

# OAKLAND CITY COUNCIL

## RESOLUTION NO. \_\_\_\_\_ C.M.S.

INTRODUCED BY COUNCILMEMBERS NOEL GALLO AND DAN KALB

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**ADOPT A RESOLUTION ON THE CITY COUNCIL'S OWN MOTION SUBMITTING TO THE VOTERS AT THE NOVEMBER 8, 2016 STATEWIDE GENERAL ELECTION 1) A PROPOSED AMENDMENT TO THE CITY CHARTER TO CREATE THE OAKLAND POLICE COMMISSION, THE COMMUNITY POLICE REVIEW AGENCY, AND A PROCESS FOR POLICE DISCIPLINE, AND 2) A PROPOSED ENABLING ORDINANCE RELATING TO THE OAKLAND POLICE COMMISSION AND THE COMMUNITY POLICE REVIEW AGENCY, AND DIRECTING THE CITY CLERK TO TAKE ANY AND ALL ACTIONS NECESSARY UNDER LAW TO PREPARE FOR AND CONDUCT THE ELECTION**

**WHEREAS**, on April 15, 1980, the City Council established the Citizens' Police Review Board (hereinafter, Board) with jurisdiction to review certain complaints alleging Oakland Police Department officer and park ranger misconduct, to conduct fact-finding investigations, and to make advisory reports to the City Administrator. On July 30, 1996, the City Council expanded the Board's jurisdiction to include complaints involving the excessive use of force, and bias based on an individual's legally protected status (race, gender, national origin, religion, sexual orientation or disability). In 2002, the City Council further expanded the Board's jurisdiction to include all complaints filed against police officers and park rangers, and expanded the Board's size from nine (9) members to twelve (12) members. The City Council also granted the Board the option of holding evidentiary hearings using three-member panels and permitted Board members to review confidential Oakland Police Department (hereinafter, Department) records in closed session. On November 12, 2002, the City Council passed Ordinance No. 12454 C.M.S., which further refined the Board's powers to include making recommendations to the City Administrator regarding litigated cases, and enlarged the amount of time for the Board to complete its investigations. The Board, however, is not empowered to oversee Department policy, impose discipline or adjudicate disciplinary appeals; and

**WHEREAS**, in January 2003, the City entered into a Negotiated Settlement Agreement (hereinafter, NSA) with multiple plaintiffs who sued the City, alleging that Police Department officers violated plaintiffs' civil rights. Since implementation of the NSA, a federal monitoring team has audited – and continues to audit – the Department's progress in complying with each of the fifty-one (51) tasks identified in the NSA; and

**WHEREAS**, while some important progress has been made in recent years, public perception persists that the Department and the City do not adequately hold its officers accountable for misconduct, as indicated, in part, by a February 8, 2016 notice of intent to circulate a petition for placing before the voters an initiative to amend the City Charter "for the purpose of creating a more robust and credible system of holding the Oakland Police Department accountable for providing the highest level of service to the residents of Oakland." The public perception that the Department does not effectively hold its officers accountable stems, in part, from the inconsistent and unpredictable results obtained in police officer discipline proceedings under the current administrative appeal process; moreover, such varied results lead to an erosion of public trust in this process; and

**WHEREAS**, maintaining public trust and confidence in the Police Department is essential for the Department to be able to provide the highest level of service to the community. In order to increase the public trust and confidence in the Department, improvements should be made to the processes for providing Department oversight and accountability. Appointing qualified members of the public to a Police Commission (hereinafter, Commission), entrusting the Commission with oversight of the Department and requiring the Commission to hold public hearings all would increase public transparency, which in turn would build a higher level of trust and confidence in the services provided by the Department. In addition, Oakland's residents and police officers alike deserve the most thorough and fair system possible for adjudicating allegations of misconduct and related administrative appeals of police discipline decisions so that the results of such appeals are as consistent as possible. Such an appeals process would also build a higher level of trust and confidence in the services provided by the Department, and

**WHEREAS**, major cities across the country, including New York City, Los Angeles, and San Francisco, as well as medium-size cities such as Berkeley, Albuquerque, and Honolulu have civilian police commissions with varying degrees of oversight authority over their police departments. In recent years, more and more municipal jurisdictions have involved citizens in their law enforcement review systems, and highly publicized incidents of alleged or actual police misconduct and the years-in-the-making widespread public outrage over police misconduct, especially in African American communities, has brought the issue of civilian oversight to center stage in the United States; and

**WHEREAS**, The National Association for Civilian Oversight of Law Enforcement, a nonprofit organization dedicated to promoting greater police accountability through the establishment or improvement of citizen oversight agencies, provides various resources on its website, including recommended standards and practices, which include the Police Oversight Principles of European Partners Against Corruption, which provides numerous recommendations for police oversight bodies including that they: (1) have independence from the executive branch of government; (2) are sufficiently separate from the hierarchy of the police subject to their oversight; (3) are governed by persons who are not currently serving as police officers; (4) have adequate finances and

resources to perform their functions; (5) have full investigative powers regarding police misconduct allegations; and (6) are representative of a diverse population; and

