

ORDINANCE NO. NS-3029

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
SANTA ANA ADDING DIVISION 16 TO ARTICLE IV OF
CHAPTER 2 OF THE SANTA ANA MUNICIPAL CODE FOR
THE ESTABLISHMENT OF A POLICE OVERSIGHT
COMMISSION

RECITALS

- A. The residents of the City of Santa Ana are concerned about public safety and have expressed their concern through various means of civil engagement, including participation in community forums on establishing civilian oversight.
- B. There have been allegations of excessive force and other types of alleged misconduct committed by Santa Ana Police Officers, which can erode public trust in law enforcement and the community of Santa Ana. The Santa Ana Police Department ("Department" or "Police Department") and the City Council are committed to working together to build trust and improve public safety.
- C. Historically, the City of Santa Ana has settled several lawsuits involving the Police Department involving incidents prior to 2017. The City Council is committed to exploring ways to reduce liability through improvements in police operations through continued transparency.
- D. The process for establishing a Police Oversight Commission began in June 2020 when the Mayor and Councilmembers directed staff to research police oversight. This resulted in numerous public informational sessions, data-gathering through two community feedback surveys, and reports outlining the various models of police oversight. In October 2021, the Mayor appointed three Councilmembers to the Police Oversight Ad Hoc Committee, who met from November 2021 to June 2022. The Ad Hoc Committee studied police oversight in detail, resulting in a working draft of an ordinance to establish a Police Oversight Commission.
- E. The establishment of the Santa Ana Police Oversight Commission will support democratic governance and lead to an even more professional, well-managed, accountable, and highly functioning Police Department.
- F. Santa Ana residents and the City Council desire a highly resourced and effective Police Oversight Commission to improve law enforcement operations and sustain community trust.
- G. The Santa Ana City Council is committed to providing the resources needed to properly investigate allegations of police practices, police misconduct, officer-involved shootings, and other serious uses of force and thereby determines it

is necessary to ensure the people who conduct investigations have the requisite expertise, establish the credibility of the investigations, and inspire the community's confidence in their quality and independence.

- H. Pursuant to the City of Santa Ana City Charter Section 700, the City Council may provide for the organization, conduct, and operation of offices, departments, and other agencies set forth in the Charter and may provide for the creation of additional departments, divisions, offices, and agencies and for their alteration or abolition, for their assignment and reassignment to departments, and for the number, titles, qualifications, powers, duties, and compensation of all officers and employees.
- I. Pursuant to City Charter Section 700, the City Council by ordinance may assign additional functions or duties to offices, departments, or other agencies or create additional offices or departments.
- J. Pursuant to City Charter Section 900, the City Council may establish appointive boards and commissions by ordinance and shall specify in such ordinance the powers and duties of the boards and commissions.

THE CITY COUNCIL OF THE CITY OF SANTA ANA DOES ORDAIN AS
FOLLOWS:

SECTION 1. Division 16 is hereby added to Article IV of Chapter 2 of the Santa Ana Municipal Code to read as follows:

CHAPTER 2

ARTICLE IV

DIVISION 16 – POLICE OVERSIGHT COMMISSION

Sec. 2-660. Establishment and Purpose.

There is hereby established a Police Oversight Commission (hereinafter referred to as the "Commission"). The purpose of the Commission shall be to improve transparency, increase the accountability of and public confidence in the Santa Ana Police Department and to provide for an Independent Oversight Director. The purpose of the Commission is to act through the Independent Oversight Director to provide the Chief of Police, City Manager, and City Council independent investigations of, analysis, and recommendations on police practices, police misconduct, officer-involved shootings, and other serious uses of force.

Sec. 2-661. Police Oversight Commission Membership and Term.

The Commission shall consist of seven (7) members to be appointed by the city

council from the residents of the city.

The city council shall strive to appoint members who are fair and impartial, and who represent diverse social, economic, and political interests. The city council shall consider the career and life experiences of Commission applicants and appoint those who are representative of the diversity of the Santa Ana community and whose knowledge and experiences will most benefit the Commission's ability to carry out its duties and responsibilities and build trust with the community. The City Council will strive to appoint applicants with knowledge and/or experience in the fields of human resources practices, management, policy development, auditing, law, investigations, social services, civil rights, and civil liberties. The Clerk of the Council shall prepare application forms requiring applicants to provide information demonstrating that they meet qualification requirements set forth in Section 2-662.

