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Office of the City Attorney  
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City Attorney

November 16, 2004

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Honorable City Council  
Oakland, California

City Council President Ignacio de la Fuente and Members of the City Council:

**Subject: Report and Resolution Authorizing the City Attorney to File an Amicus Brief in Support of the City of Berkeley In Alameda County Superior Court in an Action Challenging the Process and Procedures of Berkeley's Police Review Commission, Alameda County Superior Court Case No. 2002057569**

### **Summary of Action Requested**

The City of Berkeley has asked the City of Oakland to file an amicus brief in support of Berkeley's Police Review Commission in a lawsuit filed by the Berkeley Police Association, the union representing Berkeley police, challenging the process and procedures used by Berkeley's Police Review Commission. The lawsuit is Alameda County Superior Court Case No. 2002057569.

The lawsuit, a Petition for Writ of Mandate filed on July 11, 2002, seeks to invalidate the process and procedures used by the Police Review Commission on the grounds that they violate the Public Safety Officers' Procedural Bill of Rights and Cal. Penal Code Sections 832.5 and 832.7. The Oakland Police Officers' Association has asked that the City of Oakland to file an amicus brief in the Alameda County Superior Court proceeding. The hearing on the writ is currently set for November 22, 2004.

### **Background**

The City of Berkeley has requested that Oakland submit an amicus brief in support of its response to a Petition for Writ of Mandate filed in Alameda County Superior Court by its police union, the Berkeley Police Association. The writ challenges the Berkeley Police Review Commission's right to hold public evidentiary hearings and compel officers to appear and cooperate with the Police Review Commission process

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investigations, hearings, findings and proceedings violates Penal Code Section 832.5 and 832.7 as well as the Public Safety Officers Procedural Bill of Rights, Gov't Code Sections 3300 et seq.

On July 21, 2004, the Oakland Police Officers filed a Petition for Writ of Mandate in Alameda County Superior Court, Alameda County Superior Court Case No. WG04166653, challenging the Citizens' Police Review Board on substantially similar bases.

Should the court find that Berkeley's Police Review Commission violates the Penal Code and Public Safety Officers Bill of Rights Act, it would likely result in a successful challenge to Oakland's Citizens' Police Review Board process and procedures.

**Fiscal Impact**

None. The brief will be prepared and filed at no cost to the City of Oakland.

**Recommendation**

We recommend that the City Council continue its support for the Citizens' Police Review Board by authorizing the City Attorney to file an amicus brief in the Alameda County Superior Court proceeding.

Respectfully submitted,

  
for JOHN A. RUSSO  
City Attorney

Attorney Assigned:  
Vicki A. Laden

  
Approved as to Form and Legality

# Oakland City Council

FILED  
OFFICE OF THE CITY CLERK

2004 NOV -4 PM 7:00  
C.M.S.

RESOLUTION NO. \_\_\_\_\_

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

**RESOLUTION AUTHORIZING THE CITY ATTORNEY TO FILE AN AMICUS BRIEF IN SUPPORT OF THE CITY OF BERKELEY IN ALAMEDA COUNTY SUPERIOR COURT IN AN ACTION CHALLENGING THE PROCESS AND PROCEDURES OF BERKELEY'S POLICE REVIEW COMMISSION, ALAMEDA COUNTY SUPERIOR COURT CASE NO. 2002057569**

**WHEREAS**, the Berkeley Police Association, the union representing Berkeley police officers, filed a Petition for Writ of Mandate in Alameda County Superior Court on July 11, 2002, challenging the process and procedures used by the City of Berkeley's Police Review Commission, Alameda County Superior Court Case No. 2002057569;

**WHEREAS**, a hearing on the Writ is now scheduled to occur on November 22, 2004;

**WHEREAS**, the Oakland Police Officers' Association has filed but not yet served a Petition for Writ of Mandate challenging the Citizens' Police Review Board on substantially similar grounds, Alameda County Superior Court Case No. WG04166653;

**WHEREAS**, a ruling by the Court invalidating Berkeley's police review process and procedures on the same bases raised in the writ against the Citizens' Police Review Board would likely result in invalidating aspects of Oakland's process and procedures for review of citizens' complaints against the Oakland Police Department; therefore be it

**RESOLVED:** that the City Attorney, on behalf of the City of Oakland, is authorized to file an amicus brief supporting the City of Berkeley in the challenge to its police review process by the Berkeley Police Association, Alameda County Superior Court Case No. 2002057569.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN AND PRESIDENT DE LA FUENTE

NOTES-

ABSENT-

ABSTENTION-

Attest: \_\_\_\_\_

CEDA FLOYD  
City Clerk and Clerk of the Council  
of the City of Oakland, California