**WHEREAS**, while the Department currently has an in-house sworn Inspector General, one of the best models for on-going oversight of police discipline can be found in the City of Los Angeles' Office of Inspector General. The Los Angeles Inspector General is a civilian who is charged with conducting systemic reviews of the disciplinary process and reports directly to the City of Los Angeles' Police Commission to ensure a necessary level of independence. The creation of a civilian Inspector General reporting to the Commission came from the Christopher Warren Commission reforms following the protests and riots stemming in part from the Rodney King jury verdict; and

**WHEREAS**, two reports by court-appointed investigator Edward Swanson recommend reforms including changes to the arbitration process and procedures;

**WHEREAS**, while creating a Police Commission and providing much-needed reforms to and oversight of the police disciplinary process will enhance accountability and improve the public's trust, it is equally important that these accountability measures and structure be adopted and implemented with appropriate checks and balances; now therefore, be it

**RESOLVED:** That the City Council hereby authorizes and directs the City Clerk, at least 88 days prior to the next general municipal election date, to file with the Alameda County Board of Supervisors and the Registrar of Voters certified copies of this resolution; and be it

**FURTHER RESOLVED:** That the City Council intends for this proposed Amendment to Article VI of the Charter, Section 604, together with the companion enabling ordinance, to comprehensively address independent oversight of the Oakland Police Department, with appropriate checks and balances, and reforms to the police officer discipline process; and be it

**FURTHER RESOLVED:** That the City Charter and Oakland Municipal Code hereby are amended, to add, delete, or modify sections as set forth below (section numbers and titles are indicated in capitalized **bold type**; additions are indicated by underscoring, deletions are indicated by strike-through type; portions of the provisions not cited or not shown in underscoring or strike-through type are not changed); and be it

**FURTHER RESOLVED:** That the proposed Charter Amendment text shall be as follows:

The people of the City of Oakland do ordain as follows:

Section 1. Amendment to the Charter of the City of Oakland.

## **SECTION 604 – POLICE COMMISSION**

### **(a) Creation and Role.**

1. There hereby is established the Oakland Police Commission (hereinafter, Commission), which shall oversee the Oakland Police Department (hereinafter, Department) in order to ensure that its policies, practices, and customs conform to national standards of constitutional policing. The Commission shall have the functions and duties enumerated in this Section, as well as those assigned to the Commission by Ordinance.
2. There hereby is established a Community Police Review Agency (hereinafter, Agency), which shall have the functions and duties enumerated in this Section, as well as those assigned to the Agency by Ordinance.
3. Nothing herein shall prohibit the Chief of Police or a commanding officer from investigating the conduct of a Department sworn employee under his or her command, nor shall anything herein prohibit the Chief of Police from taking disciplinary or corrective action with respect to complaints investigated solely by the Department.
4. No later than two (2) years after the City Council has confirmed the first set of Commissioners and alternates, the City Auditor shall conduct a performance audit and a financial audit of the Commission and the Agency. Nothing herein shall limit the City Auditor's authority to conduct future performance and financial audits of the Commission and the Agency.

**(b) Powers and Duties.**

The powers and duties of the Commission are as follows:

1. Organize, reorganize and oversee the Agency.
2. Conduct public hearings at least once a year on Department policies, rules, practices, customs, and General Orders. The Commission shall determine which Department policies, rules, practices, customs, or General Orders shall be the subject of the hearing.
3. Consistent with state law and in accordance with Section 1207 of the City Charter, entitled "Oaths and Subpoenas," issue subpoenas to compel the production of books, papers and documents and take testimony on any matter pending before it. If any person subpoenaed fails or refuses to appear or to produce required documents or to testify, the majority of the members of the Commission may find him in contempt, and shall have power to take proceedings in that behalf provided by the general law of the State.
- 3.4. Propose changes, including modifications to the Department's proposed changes, to any policy, procedure, custom, or General Order of the Department which governs use of force, use of force review boards, profiling based on any of the protected characteristics identified by federal, state, or local law, or First Amendment assemblies, or which contains elements expressly listed in federal court orders or federal court settlements which pertain to the Department and are in effect at the time this Charter Section 604 takes effect for so long as such federal court orders and settlements remain in effect. All such proposed changes and modifications shall be submitted to the City Council for approval or rejection. If the City Council does not approve, modify and

approve, or reject the Commission's proposed changes or modifications within one hundred and twenty (120) days of the Commission's vote on the proposed changes, the changes or modifications will become final.

4.5. Approve or reject the Department's proposed changes to all policies, procedures, customs, and General Orders of the Department which govern use of force, use of force review boards, profiling based on any of the protected characteristics identified by federal, state, or local law, or First Amendment assemblies, or which contains elements expressly listed in federal court orders or federal court settlements which pertain to the Department and are in effect at the time this Charter Section 604 takes effect for so long as such federal court orders and settlement remain in effect. If the Commission does not approve or reject the Department's proposed changes within one hundred and twenty (120) days of the Department's submission of the proposed changes to the Commission, the Department's proposed changes will become final. If the Commission rejects the Department's proposed changes, notice of the Commission's rejection, together with the Department's proposed changes, shall be submitted to the City Council for review. If the City Council does not approve or reject the Commission's decision within one hundred and twenty (120) days of the Commission's vote on the Department's proposed changes, the Commission's decision will become final.

