



SPECIAL JOINT MEETING AGENDA
PUBLIC SAFETY REFORM AND OVERSIGHT COMMISSION
AND
OPERATIONS, STAFFING AND BUDGET COMMITTEE
VIRTUAL MEETING

Monday, September 27, 2021

6:00 P.M.

Join the meeting at: <https://bluejeans.com/540059081/0079>

Call to Order

Roll Call

Swearing in of new Commissioners

NOTICE IS HEREBY GIVEN that a regular meeting of the PUBLIC SAFETY REFORM AND OVERSIGHT COMMISSION will be held at 6:00 p.m., on THURSDAY, AUGUST 12, 2021, VIA TELECONFERENCE PURSUANT TO EXECUTIVE ORDER N-29-20 ISSUED BY, GOVERNOR GAVIN NEWSOM at <https://bluejeans.com/540059081/0079> for the purpose of only conducting the following business.

Please note that Agenda Items may be reordered during the meeting at the discretion of the body.

1. **Special Agenda Items** - none
2. **Consent Calendar** - no items
3. **Study Session**
 - a. Review and input on draft written report and recommendations to City Council regarding OIR Group Report, SMPD Response, and Commission's intended work plan. Discussion of [SMPD July 29, 2021 Information](#) Item and

SMPD Response to [OIR Group report](#) on May 31, 2020 events

4. **Continued Items** - no items
5. **Administrative Proceedings** - none
6. **Staff Administrative Items** no items

7. **Public Hearing** - none
8. **Resolutions** - none
9. **Written Communications**
10. **Public Safety Reform and Oversight Commission Member Discussion Items**

11. **Public Input:** The Commission will provide time for additional public input on matters within its purview on items that were not on the agenda. State law prohibits the Commission from taking any action on items not listed on the agenda, including issues raised under this agenda item.

Adjournment

STANDARDS OF BEHAVIOR THAT PROMOTE CIVILITY AT ALL PUBLIC MEETINGS:

- Treat everyone courteously
 - Listen to others respectfully
 - Give open-minded consideration to all viewpoints
 - Focus on the issues and avoid personalizing debate
1. Embrace respectful disagreement and dissent as democratic rights, inherent components of an inclusive public process, and tools for forging sound decisions

This agenda is available in alternate formats upon request. If you require any special disability related accommodations (i.e. sign language interpreting,

language interpretation, etc.), please contact the City Manager's Office via Lisa.Parson@smgov.net at least 1 day prior to the scheduled meeting.

This agenda is subject to change up to 72 hours prior to a regular meeting. Please check the agenda for prior to the meeting for changes.

Transportation Information: This meeting is being held virtually. No in person access is available.

City of Santa Monica
Public Safety Reform and Oversight Commission
Report to City Council regarding:
OIR Group Findings and SMPD Response Concerning May 31, 2020 Events
[September 21, 2021 Draft for Discussion]

Dear Mayor Himmelrich, Mayor Pro tem McCowan, and Councilmembers:

Earlier this year, City Council received and reviewed the OIR Group Report and discussed its implications. The OIR Group Report contained sharp criticism of SMPD on numerous topics, including critiques of SMPD's leadership, communications, policy flaws, and violations of policy and other potential misconduct by officers during the May 31, 2020 protests, opportunistic looting, and related events. The City Council asked the SMPD to provide a detailed response to the OIR Group Report within sixty days, and asked the Public Safety Reform and Oversight Commission (PSROC) to provide a report back to City Council reflecting our assessment and how the PSROC plans to incorporate the OIR Group's recommendations into the Commission's overall work plan. That report was scheduled to be completed by late September, but has been delayed as a result of the litigation brought by the SM Police Officer's Association to block the PSROC from operating.

Over the months since its inception, the Commission has been reviewing and discussing the OIR Group report and its implications for our work on oversight and reform of policing in Santa Monica and reimagining public safety. The Commission received an ad hoc committee report with that committee's initial review and recommendations on major themes and priorities they observed. We have had discussions at our regular Commission meetings to solicit individual Commissioner input and public input. In addition, the Commission's standing committee on Operations, Staffing and Budget held weekly special meetings for the purpose of ensuring each Commissioner opportunities to provide input and opinions about the OIR Group Report and to help shape our conclusions and work plan going forward. We have also received substantial public comment on the events of May 31, 2020 and their implications.

