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REVISED
11/8/04

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. Berkeley has asked 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

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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 and hearings. The writ alleges that the nature of Police Review Commission investigations, hearings, findings and proceedings violates Penal Code Sections 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. OPOA's writ has not yet been served.

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,



by JOHN A. RUSSO
City Attorney

Attorney Assigned:
Vicki A. Laden