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CITY OF OAKLAND



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Office of the City Attorney
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VIA EMAIL and HAND DELIVERY

June 13, 2019

Council President Kaplan and Members of the City Council

Re: Proposed Ordinance Amending Oakland Municipal Code Chapter 2.45, The Enabling Ordinance For The Oakland Police Commission And Community Police Review Agency, To Establish Authorization And Compliance Requirements For The Police Commission To Purchase Professional Services Necessary To Fulfill Their Duties As Defined In Charter Section 604 In Compliance With The Provisions Of Oakland Municipal Code Section 2.04.022 And Other Purchasing Requirements As Specified Therein, scheduled for review at the June 25, 2019 Public Safety Committee Meeting.

Dear Council President Kaplan and Members of the City Council:

The proposed ordinance will amend the Police Commission enabling ordinance, Oakland Municipal Code Chapter 2.45, to add professional services contracting and contracting requirements to the duties and functions of the Commission. It is scheduled for review at the June 25, 2019 Public Safety Committee Meeting. The proposed ordinance was prepared as companion legislation to the recent ordinance amending the Purchasing Ordinance, codified at Oakland Municipal Code Chapter 2.04, to delegate contracting authority to the Police Commission to approve contacts for professional services necessary for the Commission to perform its Charter functions and duties.

The key elements of the revisions amend Section 2.45.070, *Functions and Duties of the Commission*, and Section 2.45.190, *Commissioner Training*:

- To add professional services contracting as needed to fulfill the Commission's Charter duties to the extent budgeted by the Council to the list of functions and duties; and
- To add requirements for contract training prior to voting on contracts; and

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- To add requirements to comply with the Purchasing Ordinance and the City's contracting requirements, policies and procedures; and
- To make failure to comply with the contracting requirements grounds for removal; and
- To make it a responsibility and duty of Commissioners to cooperate and provide assistance to the City to address contract disputes that arise in connection with contracts the Commission approves during his/her tenure as a regular or alternate member of the Commission.

We recommend that the Council adopt the proposed ordinance to duly establish professional services contracting as a duty and function of the Commission and the contracting requirements related to the Commission's new contracting authority.

Very truly yours,



BARBARA J. PARKER
City Attorney

Assigned Attorney:
Allison Dibley

cc: Mayor Libby Schaaf
City Administrator Sabrina Landreth
City Clerk LaTonda Simmons

2779705

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APPROVED AS TO FORM AND LEGALITY

DRAFT
CITY ATTORNEY'S OFFICE

INTRODUCED BY COUNCILMEMBER _____

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 2.45, THE ENABLING ORDINANCE FOR THE OAKLAND POLICE COMMISSION AND COMMUNITY POLICE REVIEW AGENCY, TO ESTABLISH AUTHORIZATION AND COMPLIANCE REQUIREMENTS FOR THE POLICE COMMISSION TO PURCHASE PROFESSIONAL SERVICES NECESSARY TO FULFILL THEIR DUTIES AS DEFINED IN CHARTER SECTION 604 IN COMPLIANCE WITH THE PROVISIONS OF OAKLAND MUNICIPAL CODE SECTION 2.04.022 AND OTHER PURCHASING REQUIREMENTS AS SPECIFIED THEREIN

WHEREAS, on November 8, 2016, the voters of the City of Oakland passed Measure LL, which is codified at section 604 of the City Charter and which created the Oakland Police Commission and the Community Police Review Agency; and

WHEREAS, on July 10, 2018 the Oakland City Council adopted an ordinance, codified at Chapter 2.45 of the Oakland Municipal Code, to enable implementation of Charter section 604, establish the position of Civilian Inspector General, and to require an annual report and presentation by the Community Policing Advisory Board; and

WHEREAS, the City Council wishes to enable the Police Commission, on behalf of the City of Oakland, to contract for professional services needed to fulfill the Commission's Charter duties; and

WHEREAS, the City Council has amended Oakland's Purchasing Ordinance, Oakland Municipal Code Chapter 2.04, to authorize the Police Commission to contract for said professional services within a budget established by the City Council; and

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

SECTION 1. Chapter 2.45 of the Oakland Municipal Code, the enabling legislation for Charter Section 604 creating the Oakland Police Commission and Community Police Review Agency, establishing a position of Civilian Inspector General, and requiring an annual report and presentation by the Community Policing Advisory Board, is amended to add, delete or modify sections as set forth below (section

numbers and titles are indicated in bold type; additions are indicated by underscoring and deletions are indicated by strike-through type.) Portions of regulations not cited or not shown in underscoring or strike-through are not changed.

