



CITY ATTORNEY'S OFFICE

**OAKLAND CITY COUNCIL  
ORDINANCE NO. \_\_\_\_\_ C.M.S.**

**INTRODUCED BY COUNCILMEMBERS KALB AND JENKINS**

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**ORDINANCE:**

**(1) AMENDING OAKLAND MUNICIPAL CODE CHAPTER 2.45, THE ENABLING ORDINANCE FOR THE OAKLAND POLICE COMMISSION, TO BE CONSISTENT WITH CHARTER AMENDMENTS UNDER BALLOT MEASURE S1 AND TO MODIFY THE POWERS AND DUTIES OF THE OAKLAND POLICE COMMISSION AND THE POLICE COMMISSION'S SELECTION PANEL;**

**(2) AMENDING OAKLAND MUNICIPAL CODE CHAPTER 2.46, THE ENABLING ORDINANCE FOR THE COMMUNITY POLICE REVIEW AGENCY, TO BE CONSISTENT WITH CHARTER AMENDMENTS UNDER BALLOT MEASURE S1 AND TO MODIFY THE POWERS AND DUTIES OF THE COMMUNITY POLICE REVIEW AGENCY; AND**

**(3) ADDING CHAPTER 2.47 TO THE OAKLAND MUNICIPAL CODE, AN ENABLING ORDINANCE FOR THE OFFICE OF THE INSPECTOR GENERAL, TO IMPLEMENT CHARTER AMENDMENTS UNDER BALLOT MEASURE S1 AND TO FURTHER DEFINE THE POWERS AND DUTIES OF THE OFFICE OF THE INSPECTOR GENERAL.**

**WHEREAS**, on November 8, 2016, Oakland voters approved Measure LL, adding section 604 to the City Charter and establishing: (1) a Police Commission to oversee OPD policies and procedures; and (2) the Community Police Review Agency (CPRA) to investigate police misconduct and recommend discipline; and

**WHEREAS**, on November 3, 2020, Oakland voters approved Measure S1, creating a civilian Office of Inspector General, and further defining the authority of the Police Commission and the CPRA; and

**WHEREAS**, Charter Section 604(h) authorizes the City Council to enact legislation to further the goals and purpose of Charter section 604; and

**WHEREAS**, the Oakland City Council added Chapters 2.45 and 2.46 to the Oakland Municipal Code on July 10, 2018, and amended them on July 16, 2019, to support the implementation of Charter Section 604; and

**WHEREAS**, pursuant to charter section 604(h), the City Council finds that additional amendments to Oakland Municipal Code are necessary to further the goals and purpose of Charter Section 604.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** Chapters 2.45 (Oakland Police Commission) and 2.46 (Community Police Review Agency) of the Oakland Municipal Code are hereby amended as follows (section numbers and titles are indicated in bold type; additions are indicated by underscoring and deletions are indicated by ~~striketrough~~).

## **Chapter 2.45 OAKLAND POLICE COMMISSION**

### **2.45.010 Definitions.**

The following words and phrases whenever used in this Chapter shall be construed as defined in this Section:

~~"Ad Hoc Committee" shall mean a temporary committee formed by the Commission comprised of less than a quorum of Commission members to address a specific issue.~~

"Agency" shall mean the Community Police Review Agency.

~~"Appointing Authority" shall mean the Selection Panel established by section 604(c)(3) of the City Charter or the Mayor. "Appointing Authorities" shall mean both the Selection Panel and the Mayor.~~

"Chief" shall mean the Chief of Police of the Oakland Police Department.

"Commission" shall mean the Oakland Police Commission.

"Department" shall mean the Oakland Police Department.

"Misconduct" shall mean both ~~a Department sworn employee's~~ an Officer's affirmative act that violates, and/or ~~his or her~~ a failure to act in violation of, the Department's policies, procedures or directives, including without limitation the Department's Manual of Rules.

"Officer" shall mean any sworn individual employed by the Department.

"OIG" shall mean the civilian Office of Inspector General ~~created by this Chapter 2.45.~~

"Serious Incident" shall mean ~~a Department sworn employee~~ an Officer-involved shooting, death or serious bodily harm caused by the action and/or inaction of ~~a Department sworn employee~~ an Officer, in-custody death, ~~and/or the alleged~~ on-duty or off-duty criminal conduct of ~~a sworn Department employee~~ an Officer which rises to the level of a felony or ~~serious misdemeanor.~~ Serious Misdemeanor, and/or the initiation of any administrative investigation of the Chief of

### Police or the Interim Chief of Police.

"Serious Misdemeanor" shall mean any misdemeanor crime that, if convicted, could preclude active law enforcement personnel, or ~~a sworn employee of the Department~~ an Officer, from successfully fulfilling the responsibilities of their job classification. Examples include those crimes that involve violence, intimidation, threats, sexual offenses, theft, dishonesty, possession of drugs, purchase, ownership or possession of a firearm in violation of California Penal Code section 12021(c)(1), and those crimes where bias based on any legally protected characteristic is a motivating factor.

"Subject Officer" shall mean ~~the Department sworn employee~~ an Officer who is the subject of a complaint of alleged ~~misconduct~~ Misconduct.

### **2.45.020 Creation of Police Commission and repeal of Citizens' Police Review Board.**

Oakland City Charter section 604 has established the Oakland Police Commission. ~~Effective the sixtieth day after the City Council's confirmation of the first group of Commissioners and alternates,~~ Ordinance No. 12454 C.M.S., which created the Citizens' Police Review Board, ~~shall be is~~ repealed.

### **2.45.025 ~~Conflict of interest.~~ Reserved.**

~~The following persons shall not be eligible to serve as a Commissioner or as a member of the Selection Panel:~~

- ~~A. Any attorney who represents a person or entity with a pending claim or lawsuit against the Department; or~~
- ~~B. Any attorney who represented a person or entity that filed a claim or lawsuit against the Department and that claim or lawsuit which was finally resolved during within the previous year 12 months.~~

~~This Section shall not apply to the Selection Panel members already appointed prior to June 10, 2018. on the effective date of this Chapter 2.45.~~

### **2.45.030 Selection Panel.**

- A. To the extent practicable ~~and with the exception of the first Selection Panel previously formed under City Charter section 604(c)(3),~~ the Mayor and the City Council shall use best efforts to appoint individuals to the Selection Panel who are broadly representative of Oakland's diversity and who represent communities experiencing the most frequent contact with the Department.
- B. ~~With the exception of the first Selection Panel previously formed under City Charter section 604(c)(3),~~ Selection Panel members shall be residents of Oakland.
- C. The City Administrator shall post on the City's website the names of all Selection Panel members within four (4) business days of their appointment(s) being received by the City Clerk.

- D. The Selection Panel, with the assistance of the City Administrator, shall determine how to solicit candidates for the positions of Commissioner and alternate, and shall determine, consistent with City Charter section 604, what information candidates must submit as part of their applications.
- E. In accord with the City's record retention schedule, the Selection Panel shall maintain all electronic communications to, from and/or copied to any Selection Panel member regarding any matters within the Selection Panel's jurisdiction and provide such communications to the City upon request.
- F. The Selection Panel shall receive training and orientation regarding City Charter section 604 on an annual basis.
- G. Each Selection Panel member shall observe no fewer than two (2) Commission meetings per calendar year.

**2.45.040 Bylaws Commission's governing policies and rules of order.**

- A. The Commission may shall prepare and maintain its own governing policies and rules of order bylaws to govern its operations, the management of its agendas, and the conduct of its meetings. Any such bylaws policies or rules shall be approved, or amended, by a vote of not less than five (5) affirmative votes and shall be consistent with the City Charter and all City ordinances. To the extent required by law, the City will provide the employee unions with notice of such proposed bylaws prior to implementation.
- B. The Commission shall adopt policies for official communications and direction to Commission staff and City employees generally, as well as the Agency Director, Inspector General and Police Chief specifically. Neither the Commission Chair nor any other Commissioner shall give orders or directions to the Agency Director, Inspector General or Chief except to the extent the Commission has the authority to give such direction and has specifically delegated its authority in a Commission policy or by majority vote. Any such delegation of authority by the Commission to direct the Agency Director, Inspector General or Chief must be reasonably specific in nature and may not be a general or blanket delegation.
- C. The Commission's rules of procedure shall provide a clear process for the Commission, by a motion and a vote, to schedule items to, or remove items from, future Commission agendas in accordance with applicable law. Motions and votes to schedule or remove open-session items shall occur in open session, and motions and votes to schedule or remove closed-session items shall occur in closed session.
- D. All commissioners are public officials and are required to conduct themselves with the highest integrity and leadership in all actions. This includes conducting themselves appropriately in interactions with the public, with fellow members of the Commission, and with all City employees. Commissioners shall act in accordance with all applicable laws and policies, including the Commission's policies and all rules of procedure. Complaints that a Commissioner has failed to abide any of the same will be assessed and investigated as appropriate by an independent investigator such as the City's Office of

Employment Investigations and Civil Rights Compliance (EICRC) or the Public Ethics Commission. A finding that a Commissioner has violated an applicable law, rule, or policy may result in reprimand, suspension or removal by the City Council.