Sec. 2-662. Qualifications of Commissioners.

- (a) All members of the Commission shall reside in the City of Santa Ana.
- (b) Elected or appointed officers and employees serving the City shall not be eligible for appointment to the Commission.
- (c) Retired peace officers or peace officers who have separated from public service shall not be eligible for appointment to the Commission unless at least five (5) years has passed from the date of their separation from the governmental entity with which they were previously employed. Only one former or retired peace officer, who is appointed first in time, may serve on the Commission at any given time. "Peace officer" as used herein shall have the same meaning and definition as set forth in California Penal Code section 830 *et seq.*
- (d) Practicing attorneys who handle, or are members of firms or entities that currently handle, criminal or civil matters involving the Santa Ana Police Department are ineligible to serve on the Commission.

Sec. 2-663. – Commissioner confidentiality and training.

- (a) Prior to attending their first Commission meeting, each Commissioner shall take an oath and execute a confidentiality agreement stating that they will not divulge or disseminate confidential information, including identities of witnesses and contents of confidential testimony and documents, either during their term of office or thereafter to ensure that confidential personnel information and other information subject to state law protections is not released or shared.
- (b) No later than 90 days after appointment, each member shall:

- 1. Receive training in relevant subject matters, including but not limited to the Police Department's operations, policies, practices, procedures related to the following: internal affairs investigations; authorized uses of force, including the use of deadly force, control devices, and techniques; uses of conducted energy device; handcuffing and

restraints; detention and arrest of persons; search and seizure of persons and property; the department's established focus of de-escalation tactics, vehicle pursuits, and the duties, responsibilities, procedures, and requirements associated with all ranks and assignments facilitated by the Independent Oversight Director

2. All training shall be predominantly obtained from independent, third-party bodies or institutions that have experience with internal affairs of police departments and civilian review investigations and audits.

3. Attend training sessions sponsored by the National Association for Civilian Oversight of Law Enforcement or similar entities, or through presentations provided on topics including, at a minimum, constitutional rights and civil liberties, fundamentals of procedure, evidence, and due process, procedural rights and confidentiality afforded to police officers by California law (including, but not limited to, Government Code Section 3300 *et seq.*, Penal Code Sections 832.7 and 832.8, and Evidence Code Sections 1040-1043), state use of force standards, police union contracts, labor rights, in-person implicit bias training, and best practices for conducting investigations.

(c) Members of the Commission, may, but are not required to, participate in a ride-along with the Santa Ana Police Department.

Sec. 2-664. - Meetings.

The Commission shall hold its first meeting when there are a sufficient number of appointed Commissioners to constitute a quorum. At such meeting, the Commission shall fix the time and place of regularly scheduled meetings which shall not meet less than once each month. The City Manager or their designee shall attend all regular and special meetings of the Commission and provide regular staff support to the Commission. The Police Chief or their designee shall also attend such meetings as requested by the Commission.

Sec. 2-665. - Powers and duties of the Police Oversight Commission.

To effectuate its purpose, the Commission shall:

(a) Review, evaluate and make recommendations to the Chief of Police and City Council regarding the Police Department's policies, practices, and procedures, develop programs and strategies to promote positive police-community relations, and make appropriate recommendations to the City Manager and the City Council. Within thirty (30) days after receiving such recommendations, the City Manager shall submit a response to the Commission. If the Commission is dissatisfied with the response, the Commission may submit its recommendations to the City Council. The City Manager may extend for an additional thirty (30) days the time periods in which they are required to submit their responses to the Commission by giving the Commission written notice of such extension.