5.6. Review and comment, at its discretion, on all other policies, procedures, customs, and General Orders of the Department. All such comments shall be submitted to the Chief of Police who shall provide a written response to the Commission upon request.

6.7. Review the Mayor's proposed budget to determine whether budgetary allocations for the Department are aligned with the Department's policies, procedures, customs, and General Orders. The Commission shall conduct at least one public hearing on the Department budget per budget cycle and shall forward to the City Council any recommendations for change.

7.8. Require the Chief of Police to submit an annual report to the Commission regarding such matters as the Commission shall require.

8.9. Report at least once a year to the Mayor, the City Council, and to the public to the extent permissible by law, the information contained in the Chief's report in addition to such other matters as are relevant to the functions and duties of the Commission.

9.10. Acting separately or jointly with the Mayor, remove the Chief of Police by a vote of not less than five affirmative votes. If acting separately, the Commission may remove the Chief of Police only after adopting a finding or findings of cause, which shall be defined by City ordinance. The Commission must make its finding of just cause by no less than five affirmative votes. Upon removal, by the Commission, by the Mayor, or by the Mayor and the Commission acting jointly, or upon the notice of vacancy of the position of Chief of Police, the Mayor, in consultation with the Chair of the Commission, shall immediately appoint an Interim Chief of Police. Such appointment shall not exceed six (6) months in duration unless approved by a majority vote of the Commission. The Commission, with the assistance of the City Administrator, shall prepare and distribute a job announcement, and prepare a list of at least four candidates and transmit the names

and relevant background materials to the Mayor. The Mayor shall appoint one person from this list, or reject the list in its entirety and request a new list from the Commission. This provision shall not apply to any recruitment for the position of Chief of Police that is pending at the time of the Commission's first meeting.

10-11. Send the Chairperson of the Commission or another Commissioner appointed by the Chairperson to serve as a non-voting member of any level one Oakland Police Force Review Board.

~~11. Determine whether, and for what type of misconduct or failure to act, the Department's Internal Affairs Division shall have the authority to investigate the Department's non-sworn employees.~~

12. Perform such other functions and duties as may be prescribed by this Charter or by City ordinance.

**(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;
- 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 confirm 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.
- 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 shall 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.
4. With the exception of the first group of Commissioners which shall serve staggered terms, the term for each 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.
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.

**(d) Meetings, Rules and Procedures**

1. The Commission shall meet at least twice each month unless it determines that one meeting is sufficient in a particular month. The Commission shall notify the public of the time and place of the meeting and provide time for public comment at each meeting. The Commission shall meet at least twice each year in locations other than City Hall.
2. The Commission shall establish rules and procedures for the conduct and operations of its business. Such rules shall be made available to the public.
3. Five (5) members shall constitute a quorum. If a quorum is not established by the regular members in attendance, the Chairperson of the Commission may designate one or more alternate members to establish a quorum and cast votes. Motions on all matters ~~except matters involving discipline of an individual police officer~~ may be approved by a majority of those Commission members present.

**(e) Budget and Staffing**

1. The City shall allocate a sufficient budget for the Commission, including the Agency, to perform its functions and duties as set forth in this section, including budgeting at least one full-time-equivalent ~~Deputy non-City Attorney legal advisor~~ that is specifically charged with providing legal services to the Agency related to investigations, ~~adjudications, and recommended other police discipline matters~~. The one full-time-equivalent ~~Deputy non-City Attorney legal advisor~~ shall be assigned by the City Attorney after consultation with the Chair of the Commission. ~~The non-City Attorney legal~~



advisor shall not in the regular course of his or her legal practice defend law enforcement officers and shall not participate in, nor serve as counsel to the City or any of its Council members or employees in defense of any lawsuit arising from any incident involving an Oakland police officer.

2. Within sixty (60) days of the City Council's confirmation of the first group of Commissioners and alternates, the Oakland Citizens' Police Review Board (hereinafter Board) shall be disbanded and its pending business transferred to the Commission and to the Agency. The Executive Director of the Board shall become the Interim Director of the Agency, and all other staff will be transferred to the Agency.
3. After the effective date of this Charter section, the Commission shall may identify special qualifications and experience that candidates for Agency staff positions must have. Candidates for future vacancies shall may be selectively certified in accordance with the Civil Service Personnel Manual, as may be amended from time to time, except that, said selective certification shall not be subject to discretionary approval by the Personnel Director City Administrator or his or her designee.
4. The staff of the Agency shall consist of no fewer than one line investigator for every one hundred (100) sworn officers in the Department, rounded up or down to the nearest one hundred (100). The number of investigators shall be determined at the beginning of each budget cycle based on the number of sworn officers employed by the Department the previous June 1. At least one investigator shall be a licensed attorney. The budget set-aside for such minimum staffing may be suspended for a fiscal year or two-year budget cycle upon a finding in the budget resolution that the City is facing an extreme fiscal necessity, as defined by City Council resolution.
5. The City Administrator shall assign a staff member to act as liaison to the Commission and to provide administrative support to the Commission.
6. Upon a vacancy, the Director of the Agency shall be hired by the City Administrator from among two (2) or three (3) candidates submitted by the Commission. By an affirmative vote of at least five (5) members, or by an affirmative vote of four (4) members with the approval of the City Administrator, the Commission may terminate the Director of the Agency. The Commission shall periodically conduct a performance review of the Agency Director. The Agency Director shall be classified as a Department head, and shall have the authority to hire and fire Agency staff, in consultation with the City Administrator.
7. Within one hundred and eighty (180) days of the City Council's confirmation of the first group of Commissioners and alternates, a civilian Inspector General of the Department shall be hired by the City Administrator from among two (2) or three (3) candidates submitted by the Commission, and shall replace the sworn member of the Department who may be holding that position. The Inspector General may only be removed by an affirmative vote of at least five (5) members of the Commission, or by an affirmative vote of four (4) members with the approval of the City Administrator. The City Administrator shall not have the authority to independently remove the Inspector General. The Commission shall periodically conduct a performance review of the