- E. To the extent required by law, the City will provide the employee unions with notice of such proposed bylaws amendments to the Commission's governing polices and rules of procedure prior to implementation.

#### **2.45.045 Confidentiality of personnel information.**

The Commission, the Agency, the OIG and their staff shall maintain the confidentiality of ~~Department sworn employee~~ Officer personnel records (as defined by California Penal Code section 832.7) as required by state and local law. Failure to maintain the confidentiality of ~~Department sworn employee~~ Officer personnel records, whether or not intentional, may subject Commission, Agency and OIG staff to discipline, up to and including termination of employment.

#### **2.45.050 Designation of alternates as voting members.**

Consistent with section 604(d)(3) of the Charter, the ~~The~~ Chair of the Commission may, in ~~his or her~~ their discretion, designate an alternate as a temporary voting member to establish a quorum if a Commissioner is absent from a meeting. ~~Consistent with section 604 of the City Charter, there shall not be more than seven (7) voting members of the Commission at any given time.~~

#### **2.45.60 Background checks.**

In accordance with federal and state law, a background check shall be performed on the Mayor's and the Selection Panel's final candidates for the position of Commissioner and alternate before their names are submitted to the City Council for confirmation. The City Administrator's Office shall retain an independent contractor to perform these background checks, which shall only include: verification of educational and employment background, and any other information that may be verified by a public records search.

~~A. Verification of educational and employment background, and any other information that may be verified by a public records search.~~

The results of the background check ~~identified in subsection A., above,~~ shall be treated as public records, and shall be considered by the ~~appropriate Appointing Authority, Mayor or Selection Panel, as appropriate,~~ prior to submitting the names of the final candidates to the City Council for confirmation.

#### **2.45.070 Functions and duties of the Commission.**

In addition to the powers and duties described in section 604 of the Oakland City Charter, the Commission shall:

- A. In accord with the City's record retention schedule, maintain all electronic communications to, from and/or copied to any Commissioner or alternate regarding any matters within the Commission's jurisdiction, and provide such communications to the City upon request.
- B. Maintain the confidentiality of its business in accordance with state and local law,

including without limitation, California Penal Code 832.7 and the California Public Records Act (Cal. Gov't Code sec. 6250, et seq.). A Commissioner's failure to maintain such confidentiality, whether or not intentional, may be considered "gross misconduct in office" for purposes of City Charter section 604(c)(10).

- C. Review and comment on the education and training the Department provides its ~~sworn~~ employees Officers regarding the management of job-related stress, and regarding the signs and symptoms of post-traumatic stress disorder, drug and alcohol abuse, and other job-related mental and emotional health issues. The Commission shall provide any recommendations for more or different education and training to the Chief who shall respond in writing consistent with section 604(b)(6) of the Oakland City Charter. The Commission shall consider whether such training is adequately funded when it reviews the Mayor's proposed budget pursuant to Charter section 604(b)(7).
- D. Prepare and deliver to the Mayor, the City Administrator and the Chief by the earlier of April 15 of each year or such other date as set by the Mayor, ~~a proposed budgets~~ for providing the education and training identified in subsection C., above the Commission, OIG and CPRA.
  - 1. The Inspector General and Agency Director shall submit proposed budgets for the OIG and CPRA, respectively, to the Commission for inclusion in the Commission's proposal.
  - 2. The Commission's proposal shall be adopted by majority vote in open session after receiving and discussing recommendations from members of the public.
  - 3. Once budgeted by the City Council, funds and positions shall be subject to the requirements of Charter section 604(e)(6) and Municipal Code sections 2.45.100(D) and 2.46.040(G). Consistent with the Inspector General's and Agency Director's authority under Charter section 604(e)(6) to organize and reorganize the OIG and the Agency, respectively, the Commission may not direct or require the transfer, deletion, or other alteration of funds or staff positions that City Council ultimately allocates to the OIG and the Agency.
- E. Notwithstanding section 2.29.020 of the Oakland Municipal Code and in accordance with section 604(b)(10) of the City Charter, have the authority to remove the Chief, without the approval of the Mayor, by a vote of not less than five (5) affirmative votes and only after finding cause. For purposes of removing the Chief, "cause" shall be defined as any of the following:
  - 1. Continuing, intentional, or willful failure or refusal to perform the duties and responsibilities of the Chief ~~of Police~~ as required by any employment agreement with the City, the City Charter, the City's governing laws and regulations, or any laws, rules or regulations of any governmental entity applicable to the Chief's employment by the City or to City operations, including without limitation, the inability to perform the duties and responsibilities of the Chief ~~of Police~~ as aforementioned as a result of alcoholism or drug addiction; or
  - 2. A final Sustained finding of Misconduct against the Chief arising from an administrative investigation where termination is within the recommended range of

discipline in the Department's Discipline Matrix.

- ~~2.3.~~ Gross neglect of duties, material violation of any duty of loyalty to the City, or material violation of City or Department policy, including without limitation any policies or procedures pertaining to harassment and discrimination, after the Chief has received written warning of the neglect or violation and the Chief has failed to cure the neglect or violation within twenty (20) days; or
- ~~3.4.~~ Conviction by, or entry of a plea of guilty or nolo contendere, in a court of competent and final jurisdiction for (a) any crime involving moral turpitude, (b) any felony offense, (c) any crime which is likely to have a material adverse impact on the business operations or financial or other condition of the City, or (d) any crime which has resulted in imprisonment; or
- ~~4.5.~~ Failure or refusal to cooperate with any investigation involving employees of the Department; or
- ~~5.6.~~ Obstruction of any investigation of Department employee ~~misconduct~~ Misconduct or criminal activity; or
- ~~6.7.~~ Refusal, which shall include ongoing failure, to administer or enforce any Department policy or procedure; or
- ~~7.8.~~ A material act of dishonesty, fraud, embezzlement, self-dealing, or other act of moral turpitude; or
- ~~8.9.~~ A material breach of confidentiality; or
- ~~9.10.~~ Loss of any professional license or other certification required by state or local law to perform the duties of the position of Chief ~~of Police~~.

F. ~~Within two hundred and forty (240) days of the City Council's confirmation of the first group of Commissioners and alternates and on the anniversary of that date thereafter, notify the Chief regarding what information will be required in Receive and comment on the Chief's annual report to the Commission, as required by Charter section 604(b)(8),~~ which shall include, at a minimum, the following:

- 1. The number of complaints submitted to the Department's Internal Affairs Division (hereinafter, "IAD") together with a brief description of the nature of the complaints;
- 2. The number of pending investigations in IAD, and the types of Misconduct that are being investigated;
- 3. The number of investigations completed, or otherwise closed, by IAD, and the results of the investigations, including total data on types of alleged rule violations, employee types (professional staff, police officer trainee, officer and/or supervisors), and ultimate determinations (Sustained, Not Sustained, Unfounded, Exonerated, or Administratively Closed);
- 4. The number of training sessions provided to ~~Department sworn employees~~ Officers, and the subject matter of the training sessions;
- 5. Revisions made to Department policies;

6. The number and location of ~~Department sworn employee~~ Officer-involved shootings;
7. The number of Executive Force Review Board ~~or~~ and Force Review Board hearings, and the results;
8. A summary of the Department's monthly Use of Force Reports;
9. Number of ~~Department sworn employees~~ Officers disciplined and the level of discipline imposed; and
10. The number of closed investigations which did not result in discipline of the ~~subject officer~~ Subject Officer.

11. The number of complaints the Department failed to forward to the Agency within one business day of receipt, as required by section 604(f)(1) of the Charter, including any potential rule violation(s) identified by the Department as a result of each complaint not timely forwarded.

The Chief shall submit the annual report by the last day of April the following calendar year. By the last day of ~~March~~ December of each year, the Commission shall notify the Chief regarding any additional information requested. The Chief's annual report shall be available to the public and thus shall not disclose any information in violation of state and local law regarding the confidentiality of personnel records, including but not limited to California Penal Code section 832.7.

