUDY COMMISSION COMMITTEE ROSTER

June 17, 2003

NAME	ORGANIZATION	TITLE	PHONE	CELL/PAGER	E-MAIL
Dennis Beck	City Attorney Office	Deputy City Attorney	621-7542		<a href="mailto:Dennis.Beck@fresno.gov">Dennis.Beck@fresno.gov</a>
Rod Brisendine	Fresno Police Officers Association	Second Vice President			<a href="mailto:Rodney.Brisendine@fresno.gov">Rodney.Brisendine@fresno.gov</a>
Joe Callahan	Fresno Police Department	Lieutenant	621-2731	P: 773-3051	<a href="mailto:Joseph.Callahan@fresno.gov">Joseph.Callahan@fresno.gov</a>
Jeaneen Cervantes	City Manager's Office	Senior Secretary	621-7770		<a href="mailto:Jeaneen.Cervantes@fresno.gov">Jeaneen.Cervantes@fresno.gov</a>
Roz Clark	Fresno Neighborhood Watch Association		222-0124	C: 281-3645	<a href="mailto:RozClark@yahoo.com">RozClark@yahoo.com</a>
Jerry Dyer	Fresno Police Department	Chief of Police	621-2000		<a href="mailto:Jerry.Dyer@fresno.gov">Jerry.Dyer@fresno.gov</a>
Paula Farris	Greater Fresno Area Chamber of Commerce	Vice Chairperson	438-2040		<a href="mailto:Pfarris@Panagraph.com">Pfarris@Panagraph.com</a>
Gail Gaston	Human Relations Commission	Chairperson	325-0540	C: 681-3140	<a href="mailto:gdemvote@aol.com">gdemvote@aol.com</a>
Jerry Haynes	Community Services Division	Assistant Director	621-2910	C: 907-0323 Fax: 498-1588	<a href="mailto:Jerry.Haynes@fresno.gov">Jerry.Haynes@fresno.gov</a>
Keith Kelley	Fresno West Coalition for Economic Development	Executive Director	485-1273 255-4200	C: 217-0496	<a href="mailto:Keithkelly@fwced.org">Keithkelly@fwced.org</a>
Sara Mirhadi	Democratic Community		325-1610	C: 960-4429	<a href="mailto:Saramirhad@aol.com">Saramirhad@aol.com</a>
Joel Murillo	LEADER for Education, Employment and Justice	Chair	268-7227	Fax: 268-9299	NONE
Mike Oliver	Fresno Police Officers Association	President	442-3762	P: 764-0252	<a href="mailto:Mike.Oliver@fresno.gov">Mike.Oliver@fresno.gov</a>
Debbie Reyes	Central California Criminal Justice Committee		485-7884		<a href="mailto:Reyesdm@pacbell.net">Reyesdm@pacbell.net</a>
H. Spees	One by One Leadership	Chief Executive Officer	233-2000 ext. 111	Gloria ext. 110	<a href="mailto:Gloria@onebyoneleadership.com">Gloria@onebyoneleadership.com</a>
Lemarr Treadwell	West Fresno School District	Teacher	485-2272	C: 281-4757	<a href="mailto:Ltreadwell@attbi.com">Ltreadwell@attbi.com</a>





## ATTACHMENT 2



## NACOLE CODE OF ETHICS

### **Preamble**

*Civilian oversight practitioners have a unique role as public servants overseeing law enforcement agencies. The community, government, and law enforcement have entrusted them to conduct their work in a professional, fair and impartial manner. They earn this trust through a firm commitment to the public good, the mission of their agency, and to the ethical and professional standards described herein.*

*The standards in the Code are intended to be of general application. It is recognized, however, that the practice of civilian oversight varies among jurisdictions and agencies, and additional standards may be necessary. The spirit of these ethical and professional standards should guide the civilian oversight practitioner in adapting to individual circumstances, and in promoting public trust, integrity and transparency.*

### **Personal Integrity**

Demonstrate the highest standards of personal integrity, commitment, truthfulness, and fortitude in order to inspire trust among your stakeholders, and to set an example for others. Avoid conflicts of interest. Conduct yourself in a fair and impartial manner and recuse yourself or personnel within your agency when significant conflict of interest arises. Do not accept gifts, gratuities or favors that could compromise your impartiality and independence.

### **Independent and Thorough Oversight**

Conduct investigations, audits, evaluations and reviews with diligence, an open and questioning mind, integrity, objectivity and fairness, in a timely manner. Rigorously test the accuracy and reliability of information from all sources. Present the facts and findings without regard to personal beliefs or concern for personal, professional or political consequences.

### **Transparency and Confidentiality**

Conduct oversight activities openly and transparently providing regular reports and analysis of your activities, and explanations of your procedures and practices to as wide an audience as possible. Maintain the confidentiality of information that cannot be disclosed and protect the security of confidential records.