(b) Receive, hear, and review misconduct complaints, tort claims, or lawsuits made against on-duty Santa Ana Police Officers which allege Santa Ana Police Officers have engaged in the following conduct:

- (1) officer-involved shootings- discharge of a firearm at a person by a Santa Ana peace officer that results in death;
- (2) in-custody deaths;
- (3) uses of force that result in great bodily injury of a person;
- (4) prejudice or discrimination involving a protected class;
- (5) dishonesty;
- (6) sexual assault;
- (7) unlawful arrest or unlawful search;
- (8) unreasonable or excessive force;
- (9) failure to intervene against another officer using force that is clearly unreasonable/excessive; or
- (10) unlawful activities/conduct that interferes with First Amendment assemblies.

(c) All complaints to be reviewed by the Commission must be in writing on forms supplied by the Department or the Commission. Anonymous complaints will be accepted. The Commission will not be authorized to retroactively conduct investigations of complaints.

(1) A copy of each complaint, tort claim, and/or lawsuit that alleges misconduct as set forth in section 2-665(b), regardless of where or how it is filed or submitted, shall immediately be forwarded to the members of the Commission, the Independent Oversight Director, the City Manager and the Chief of Police.

(2) No complaint shall be accepted, reviewed, or investigated by the Commission or the Independent Oversight Director if it is not filed/submitted within one (1) year after the alleged misconduct by a Santa Ana Police Officer.

(3) All Commission discussions with the Independent Oversight Director concerning alleged misconduct by any Santa Ana Police Officer shall be held in closed session. At least ten (10) days' advance written notice of the date of the meeting in which a specific officer will be discussed in closed session shall be provided to the complainant and the named police officer and their legal counsel, if known to the Commission.

(d) Receive and discuss reports from the Independent Oversight Director on all incidents involving the following types of alleged misconduct by Santa Ana Police Officers:

- (1) officer-involved shootings- discharge of a firearm at a person by a Santa Ana peace officer that results in death;
- (2) in-custody deaths;
- (3) uses of force that result in great bodily injury of a person;
- (4) prejudice or discrimination involving a protected class;
- (5) dishonesty;
- (6) sexual assault;
- (7) unlawful arrest or unlawful search;
- (8) unreasonable or excessive force;

- (9) failure to intervene against another officer using force that is clearly unreasonable/excessive; or
- (10) unlawful activities/conduct that interferes with First Amendment assemblies.

(e) Direct the Independent Oversight Director to independently review and investigate citizen complaints, tort claims, or lawsuits alleging the types of police misconduct as identified in section 2-665(b) or when the City Council provides authorization pursuant to Santa Ana City Charter Section 1100 subject to the restrictions set forth in Government Code Section 3300 *et seq.*, California Penal Code Sections 832.5, 832.7 and 832.8, Evidence Code Sections 1043 through 1046, the Santa Ana Charter and Municipal Code, the MOU that applies to the impacted member, and Santa Ana Police Department's policies and procedures.

(f) The Independent Oversight Director shall review and investigate timely filed/submitted complaints as soon as possible. Pursuant to Santa Ana City Charter Section 1100, the City Council hereby authorizes the Independent Oversight Director to subpoena witnesses, administer oaths and compel the production of evidence for their independent investigation. At the conclusion of the investigation, the Independent Oversight Director shall submit a report with findings and recommendations, orally and in writing, to the Commission.

(1) Upon receipt of the Independent Oversight Director's report, the Commission may:

- (i) Direct the Independent Oversight Director to investigate the complaint further;
- (ii) Forward the Commission's findings and recommendations concerning the complaint to the City Manager based upon the Independent Oversight Director's report; and
- (iii) Make disciplinary recommendations to the Police Chief and/or the City Manager, when a complaint of misconduct has been sustained against a Santa Ana Police Officer subject to the restrictions set forth in Government Code Section 3300 *et seq.*, California Penal Code Sections 832.5, 832.7 and 832.8, Evidence Code Sections 1043 through 1046, the Santa Ana Charter and Municipal Code, the MOU that applies to the impacted member, and the Police Department's policies and procedures. This subdivision does not, however, provide the Commission or the Independent Oversight Director the authority to impose any discipline on any member of the Police Department. All discipline ultimately imposed on any peace officer must comply with all federal, state and local laws, including, but not limited to, Government Code Section 3303, *et seq.*, Penal Code Sections 832.5, 832.7 and 832.8, Evidence Code Sections 1043 through 1046, Chapter 9, Article V of the Santa Ana Municipal Code, the MOU that applies to the impacted member, and the Police Department's policies and procedures. Unless extended by the Commission, within sixty (60) days after receiving such recommendations, the Police Chief or City Manager shall submit a response to the Commission. If the Commission is dissatisfied with the response, the commission may submit its recommendations to the City Council. The Police Chief and/or City Manager may extend for an additional thirty (30) days the time periods in which they are required to submit their responses to the Commission by giving the Commission written notice of such extension.