- G. Conduct ~~an~~ annual performance ~~review~~ reviews of the Inspector General, Agency Director and ~~of~~ the Chief. The Commission shall determine, and may periodically amend, the criteria for evaluating the Inspector General's, Agency Director's and the Chief's job performances by a majority vote in open session., ~~and communicate those performance criteria, in addition to any other job performance expectations, to the Agency Director and the Chief one (1) full year before conducting any evaluation of their job performance. No performance criteria, or any other job expectation, may be used in a performance review unless it was adopted by the Commission eleven (11) months prior to the end of the applicable review period. The Commission shall provide any new evaluation criteria or substantive revisions or additions thereto to the City's Human Resources Department for review and input regarding consistency with both City and industry standards.~~ The Commission may, in its discretion decide to solicit and consider, as part of its evaluation, comments and observations from the City Administrator and other City staff who are familiar with the Inspector General's, Agency Director's or the Chief's job performance. Responses to the Commission's requests for comments and observations shall be strictly voluntary. Nothing herein shall be construed to prohibit evaluation of the Inspector General, the Agency Director or the Chief in closed session, pursuant to applicable law.
- H. Consistent with section 604(e)(6) of the Charter, have the authority to remove the Inspector General by an affirmative vote of no fewer than five members only after a finding or findings of cause. For purposes of removing the Inspector General, "cause" shall be defined as any of the following:

1. Continuing, intentional, or willful failure or refusal to perform the duties and responsibilities of the Inspector General as required by any employment agreement with the City, the City Charter, the City's governing laws and regulations, or any laws, rules or regulations of any governmental entity applicable to the Inspector General's employment by the City or to City operations, including without limitation, the inability to perform the duties and responsibilities of the Inspector General as aforementioned as a result of alcoholism or drug addiction; or
  2. Gross neglect of duties, material violation of any duty of loyalty to the City, or material violation of City policy, including without limitation any policies or procedures pertaining to harassment and discrimination, after the Inspector General has received written warning of the neglect or violation and has failed to cure the neglect or violation within twenty (20) days; or
  3. Conviction by, or entry of a plea of guilty or nolo contendere, in a court of competent and final jurisdiction for (a) any crime involving moral turpitude, (b) any felony offense, (c) any crime which is likely to have a material adverse impact on the business operations or financial or other condition of the City, or (d) any crime which has resulted in imprisonment; or
  4. A material act of dishonesty, fraud, embezzlement, self-dealing, or other act of moral turpitude; or
  5. A material breach of confidentiality; or
  6. Loss of any professional license or other certification required by state or local law to perform the duties of the position of Inspector General.
  7. Two (2) consecutive annual performance evaluations with an overall rating of less than fully effective ratings.
- H.I. Create a form for Commissioners to use in providing annual comments, observations and assessments to the City Administrator regarding the Inspector General's job performance. Each Commissioner shall complete the form individually and submit his or her completed form to the City Administrator confidentially. Regularly evaluate the sufficiency and performance of legal counsel.
1. The Commission shall develop and implement a performance evaluation process to assess the performance of its outside counsel. Metrics to be evaluated shall include, but are not limited to: analytical abilities, legal research/writing, public speaking, professionalism, time management, productivity, and subject matter expertise/knowledge of the law. Areas of subject matter expertise shall include, but are not limited to, if applicable: understanding of the Brown Act/Sunshine Act and parliamentary rules, public employment law, and/or policing policies/practices and police accountability.

2. Performance evaluations of outside counsel shall occur regularly, but no less frequently than once each calendar year.
3. The Commission shall report to the City Council regarding the performance evaluation of outside counsel.
4. If the Commission creates a staff attorney position through the Civil Service Board, in accordance with Charter sections 604(b)(12) and 604(e)(7), the Commission shall conduct performance evaluations in accordance applicable personnel rules and labor agreements.

H.J. Request that the City Attorney submit ~~semi~~-annual reports to the Commission and to City Council which shall include a listing and summary of:

1. To the extent permitted by applicable law, the discipline decisions that were appealed to arbitration;
2. Arbitration decisions or other related results;
3. The ways in which it has supported the police discipline process; and
4. Significant recent developments in police discipline.

The City Attorney's ~~semi~~-annual reports shall not disclose any information in violation of state and local law regarding the confidentiality of personnel records, including but not limited to California Penal Code section 832.7.

J.K. Provide ~~policy guidelines input~~ to the Agency Director for assistance in determining case prioritization.

K-L. Make available on its website, to the extent permitted by law:

1. The Commission's annual report;
2. The Chief's annual report;
3. The Agency's reports;
4. The Agency Director's monthly reports; ~~and~~
5. The ~~Inspector General's annual report.~~ OIG's reports, and
6. Access to the City's public records portal

No information shall be distributed in any form, including but not limiting to using any print media, or posted using any electronic media, in violation of state and local law regarding the confidentiality ~~of personnel records or privilege~~, including but not limited to confidentiality of personnel records under California Penal Code section 832.7.

L.M. Direct the Agency to investigate a ~~serious incident~~ Serious Incident when requested by the Mayor, the City Administrator, and/or the City Council by an affirmative majority vote. This does not affect the Agency's ability to investigate any complaint of misconduct, whether public or not.

M.N. Review the Agency's dismissal and/or administrative closure of all complaints of ~~misconduct~~ Misconduct involving Class I offenses, including any Agency investigative

file regarding such complaints, and, in its discretion and by five (5) affirmative votes, direct the Agency to reopen the case and investigate the complaint. For purposes of this subsection, the definition of "Class I offenses" shall be the same as the definition of "Class I offenses" in the Department's Discipline Policy.

~~N.O. Submit an annual, written report as required by Charter section 604(b)(9) to the Mayor, City Council and the public by May 30 of each year. In association with the Agency Director and in consultation with the Chief or the Chief's designee, establish rules and procedures for the mediation and resolution of complaints of misconduct. To the extent required by law, the City will provide the employee unions with notice of such proposed bylaws prior to implementation.~~

~~O. Receive any and all reports prepared by the Community Policing Advisory Board (hereinafter referred to as "CPAB") and consider acting upon any of the CPAB's recommendations for promoting community policing efforts and developing solutions for promoting and sustaining a relationship of trust and cooperation between the Department and the community.~~

P. Review and comment on the Department's policy and/or practice of publishing Department data sets and reports regarding various Department activities, submit its comments to the Chief, and request the Chief to consider its recommendations and respond to the comments in writing.

Q. Solicit and consider input from members of the public regarding the quality of their interactions with the Agency, the OIG, and the Commission.

~~R. Hold at least two public hearings each calendar year to discuss potential amendments to update the Commission's rules of procedure and to ensure compliance with section 2.45.040. The Department, through the City Administrator or his or her designee, shall report to the Commission on issues identified by the Commission through the Commission's Chair. The City Administrator, or his or her designee, shall attend in person unless impracticable, and shall be prepared to discuss and answer questions regarding the issues identified by the Commission.~~

S. On behalf of the City of Oakland, have the authority to bind the City by written contract, as described in Oakland Municipal Code Chapter 2.04, for such professional, technical or scientific services as are necessary to fulfill its Charter duties. No Commission member may participate in a vote to approve a contract ~~until he or she completes prior to completing~~ the contract training described in section 2.45.190 N, ~~such training to be provided by City Administration within sixty (60) days of final passage of this section 2.45.070 S. and, thereafter, as prescribed by section 2.45.190 N.~~

~~Failure to complete contract training before participating~~ Participating in a vote to approve a contract without completing contract training, and/or ~~failure failing~~ to adhere to the requirements, procedures and policies set forth in Chapter 2.04 of the Oakland Municipal Code, may be considered "gross misconduct in office" for purposes of Charter section 604(c)(10).

The Council recognizes and acknowledges that the City may need the cooperation and assistance of Commission members to address contract disputes that arise in connection

with contracts that the Commission approves during the tenure of such Commissioners' service as a regular or alternate member on the Commission. Each Commissioner shall have the responsibility and duty to cooperate and provide assistance to the City to address contract disputes that arise in connection with contracts that the Commission approves during his/her tenure as a regular or alternate member of the Commission.

T. No Commissioner shall interfere with an open Agency investigation or any other administrative investigation of an Officer, except in accordance with its functions and duties as explicitly set forth in section 604 of the Charter and this Chapter.

#### **2.45.075 Serious ~~incidents~~ Incidents.**

~~Within one hundred and eighty (180) days after the effective date of this Chapter 2.45, the~~ The City Administrator ~~or their designee~~ shall ensure ~~establish~~ the Department establishes and maintains a protocol for notifying the Commission, the Agency Director and the Inspector General of ~~serious incidents~~ Serious Incidents within forty-eight (48) hours of the Chief knowing ~~or having a reasonable suspicion~~ that a ~~serious incident~~ Serious Incident has occurred, ~~or knowing of an allegation that a Serious Incident has occurred.~~ For purposes of this subsection, "Reasonable Suspicion" shall mean that, from the totality of the circumstances, there is a specific, articulable, and objective basis for suspecting personnel of criminal activity. There must be specific facts beyond the mere allegation of criminal misconduct. The City Administrator or her or his designee shall also provide a confidential status report to the ~~Chair of the~~ Commission, the Agency Director and the Inspector General within ten (10) calendar days of the date on which the ~~serious incident~~ Serious Incident occurred, and a second confidential status report ~~to the Chair of~~ the Commission, the Agency Director and the Inspector General within forty-five (45) calendar days of the date on which the serious incident occurred. The City Administrator or her or his designee shall also brief the Commission Chair, the Agency Director and the Inspector General at least once a month regarding allegations of all ~~serious incidents~~ Serious Incidents under investigation.

#### **2.45.080 Access to documents**

A. The Commission shall have access to Department files and records, including personnel files, in accordance with Charter Section 604(f)(2). Commission requests for Department records shall be submitted in writing to the Captain of Internal Affairs and/or the Chief. The Department shall be responsible for responding to Commission requests for Department records in accordance with Charter section 604(f)(2).