The following is a summary of our assessment:

- The events of May 31, 2020 put the SMPD under stressful conditions that revealed structural and systemic weaknesses in the department.
- Leadership of SMPD failed our community on May 31, 2020 and perpetuated false and misleading information about the status and operations of SMPD in the immediate aftermath of the events and continuing through to the present.
- The SMPD's policies, training, and tactics resulted in attacks on peaceful protesters while failing to anticipate and prevent systematic looting of businesses by opportunistic criminals. SMPD pointed rifles at Santa Monica residents and shot them with rubber bullets from behind.
- Numerous instances of misconduct occurred by officers, including misuse of tear gas, pepper spray and flash grenades, along with widespread failure to use body worn cameras. Officers engaged in misconduct against defenseless and peaceful residents of

Santa Monica and have not been held accountable.

- The SMPD leadership failed to appropriately investigate and hold officers accountable for misconduct on May 31, 2020. SMPD does not have an adequate system of holding officers accountable for misconduct.
- SMPD and its leadership have failed to adequately engage in community dialogue in its attempt to remedy the numerous flaws revealed on May 31, 2020 and in the OIR Group Report. For example, SMPD accepts all of the OIR Group’s recommendations and claims that they have essentially “fixed” all of their problems, yet they did not involve the community in developing so-called fixes. Instead, they have continued to act in complete disregard of the PSROC on both routine and important policy matters in recent months.
- SMPD’s Use of Force system is flawed. It’s policies are not reflective of best practices, and it does not have an adequate system of reporting and accountability.
- SMPD’s Protests and Crowd Management system is flawed. It’s policies have not been updated to reflect community values and are not transparent. It does not have an appropriate system to train officers and hold them accountable for compliance.
- SMPD does not have appropriate systems for intake, tracking and transparency of complaints.

We intend to incorporate each of the above issues into our work plan going forward. Our intent is to work with the new leadership of SMPD to promote more cooperation and dialogue between the Commission and SMPD and to develop a functioning working relationship. We also expect to work with the SMPD and provide our input on each important policy and the related training approaches and accountability mechanisms.

PSROC will delegate the initial work on each theme to the standing committees it has created and ask those committees to do the detailed work and make preliminary recommendations on key issues. We anticipate the full Commission making regular suggestions, recommendations and proposals to the appropriate persons or groups within the City, including to the new Police Chief, City Manager, and City Council.

Details of Themes, Issues and Recommendations

1. Key Themes Identified by the Commission for Follow Up

Leadership.

The OIR Group Report flagged substantial weaknesses in the overall leadership of SMPD that were manifest because of the urgent and emergency situations that unfolded on May 31, 2020. We are concerned that these leadership challenges persist within the department and further work needs to be done.

We would also like to understand how the SMPD leadership will organize its response to future incidents similar to the events of May 31, 2020.

False narrative.

There is concern that the SMPD and other City officials have used evasive and untrue language when communicating to the public about matters of concern. That conduct has not been limited to the former leadership of SMPD and we are concerned that the practice has continued to the present.

The OIR Group report strongly criticizes the former Police Chief and other City leadership for attempting “to put a positive spin on the events [of May 31, 2020] rather than candidly acknowledging the significant shortcomings in SMPD’s response.” [OIR report at p. 96] In short, the Chief and other City leadership did not tell the public the truth about what happened on May 31, 2020.

We believe the false narrative promoted by SMPD during 2020 included the following:

- Statements denying that credible evidence existed forecasting possible demonstrations and looting in Santa Monica on 5/31;
- The former Police Chief and Interim City Manager both asserted that SMPD deserved a “Strong A” for its performance on 5/31. Neither chose to publicly modify their statement, despite overwhelming evidence of its inaccuracy; they also touted the techniques and training of SMPD and expressed gratitude for having kept the City safe on May 31. [OIR report at p. 96]
- The volume of footage captured by SMPD officer’s body-worn cameras was regularly cited by top city officials as a primary reason for explaining why a meaningful report on the events of 5/31 was not made available to the public for 13 months. These officials neglected to inform the public that approximately half of the officers did not activate their body-worn cameras, resulting in far less footage than would have been expected;
- SMPD leadership and other city leaders made conflicting and inaccurate statements to the public about the progress and value of the internal SMPD After-Action Report. Ultimately, that work product was roundly criticized by, and proved to be of little use to, the OIR investigators;
- The public was given false assurances on multiple occasions that the completion of an authoritative After-Action report was imminent when it was not;