(g) Authorize the Independent Oversight Director to audit complaint files and review policies to ensure best practices are implemented.

(h) Advise the Mayor, City Council, City Manager and Police Chief on community relations issues involving the Police Department.

(i) Review any Memorandum of Understanding (MOU) between the City and the Santa Ana Police Officers Association or the City and the Santa Ana Police Management Association, and provide suggestions and recommendations concerning negotiations to the City Manager and the City Council.

(j) Conduct public meetings to educate the community on the purpose of the Police Oversight Commission and provide a forum for discussions about police policies, practices, and procedures.

(k) Prepare and submit an annual report to the City Council concerning the Commission's activities, findings and recommendations. The annual report shall include, at a minimum, the following:

The number of investigations initiated during the annual reporting period and data summarizing the nature of the alleged or actual underlying conduct;

The number of investigations concluded during the reporting period, and, of those investigations, the number that took more than six months to conclude and data summarizing the nature of the alleged or actual underlying conduct;

The number of investigations pending as of the end of the reporting period and data summarizing the nature of the alleged or actual underlying conduct;

The number of complaints not sustained during the reporting period and data summarizing the nature of the alleged or actual underlying conduct;

The number of complaints sustained during the reporting period and data summarizing the nature of the alleged or actual underlying conduct;

The number of complaints filed against each police officer during the reporting and data summarizing the nature of the alleged or actual underlying conduct;

The number of disciplinary recommendations issued to the Police Chief and City Manager, as well as the number of recommendations accepted and rejected.

The number of complaints referred to other agencies during the reporting period and the identity of such other agencies and data regarding summarizing the nature of the alleged or actual underlying conduct.

The reports or recommendations submitted to the City Council, Police Chief, and City Manager concerning Commission regulations, legislation, or budgetary allocation and Police department policies, procedures, customs, orders, collective bargaining agreements, programs, and training, as well as the appropriate party's response to such reports or recommendations.

(l) Perform such other duties as requested by the City Council. All staff work must comply with all federal, state and local laws, including but not limited to, Government Code Section 3303, *et seq.*, Penal Code Sections 832.5, 832.7 and 832.8, Evidence Code Sections 1043 through 1046, Chapter 9, Article V of the Santa Ana Municipal Code, the MOU that applies to the impacted member and Santa Ana Police Department's policies and procedures.

(m) References to Santa Ana Police Department's policies and procedures in this Division shall mean all current policies and procedures in place that apply to administrative/internal affairs investigations. Those policies and procedures shall not be amended in any way that may conflict with this Ordinance, unless otherwise required by law.

Sec. 2-666. – Appointment and role of an Independent Oversight Director.

(a) The City Council does hereby authorize the appointment of an Independent Oversight Director, pursuant to City Charter Section 1100 and in accordance with this Section 1100 shall appoint the Independent Oversight Director. The Independent Oversight Director may be engaged through a professional services agreement or may be hired as an exempt at-will City employee who will serve at the will and pleasure of the City Council and will be subject to removal by majority vote of the City Council.

(b) In addition to regular staff support provided to the Commission, the Independent Oversight Director shall assist the Commission in performing its duties and exercising its powers.