~~A.B.~~ Subject to applicable law, the Commission shall have access to all Agency ~~and Department~~ files and records, with the exception of personnel records, and to all files and records of other City offices, departments or agencies that are relevant and necessary to the performance of its duties, with the exception of personnel records. Requests for access to files and records under this subsection shall be made by a majority vote of the Commission, which shall articulate a reasonable nexus to one or more of the Commission's powers and duties enumerated in Charter Section 604(b).

C. Subject to applicable law, the Commission shall have access to all Department files and records, with the exception of personnel records, and to all files and records of other City

departments and agencies that are relevant to a ~~serious incident~~ Serious Incident. ~~Notwithstanding the foregoing, the Commission shall have access to the personnel records necessary to perform its duties described in City Charter section 604(g)(3) and in section 2.45.070 M. of this Chapter of the Oakland Municipal Code.~~

~~D. The Commission shall have access files and records, including personnel records, necessary to perform its duty to review the Agency's closure of certain use-of-force, sexual misconduct, and untruthfulness investigations pursuant to Charter section 604(g)(3).~~

~~E. The Commission shall have access files and records, including personnel records, necessary to perform its duty to review the Agency's dismissal and/or administrative closure of all complaints of Misconduct involving Class I offenses pursuant to section 2.45.070(M) of this Chapter.~~

~~C.F. The Discipline Committees shall have access to all files, including personnel records, that are included in the Chief's and Agency's submissions, as described in City Charter section 604(g)(2) and in this Chapter 2.45.~~

~~D. The Inspector General shall have access to all files, including personnel records, that are necessary to perform his or her duties described in this Chapter 2.45.~~

~~E. The Commission and the OIG shall follow Department policies and procedures regarding the release of videotape and audio tape recordings of alleged Class I violations committed by police officers.~~

~~F.G. To the extent possible, any confidential documents, files and records shall be made available to the Commissioners, the Inspector General and the Discipline Committees in electronic format on a secure server. Each individual who has access to this server shall have ~~his or her~~ their own password. Each page of any printed copies of confidential documents, records or files shall bear a watermark consisting of the name of the individual for whom the printed copies are made. All such copies must be stored in a secure place, and must be shredded when no longer needed. Upon expiration of ~~his or her~~ their term, a Commissioner must return to the City any and all copies of confidential materials that have not been shredded.~~

#### **2.45.090 Meetings.**

In conducting its meetings, the Commission shall comply with all requirements of the Brown Act, California Government Code section 54950, et seq., and Article II of Chapter 2.20 of the Oakland Municipal Code.

A. Consistent with City Charter section 604(d)(1), the Commission shall meet at least twice each month at an established time and place suitable to its purpose. Such meetings shall be designated regular meetings and shall be held at City Hall. If the Commission determines, by a majority vote of those present at a regular meeting, that a second regular meeting in that month is not necessary, it shall provide public notice of the meeting cancellation as required by all applicable State and local laws. Video recordings of all open sessions of Commission meetings shall be aired on KTOP-TV10. The Commission

shall work with City Administration to facilitate public participation via internet platforms such as Zoom. The Commission shall report out to the public regarding the progress made in this regard at least quarterly until such remote access is established.

- B. Consistent with City Charter section 604(d)(1), at least twice each calendar year, the Commission shall hold one (1) of its regularly scheduled meetings at a location outside of City Hall. These offsite meetings shall be designated special meetings subject to the ten-day agenda notice requirement for purposes of Article II of Chapter 2.20 of the Oakland Municipal Code and shall include an agenda item titled "community roundtable," or something similar. The purpose of the community roundtable agenda item shall be to solicit community testimony and other input in discussions regarding community policing, building trust between the community and the Department, and other similar and relevant subjects as determined by the Commission. The Commission shall consider inviting to each roundtable individuals and groups familiar with the issues involved in building and maintaining trust between the Department and the community, including but not limited to representatives from the Department, members of faith-based groups, youth groups, advocacy groups, residents of neighborhoods that experience the most frequent contact with the Department and, to the extent practicable, formerly incarcerated members of the community.
- C. "Final Actions," as defined by state and local open meeting laws, taken by the Commission in closed session shall be publicly reported with the vote or abstention on that action of every member present. Closed sessions that are scheduled in conjunction with regular Commission meetings shall be held at the end of Commission meetings, prior to open forum and adjournment, unless holding closed session earlier is necessary to accommodate attendance by a person other than a Commissioner, Commission staff, or the Commission's outside counsel.

#### **2.45.110 Civilian Inspector General.**

- ~~A. Within one (1) year of the City Council's confirmation of the first group of Commissioners and alternates, the Commission, with the assistance of the Human Resources Management Department and in accordance with the City's Civil Service Rules, shall prepare a job description and list of required qualifications for the position of civilian Inspector General. After all required approvals have been obtained for adding this position to the City's Classification Plan (as defined by the City's Civil Service Rules), the Commission, with the assistance of the City Administrator shall be responsible for hiring the first and all subsequent civilian Inspectors General. The Inspector General shall be subject to a background check as described in section 2.45.060, above, before hiring except that the results of the background check shall be submitted only to the Commission.~~
- ~~B. Within ninety (90) days of his or her appointment, the Inspector General shall, at a minimum, receive the training described in City Charter section 604(e)(9) and in section 2.45.190 A. through F. of this Chapter 2.45. The Commission may propose any additional training it deems necessary for the Inspector General to perform the functions and duties of the OIG.~~
- ~~C. The Inspector General shall report to the Commission, and may only be removed according to the City's Civil Service Rules and any applicable memorandum of understanding between the City and a union.~~

- ~~D. The Inspector General shall be responsible for the day-to-day operations of the OIG, including but not limited to the supervision and direction of all OIG staff.~~
- ~~E. The Inspector General shall be permitted to attend, as an observer, Executive Force Review Board, Force Review Board, and, to the extent permitted by law, Skelly hearings if he or she chooses to do so. The Inspector General shall not have any decision-making authority regarding the specific cases being heard, and shall maintain the confidentiality of the hearings as required by law. The Inspector General shall not be permitted to attend any Executive Force Review Board, Force Review Board, or Skelly hearing until he or she has completed the training identified in section 2.45.190 C.~~

#### **~~2.45.120 Functions and duties of the Office of Inspector General.~~**

~~The Commission shall advise the OIG of its priorities and the functions and duties the Commission establishes for the Office of Inspector General, which shall include, without limitation:~~

- ~~A. Preparing an annual report, summarizing the results of the annual reviews of:
  - ~~1. The Department's processes and procedures for investigating alleged Misconduct;~~
  - ~~2. The Department's processes and procedures for determining the appropriate level of discipline for sustained findings of misconduct;~~
  - ~~3. The Agency's processes and procedures for investigating alleged Misconduct;~~
  - ~~4. The Agency's processes and procedures for determining the appropriate level of discipline for sustained findings of misconduct;~~
  - ~~5. Trends and patterns regarding Department training and education, and the Department's use of any early warning system(s);~~
  - ~~6. Training and/or policy issues that arise during the investigations of complaints; and~~
  - ~~7. Trends and patterns regarding use of force and Department sworn employee-involved shootings.~~~~

~~This annual report shall be presented to the Commission, the Mayor, the City Council's Public Safety Committee, the City Council and to the Chief and shall include, where appropriate, recommendations for changes in the processes and procedures that were reviewed.~~

- ~~B. Monitoring and evaluating, on at least an annual basis, the number and percentage of sworn officers who have received in-service training on profiling and implicit bias, procedural justice, de-escalation, diplomacy, situational problem solving, and work related stress management, and make recommendations, as appropriate, to the Commission regarding changes to the Department's training programs.~~
- ~~C. Developing and presenting a plan to the Commission to measure the performance of each element of the Department's discipline process for sworn Department employees.~~
- ~~D. Completing all audits or reviews requested by the Mayor, the City Administrator, and/or the City Council by an affirmative majority vote. The Inspector General shall report all findings to the office that requested the audit or review.~~

- ~~E. Monitoring, evaluating, and making recommendations regarding the Department's recruitment and hiring practices for sworn personnel.~~
- ~~F. Monitoring, evaluating, and making recommendations regarding the Department's policies and procedures as requested by the Commission in furtherance of its duties under City Charter section 604(b)(4), (5) and (6).~~
- ~~G. Monitoring, evaluating, and making recommendations regarding the Department's risk management practices.~~
- ~~H. Any reports, plans, audits, reviews and recommendations generated by the OIG shall not disclose information in violation of state and local law regarding the confidentiality of personnel records, including but not limited to California Penal Code section 832.7.~~

### **2.45.130 Establishment of the Establishing Discipline Committees.**

A separate Discipline Committee will be established for each ~~Department sworn employee Officer~~ discipline or termination case. The ~~Chairperson of the~~ Commission Chair shall appoint three (3) Commission members to serve on a Discipline Committee and shall designate one (1) of these three (3) Commission members as the Committee's chair ~~Chairperson~~. The Discipline Committees shall decide any dispute between the Agency and the Chief regarding the proposed or final findings or proposed or final level of discipline to be imposed on a ~~subject officer~~ Subject Officer.