Inspector General. The Inspector General shall be classified as a Department head. The Chief of Police may assign a sworn officer to act as a liaison from the Department to the Inspector General.

8.7. Agency and Commission staff, with the exception of the Agency Director, shall be civil service employees in accordance with Article IX of the City Charter. Background checks shall be required for all Agency investigators that have been transferred from the Board and all subsequent investigator applicants before they are hired by the Agency. Such background checks shall not be performed by the Department. Staff of the Board who are transferred to the Agency as discussed in section (e)(2) above shall not be subject to background checks.

9.8. No current or former sworn employee of the Department, or current official, employee or representative of an employee association representing sworn police officers, is eligible for any staff position in the Agency or the Commission.

**(f) Investigations**

1. Beginning sixty (60) days after the City Council's confirmation of the first group of Commissioners and alternates, the Agency shall receive, review and prioritize all public complaints concerning the alleged misconduct or failure to act of all Department sworn employees, including complaints from Department non-sworn employees. The Agency shall not be required to investigate each public complaint it receives, beyond the initial intake procedure, but shall investigate public complaints involving 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. The Agency shall also investigate any other possible misconduct or failure to act of a Department sworn employee, whether or not the subject of a public complaint, as directed by the Commission. The Agency shall forward a copy of each complaint received to the Internal Affairs Division of the Oakland Police Department within one business day of receipt.
2. Subject to applicable law, the Agency shall have the same access to all Department files and records, with the exception of personnel records, in addition to all files and records of other City departments and agencies, as the Department's Internal Affairs Division (IAD). Access to personnel records shall be limited to the Agency Director who shall maintain confidentiality as required by law. The Department and other City departments and agencies shall make every reasonable effort to respond to the Agency's requests for files and records within ten (10) days.
3. The Agency shall make every reasonable effort to complete its investigations within one hundred and eighty (180) days of the filing of the complaint with the Agency. Within thirty (30) days of completion of the investigation, the Director of the Agency shall issue written findings and proposed discipline regarding the allegations stated in the complaint to the Commission and the Chief of Police. The City Administrator shall not have the authority to reject or modify the Agency's findings and proposed discipline.

4. To the extent allowed by law and after consultation with the Commission, the Agency shall forward information to other enforcement agencies, including but not limited to the Alameda County District Attorney, when such information establishes a reasonable basis for believing that a crime may have been committed by a sworn Department employee.

**(g) Adjudication**

1. If the Chief of Police agrees with the Agency's findings and proposed discipline, he or she shall send to the subject officer notification of findings and intent to impose discipline. The Chief of Police may send such notification to the subject officer before IAD has begun or completed its investigation.
2. If the Chief of Police disagrees with the Agency's findings and/or proposed discipline, the Chief of Police shall prepare his or her own findings and/or proposed discipline which shall be submitted to a Discipline Committee comprised of three Commissioners. 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 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 discipline investigation.
3. If the Chief of Police prepares his or her own findings and proposed discipline and provides it to the Agency before the Agency's investigation is initiated or completed, the Agency may close its investigation or may choose not to conduct its own investigation in order to allow final discipline to proceed as proposed by the Chief, except that if the Agency is required to conduct an investigation by subsection (f) above, the Commission must approve the Agency's decision by a majority vote. If the Agency chooses not to close its investigation, imposition of final discipline shall be delayed until the Agency's investigation is completed and the Agency makes its findings and recommendations for discipline. The Agency shall notify the Chief of its final decision regarding how it will proceed within five (5) business days of the Chief's notice of completion of his or her investigation.
4. All employees are afforded their due process and statutory rights including *Skelly* rights. After the findings and imposition of discipline have become final, the subject officer shall have the right to grieve/appeal the findings and imposition of discipline if such rights are prescribed in a collective bargaining agreement.

**(g) Adjudication**

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discipline. The Chief of Police may send such notification to the subject officer before IAD has begun or completed its investigation.