(c) After receiving a complaint, tort claim, or lawsuit and when directed by the Commission, the Independent Oversight Director shall, in accordance with this division, conduct investigations of allegations of on-duty Santa Ana Police Officers who have engaged in the following conduct:

- (1) officer-involved shootings- discharge of a firearm at a person by a Santa Ana peace officer that results in death;
- (2) in-custody deaths;
- (3) uses of force that resulted in great bodily injury of a person;
- (4) prejudice or discrimination involving a protected class;
- (5) dishonesty;
- (6) sexual assault;
- (7) unlawful arrest or unlawful search;
- (8) unreasonable or excessive force;
- (9) failure to intervene against another officer using force that is clearly

unreasonable/excessive; or

(10) unlawful activities/conduct that interferes with First Amendment assemblies.

In addition to conducting investigations of complaints, tort claims, and/or lawsuits alleging the type of misconduct set forth in section 2-665(b), the Independent Oversight Director shall also have the independent authority to periodically request and review citizen complaints and "use of force" reports or other pertinent documents maintained by, or available to, the Chief of Police to determine whether death or great bodily injury was caused by direct police action. No investigations shall be commenced on any incidents that occurred prior to the effective date of the Ordinance enacting this Division. Any review of historical data or incidents must comply with all federal, state and local laws, including but not limited to, Government Code Section 3303, *et seq.*, Penal Code Sections 832.5, 832.7 and 832.8, Evidence Code Sections 1043 through 1046, Chapter 9, Article V of the Santa Ana Municipal Code, the MOU that applies to the impacted member and Santa Ana Police Department's policies and procedures.

(d) The Independent Oversight Director shall conduct all audits and investigations in a fair, objective, impartial, and ethical manner, and shall comply with the Public Safety Officers Procedural Bill of Rights (Government Code Section 3300, *et seq.*) in interviewing police officers. The Independent Oversight Director shall prepare a written report of each investigation that will constitute the public record and may discuss confidential or privileged information with the Commission in a properly notice closed session. The report shall comply with the provisions of Penal Code Sections 832.5, 832.7 and 832.8 and Evidence Code Sections 1043 through 1046. After review by the Commission, the public record of the investigation shall be posted on the public website for the Commission within thirty (30) days. All disclosures of investigations conducted by the Independent Oversight Director shall comply with California Penal Code Sections 832.5, 832.7 and 832.8 and California Evidence Code Sections 1043 through 1046, as amended from time to time. The Independent Oversight Director may discuss findings with the Commission and/or the public in strict compliance with California Penal Code Sections 832.5, 832.7 and 832.8 and California Government Code Sections 3300, *et seq.*

(e) The City Manager or their designee shall assist with advertising the position of Independent Oversight Director and shall prepare the necessary documents to engage the Independent Oversight Director. The City Council shall review all qualifying applications and select no more than three applicants to interview for the role of Oversight Director. The Commission shall be permitted the opportunity to review the top three applicants and recommend a candidate to the City Council. The Independent Oversight Director shall be authorized by the City Council under Charter Section 1100 to report directly to the City Council.

Sec. 2-667. – Budget and Support for Commission and Oversight Director.

The City Manager shall make a recommendation to the city council, as part of the annual City budget, to fund the Commission and any additional labor, consulting, equipment, training, or materials necessary for the Commission and the Independent Oversight Director to carry out the duties and exercise the powers set forth in this Division.

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Sec. 2-668 – Access to Police Department records, data and reports.

To effectuate meaningful oversight and accountability, the Commission and the Independent Oversight Director shall have complete and prompt access to all police department records, information, and data, including, but not limited to, audio and video recordings, photographs, police reports, dispatch logs, and other records related to the underlying incident to assist the Commission and the Independent Oversight Director in effectively discharging their respective duties, subject to all federal, state and local laws including any and all restrictions set forth in the Santa Ana Charter, Municipal Code and the Public Safety Officers Procedural Bill of Rights (Government Code Section 3300, *et seq.*). The Police Department shall designate staff who will timely receive and process requests for records made by the Commission and/or the Independent Oversight Director.

To increase transparency, all data including, but not limited to, stop, detention, arrest, and use of force data, including Racial and Identity Profiling Act ("RIPA") data and reports, that are legally disclosed to the Department of Justice and/or any other federal or state law enforcement agency, shall, at the time of disclosure of that data, be concurrently provided to the Commission and the Independent Oversight Director.

Sec. 2-669. - Rules and records.