- A. No Discipline Committee established by the Commission shall decide any dispute between the Chief and the Agency, as directed by section 604(g) of the City Charter, until each member of the Discipline Committee has completed: (1) orientation regarding Department operations, policies and procedures, including but not limited to discipline procedures for Misconduct, and (2) the training described in section 2.45.190 A. through F.
- B. Membership in the Discipline Committees shall rotate for each ~~Department sworn employee Officer~~ discipline or termination case, as determined by the ~~Chairperson of the~~ Commission Chair.
- C. All Commissioners, including Alternate Commissioners, who have satisfied the training requirements, may serve as Discipline Committee members.
- D. Any Commissioner with a conflict of interest regarding a particular case, shall recuse themselves as appropriate from serving on a Discipline Committee. The following are examples of potential Commissioner conflicts: a personal relationship with an individual involved in the case, participation in a discipline meeting in which the case was discussed, participation in a formal review of a case, such as Force Review Board.

### **2.45.140 Discipline.**

In accordance with section 604(g)(4) of the City Charter, all ~~Department sworn employees Officers~~ shall be afforded their due process and statutory rights, including Skelly rights, as follows:

- A. With respect to ~~misconduct~~ Misconduct that is given a Class I designation pursuant to the

Department's Discipline Policy, the Chief and the Agency Director shall include probative ~~video and/or audio recordings videotape and/or audiotape~~ from their respective investigations in their submissions to the Discipline Committee pursuant to City Charter section 604(g)(2). The Discipline Committee shall have the authority to require the Chief and the Agency Director to provide any additional ~~videotape, audiotape recordings,~~ and/or documents (including without limitation any existing transcripts ~~of subject officer~~ Subject Officer or witness interviews) from the Agency's and the Department's investigation files that it deems relevant to its deliberations, and shall also have the authority to require the Chief and the Agency Director, or their non-attorney designees, to appear before the Discipline Committee to present their findings and recommendations and to answer questions.

- B. The record submitted to the Discipline Committee by the Chief regarding any ~~misconduct~~ Misconduct shall include the ~~subject officer's~~ Subject Officer's history of discipline for the previous five (5) years. All documents submitted to the Discipline Committee by either the Agency Director or the Chief shall not include any redactions unless such redactions are required by law.
- C. After the investigation of a complaint has been completed and a decision has been made regarding the proposed findings and the proposed level of discipline (hereinafter referred to as the "proposed discipline"), either by agreement between the Chief and the Agency or by decision of the Discipline Committee, the Chief shall send a notice of intent to impose discipline or a notice of intent to terminate to the ~~subject officer~~ Subject Officer. Consistent with City policy and applicable law, the Department shall offer the ~~subject officer~~ Subject Officer a Skelly hearing to be conducted by an assigned Skelly officer. After completion of the Skelly hearing, the Skelly officer shall issue ~~his or her~~ a report which shall include ~~his or her~~ a recommendation regarding whether the proposed discipline should be affirmed or modified in any way.
- D. The Skelly report shall be submitted to the Chief and to the Agency Director if the Chief and the Agency Director agreed on the Proposed Discipline. The Chief and the Agency Director shall consider the Skelly report and consult with each other regarding the final set of findings and level of discipline to be imposed (hereinafter referred to as "final discipline").
  - 1. If the Chief and the Agency Director agree on the final discipline, the Chief shall send a notice of discipline or notice of termination to the ~~subject officer~~ Subject Officer.
  - 2. If the Chief and the Agency Director do not agree on the final discipline, the Skelly report shall be submitted to the Discipline Committee which shall decide the final discipline based solely on the record reviewed and considered by the Skelly Officer (which shall include the notice of intent to discipline or terminate with all attachments). The Discipline Committee shall also have the authority to require the Chief and the Agency Director, or their non-attorney designees, to appear before the Discipline Committee to present their recommendations and to answer questions. After determining the final discipline, the Discipline Committee shall direct the Chief to send a notice of discipline or notice of termination to the ~~subject officer~~ Subject Officer.

- E. The Skelly report shall be submitted to the Discipline Committee if the Discipline Committee decided the proposed discipline. The Skelly report shall also be submitted to the Chief and the Agency Director. The Discipline Committee shall consider the Skelly report in deciding the final discipline. After such determination, the Discipline Committee shall direct the Chief to send a notice of discipline or notice of termination to the ~~subject-officer~~ Subject Officer.
- F. After the final discipline has been determined by either the agreement of the Agency Director and the Chief, or by the Discipline Committee, and to the greatest extent permitted by law, the complainant(s) shall be informed of the disposition of the complaint.
- G. The Discipline Committee shall maintain the confidentiality of all personnel and/or privileged information as required by State and local law. After the Discipline Committee has concluded its deliberations regarding the Proposed Discipline and/or the final discipline, it shall return all records and information it received (if not received electronically) to the party from which it received such records and information. Members of the Discipline Committee shall not retain copies of the records they receive from the Chief and the Agency, nor shall they publicly comment about, or discuss any personnel matter with anyone, including another member of the Discipline Committee, outside of Discipline Committee meetings, except as required by a valid subpoena. This subsection G. shall not preclude any member of a Discipline Committee from participating in any grievance procedure, including without limitation testifying in an appeal before the Civil Service Board or an arbitration or other type of administrative hearing.
- H. The ~~subject-officer~~ Subject Officer may appeal the imposition of discipline or termination to the Civil Service Board. In addition, the ~~subject-officer~~ Subject Officer may grieve the imposition of discipline or termination as prescribed in a collective bargaining agreement.

#### **2.45.150 ~~Establishment of other~~ Establishing additional committees.**

The Commission may establish either an ad hoc or standing committee by majority vote of the Commission. Membership on a Committee shall be proposed by the Chair and ratified by a majority vote of the Commission.

The Commission must obtain City Council approval prior to the creation of any standing committee only if the committee will require additional resources. A proposal to create a standing committee of the Commission must include information regarding the costs associated with staffing the standing committee, if any, and the costs of complying with noticing and reporting requirements resulting from its establishment. City Council approval shall not be required for creating temporary or ad hoc committees.

#### **2.45.160 Public statements of the Commission.**

The Commission may authorize one or more of its members to issue statements to the public regarding the Commission's official business, to the extent such business is not confidential or privileged under State or local law only after the statement has been approved by an affirmative vote of not less than four (4) votes in a public meeting. Commissioners may publicly discuss their

roles as Commissioners and the Commission's public and official business for the purpose of educating the community provided they adhere to the notice requirements of the Brown Act and Oakland's Sunshine Ordinance.

#### **2.45.170 Election of Chairperson Electing a Commission Chair and Vice-Chair.**

~~At The Commission shall elect a Commission Chair and Vice-Chair at its first regular meeting, the members shall elect a Chairperson and a Vice-Chairperson. Beginning February 1, 2019, the members shall elect a Chairperson and a Vice-Chairperson at the first regular meeting of each calendar year, and as necessary to fill a vacancy.~~

#### **2.45.180 Staff assistance. Reserved**

- ~~A. Within two hundred and forty (240) days of the City Council's confirmation of the first group of Commissioners and alternates and on an ongoing basis as appropriate, the Commission shall provide the City Administrator with its proposal for the staff positions necessary to permit the Commission and the Agency to fulfill its functions and duties as set forth in this Chapter 2.45, Chapter 2.46, and as set forth in section 604 of the City Charter.~~
- ~~B. Pursuant to City Charter section 604(e)(5) and, to the extent practicable, within one (1) week of the City Council's confirmation of the first group of Commissioners and alternates, the City Administrator shall assign an administrative staff person under her/his jurisdiction to provide administrative support to the Commission and to act as liaison between the Commission and the City Administrator's office.~~
- ~~C. At a minimum, the City Council shall allocate the equivalent of an additional one-half (1/2) of a full-time administrative position (0.5 FTE) to the City budget for the purpose of providing adequate administrative support for the Commission.~~
- ~~D. The full-time equivalent non-City Attorney legal advisor position assigned by the City Attorney after consultation with the Chair shall be divided into two (2) part-time positions: a one-half (1/2) or two-thirds (2/3) time position with specific responsibilities for providing legal services to the Agency related to investigations and discipline, and a one-half (1/2) or one-third (1/3) time position as legal advisor to the Commission. The legal advisor to the Agency and the legal advisor to the Commission shall report to the Commission. Neither the legal advisor to the Agency nor the legal advisor to the Commission shall report to or be supervised by the City Attorney or any Deputy City Attorney. Pursuant to City Charter Section 401(6), the City Attorney shall act as counsel to the Agency and the Commission in any litigation brought against either in their official capacity and shall provide legal advice only upon request of the Commission.~~

#### **2.45.190 Commissioner training.**

- A. Immediately upon appointment, each Commissioner and alternate shall familiarize themselves with City Charter section 604 and with Chapters 2.45 and 2.46 of the Oakland Municipal Code.
- B. Within the Commission's budget there shall be a line item for attendance at conferences offered by organizations such as the National Association for Civilian Oversight of Law

Enforcement ("NACOLE").