The OIR Group reported that the “dissonance between the Department’s message and the public’s experience (either in person or watching on television) caused a serious rift in trust that increased the unease of many Santa Monicans in relation to what had transpired on May 31.” [p.97]

The Commission will seek to understand whether the false narrative promoted to the public in

the wake of the May 31 events was reflective of a systemic problem within the department.

In addition, we will want to understand what steps have been taken to date to ensure that the public receives accurate and truthful information from the SMPD.

If a critical incident occurs in the future, the Commission will want clarity from SMPD regarding what actions should the public expect from SMPD concerning a report on what happened.

Body worn camera compliance issues.

There is concern that there has been insufficient detail provided about the lack of compliance with the BWC policy by SMPD officers on May 31, 2020. We don't know the details about the officers disciplined, such as the specific conduct, and what the discipline was. We don't have sufficient information about the conduct of the officers who did not comply and were not disciplined. We don't have information on the policy or how it is enforced, or what changes have been made to the policy or procedures in response to the OIR Group report.

Accountability and discipline.

There is concern that the systems of accountability and discipline need to be strengthened. The interim Chief was not able to provide complete answers to PSROC Commissioner's questions about non-compliance with body-worn camera requirements, and the public was not informed about the existence of any disciplinary investigations or the outcome of such investigations until PSROC made inquiries. In addition, the OIR Group Report identifies numerous incidents they observed on camera footage that should have resulted in misconduct referrals and investigative follow up. SMPD has given no indication that they have taken those matters seriously or have done any follow up. If so, the process and results have not been transparent.

The system of intake for complaints is obtuse and not user friendly. In addition, supervising officers have a great deal of discretion to treat complaints informally. Such informal treatment results in a lack of transparency to the public about the nature of complaints and how they were handled.

In addition, the SMPD has been resistant to routine inquiries that involve public records about discipline. In response to our initial inquiries, the SMPD and City officials failed to provide any response for almost 90 days, despite the fact that the requested records are not protected or confidential and are required to be released to the public upon request.

Involvement of outside law enforcement agencies on May 31, 2020. There is interest in learning more about the role of outside law enforcement agencies during the events on May 31. There is insufficient information about efforts to obtain BWC footage from those agencies or what efforts were made to evaluate the conduct of those outside agencies during the protests.

Lawful assembly best practices.

SMPD mishandled the peaceful protests on May 31, while allowing systematic looting of small businesses by opportunistic criminals. It is important to understand what are the best practices for lawful assembly and First Amendment related activities and what steps will be taken to prevent reoccurrence in the future.

The OIR Group report also identifies flawed language in the written policies as well as flawed implementation of appropriate handling of protests on May 31, 2020. This reveals overall flaws in the system for handling protests, which include policies, training, and a system for transparency and accountability.

SMPD claims to have remedied any such flaws, but their refusal to appropriately engage in a detailed conversation with the Commission or interested community members reveals one of its key flaws.

Use of force during protests.

There are concerns about the various uses of force that occurred during the May 31, 2020 events. SMPD shot tear gas into crowds under inappropriate conditions and without appropriate exit routes. SMPD shot pepper spray at Santa Monica residents, including at least one woman who was a former PAL participant and was known to them. SMPD pointed a rifle at the back of a woman who was a Santa Monica resident, standing afraid in the middle of protest activity. She is traumatized to this day. The OIR Group also identified numerous examples of additional misconduct that should have been investigated by SMPD.

In addition, the OIR Group Report reveals significant issues regarding the policies and training on Use of Force by SMPD. Again, SMPD claims to have remedied any such flaws, but their refusal to appropriately engage in a detailed conversation with the Commission or interested community members reveals one of its key flaw.