The Commission shall, in consultation with the Independent Oversight Director and the City Manager, develop rules for the transaction of business of the Commission, which rules shall, among other things, include the manner of calling and giving notice of special meetings and hearings, and the appointment and powers of ad hoc and standing subcommittees. Said subcommittees may be formed to work on various topics within the scope of police activities. The city council shall adopt the rules for the transaction of business of the Commission. The Commission shall also keep records of its resolutions, rules, transactions, motions, orders, findings, recommendations and determinations. Except for those items made confidential by California Penal Code Sections 832.5, 832.7 and 832.8, or by any other applicable privileges under the law, the records of the Commission shall be open to the public. Commission reports shall be posted on the City's website and open to public inspection, except that information contained therein that is confidential and prohibited from disclosure under any other applicable law shall be redacted.

Sec. 2-670. Severability.

Should any provision of this division, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this division or Chapter or the application of this Division or Chapter to any other person or circumstance and, to that end, the provisions hereof are severable.

Secs. 2-671 - 2-699 Reserved.

SECTION 2. Section 2-325 of Article IV of Chapter 2 of the Santa Ana Municipal

Code is hereby amended to add a subsection (i) to read as follows: (New language is underlined)

Sec. 2-325. - Compensation for members of boards, commissions.

1. The members of the following boards and commissions of the city shall receive the compensation as set forth herein:

- (a) *Community development and housing commission*. Fifty dollars (\$50.00) per meeting, three (3) meetings maximum per month, plus twenty dollars (\$20.00) per month automobile allowance.
- (b) *Personnel board*. Fifty dollars (\$50.00) per meeting.
- (c) *Planning commission*. Fifty dollars (\$50.00) per meeting, three (3) meetings maximum per month, plus fifty dollars (\$50.00) per month automobile allowance.
- (d) *Historic resources commission*. Fifty dollars (\$50.00) per meeting, two (2) meetings maximum per month.
- (e) *Parks, recreation and community services commission*. Fifty dollars (\$50.00) per meeting, two (2) meetings maximum per month.
- (f) *Environmental and transportation advisory commission*. Fifty dollars (\$50.00) per meeting, two (2) meetings maximum per month.
- (g) *Youth commission*. One (1) meeting per month, three (3) special meetings maximum per year with the compensation of fifty dollars (\$50.00) per meeting.
- (h) *Arts and culture commission*. Each commission member shall receive a maximum compensation in the amount of fifty dollars (\$50.00) for attendance at one (1) regular meeting per month.
- (i) *Police Oversight Commission*. Each Commissioner shall receive \$50 per meeting with no more than four (4) compensated meetings per month.

2. The members of the appointive boards and commissions may receive reimbursement for necessary traveling and other expenses when on official duty of the city when such expenditure has been appropriated by the city council and authorized by the board or commission and subject to rules and regulations prescribed by ordinance or order of the city council.

SECTION 3. The Clerk of the Council shall attest and certify to the passage and adoption of this Ordinance, and shall cause same to be posted as required by law and this Ordinance shall take effect thirty (30) days after its final adoption.

SECTION 4. If any section, subsection, sentence clause or phrase or word of this


Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction or preempted by state legislation, such decision or legislation shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Santa Ana hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence clause or phrase or word not declared invalid or unconstitutional without regard to any such decision or preemptive legislation.


ADOPTED this 15th day of November, 2022.



Vicente Sarmiento
Mayor

APPROVED AS TO FORM:
Sonia Carvalho, City Attorney



By:  Tamara Bogosian
Senior Assistant City Attorney

AYES:	Councilmembers	<u>Hernandez, Lopez, Mendoza, Penaloza, Phan, Bacerra, Sarmiento (7)</u>
NOES:	Councilmembers	<u>None (0)</u>
ABSTAIN:	Councilmembers	<u>None (0)</u>
NOT PRESENT:	Councilmembers	<u>None (0)</u>

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Clerk of the Council, do hereby attest to and certify that the attached Ordinance No. NS-3029 to be the original ordinance adopted by the City Council of the City of Santa Ana on November 15, 2022 and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: 11/18/22



Clerk of the Council
City of Santa Ana