2. If the Chief of Police disagrees with the Agency's findings and/or proposed discipline, the Chief of Police shall prepare his or her own findings and/or proposed discipline, which shall be submitted to a Discipline Committee comprised of three Commissioners. The City Administrator shall not have the 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 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.
3. If the Chief of Police prepares his or her own findings and proposed discipline and provides it to the Agency before the Agency's investigation is initiated or completed, the Agency may close its investigation or may choose not to conduct its own investigation in order to allow final discipline to proceed as proposed by the Chief, except that if the Agency is required to conduct an investigation by subsection (f) above, the Commission must approve the Agency's decision by a majority vote. If the Agency chooses not to close its investigation, imposition of final discipline shall be delayed until the Agency's investigation is completed and the Agency makes its findings and recommendation for discipline. The Agency shall notify the Chief of its decision regarding how it will proceed within five (5) business days of the Chief's notice of completion of his or her investigation.
4. After the findings and imposition of discipline have become final, the subject officer shall have the right to grieve the findings and imposition of discipline if such rights are prescribed in a collective bargaining agreement. The standard of proof that shall apply to all evidentiary hearings under such grievance procedures, including but not limited to hearings regarding employment terminations, is preponderance of the evidence.
5. Within sixty (60) days of the City Council's confirmation of the first group of Commissioners and alternates, the Commission shall request a list of twenty (20) arbitrators from the California State Mediation & Conciliation Service (hereinafter CSMCS), each of whom shall have ten or more years of experience as arbitrators, including experience hearing police discipline cases. The Commission shall ask for additional names if any of the arbitrators on the list received from CSMCS do not have the requisite experience. The City Attorney's Office shall strike six (6) names and the Oakland Police Officers' Association and the Oakland Police Management Association together shall strike a total of six (6) names. The resulting list of eight (8) names shall hear police discipline and termination appeals on a random basis for a period of three (3) years after which the process for compiling a list of eight (8) arbitrators shall be repeated. The list of eight arbitrators shall be made public.

6. The arbitrator or the Civil Service Board shall be required to uphold the level of discipline imposed by the City, including but not limited to employment termination, if: (a) the City satisfies the preponderance of the evidence standard of proof, and (b) the level of discipline imposed by the City is reasonable and consistent with progressive discipline. To the extent permissible by state law, including rules regarding attorney-client privilege, the arbitrator's or Civil Service Board's disposition of each discipline case shall be made public. The Commission shall notify the complainant, if there is one, of the arbitrator's or Civil Service Board's decision, to the greatest extent permitted by law.

7. The arbitrator, Civil Service Board, or hearing officer shall require the parties to:

a. Exchange the names of any expert witnesses who will testify at the hearing, together with a summary of the substance of each expert witness's anticipated testimony, at least fourteen (14) calendar days prior to the first day of hearing. Any revisions or additions to this list must be made at least three (3) business days before the hearing;

a. Exchange a list of any non-expert witnesses who will testify at the hearing, together with a summary of the substance of each non-expert witness's anticipated testimony, at least fourteen (14) calendar days prior to the first day of hearing. Such list of non-expert witnesses shall be confidential and disclosed only to the subject officer (who shall maintain the confidentiality of the list), City employees with a need to know, and counsel for the parties. Any revisions or additions to this list must be made at least three (3) business days before the hearing;

b. Exchange a list identifying all exhibits the party intends to introduce at the hearing at least fourteen (14) calendar days prior to the first day of hearing. Any revisions or additions to this list must be made at least three (3) business days before the hearing; and

c. Meet and confer at least fourteen (14) calendar days prior to the first day of hearing to determine whether they can agree on a joint exhibit list, and a joint stipulation of facts.

8. Within sixty (60) days of the City Council's confirmation of the first group of Commissioners and alternates, all Department sworn employees shall also have the right to appeal any findings and discipline imposed by the Chief of Police to the Commission in lieu of an arbitration hearing or Civil Service Board hearing prescribed in a collective bargaining agreement. Such election is irrevocable. The Commission shall conduct an evidentiary hearing where the Agency, the Chief of Police, and the subject officer shall have the right to call witnesses and submit other evidence. The standard of proof that shall apply to all such evidentiary hearings, including but not limited to hearings regarding employment terminations, is preponderance of the evidence. The Commission may delegate its authority to hold such a hearing to a hearing officer who shall be an attorney or retired judge with ten or more years of relevant experience. The Commission shall have the sole authority to choose the hearing officer. The hearing officer shall conduct the hearing and make a recommendation for final decision to the Commission. The level of discipline imposed by the City, including but not limited to employment termination, must be upheld if: (a) the City satisfies the preponderance of the evidence



standard of proof, and (b) the level of discipline imposed by the City is reasonable and consistent with progressive discipline. The Commission shall make the final decision regarding the findings and level of discipline to be imposed with an affirmative vote of at least four members. To the extent permissible by state law, including rules regarding attorney-client privilege, the vote of each Commissioner regarding final decisions about discipline shall be made public. The Commission shall notify the complainant, if there is one, of its decision, to the greatest extent permitted by law.

9. When necessary and relevant for a discipline case to be heard by the Commission, the Commission shall have the same access to all Department files and records, in addition to all files and records of other City departments and agencies, as the Department's Internal Affairs Division. The Department and other City departments and agencies shall make every reasonable effort to respond to the Agency's requests for files and records within ten (10) days.

10. The Commission shall have the power to issue subpoenas to compel the appearance of witnesses, and the production of books, papers, records, and documents, and take testimony on any pending matter. The Commission or the Agency may seek a contempt order as provided by the general law of the State for a person's failure or refusal to appear, testify, or produce subpoenaed documents.