Chapter 2.45 – Oakland Police Commission

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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 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.
- D. Prepare and deliver to the Mayor, the City Administrator and the Chief by April 15 of each year, or such other date as set by the Mayor, a proposed budget for providing the education and training identified in subsection (C) above.
- 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. 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. 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. Failure or refusal to cooperate with any investigation involving employees of the Department; or
5. Obstruction of any investigation of Department employee misconduct or criminal activity; or
6. Refusal, which shall include ongoing failure, to administer or enforce any Department policy or procedure; or
7. A material act of dishonesty, fraud, embezzlement, self-dealing, or other act of moral turpitude; or
8. A material breach of confidentiality; or
9. 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 the Chief's annual report to the Commission 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 by IAD, and the results of the investigations;
 4. The number of training sessions provided to Department sworn employees, and the subject matter of the training sessions;
 5. Revisions made to Department policies;
 6. The number and location of Department sworn employee-involved shootings;
 7. The number of Executive Force Review Board or Force Review Board hearings, and the results;
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8. A summary of the Department's monthly Use of Force Reports;
 9. Number of Department sworn employees disciplined and the level of discipline imposed; and
 10. The number of closed investigations which did not result in discipline of the Subject Officer.

The Chief's annual report 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 of the Agency Director and of the Chief. The Commission shall determine the criteria for evaluating the Agency Director's and the Chief's job performance, and communicate those performance criteria, in addition to any other job performance expectations, to the Agency Director and the Chief one full year before conducting any evaluation of their job performance. 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 Agency Director's or the Chief's job performance. Responses to the Commission's requests for comments and observations shall be strictly voluntary.
- H. 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.
- I. 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. Provide policy guidelines to the Agency Director for assistance in determining case prioritization.

K. 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.

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

L. Direct the Agency to investigate a Serious Incident when requested by the Mayor, the City Administrator, and/or the City Council by an affirmative majority vote.

M. Review the Agency's dismissal and/or administrative closure of all complaints of 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. 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 and the Commission.
- R. 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 the contract training described in section 2.45.190(N).

Failure to complete contract training before participating in a vote to approve a contract, and/or failure 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.

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2.45.190 – Commissioner Training.

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:

- A. Become familiar with City Charter section 604 and with Chapters 2.45 and 2.46 of the Oakland Municipal Code.
- B. Receive training in basic principles of constitutional due process and administrative hearing procedures;
- C. Receive training in the legal requirements for maintaining the confidentiality of personnel records and other confidential documents or information;
- ~~D. 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;~~
- E. Receive information regarding constitutional civil rights guaranteed to all citizens as such rights are affected by law enforcement;
- F. Receive training in the legal requirements of 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. 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; and
- H. 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.

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

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. Receive the training and orientation specified by section 604(c)(9) of the City Charter;
- J. 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. Complete the Department’s Implicit Bias Training, and Crisis Intervention Training;
- L. Complete Peace Officer Standards and Training (POST) Learning Domains 15 (Laws of Arrest) and 16 (Search and Seizure); and
- M. Receive training regarding racial equity; and

N. 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 6-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.

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”).

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SECTION 2. 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.

SECTION 3. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise, this ordinance shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND
PRESIDENT KAPLAN

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council of the City of
Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 2.45, THE ENABLING ORDINANCE FOR THE OAKLAND POLICE COMMISSION AND COMMUNITY POLICE REVIEW AGENCY, TO ESTABLISH AUTHORIZATION AND COMPLIANCE REQUIREMENTS FOR THE POLICE COMMISSION TO PURCHASE PROFESSIONAL SERVICES NECESSARY TO FULFILL THEIR DUTIES AS DEFINED IN CHARTER SECTION 604 IN COMPLIANCE WITH THE PROVISIONS OF OAKLAND MUNICIPAL CODE SECTION 2.04.022 AND OTHER PURCHASING REQUIREMENTS AS SPECIFIED THEREIN

This ordinance will amend Oakland Municipal Code Chapter 2.45, which is the enabling ordinance for the Oakland Police Commission and Community Police Review Agency, to add authorization and compliance requirements for the police commission to hire independent contractors as necessary and budgeted by the Council to provide professional services necessary for the Commission to carry out its duties set forth in Oakland Charter Section 604.