### **Respectful and Unbiased Treatment**

Treat all individuals with dignity and respect, and without preference or discrimination including but not limited to the following protected classes: age, ethnicity, culture, race, disability, gender, religion, sexual orientation, socioeconomic status or political beliefs.

### **Outreach and Relationships with Stakeholders**

Disseminate information and conduct outreach activity in the communities that you serve. Pursue open, candid, and non-defensive dialog with your stakeholders. Educate and learn from the community.

### **Agency Self-examination and Commitment to Policy Review**

Seek continuous improvement in the effectiveness of your oversight agency, the law enforcement agency it works with, and their relations with the communities they serve. Gauge your effectiveness through evaluation and analysis of your work product. Emphasize policy review aimed at substantive organizational reforms that advance law enforcement accountability and performance.

### **Professional Excellence**

Seek professional development to ensure competence. Acquire the necessary knowledge and understanding of the policies, procedures, and practices of the law enforcement agency you oversee. Keep informed of current legal, professional and social issues that affect the community, the law enforcement agency, and your oversight agency.

### **Primary Obligation to the Community**

At all times, place your obligation to the community, duty to uphold the law and to the goals and objectives of your agency above your personal self-interest.



## ATTACHMENT 3



# Office of Independent Review

## Frequently Asked Questions

### **What is an Office of Independent Review?**

An Office of Independent Review (OIR) provides the City with a mechanism to strengthen community trust for the Police Department by allowing for a neutral, third-party review of police policies, procedures, strategies and internal investigations. An Office of Independent Review is staffed with highly skilled personnel with significant expertise in law enforcement best practices. The Office works independently of the Police Department chain of command to provide City policymakers and the public with objective analysis of policing data, actions and outcomes. The Office of Independent Review would also serve as a resource for police officers and managers, providing consultation on policing issues, department procedures and concerns relating to actions by officers.

Independent Reviews can be initiated in response to citizen inquiry or at the request of the Chief of Police, a Division Commander, or an officer. In addition, the OIR will automatically review:

- "Use of force" cases (including officer-involved shootings);
- Investigations of in-custody deaths;
- Collisions during pursuits that result in serious injury or death; and
- Complaints involving alleged bias relating to gender, race, ethnicity, religion, age, sexual orientation, or disability.

The IPA may also audit:

- All other collisions during pursuits;
- Claims of retaliation for filing complaints against officers; and
- Any other complaints.

OIR reports will be forwarded to the City Manager who is accountable to the Mayor of Fresno. Under the City Charter, the City Manager has full supervisory authority over the Chief of Police, including the ability to hire and fire. This reporting structure will ensure the independence of the OIR by insulating it from political influence.

In addition, the OIR will publish an Annual Report to the Community, summarizing results and findings during the previous year. The Annual Report will also include a yearly survey of public attitudes toward the Fresno Police Department and perceptions of the effectiveness of its strategies.

### **Why would an Office of Independent Review be beneficial for Fresno?**

To be fully effective, police agencies require the highest level of public confidence and officer credibility throughout the community they serve. An Office of Independent Review will provide ongoing, independent feedback to the Chief of Police, Mayor, other city leaders, and the community to help address issues which may impact public support and cooperation.



The Fresno Police Department is a highly professional and nationally-accredited police agency with 849 sworn officer positions. Department personnel make over 600,000 citizen contacts each year. These range from responses to 911 calls and arrests of criminal suspects to traffic stops and special event patrols. Citizen inquiries or complaints arising from contacts with police are handled by the department's own Internal Affairs Division.

An Office of Independent Review provides for an impartial analysis of Internal Affairs investigations by a neutral third party. This will provide city leaders and citizens with an objective view of police policies, procedures, methods and strategies to enhance the credibility of the Police Department and its officers in the community. In doing so, an Office of Independent Review will help improve officer safety through increased public cooperation. In addition, the establishment of an OIR is likely to reduce liability resulting from legal claims and judgments in the long run as potential problems are identified and corrected early on.

**Does this OIR proposal reflect a lack of trust in the Fresno Police Department or Fresno Police Officers?**

Not in the least. The Fresno Police Department is widely viewed as a model police agency. It is a nationally accredited department, led by one of the most highly respected law enforcement officials in the country – Chief Jerry Dyer. Since 2001, Chief Dyer has embraced the concept of independent review as an essential tool for enhancing his department and helping to ensure trust and cooperation between his officers and the community.

Fresno Mayor Ashley Swearengin, like Chief Dyer, also supports independent review. An OIR will provide greater government transparency - one of Mayor Swearengin's core values – while ensuring the highest level of public safety for Fresno citizens and protection for our officers. Just as other public agencies utilize outside experts to help improve their methods and procedures, the Office of Independent Review will provide continuous, professional feedback to the Fresno Police Department. Currently, over 55% of the city's general fund budget is allocated to the Police Department – a total of nearly \$139 million annually. It is also the city's largest department and delivers the single most essential service to Fresno residents: protection of life and property. The establishment of an Office of Independent Review provides a reasonable and appropriate system of public accountability, given the size and scope of the department's responsibilities.