- C. Ongoing or repeated failure to complete training within the timeframes proscribed by City Charter and/or this Section may constitute a substantial neglect of a Commissioner's duty.
- D. Each Commissioner and alternate shall complete the City's on-line training on workplace retaliation training at least once each calendar year. Commissioner and alternates shall complete the first such training within sixty days of appointment, or as soon thereafter as possible. The Public Ethics Commission shall request and receive an annual report in January of each year regarding the Commission's workplace retaliation training activity for the preceding calendar year.
- E. Within six (6) months of appointment, or as soon thereafter as possible ~~and with the exception of the first group of Commissioners and alternates,~~ each Commissioner and alternate shall receive training on:

  - A. ~~Become familiar with City Charter section 604 and with Chapters 2.45 and 2.46 of the Oakland Municipal Code;~~
  - B.1. ~~Receive training in~~ basic principles of constitutional due process and administrative hearing procedures;
  - C.2. ~~Receive training in~~ the legal requirements for maintaining the confidentiality of personnel records and other confidential documents or information;
  - D.3. ~~Receive briefing on~~ the negotiated settlement agreement in the case of Delphine Allen, et al. v. City of Oakland, and all related court orders for so long as they remain in effect;
  - E4. ~~Receive information regarding~~ constitutional civil rights guaranteed to all citizens as such rights are affected by law enforcement;
  - F5. ~~Receive training in the legal requirements of the~~ California's Political Reform Act (Cal. Gov't Code section 81000, et seq.), Oakland's Conflict of Interest Code (Oakland Municipal Code Chapter 3.16), California's Brown Act (Cal. Gov't Code section 54950, et seq.), Oakland's Sunshine Ordinance (Oakland Municipal Code Chapter 2.20), and California's Public Records Act (Cal. Gov't Code section 6250, et seq.);
  - G.6. ~~Receive training in open session in the legal requirements of~~ California's Meyers Miliias Brown Act (Cal. Gov't Code section 3500, et seq.) (MMBA), the Public Employment Relations Board's administration of the MMBA, the City's Memoranda of Understanding with the Oakland Police Officers' Association and other represented City employees, the City's Civil Service Board, and other relevant City personnel policies and procedures, which training shall be provided by the City Administrator or their designee(s) from Human Resources and/or Employee Relations and shall occur in open session; and
  - H.7. ~~Receive training in open session in the legal requirements of~~ California's Public Safety Officers Procedural Bill of Rights Act (Cal. ~~Gov't Code section 3300, et seq.~~), ~~and other California Code sections pertaining to peace officers' rights, which~~

~~training shall be provided by the Agency Director and/or their designees(s) and shall occur in open session; and~~

8. City policies and procedures regarding Officer misconduct and discipline, including Relevant Department and CPRA policy and procedure.

~~The first group of Commissioners and alternates shall comply with the requirements of subsections A. through H. within twelve (12) months of their appointment.~~

F. In addition, within twelve (12) months of appointment, or as soon thereafter as possible ~~and with the exception of the first group of Commissioners and alternates,~~ each Commissioner and alternate shall:

- ~~I.1.~~ Receive the training and orientation specified by section 604(c)(9) of the City Charter;
- ~~J.2.~~ Participate in a Department "ride-along" and attend a police academy curriculum designed for them by the Chief after consultation with the Commission. The curriculum shall be designed so that criminal background checks will not be required for attendance;
- ~~K.3.~~ Complete the Department's implicit bias training, and crisis intervention training;
- ~~L.4.~~ Complete Peace Officer Standards and Training (POST) Learning Domains 15 (Laws of Arrest) and 16 (Search and Seizure); and
- ~~M.5.~~ Receive training regarding racial equity.

~~The first group of Commissioners and alternates shall comply with the requirements of subsections I. through M. within eighteen (18) months of their appointment.~~

~~The City Administrator shall assist the Commission in scheduling and facilitating all training and orientation required by this Section and by section 604 of the City Charter. Within the Commission's budget there shall be a line item for attendance at conferences offered by organizations such as the National Association for Civilian Oversight of Law Enforcement ("NACOLE").~~

N.6. Receive training on the City's public contracting requirements, policies and procedures for the purchase of professional, technical, and/or scientific services before the Commissioner casts a vote on any such contract, notwithstanding the six-month time frame provided for training in this Section 2.45.190 and in accord with Section 2.45.070, which provides that Commissioners must receive training on public contracting before the Commissioner votes on such contracts and that failure to do so constitutes gross misconduct in office and grounds for removal.

G. The City Administrator shall assist the Commission in scheduling and facilitating all training and orientation required by this Section and by Charter section 604. Within the Commission's budget there shall be a line item for attendance at conferences offered by organizations such as the National Association for Civilian Oversight of Law Enforcement ("NACOLE").

### **2.45.200 Hearings.**

It shall be the sole and exclusive responsibility of the Commission to determine the order and conduct of any public hearing, consistent with applicable law.

### **2.45.210. Authority of Public Ethics Commission.**

If ~~either the Commissioner~~ Commission ~~or the Inspector General~~ does not receive the files and records requested pursuant to section 604 of the City Charter or pursuant to this Chapter 2.45 within fifteen (15) business days of its request, the Public Ethics Commission shall have the authority to investigate allegations that the head of the offending City department or agency failed to provide the requested files or records as required by section 604 of the City Charter or this Chapter 2.45. Such requirements shall be subject to enforcement by the City in the same manner as violations of Chapter 2.25 of the Oakland Municipal Code.

### **2.45.220 ~~Reporting to City Council.~~ Administrative hearing upon removal of Chief**

~~The Commission shall submit its first annual, written report to the Mayor, City Council and the public within eighteen (18) months of the City Council's confirmation of the first group of Commissioners and alternates. The Commission's subsequent reports shall be submitted annually on or near the anniversary of that date.~~

Upon removal of the Chief from office, for any reason by any authority within the City, the Chief shall be entitled to an administrative appeal in accordance with California Government Code section 3304(c). Removal for the purposes of this section shall include any action that constitutes removal under the Code, including but not limited to termination.

The Chief shall have ten calendar days from service of the notice of the action constituting removal to request an administrative appeal. The request for appeal must be in writing and must be directed to, at a minimum, the Commission, the Mayor, and the City Attorney.

The administrative appeal procedure shall be as follows:

The City will retain an independent hearing officer, the cost of which shall be borne by the City. The hearing officer's assessment of the removal and findings of fact related to the same shall serve as a non-binding recommendation to the City. The hearing officer shall receive evidence solely through records, sworn declarations and argument. The parties' arguments shall be oral, except that either party may also elect to submit a closing brief following the presentation of evidence. Any evidence introduced in a closing brief not previously introduced or submitted to the arbitrator will not be considered. Closing briefs shall be submitted within twenty (30) calendar days of the close of the hearing. The hearing officer will not consider briefs submitted after the deadline. The hearing officer will finalize the evidentiary record and submit a written report rendering a non-binding recommendation to the City and, as necessary to make such recommendation, make underlying findings of fact, about the removal of the Chief, whether or not the removal decision was supported by just cause.

The hearing officer shall submit the report within thirty (30) calendar days of the close of the hearing; unless either party timely submits a closing brief, in which case the record shall be

finalized and the complete report shall be delivered within sixty (60) calendar days after the close of the hearing.

The Hearing Officer shall provide the following materials to the Removing Authorities for their consideration, which shall constitute the official hearing record: (1) A summation page delineating the name of the Hearing; any and all issues set forth by the Parties during the administrative appeal hearing; a brief summary of the written report; (2) the complete written report rendering all findings and recommendations; (3) any documentary evidence, and any written briefs submitted; and (4) the cassette tape(s) of the hearing.

The hearing shall be audio-recorded by the City. Copies of the recording will be available to the appellant, upon written request, for no charge.

The hearing shall be closed to the public. The hearing officer's report and all other related or accompanying documents and materials shall remain confidential to the extent required by law.

## **Chapter 2.46 COMMUNITY POLICE REVIEW AGENCY**

### **2.46.010 Definitions.**

The following words and phrases whenever used in this Chapter shall be construed as defined in this Section:

"Agency" shall mean the Community Police Review Agency.

"Commission" shall mean the Oakland Police Commission. "Department" shall mean the Oakland Police Department.

"Misconduct" shall mean both ~~a Department sworn employee's~~ an Officer's affirmative act that violates, and/or ~~his or her~~ a failure to act in violation of, the Department's policies, procedures or directives, including without limitation the Department's Manual of Rules.

"Officer" shall mean any sworn individual employed by the Department.

"Subject Officer" shall mean the ~~Department sworn employee~~ Officer who is the subject of a complaint of alleged Misconduct.

### **2.46.020 Creation.**

Oakland City Charter section 604 has established the Community Police Review Agency.

