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2020 FEB 20 PM 3:49

AGENDA REPORT

TO: Members on the City Council and
Members of the Public

FROM: Council President Pro Tem
Dan Kalb

SUBJECT: Police Commission Charter
Amendment - Supplemental

DATE: February 20, 2020

RECOMMENDATION

Adopt a Resolution—With Councilmember Kalb’s Revisions—Proposing to Amend City Charter Section 604 To Strengthen The Independence of The Oakland Police Commission, Directing The City Administrator to Give Written Notice To Employee Organizations That May Be Affected, And Directing the City Administrator to Meet and Confer, As Appropriate, Subject to Further Council Instructions

EXECUTIVE SUMMARY

The primary difference between Councilmember Kalb’s Resolution for an Amendment to Section 604 of the Charter and the Charter Amendment Resolution submitted by President Kaplan involves Subsection (c) Appointment, Terms, Vacancies, Removal. Councilmember Kalb’s Amendment retains the Mayoral appointees to the Commission consistent with the current Charter.

The other change being proposed by Councilmember Kalb is adding language to allow for Commission alternates to be appointed to and serve on a Discipline Committee as defined in Charter Section 604(g)(2).

REASON FOR SUPPLEMENTAL

I am proposing the following additional changes to the version filed by Council President Kaplan.

1. Do not eliminate Charter Section 604(c)(2).
2. Do not amend Proposed Charter Section 604(c)(2)(a) to add (i) “current Department employee;”
3. Do not amend Charter Section 604(c)(3)(b).

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4. Do not amend Charter Section 604(c)(3)(c) except for what is outlined in change six below.
5. Amend Charter Section 604(c)(3)(c) to only add the following second sentence "The Selection Panel shall by a two-thirds vote of the members present but by a vote of no fewer than five (5) members".
6. Amend Charter to add the following to end of Section 604(c)(3)(d): "Upon a vacancy on the Selection Panel, the Councilmember who appointed the Selection Panel member, or the Mayor (hereinafter referred to as the Appointing Authority), shall appoint a replacement. If the Appointing Authority does not appoint the replacement within one hundred and twenty (120) days of the date of resignation, removal or expiration of the Selection Panel member's term, the Selection Panel, by a two-thirds vote of those present but by a vote of no fewer than five (5) Selection Panel members, shall choose a replacement for the vacancy.
7. Amend Charter Section 604(g)(2) to read as follows:

"If the Chief of Police disagrees with the Agency's findings and/or proposed discipline, the Chief of Police shall ~~prepare~~ notify the Agency Director of his or her own findings and/or proposed discipline which shall be submitted to. The Agency Director shall submit the Chief's findings and proposed discipline in addition to the Agency's findings and proposed discipline to the Chair of the Commission. The Chair of the Commission shall appoint a Discipline Committee comprised of three Commissioners, *who may be either regular or alternate members.* The City Administrator shall not have authority to reject or modify the Chief of Police's findings and proposed discipline. ~~The Agency's findings and proposed discipline shall also be submitted to the Discipline Committee which shall review both submissions and resolve any dispute between the Agency and the Chief of Police. Based solely on the record presented by the Agency and the Chief of Police, the~~ The Discipline Committee may further investigate any complaint of Level 1 misconduct (as defined by Department policy) before it, including calling and interviewing witnesses, subject officers, and subject-matter experts, requesting additional records, requesting that Agency investigators collect additional evidence, and other investigative measures. The Discipline Committee shall submit its final decision regarding the appropriate findings and proposed discipline to the Chief of Police who shall notify the subject officer. The City Administrator shall not have the authority to reject or modify the Discipline Committee's final decision regarding the appropriate findings and level of discipline. ~~The Discipline Committee shall not have the authority to conduct its own investigation."~~

The only additional difference between my Resolution and President Kaplan's resolution is the underlined language in italics in the seventh line discussing alternate members ability to serve on a Discipline Committee.