**What is the role of an OIR?**

The primary role of the Office of Independent Review is to analyze complaints filed by citizens with the Police Department Internal Affairs Division to ensure they have been investigated thoroughly and conducted fairly. The OIR may examine the records of investigations and talk with investigating officers. The OIR can not conduct a separate investigation and will not have subpoena authority. The findings of the OIR will be reported to the City Manager, who has supervisory authority over the Chief of Police.



The OIR will also monitor reporting trends to examine whether police policies are being fairly administered. In addition, the OIR will conduct public outreach, including an annual survey to determine public perceptions about the Police Department and its effectiveness. A report to the community will be published each year detailing the work of the OIR and other relevant data.

**What authority will an OIR have over the Police Department?**

The Office of Independent Review will not direct policy within the Police Department. The findings and recommendations of the OIR will be reported to the City Manager. Under the City's Charter, the City Manager has direct authority over the Chief of Police and is ultimately responsible for ensuring the effectiveness and professionalism of the Police Department.

**Will Police Officer confidentiality be observed?**

Yes, the Office of Independent Review will be bound by confidentiality statutes and the Peace Officer Bill of Rights.

**Which other cities have similar independent review functions?**

With passage of this proposal, Fresno will join the ranks of cities in California with some form of independent review, including: Los Angeles, San Diego, Sacramento, Long Beach, Berkeley, Claremont, Davis, National City, Novato, Oakland, Richmond, Riverside, San Francisco, San Jose, Santa Cruz and Sausalito. Nationally, we will join the ranks of such cities as: Tucson, Denver, New Haven, Miami, Orlando, Honolulu, Boise, Chicago, Indianapolis, Iowa City, Baltimore, Detroit, Minneapolis, Kansas City, Omaha, Las Vegas, Albuquerque, New York, Syracuse, Cincinnati, Eugene, Portland, Philadelphia, Pittsburgh, Knoxville, Memphis, Austin, Houston, Salt Lake City, Seattle, Washington D.C., and many others.

**Who will select the City's Independent Reviewer?**

The Independent Reviewer will be hired by the City Manager, based on direct input from the Mayor, Chief of Police, representatives from the City Council and Fresno Police Officers Association (FPOA) and three members of the community.

**Is a change in the City Charter required to establish an OIR?**

No. An Office of Independent Review, reporting to the City Manager, may be established without a modification to the City Charter. Other approaches, including those requiring the OIR to report to the Mayor or to the City Council, would require a lengthy and cumbersome process to amend the City Charter. However, even if a charter revision process was undertaken to enable OIR reporting directly to the City Council, the OIR could not legally disclose certain findings to the City Council without violating personnel and confidentiality statutes. Therefore, the City Manager approach is the only workable reporting structure for the OIR.

**What will an Office of Independent Review cost?**

A budget of \$285,000 will be required to establish an Office of Independent Review for the first year. In Years 2-4, the annual budget will not exceed \$360,000. **This budget**



**includes salary and benefits for three full time personnel** (Independent Reviewer, Community Outreach Specialist and Administrative Assistant) plus operational expenses. **No staffing expansion will be permitted for 4 years without City Council authorization.**

**Where will the money for the OIR come from?**

The establishment of an Office of Independent Review will be revenue-neutral, meaning that dollar-for-dollar reductions will be made in other budgeted areas within the City to fund OIR operations. In the 2009-2010 budget year, the following reductions will be made:

- Elimination of "City Stewards" program \$100,000
- Elimination of City Publicist \$120,000
- Elimination of Grant Writing program \$100,000
- Reduction in Customer Survey expenditures \$ 40,000

**Wouldn't it cost less to hire an outside auditor on a case-by-case basis?**

Hiring an outside auditor only "when needed" would cost more, not less. Each separate, independent investigation costs \$30,000 - \$50,000 on average and would be subject to inconsistencies in personnel, methodology and reporting. Other significant drawbacks to this approach include the complete elimination of community outreach and an inability to measure results from policy and procedure changes.

**How will we know if the OIR is a success or failure?**

The success or failure of the OIR will be measured in a number of ways including: results from public surveys on attitudes toward the Police Department, reductions in the number of complaints filed against the department, effectiveness of working relationship between the OIR and Police Department personnel, and reduction in costs for legal services, judgments, and settlements. The OIR position is subject to review and/or elimination by the Fresno City Council after 5 years.

**Who Supports an Office of Independent Review?**

Fresno Mayor Ashley Swearengin  
Former Mayor Alan Autry  
Fresno Police Chief Jerry Dyer  
Fresno County Grand Jury  
League of Women Voters  
Fresno Business Council  
The Fresno Bee  
Fresno Chamber of Commerce  
Building Industry Association of the San Joaquin Valley

**Who Opposes an Independent Police Auditor?**

Fresno Police Officers Association