- A. It is in the public interest to facilitate the Agency's receipt of public complaints regarding alleged ~~misconduct~~ Misconduct. Thus, some of the Agency staff should be located in a street-level or ground-floor, visible office that is accessible by public transportation. ~~The Commission, in consultation with the Agency Director, shall determine the number of existing Agency staff who would work at such a location.~~ Hours of operation for this location shall be clearly posted on the office door and inside the office. The address of this office location, together with hours of operation and a telephone number shall be posted on the City's website and on the Agency's website.

- B. Consistent with section 604(e)(1) of the Charter, the City shall allocate a sufficient budget for the Agency to perform its functions and duties.
- C. Consistent with the Agency's access to City files and records under section 604(f)(2) of the Charter, the Agency shall have direct access to records in the custody of any outside investigator retained by the City to conduct an administrative investigation of an Officer. Upon receipt, the outside investigator shall make every reasonable effort to respond to the Agency's requests for files and records within ten (10) days.

#### **2.46.030 Functions and duties.**

In addition to the powers and duties prescribed in section 604 of the Oakland City Charter, the Agency's functions and duties are as follows:

- A. Use the same complaint form as used by the Department in receiving all public complaints concerning alleged ~~misconduct~~ Misconduct, including complaints from Department non-sworn employees. All complaints, wherever filed, shall ~~be indicate~~ date-stamped of receipt and ~~numbered sequentially~~ be assigned an internally generated case number. A copy of the numbered and date-stamped complaint shall be provided to the complainant whenever possible and to the Department's Internal Affairs Division within one (1) business day of receipt.
- B. Make complaint forms available to the public by posting the forms and information about the complaint process on the Agency's website and by accepting the online filing of complaints and attachments via the Agency's website, and by making information about the complaint process available at other public locations to be determined by the Agency Director.
- C. Ensure that all investigators receive any necessary training in conducting fair and impartial investigations.
- D. Request the Commission to issue a subpoena, in accordance with City Charter section 604(b)(3), to compel a ~~subject officer~~ Subject Officer and any other ~~sworn employee of the Department~~ Officer to fully cooperate with an Agency investigation. The Chief shall order all ~~Department sworn employees~~ Officers subject to any subpoena issued by the Commission to comply with all requirements of the subpoena.
- E. ~~Videotape~~ record the interviews of all Subject Officers who are alleged to have committed a Class I offense. For purposes of this subsection, the definition of "Class I offense" shall be the same as the definition of "Class I offense" in the Department's Discipline Policy.
- F. Request, without requiring, that the complainant(s) and witnesses of Class I allegations agree to be audiotaped or videotaped if, in the Agency's discretion, its investigation would benefit from such taping.
- G. ~~In consultation with and upon the approval of the Commission,~~ Establish rules and procedures for the operation of its business including, but not limited to, procedures for the intake of complaints.
- H. ~~No less than~~ At least twice ~~a~~ each calendar year and as permitted by applicable law, ~~issue~~ submit a report to the Public Safety Committee which shall include the following information:

1. The number of complaints submitted to the Agency together with a brief description of the nature of the complaints and the identification of the Council District from which the complaint originated;
2. The demographic profiles of the complainants to the extent that information exists or is voluntarily provided by the complainants;
3. The number of the Agency's pending investigations, and the types of Misconduct that is being investigated;
4. The number of investigations completed by the Agency, the results of the investigations, and the ~~amount of time~~ number of days spent on the investigations;
5. The number of ~~Department sworn employees for~~ Officers whom sustained findings of ~~misconduct~~ Misconduct were made and the level of discipline proposed;
6. The number of closed investigations which did not result in sustained findings and/or discipline of the ~~subject officer~~ Subject Officer;
7. The number of cases referred to mediation;
8. The number of cases in which the Agency failed to meet (a) the one-hundred-and-eighty-day (180) goal specified by City Charter section 604(f)(3), and/or (b) the deadline specified by California Government Code section 3304; and
9. The number of times a Department employee failed to comply with the Agency's request for an interview or for the production of documents, and the number of times ~~a Department sworn employee~~ an Officer failed to comply with a valid subpoena, and whether discipline was imposed for any such non-compliance.

I. As soon as practicable, publish on its website records related to the reporting, investigation, or findings of: incidents involving the discharge of a firearm at a person by a peace officer or custodial officer and incidents in which the use of force by an Officer against a person resulted in death, or in great bodily injury, consistent with California Penal Code section 832.7(b)(1)(A).

#### **2.46.040 Agency Director.**

The Agency Director shall report to the Commission and shall be responsible for the day-to-day operations of the Agency. The Agency Director's job responsibilities shall include, but not be limited to, the following:

- A. Identifying the staff positions, in addition to the position of Investigator, necessary to perform the Agency's functions and duties;
- B. Assigning complaints to investigators, consulting with investigators regarding, and monitoring the progress of, their investigations;
- C. Monitoring the workload of all Agency staff;
- D. Reporting to the Commission once a month regarding the Agency's pending cases. The following information shall be included in the Agency Director's monthly written report:
  1. The case number;
  - ~~2. The name of the complainant;~~

- ~~3.2.~~ The initials of the investigator assigned to investigate the complaint;
- ~~4.3.~~ The date the complaint was filed with the Agency and the date the complaint was filed with the Department's Internal Affairs Division;
- ~~5.4.~~ The date by which the investigation must be completed if the Agency is to meet the one-hundred-and-eighty-day (180) goal specified by City Charter section 604(f)(3);
- ~~6.5.~~ The deadline by which the investigation must be completed, as specified by California Government Code section 3304;
- ~~7.6.~~ The date of the incident that is the subject of the complaint; and
- ~~8.7.~~ If City Charter section 604(f)(1) requires the Agency to investigate the complaint, whether the complaint involves uses of force, in- custody deaths, profiling based on any of the protected characteristics identified by federal, state, or local law, and First Amendment assemblies. If City Charter section 604(f)(1) does not require the Agency to investigate the complaint, a brief, general description of the type of complaint. This brief, general description must be similar in length and generality to the description of the types of complaints the Agency is required to investigate, as stated in City Charter section 604(f)(1); and
- ~~9.8.~~ The number of times the Department and/or a Department employee refused to comply with a written request for information, and the number of times a ~~Department sworn employee~~ an Officer refused to comply with a valid subpoena.

E. Conducting annual job performance evaluations of all Agency staff;

F. Responding to questions and issues raised by the public, as permitted by applicable law; and

G. Preparing a proposed budget for the Agency. The proposed budget shall be delivered to the Commission by February 1 of each year. In addition to submitting the Agency's proposed budget to the Commission, the Agency Director may submit the proposed budget directly to the Mayor and the City Administrator by the earlier of April 1 of each year or such other date as set by the Mayor. Consistent with the Agency Director's authority to organize and reorganize the Agency and their designation as a department head under Charter section 604(e)(6), the Commission may not direct or require the transfer, deletion, or other alteration of funds and staff positions that the City Council ultimately budgets to the Agency.

~~G.H.~~ Any other duties assigned by the Commission, consistent with the Agency's powers and duties as described in section 604 of the City Charter and subject to any constraints imposed by the Agency's budget.

#### **2.46.050 Background checks.**

In accordance with federal and state law and consistent with section 604(e)(7) of the City Charter, background checks shall be performed on all new ~~Agency Complaint Investigators~~ Agency staff and on the Agency Director, before hiring. The City Administrator's Office shall retain an outside person or entity to perform these background checks, which shall include:

- A. Verification of educational and employment background, and any other information that may be verified by a public records search; and
- B. Results of a Criminal Records Search. The results of the background checks may be used solely for the purpose of evaluating the candidates ~~for the Agency Director and for Agency Complaint Investigator~~. The results of any background checks of candidates for the position of Agency Director shall be submitted only to the Commission. The results of any background checks of candidates ~~for the position of Agency Complaint Investigator~~ staff positions shall be submitted ~~only~~ to the Agency Director.

#### **2.46.060 Mediation Program.**

Upon the agreement of the Chief, the Agency Director, the complainant(s) and the ~~subject officer~~ Subject Officer(s), the Agency Director shall appoint a qualified mediator with at least five (5) years of experience in mediating employment or other relevant disputes, from a conflict resolution company or association that employs mediators, to mediate a final resolution of the complaint ~~in accordance with the Commission's established rules and procedures~~. The Chief and Agency Director shall agree upon: (1) types of cases that can be referred to mediation; (2) guidelines regarding the process, including but not limited to, confidentiality and agreement of the parties to participate. Any Commissioner, City employee, or former ~~Department sworn officer~~ shall Officer not be appointed mediator. Both the Chief and the Agency Director must approve of any settlement offer before it is proposed to the ~~subject officer~~ Subject Officer and/or before any such offer is accepted.