HISTORY AND ANALYSIS

Councilmember Kalb, along with Councilmember Noel Gallo were proud to sponsor the Charter Measure LL that the City Council placed on the ballot for the November 2016 election. That measure created Oakland's civilian police oversight commission with substantial independence and appropriate checks and balances.

As currently written, the Charter contemplates appointment authority split between the Mayor (3 appointments plus 1 alternate) the City Council appointed Selection Panel (4 appointments plus 1 alternate). Councilmember Kalb very much supports this current construction as it allows for appropriate balance between the executive and legislative branches of government, and for some level of accountability for the city's chief elected officer. This process allows for accountability through both the Mayor and the City Council. For reference, the appointing authority for all commissioners in the City of Los Angeles is the Mayor with confirmation by the Council. The appointing authority in San Francisco is split, with the Mayor having the majority of appointments (4) and their Board of Supervisors having three.

The alternate members of the Commission have gone through the same vetting processes as Commission members and they regularly attend meetings. Adding alternate members as possible members of a Discipline Committee will give the Commission additional resources and flexibility to address its responsibilities.

COORDINATION

Councilmember Kalb worked with the City Attorney's office in drafting various amendments to the existing Charter Section 604. Councilmember Kalb and Council President Kaplan worked together on several provisions and came to consensus on almost all specific revisions. While there is still some language to discuss and clarify, the consensus provisions are essentially incorporated in the version submitted by Council President Kaplan on Feb. 13, 2020.

For questions regarding this supplemental report, please contact Seth Steward, Chief of Staff to Councilmember Kalb, at 510-238-7013.

Respectfully submitted,



Dan Kalb
Council President Pro Tem
Councilmember, District 1

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(c) Appointment, Terms, Vacancies, Removal.

1. The Commission shall consist of seven (7) regular members and two (2) alternate members, all of whom shall be Oakland residents of at least eighteen (18) years of age. To the extent practicable, appointments shall be broadly representative of Oakland's diversity and shall include members with knowledge and/or experience in the fields of human resources practices, management, policy development, auditing, law, investigations, law enforcement, youth representation, civil rights and civil liberties, as well as representation from communities experiencing the most frequent contact with the Department. Background checks shall be required for all Commission members and alternates. Such background checks shall not be performed by the Department. The following shall not be eligible to serve as a Commissioner:

- a. ~~current sworn police officer~~ employee of a municipal police department;
- b. current City employee;
- c. former Department sworn employee; or
- d. current or former employee, official or representative of an employee association representing sworn police officers.

2. Within two hundred and ten (210) days of the enactment of this Section, the Mayor shall appoint three (3) Oakland residents as Commissioners, at least one of whom shall be a retired judge or lawyer with trial experience in criminal law or police misconduct, and one (1) Oakland resident as an alternate, and submit the names of these appointees to the Council for confirmation. The Council shall have sixty (60) days after the completion of the background checks and from the date of receipt of the Mayor's submission to accept or reject each of the Mayor's appointees as Commissioners. The Mayor shall appoint an Oakland resident to fill any Commission vacancies that were previously filled by a Mayor's appointee. If the City Council does not accept or reject the Mayor's appointee within sixty (60) days after the completion of the background check and receipt of the Mayor's submission, the appointee shall be deemed appointed.

3. All other Commissioners and the other alternate shall be appointed as follows:

a. There is hereby established a nine (9) member Selection Panel. Within ninety (90) days of the enactment of this Section, each City Council member shall appoint one (1) person, and the Mayor shall appoint one (1) person, to the Selection Panel. ~~No current Department employee is eligible to be a member of the Selection Panel.~~ The Selection Panel, with the assistance of the City Administrator, will solicit applications from those willing to serve on the Commission. The Selection Panel will review the applications, and interview applicants to serve as members of the Commission. The following shall not be eligible to serve as a Selection Panel member:

- i. current or former sworn employee of a municipal police department;

- ii. current or former sworn employee of the Alameda County Sheriff's Office;
- iii. current employee of the Alameda County District Attorney's Office; or
- iv. current or former employee, official or representative of an employee association representing sworn police officers.