11. If the subject officer elects to appeal the findings and discipline imposed by the Chief of Police to the Commission as described in subsection (g)(8) above, the Commission may offer to the subject officer voluntary conciliation, mediation, referral to the Chief of Police for disposition without a hearing, or any other alternative dispute resolution method that the Commission deems appropriate. If the subject officer agrees to use an alternative dispute resolution method, the Chief of Police and the Agency Director jointly shall have full settlement authority. If no settlement is reached, the subject officer shall have the right to appeal the findings and imposition of discipline as described in subsection (g)(8) above.

12. The one year statute of limitations for investigating complaints shall be tolled as required by state law when the complainant is the subject of criminal prosecution.

**(h) Enabling Legislation**

The Commission may make recommendations to the City Council for enacting legislation or regulations that will further the goals and purposes of this section 604. The City Council may, on its own initiative, enact legislation or regulations that will further the goals and purposes of this section 604. Once the Commission is seated, after first submitting such subsequent legislation or regulations shall be submitted to the Commission for review and comment. The Commission shall have forty-five (45) days to submit its comments to the City Council, such time to be extended only by agreement of the City Council.

and be it

**FURTHER RESOLVED** That the proposed Ordinance text shall be as follows:



## **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:

“Agency” shall mean the Community Review Police Agency.

“Commission” shall mean the Oakland Police Commission.

“Department” shall mean the Oakland Police Department.

“Serious Incident” shall mean a police officer involved shooting, death or serious bodily harm caused by the action and/or inaction of a police officer, in custody death, and/or serious criminal activity of a Department employee, whether sworn or non-sworn, on duty or off duty.

### **2.45.015 – Creation:**

Oakland City Charter Section 604 has established the Oakland Police Commission. Ordinance No. 12454 C.M.S. which creates the Citizens’ Police Review Board shall be repealed effective once the initial Commission appointments have been confirmed.

### **2.45.020 – Functions and Duties:**

In addition to the powers and duties described in Section 604 of the Oakland City Charter, it shall be the function and duty of the Commission, for and on behalf of the city, its elected officials, officers, employees, boards and commissions, to:

- A. In cooperation with the Chief of Police, ensure that all sworn employees of the Oakland Police Department (hereinafter Department) receive adequate education and training 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.
- B. In cooperation with the Chief of Police, ensure that all sworn employees of the Department receive adequate treatment, when appropriate, for post-traumatic stress disorder, drug and alcohol abuse, and other job-related mental and emotional health issues.
- C. Prepare and deliver to the Mayor, the City Administrator and the Chief of Police by January 31 of each year, or such other date as set by the Mayor, a proposed budget for providing the education, training and treatment identified in subsections (A) and (B) above.
- D. Remove the Chief of Police, without the approval of the City Administrator or the Mayor, by a vote of not less than five (5) affirmative votes and only after finding cause. For purposes of removing the Chief of Police, “cause” shall be defined as:
  1. Gross neglect of duties or a violation of City or Department policy after the Chief of Police has received written warning of the neglect or violation and

the Chief of Police has failed to cure the neglect or violation within twenty (20) days; or

2. Conviction of a felony; or
3. Conviction of misdemeanor involving moral turpitude; or
4. Failure or refusal to cooperate with any investigations involving employees of the Department;
5. Obstruction of justice;
6. Failure or refusal to administer or enforce Department policies, procedures or General Orders; or
7. A material act of dishonesty, fraud, or other act of moral turpitude.

E. Direct the Inspector General, within one hundred and eighty (180) days of his or her appointment, to hire a civilian for the position of Police Auditor. The Police Auditor shall be subject to a background check prior to being offered the position. The Police Auditor shall report directly to the Inspector General. The Police Auditor's job responsibilities shall include, without limitation:

1. Conducting an annual review of the Department's process and procedures for investigating police misconduct and police failure to act;
2. Conducting an annual review of the Department's process and procedures for determining the appropriate level of discipline for sustained findings of police misconduct or police failure to act;
3. Conducting an annual review of the Agency's process and procedures for investigating police misconduct and police failure to act;
4. Conducting an annual review of the Agency's process and procedures for determining the appropriate level of discipline for sustained findings of police misconduct or police failure to act;
5. Preparing a report, on an annual basis, summarizing the results of the annual reviews described above and including, when appropriate, recommendations for changes in the processes and procedures that were reviewed. This annual report shall be presented to the Commission, the Mayor, the City Council's Public Safety Committee, and to the Chief of Police;
6. Conducting an annual review of trends and patterns regarding Department training and education, and the Department's use of the Internal Personnel Assessment System (IPAS) and other early warning system(s). The Police Auditor shall also monitor the number and percentage of sworn officers who have received adequate training on profiling and implicit bias, procedural justice, de-escalation training, and work-related stress management.

F. Direct the Inspector General to develop and present a plan to the Commission to measure the performance of each element of the Department's discipline process.

G. Direct the Inspector General to review, as appropriate, and finalize the Police Auditor's annual report and submit it to the Commission.

H. Direct the Office of the Inspector General to complete all audits or review 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.