#### **2.46.070 Authority of Public Ethics Commission.**

If the Agency does not receive the files and records requested pursuant to section 604 of the City Charter or pursuant to this Chapter 2.45 within fifteen (15) business days of its request, the Public Ethics Commission shall have the authority to investigate allegations that the head of the offending City department or agency failed to provide the requested files or records to the Agency as required by section 604 of the City Charter or this Chapter 2.46. Such requirements shall be subject to enforcement by the City in the same manner as violations of Chapter 2.25 of the Oakland Municipal Code.

**SECTION 2.** Chapter 2.47 (Office of Inspector General) of the Oakland Municipal Code is hereby added as follows (section numbers and titles are indicated in bold type; additions are indicated by underscoring).

### **Chapter 2.47 OFFICE OF INSPECTOR GENERAL**

#### **2.47.010 Definitions**

The following words and phrases whenever used in this chapter shall be construed as defined in this section:

"OIG" shall mean the Office of Inspector General.

"Commission" shall mean the Oakland Police Commission.

"Department" shall mean the Oakland Police Department.

"Inspector General" shall mean the Director of the OIG.

#### **2.47.020 Creation**

Oakland City Charter Section 604 has established the Office of Inspector General.

- A. Consistent with section 604(e)(1) of the Charter, the city shall allocate a sufficient budget for the OIG to perform its functions and duties.
- B. All OIG staff shall be civil service employees in accordance with section 604(e)(7) and article IX of the Charter.
- C. The Inspector General shall be subject to a background check as described in section 2.45.060, above, before hiring except that the results of the background check shall be submitted only to the Commission.
- D. Any reports, plans, audits, reviews and recommendations generated by the OIG shall not disclose information in violation of state and local law regarding confidentiality or privilege, including but not limited to California Penal Code section 832.7.

#### **2.47.030 Functions and duties.**

In addition to the powers and duties prescribed in section 604 of the Oakland City Charter, the OIG's functions and duties are as follows:

- A. Conducting any audit or review of the Department necessary to assess the Department's performance and adherence to constitutional policing practices, and any audit or review of the Department's policies and procedures, including any pattern of non-compliance with the foregoing, as necessary or helpful for the Commission to fulfill its duties under City Charter section 604(b)(4), (5) and (6).
- B. Preparing a biennial report, summarizing the results of the biennial reviews of:
  - 1. The Department's processes and procedures for investigating alleged Misconduct;
  - 2. The Department's processes and procedures for determining the appropriate level of discipline for sustained findings of Misconduct;
  - 3. The Agency's processes and procedures for investigating alleged Misconduct;
  - 4. The Agency's processes and procedures for determining the appropriate level of discipline for sustained findings of Misconduct;
  - 5. Trends and patterns regarding Department training and education, and the Department's use of any early warning system(s);
  - 6. Training and/or policy issues that arise during the review of completed investigations of complaints; and
  - 7. Trends and patterns regarding use of force and Officer-involved shootings.

This biennial report shall be presented to the Commission, the Mayor, the City Council's Public Safety Committee, the City Council and to the Chief and shall include, where appropriate, recommendations for changes in the processes and procedures that were reviewed.

- C. Monitoring and evaluating, on at least an annual basis, the number and percentage of Officers who have received in-service training on profiling and implicit bias, procedural justice, de-escalation, diplomacy, situational problem-solving, and work-related stress management, and make recommendations, as appropriate, to the Commission regarding changes to the Department's training programs.
- D. Developing and presenting a plan to the Commission to measure the performance of each element of the Department's discipline process for Officers.
- F. Monitoring, evaluating, and making recommendations regarding the Department's recruitment and hiring practices for Officers.
- G. Monitoring, evaluating, and making recommendations regarding the Department's policies and procedures as requested by the Commission in furtherance of its duties under City Charter section 604(b)(4), (5) and (6).
- H. Monitoring, evaluating, and making recommendations regarding the Department's risk management practices.

#### **2.47.040 Civilian Inspector General.**

The Inspector General's job responsibilities shall include, but not be limited to, the following:

- A. Managing all OIG audits, evaluations, inspections and reviews. Subject to Charter Section 604(f)(5), the Inspector General shall have sole discretion in deciding whether and how to conduct any OIG audit, evaluation, inspection or review, including decisions regarding timing, methodology, findings, recommendations, and reporting. In considering requests for audits, evaluations, inspections or reviews, including requests from the Mayor, City Administrator, or City Council, the Inspector General shall take into consideration the OIG's priorities, resources, and available funding.
- B. Completing the training described in City Charter section 604(c)(9) and in section 2.45.190 A through F of this Chapter 2.45 within ninety (90) days of taking office.
- C. Overseeing the day-to-day operations of the OIG, including but not limited to the supervision and direction of all OIG staff. Subject to any duty to meet and confer with an affected union, the Inspector General shall have sole discretion in setting the operating procedures for the OIG.
- D. Reporting quarterly to the Police Commission at a public meeting on recently completed, pending, and upcoming audits, evaluations, inspections or reviews. The Inspector General may, upon mutual agreement between the Inspector General and the Police Commission, report more frequently.

- E. Observing, or having a designee observe, Executive Force Review Boards, Force Review Boards, and, to the extent permitted by law, Skelly hearings. Attendance at such events by the OIG shall be at the Inspector General's discretion. The Inspector General shall not have any decision-making authority regarding the specific cases being heard and shall maintain the confidentiality of the hearings as required by law. The Inspector General shall not be permitted to attend any Executive Force Review Board, Force Review Board, or Skelly hearing until they have completed the training identified in section 2.45.190 C.
  
- F. Preparing a proposed budget for the OIG. The proposed budget shall be delivered to the Commission by February 1 of each year. In addition to submitting the OIG's proposed budget to the Commission, the Inspector General may submit the proposed budget directly to the Mayor and the City Administrator by the earlier of April 1 of each year or such other date as set by the Mayor. Consistent with the Inspector General's authority to organize and reorganize the OIG and their designation as a department head under Charter section 604(e)(6), the Commission may not direct or require the transfer, deletion, or other alteration of funds and staff positions that the City Council ultimately budgets to OIG.

#### **2.47.050 Background checks.**

In accordance with federal and state law and consistent with section 604(e)(7) of the City Charter, background checks shall be performed on all new OIG staff before hiring. The City Administrator's Office shall retain an outside person or entity to perform these background checks, which shall include:

- A. Verification of educational and employment background, and any other information that may be verified by a public records search; and
- B. Results of a Criminal Records Search. The results of the background checks may be used solely for the purpose of evaluating the candidates and shall be submitted to the IG.

#### **2.47.060 Authority of Public Ethics Commission.**

If the OIG does not receive the files and records requested pursuant to section 604 of the City Charter or pursuant to this Chapter 2.47 within fifteen (15) business days of its request, the Public Ethics Commission shall have the authority to investigate allegations that the head of the offending City department or agency failed to provide the requested files or records to the OIG as required by section 604 of the City Charter or this Chapter 2.47. Such requirements shall be subject to enforcement by the City in the same manner as violations of Chapter 2.25 of the Oakland Municipal Code.

**SECTION 3. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND  
PRESIDENT FORTUNATO BAS

NOES –  
ABSENT –  
ABSTENTION –

ATTEST: \_\_\_\_\_  
ASHA REED  
City Clerk and Clerk of the Council of the  
City of Oakland, California

Date of Attestation: \_\_\_\_\_

## NOTICE AND DIGEST

### ORDINANCE:

**(1) AMENDING OAKLAND MUNICIPAL CODE CHAPTER 2.45, THE ENABLING ORDINANCE FOR THE OAKLAND POLICE COMMISSION, TO BE CONSISTENT WITH CHARTER AMENDMENTS UNDER BALLOT MEASURE S1 AND TO MODIFY THE POWERS AND DUTIES OF THE OAKLAND POLICE COMMISSION AND THE POLICE COMMISSION'S SELECTION PANEL; AND**

**(2) AMENDING OAKLAND MUNICIPAL CODE CHAPTER 2.46, THE ENABLING ORDINANCE FOR THE COMMUNITY POLICE REVIEW AGENCY, TO BE CONSISTENT WITH CHARTER AMENDMENTS UNDER BALLOT MEASURE S1 AND TO MODIFY THE POWERS AND DUTIES OF THE COMMUNITY POLICE REVIEW AGENCY; AND**

**(3) ADDING CHAPTER 2.47 TO THE OAKLAND MUNICIPAL CODE, AN ENABLING ORDINANCE FOR THE OFFICE OF THE INSPECTOR GENERAL, TO IMPLEMENT CHARTER AMENDMENTS UNDER BALLOT MEASURE S1 AND TO FURTHER DEFINE THE POWERS AND DUTIES OF THE OFFICE OF THE INSPECTOR GENERAL.**

This ordinance will amend Oakland Municipal Code Chapters 2.45 and 2.46, which are the enabling ordinances for the Oakland Police Commission and Community Police Review Agency, respectively, and will add Chapter 2.47, which will be the enabling ordinance for the Office of Inspector General, to implement amendments to the City Charter adopted with the passage ballot measure S1 in 2020, as well as to further define the powers and duties of the Police Commission, Community Police Review Agency, and the Office of Inspector General.