b. Within one hundred and twenty days (120) of its formation, the Selection Panel, by a two-thirds vote, shall submit a slate of four (4) regular members and one (1) alternate member to the City Council. The City Council may require the nominees to appear before the Council or a Committee of the Council. If the City Council does not accept or reject the slate in its entirety within sixty (60) days after the completion of the background checks and submission by the Selection Panel, the four (4) regular members and one (1) alternate member shall be deemed appointed.

c. Each year the Selection Panel shall re-convene, as needed, to designate replacements for the five (5) Commissioner (four (4) regular members and one (1) alternate) vacancies initially filled by the Selection Panel. and The Selection Panel shall, by a two-thirds vote of the members present but by a vote of no fewer than five (5) members, submit a slate of names of such designated persons to the City Council for acceptance or rejection. If the City Council does not accept or reject the entire slate within sixty (60) days after the completion of the background checks and submission by the Selection Panel, all designated replacements shall be deemed appointed.

d. Each year the Mayor and each Councilmember may replace her or his assigned person on the Selection Panel. Selection Panel members may serve up to five (5) years. Upon a vacancy on the Selection Panel, the Councilmember who appointed the Selection Panel member, or the Mayor (hereinafter referred to as the Appointing Authority), shall appoint a replacement. If the Appointing Authority does not appoint the replacement within one hundred and twenty (120) days of the date of resignation, removal or expiration of the Selection Panel member's term, the Selection Panel, by a two-thirds vote of those present but by a vote of no fewer than five (5) Selection Panel members, shall choose a replacement for the vacancy.

4. With the exception of the first group of Commissioners which shall serve staggered terms, the term for each regular and alternate Commissioner shall be three (3) years.

5. Commission members are limited to no more than two (2) consecutive terms, except that a Commissioner serving a term of no more than one (1) year shall be allowed to serve two (2) additional consecutive terms.

6. To effect a staggering of terms among the Commissioners, the duration of the first group of Commissioners shall be determined by the Selection Panel as follows: Three (3) regular members, including one (1) of the mayoral appointees, shall have an initial term of three (3) years; two (2) regular members, including one (1) of the mayoral appointees, shall have an initial term of two (2) years; two (2) regular members, including one (1) of the mayoral appointees, shall have an initial term of four (4) years. The alternate member

appointed by the Selection Panel shall have an initial term of two (2) years and the alternate member appointed by the Mayor shall have an initial term of three (3) years.

7. A vacancy on the Commission shall exist whenever a member dies, resigns, ceases to be a resident of the City, is convicted of a felony, or is removed.

8. For vacancies occurring for reasons other than the expiration of a regular member's term, the Commission shall select one of the alternates to replace the regular member for that regular member's remaining term of office. If the alternate chosen to replace the regular member was appointed by the Selection Panel, the Selection Panel shall appoint another alternate. If the alternate chosen to replace the regular member was appointed by the Mayor, the Mayor shall appoint another alternate.

9. All Commission members shall receive orientation regarding Department operations, policies and procedures, including but not limited to discipline procedures for police officer misconduct and failure to act. All Commission members shall receive training regarding Procedural Justice, conflict resolution, national standards of constitutional policing, best practices for conducting investigations, and other subject matter areas which are specified by City ordinance. All Commission members shall receive training from the Department of Race and Equity on "racial bias" within 90 days of the amendment of this section 604(c)(8) or within 90 days of their confirmation to the Commission by the City Council.

10. The City Council may remove members of the Commission for cause as provided in Section 601 of the Charter, or members of the Commission may be removed by a majority vote of the Commission only for conviction of a felony, conviction of a misdemeanor involving moral turpitude, a material act of dishonesty, fraud, or other act of moral turpitude, substantial neglect of duty, gross misconduct in office, inability to discharge the powers and duties of office, absence from three consecutive regular Commission meetings or five regular meetings in a calendar year except on account of illness or when absent by permission. The Public Ethics Commission shall have the authority to investigate all allegations which, if true, could be cause for removal of a Commissioner under Section 601 of the Charter and to refer the findings to the City Council.