I. Require the Chief of Police to submit quarterly reports to the City Council's Public Safety Committee which shall include, without limitation:

1. The number of pending investigations in the Department's Internal Affairs Division, and the types of police officer misconduct or police officer failure to act that are being investigated;
  2. The number of training sessions offered to Department sworn employees, and the subject matter of the training sessions;
  3. Revisions made to Department policies and general orders;
  4. Number of, and circumstances surrounding, officer involved shootings and the results of any Executive Force Review Board or Force Review Board hearings; and
  5. Number of officers disciplined and the level of discipline imposed.
- J. Within one hundred and eighty days (180) 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 of Police regarding what information will be required in the Chief of Police's annual report to the Commission.
- K. Establish a Discipline Committee, consisting of three (3) Commission members, one of whom shall be appointed Chairperson, which shall decide any dispute between the Agency and the Chief of Police regarding the appropriate findings or recommended level of discipline. Membership in the Discipline Committee shall change for each such dispute so that the same three (3) Commission members are not deciding each dispute between the Agency and the Chief of Police.
- L. Request that the City Attorney's Office submit quarterly reports to the City Council which include a summary of:
  1. Recent arbitration decisions or other related results;
  2. The ways in which it has supported the police discipline process; and
  3. Recent developments in police discipline.
- M. Provide policy guidelines to the Agency Director for assistance in determining case prioritization.
- N. Monitor and evaluate the Department's recruitment and hiring practices for sworn personnel.
- O. Make available on its website, to the extent permitted by law:
  1. The Commission's annual report;
  2. The Chief of Police's annual and quarterly reports; and
  3. The Inspector General's annual report.
- P. Direct the Chief of Police to immediately notify the Chair of the Commission, the Agency Director and the Inspector General of any Serious Incident. In addition, direct the Chief of Police to provide a status report within ten (10) calendar days of the date on which the Serious Incident occurred, and a second status report within forty five (45) calendar days of the date on which the Serious Incident occurred.
- Q. Direct the Chief of Police to brief the Commission Chair, the Agency Director and the Inspector General at least once a month regarding allegations of all Serious Incidents under investigation.
- R. If no investigation has begun, direct the Agency to investigate a police officer involved shooting, death or serious bodily harm caused by the action and/or inaction of a police officer, in custody death, and/or serious criminal activity of a sworn Department employee, whether on duty or off duty, when requested by the Mayor, the City Administrator, and/or the City Council by an affirmative majority vote.

**2.45.30 Election of chairperson.**



At the first regular meeting of each year, the members shall elect a chairperson and a vice chairperson.

#### **2.45.40 – Rules, regulations and procedures.**

The Commission shall establish rules and procedures for the conduct of its business by a majority vote of the members present. The Commission must vote to adopt any motion or resolution. All such proposed rules and procedures shall be submitted to the City Council for approval or rejection within three (3) business days of the Commission's vote. If the City Council does not approve or reject the Commission's proposed rules and procedures within ninety (90) days of the Commission's vote on the proposed rules and procedures, the rules and procedures will become final until modified in the future by the Commission.

#### **2.45.050 – Commission Committees**

With the exception of the Commission's Discipline Committee, the Commission must obtain City Council approval prior to creating any standing committee of the Commission. A proposal to create a standing committee of the Commission must include information regarding the costs associated with staffing the standing committee, and the costs of complying with noticing and reporting requirements resulting from the establishment of any such standing committee of the Commission.

#### **2.45.060 – Staff assistance.**

Within one hundred and eighty (180) days of the City Council's confirmation of the first group of Commissioners and alternates, 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.

#### **2.45.070 – Commissioner Training**

Within twelve months of appointment, or as soon thereafter as possible, each Commissioner must:

- A. Complete the Citizens' Police Academy and participate in a Department "ride-along";
- B. Complete the Department's Procedural Justice Training, Implicit Bias Training, and Crisis Intervention Training;
- C. Complete Peace Officer Standards and Training (POST) Learning Domains 15 (Laws of Arrest) and 16 (Search and Seizure);
- D. Receive training in basic principles of constitutional due process and administrative hearing procedures; and
- E. Receive training in the legal requirements for maintaining the confidentiality of personnel records and other confidential documents or information.

#### **2.45.075 – Arbitrator Selection Process**

In furtherance of the arbitrator selection process described in City Charter section 604(g)(5):

- A. There shall be a coin toss to determine whether the City Attorney's Office or the OPOA and OPMA, together, shall strike the first name from the list of twenty (20) arbitrators received from the California State Mediation & Conciliation Service.
- B. After the first name is struck from the list, the other party (the City Attorney's Office) or parties (the OPOA and OPMA together) shall strike the next name. Strikes shall continue to alternate until a list of eight (8) arbitrators remains.
- C. The Commission shall establish a protocol for randomly assigning arbitrators to hear discipline cases. No arbitrator shall be assigned to two (2) or more consecutive cases unless, as determined by the Commission, there are separate discipline cases that arise out of the same set of factual circumstances and one arbitrator should preside over all such cases to maintain consistency in the imposition of discipline.