Transparency. There are concerns about transparency between SMPD, the City Attorney's Office and the community.

2. Commission work plan to address these important issues.

Body worn camera recommendations:

We will ask our Accountability standing committee to evaluate the following suggestions:

- Commission should seek assistance of Inspector General to follow up on details of noncompliance;
- Commission should obtain camera footage and audio from outside agencies who participated in May 31, 2020 activity in Santa Monica;
- Commission should demand immediate receipt and publication of SMPD's body worn

camera policy;

- Commission should insist that training and policy on use of cameras be evaluated with a goal of adopting the latest best practices for use of such cameras to enhance their legitimacy and trust within the community.

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Accountability Recommendations:

We will ask our Accountability standing committee to evaluate the following suggestions:

- consider modifications to the Commission ordinance to provide further accountability mechanisms and enhance the involvement of the Commission in the accountability process.
- evaluate whether the Commission should have subpoena power.
- evaluate revisions to the discipline procedures for the SMPD.
- continue to invite the Police Chief and SMPD leadership to respond to Commission questions and provide specific answers.

Leadership Recommendations:

We will ask our Operations, Staffing and Budget standing committee to evaluate the following suggestions:

- PSROC should be meaningfully included in search for new Police Chief;
- PSROC should provide a list of characteristics, skills and experience to look for in the next Police Chief;
- City Manager should require Police Chief to develop a plan for positively interacting with the Commission and collaborating on policy and other matters of public safety;
- City Council should insist that contract with new Police Chief contains goals for accountability of the department and its officers;
- City Manager should design performance goals for the new Police Chief that include measures for community engagement and cooperation with the Commission.

False Narrative Recommendations:

- City Council and City Manager should insist that SMPD become more transparent about all aspects of SMPD activities;
- Commission should evaluate the operation and structure of public communications within the SMPD and consider ideas for improvement.

3. Additional matters for City Council to be aware of

- The lack of sufficient resources provided to support the Commission;
- The insufficient responsiveness of the City in providing requested information;

- The need for Commission input in the selection of new SMPD Chief.
- There is widespread support for civilian oversight within Santa Monica;
- Independent oversight is a fundamental good governance structure that enhances local democratic process, and helps ensure that local policing policies and practices comport with City values. Oversight provides the volunteer City Council with additional information and input into matters that are important to City Council's policymaking and budget duties.
- Independent civilian oversight of local police agencies is a best practice for contemporary policing and is widely promoted by law enforcement policy organizations and widely embraced by communities throughout our country. It would be anomalous for a modern, leading city to not have an oversight body.
- the police cannot be entrusted to police themselves; see examples from the recent past.
- we have concerns about the SM POA and actions that are inconsistent with civilian oversight and with fundamental democratic values.

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City of Santa Monica
Public Safety Reform and Oversight Commission
Report to City Council regarding:
OIR Group Findings and SMPD Response Concerning May 31, 2020 Events
[Draft with edits from PSROC Vice Chair Devermont from September 24, 2021]

Dear Mayor Himmelrich, Mayor Pro tem McCowan, and Councilmembers:

Earlier this year, City Council received and reviewed the OIR Group Report and discussed its implications. The OIR Group Report contained sharp criticism of SMPD on numerous topics, including critiques of SMPD's leadership, communications, policy flaws, and violations of policy and other potential misconduct by officers during the May 31, 2020 protests, opportunistic looting, and related events. The City Council asked the SMPD to provide a detailed response to the OIR Group Report within sixty days, and asked the Public Safety Reform and Oversight Commission (PSROC) to provide a report back to City Council reflecting our assessment and how the PSROC plans to incorporate the OIR Group's recommendations into the Commission's overall work plan. That report was scheduled to be completed by late September, but has been delayed as a result of the litigation brought by the SM Police Officer's Association to block the PSROC from operating.

Over the months since its inception, the Commission has been reviewing and discussing the OIR Group report and its implications for our work on oversight and reform of policing in Santa Monica and reimagining public safety. The Commission received an ad hoc committee report with that committee's initial review and recommendations on major themes and priorities they observed. We have had discussions at our regular Commission meetings to solicit individual Commissioner input and public input. In addition, the Commission's standing committee on Operations, Staffing and Budget held weekly special meetings for the purpose of ensuring each Commissioner opportunities to provide input and opinions about the OIR Group Report and to help shape our conclusions and work plan going forward. We have also received substantial public comment on the events of May 31, 2020 and their implications.

The following is a summary of our assessment:

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- The SMPD's policies, training, and tactics resulted in attacks on peaceful protesters while failing to anticipate and prevent systematic looting of businesses by opportunistic criminals. SMPD pointed rifles at Santa Monica residents and shot them with rubber bullets from behind.
- Numerous instances of misconduct occurred by officers, including misuse of tear gas, pepper spray and flash grenades, along with widespread failure to use body worn cameras. Officers engaged in misconduct against defenseless and peaceful residents of

Santa Monica and have not been held accountable.

- The SMPD leadership failed to appropriately investigate and hold officers accountable for misconduct on May 31, 2020. SMPD does not have an adequate system of holding officers accountable for misconduct.
- SMPD and its leadership have failed to adequately engage in community dialogue in its attempt to remedy the numerous flaws revealed on May 31, 2020 and in the OIR Group Report. For example, SMPD accepts all of the OIR Group’s recommendations and claims that they have essentially “fixed” all of their problems, yet they did not involve the community in developing so-called fixes. Instead, they have continued to act in complete disregard of the PSROC on both routine and important policy matters in recent months.
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Details of Themes, Issues and Recommendations

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The OIR Group Report flagged substantial weaknesses in the overall leadership of SMPD that were manifest because of the urgent and emergency situations that unfolded on May 31, 2020. We are concerned that these leadership challenges persist within the department and further work needs to be done.

We would also like to understand how the SMPD leadership will organize its response to future incidents similar to the events of May 31, 2020.

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- The public was given false assurances on multiple occasions that the completion of an authoritative After-Action report was imminent when it was not;

The OIR Group reported that the “dissonance between the Department’s message and the public’s experience (either in person or watching on television) caused a serious rift in trust that increased the unease of many Santa Monicans in relation to what had transpired on May 31.” [p.97]

The Commission will seek to understand whether the false narrative promoted to the public in

the wake of the May 31 events was reflective of a systemic problem within the department.

In addition, we will want to understand what steps have been taken to date to ensure that the public receives accurate and truthful information from the SMPD.

If a critical incident occurs in the future, the Commission will want clarity from SMPD regarding what actions should the public expect from SMPD concerning a report on what happened.

Body worn camera compliance issues.

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Accountability and discipline.

There is concern that the systems of accountability and discipline need to be strengthened. The interim Chief was not able to provide complete answers to PSROC Commissioner's questions about non-compliance with body-worn camera requirements, and the public was not informed about the existence of any disciplinary investigations or the outcome of such investigations until PSROC made inquiries. In addition, the OIR Group Report identifies numerous incidents they observed on camera footage that should have resulted in misconduct referrals and investigative follow up. SMPD has given no indication that they have taken those matters seriously or have done any follow up. If so, the process and results have not been transparent.

When questioned at a PSROC meeting, Interim Chief Seabrooks could not answer questions as to exactly how many officers were investigated for being non-compliant with SMPD body Camera policy on May 21, 2020. Additionally, the Interim Chief was unable to state how many officers were disciplined for non-compliance, how many were found to have not violated policy after being investigated, what discipline was administered for those found to be non-compliant. Upon questioning by Commissioners, Interim Chief Seabrooks was advised not to answer whether a finding of intentional non-compliance, to hide events that should be filmed under the policy, would constitute an act of dishonesty under California Penal Code § 832.7. Interim Chief Seabrooks only answered the most pointed questions directly and did not offer information beyond the strict confines of each question. This body interprets the reluctance to be forthcoming with the commission as discomfort with civilian oversight.

The system of intake for complaints is obtuse and not user friendly. In addition, supervising officers have a great deal of discretion to treat complaints informally. Such informal treatment

results in a lack of transparency to the public about the nature of complaints and how they were handled.

In addition, the SMPD has been resistant to routine inquiries that involve public records about discipline. In response to our initial inquiries, the SMPD and City officials failed to provide any response for almost 90 days, despite the fact that the requested records are not protected or confidential and are required to be released to the public upon request.