#### **2.45.080 Hearings**

- A. 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 and any adopted Memorandum of Understanding between the City and the employee association(s) representing sworn Oakland police officers.
- B. It shall be the Commission's sole and exclusive responsibility to determine the procedures to be followed in all evidentiary hearings regarding complaints about police officer conduct or failure to act conducted by either the Commission or the hearing officer provided that such procedures are consistent with accepted practices of administrative procedure and consistent with constitutional due process requirements.
- C. Commissioners and the Deputy City Attorney representing the Agency in the hearing may reasonably question all witnesses. The officer who is the subject of the complaint or the officer's representative will be allowed reasonable cross-examination of witnesses.
- D. Prior to the Commission making its final decision regarding findings and the imposition of discipline, the Commission shall take into account all relevant and applicable City and Department rules, regulations, policies, and General Orders.

#### **2.45.090 Authority of Public Ethics Commission**

After the Commission has provided two (2) written notices to the City Administrator and applicable Department or Agency Head of failure to provide documents or information as required by Section 604 of the City Charter, the Public Ethics Commission shall have the authority to investigate allegations that said City Department or Agency Head failed to provide documents or information to the Commission as required by Section 604 of the City Charter.

Such requirements shall be subject to enforcement in the same manner as violations of Chapter 2.25 of the Oakland Municipal Code.

#### **2.45.100 – Reporting to City Council.**

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.

#### **2.45.110 – Authority to amend.**

Nothing herein shall prevent or preclude the City Council from amending this chapter as it deems appropriate.

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

#### **2.46.010 – Creation**

Oakland City Charter Section 604 has established the Community Police Review Agency (hereinafter Agency).

#### **2.46.020 – Functions and duties.**

In addition to the powers and duties described in Section 604 of the Oakland City Charter, it shall be the function and duty of the Community Police Review Agency, for and on behalf of the city, its elected officials, officers, employees, boards and commissions, to:

- A. Use the same complaint form as used by the Oakland Police Department (hereinafter Department) in receiving all public complaints concerning alleged misconduct or failure to act on the part of any Department sworn employee, including complaints from Department non-sworn employees. All complaints, wherever filed, shall be date-stamped and numbered sequentially. Within twenty-four (24) hours of receipt, a copy of the numbered and date stamped complaint shall be provided to the complainant and to the Department's Internal Affairs Division.
- B. Make complaint forms available to the public at libraries, resource centers, recreation centers, and on the Agency's website.
- C. Ensure that all investigators receive any necessary training in conducting fair and impartial investigations.
- D. No less than twice a year, issue a detailed statistical report to the Public Safety Committee regarding complaints filed with the Agency, the processing of the complaints, the length of time required for investigation, if any, and the disposition of the complaints.

#### **2.46.030 – Agency Director.**



The Agency Director shall be responsible for the day-to-day operations of the Agency. The Agency Director's job responsibilities shall include, without limitation, the following:

- A. Identifying the staff positions, other than the position of investigator, necessary to perform the Agency's functions and duties.
- B. Monitoring the workload of all Agency investigators.
- C. Assigning complaints to investigators.
- D. Conducting annual job performance evaluations of all investigators.
- E. Responding to questions and issues raised by the public, and
- F. Any other duties assigned by the Commission, in consultation with the City Administrator.

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

After the Commission has provided two (2) written notices to the City Administrator and applicable Department or Agency Head of failure to provide documents or information as required by Section 604 of the City Charter, the Public Ethics Commission shall have the authority to investigate allegations that said City Department or Agency Head failed to provide documents or information to the Commission as required by Section 604 of the City Charter. Such requirements shall be subject to enforcement in the same manner as violations of Chapter 2.25 of the Oakland Municipal Code.

#### **2.46.050 Authority to amend.**

Nothing herein shall prevent or preclude the City Council from amending this chapter as it deems appropriate.

#### **FURTHER RESOLVED:**

**Section 2. Severability.** If any section, subsection, sentence, clause or phrase of this Charter amendment Measure 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 this Section the Measure. The City Council voters hereby declares that they it would have placed this Charter amendment before the voters passed this Measure 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, and be it

and be it

**FURTHER RESOLVED:** That in accordance with the Elections Code and Chapter 3.08 of the Oakland Municipal Code, the City Clerk shall fix and determine a date for submission of arguments for or against said proposed Charter amendment, and said date shall be posted by Office of the City Clerk; and be it

**FURTHER RESOLVED:** That in accordance with the Elections Code and Chapter 3.08 of the Oakland Municipal Code, the City Clerk shall provide for notice and publication as to said proposed Charter amendment in the manner provided for by law; and be it

**FURTHER RESOLVED:** That each ballot used at said municipal election shall have printed therein, in addition to any other matter required by law the following:

**PROPOSED CHARTER AMENDMENT**

**MEASURE \_\_\_\_**

Measure ...

Measure ____ <i>[to be drafted]</i>	Yes	
	No	

and be it

**FURTHER RESOLVED:** That the City Clerk and City Administrator hereby are authorized and directed to take any and all actions necessary under law to prepare for and conduct the next municipal election and appropriate all monies necessary for the City Administrator and City Clerk to prepare for and conduct the next municipal election, consistent with law.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID, AND  
PRESIDENT GIBSON MCELHANEY

NOES –

ABSENT –

ABSTENTION –

ATTEST: \_\_\_\_\_

LATONDA SIMMONS  
City Clerk and Clerk of the Council of the  
City of Oakland, California