Outside of public record requests, SMPD has been resistant to undertaking reformative efficiency measures regarding notification and production of "Brady evidence" to prosecutors and defense attorneys. For this report, "Brady Evidence" is evidence that would reflect on an officer's credibility, and such evidence would be findings of excessive force, actions of dishonesty, or even arrests or convictions for crimes by an officer.

"Brady Evidence" arises out of a United States Supreme Court Case **Brady v. Maryland, 373 U.S. 83 (1963)**. The court found that the notification and production of this type of evidence were constitutionally required. While no one disagrees that the Constitution of the United States mandates the production of Brady evidence, the failure to notify and produce this evidence remains an issue today. In his dissent (4 other Judges joined), Former 9th Circuit Chief Judge Kozinski wrote, "There is an epidemic of *Brady* violations abroad in the land." *United States v. Olson* 737 F.3d 625 (9th Cir. 2013)

To correct this problem, many have suggested that police departments and prosecutorial offices keep an internal "Brady List." A "Brady List" is an internal list of officers who have committed "Brady Violations" (misconduct arising to the point of mandating disclosure). A Brady List allows Police Departments to quickly and efficiently notify prosecutors and defendants that an officer in their case has "Brady Hit.." With a Brady List, Brady Evidence does not get disclosed late or missed at all due to a disorganized structure of searching once a criminal case is well underway. In response to creating a Brady List by San Francisco Police Department, the California Supreme Court wrote, "...[i]n this case, the police department has laudably established procedures to streamline the *Pitchess/Brady* process" *People v. Superior Court* 61 Cal.4th 696 (2015) The courts look favorably upon Brady Lists.

Interim Chief Seabrooks informed the Commission that her department does not keep a Brady List. The Los Angeles County District Attorney's Office (LADA) has asked to be notified of officers involved in a case with Brady Hits when a police report and evidence are submitted with a recommendation of charges to be filed. The Commission was informed that Santa Monica Police Department has failed to comply with this request. As a result, LADA and the Santa Monica City Attorney's Office are informed of Brady violations well after a criminal court case has been initiated. Unfortunately, this results in some defendants pleading to crimes without knowing that potentially exonerating

evidence lay just out of their reach. SMPD's creation and maintenance of a Brady List would ensure all parties are informed of Brady hits as soon as charges are followed.

Involvement of outside law enforcement agencies on May 31, 2020. There is interest in learning more about the role of outside law enforcement agencies during the events on May 31. There is insufficient information about efforts to obtain BWC footage from those agencies or what efforts were made to evaluate the conduct of those outside agencies during the protests.

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Transparency. There are concerns about transparency between SMPD, the City Attorney's Office and the community.

2. Commission work plan to address these important issues.

Body worn camera recommendations:

We will ask our Accountability standing committee to evaluate the following suggestions:

- Commission should seek assistance of Inspector General to follow up on details of noncompliance;
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- Commission should demand immediate receipt and publication of SMPD's body worn camera policy;
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Accountability Recommendations:

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- PSROC should provide a list of characteristics, skills and experience to look for in the next Police Chief;
- City Manager should require Police Chief to develop a plan for positively interacting with the Commission and collaborating on policy and other matters of public safety;
- City Council should insist that contract with new Police Chief contains goals for accountability of the department and its officers;
- City Manager should design performance goals for the new Police Chief that include measures for community engagement and cooperation with the Commission.

False Narrative Recommendations:

- City Council and City Manager should insist that SMPD become more transparent about all aspects of SMPD activities;
- Commission should evaluate the operation and structure of public communications within the SMPD and consider ideas for improvement.

3. Additional matters for City Council to be aware of

- The lack of sufficient resources provided to support the Commission;
- The insufficient responsiveness of the City in providing requested information;
- The need for Commission input in the selection of new SMPD Chief.
- There is widespread support for civilian oversight within Santa Monica;
- Independent oversight is a fundamental good governance structure that enhances local democratic process, and helps ensure that local policing policies and practices comport with City values. Oversight provides the volunteer City Council with additional information and input into matters that are important to City Council's policymaking and budget duties.
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