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Councilmembers Dan Kalb & Noel Gallo

CITY OF OAKLAND



CITY HALL - ONE FRANK H. OGAWA PLAZA, 2ND FLOOR - OAKLAND - CALIFORNIA 94612

Agenda Memorandum

To: City Council Public Safety Committee and Members of the Public

From: Councilmembers Dan Kalb & Noel Gallo

Date: January 12, 2017

Subject:

INFORMATIONAL DISCUSSION FOR FEEDBACK ON A DRAFT ORDINANCE (1) ENABLING IMPLEMENTATION OF THE CITY CHARTER AMENDMENT CREATING THE OAKLAND POLICE COMMISSION AND THE COMMUNITY POLICE REVIEW AGENCY (2) ESTABLISHING A CIVILIAN INSPECTOR GENERAL AND RENAMING THE CURRENT OFFICE OF THE INSPECTOR GENERAL AS THE OFFICE OF AUDITS AND COMPLIANCE, AND (3) REQUIRING AN ANNUAL REPORT AND PRESENTATION BY THE COMMUNITY POLICING ADVISORY BOARD TO THE COMMISSION

Colleagues and Members of the Public:

This preliminary memorandum accompanies our *draft enabling ordinance* for the Police Commission Charter Amendment (Measure LL), which we introduced last year, was placed on the ballot by the City Council, and was passed by the voters in November. In lieu of scheduling the enabling ordinance for consideration for adoption now, we have submitted the ordinance as a working draft to the Public Safety Committee in order to solicit public feedback about its provisions from our colleagues, experts in the community, and members of the public.

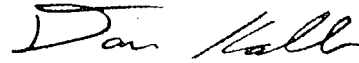
After public discussion and feedback, our goal is to further refine the draft ordinance and then return to request scheduling of the revised ordinance to the Public Safety Committee with a recommendation of referral to the full Council for adoption. We anticipate submitting a standard agenda report with the ordinance at that time.

Measure LL (Oakland Charter Section 604) establishes a new Police Commission for the City of Oakland. Our enabling ordinance consists of the following:

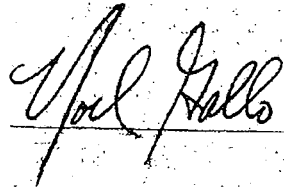
1. Enabling legislation that rests upon the framework established by Charter Section 604, including provisions governing the Police Commission and provisions governing the Community Police Review Agency;
2. Renaming the current Oakland Police Department (OPD) Office of Inspector General as OPD's Office of Audits and Compliance and establishing a new civilian Office of Inspector General that is independent from OPD;

3. Adding a requirement for the Community Policing Advisory Board that it provide an annual report and presentation to the Police Commission.

Respectfully submitted,



Dan Kalb
Councilmember, District 1



Noel Gallo
Councilmember, District 5

Attachment: Charter Section 604 (Measure LL – passed by the Voters)

17 JAN 12 PM 4:47

FULLTEXT OF MEASURE LL

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.
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.
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.

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

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.
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 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 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 non-City Attorney legal advisor that is specifically charged with providing legal services to the Agency related to investigations and recommended discipline. The one full-time-equivalent 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

2. 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.
3. 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.
4. After the effective date of this Charter section, the Commission may identify special qualifications and experience that candidates for Agency staff positions must have. Candidates for future vacancies may be selectively certified in accordance with the Civil Service Personnel Manual, as may be amended from time to time; said selective certification shall be subject to discretionary approval by the City Administrator or his or her designee.
5. 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.
6. The City Administrator shall assign a staff member to act as liaison to the Commission and to provide administrative support to the Commission.
7. 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

8. 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.
9. 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 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.
10. 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 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.

(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, 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.

Section 2. Severability. If any section, subsection, sentence, clause or phrase of this 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 the Measure. The voters hereby declare that they would have 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.

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

DISCUSSION FOR FEEDBACK ON A DRAFT ORDINANCE (1) ENABLING IMPLEMENTATION OF THE CITY CHARTER AMENDMENT CREATING THE OAKLAND POLICE COMMISSION AND THE COMMUNITY POLICE REVIEW AGENCY, (2) ESTABLISHING A CIVILIAN INSPECTOR GENERAL AND RENAMING THE CURRENT OFFICE OF THE INSPECTOR GENERAL AS THE OFFICE OF AUDITS AND COMPLIANCE, AND (3) REQUIRING AN ANNUAL REPORT AND PRESENTATION BY THE COMMUNITY POLICING ADVISORY BOARD TO THE COMMISSION

WHEREAS, On November 8, 2016, the City of Oakland's voters passed Measure LL to add Section 604 to the Oakland City Charter, setting up the establishment of the Oakland Police Commission; and

WHEREAS, An enabling ordinance is vital companion for implementation of the Charter Amendment passed by the voters; and

WHEREAS, [PENDING]; and

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

SECTION 1. That the City Council hereby adopts the addition of Chapters 2.45 and 2.46 to the Oakland Municipal Code to enable the implementation of City Charter Section 604 which establishes the Oakland Police Commission and the Community Police Review Agency, and to establish the Office of Inspector General and to appoint a civilian Inspector General who shall be responsible for its day-to-day operations.

SECTION 2. Chapters 2.45 is hereby added to the Oakland Municipal Code to read 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.

“Appointing Authority” shall mean the Selection Panel established by Section 604(c)(3) of the City Charter or the Mayor. “Appointing Authorities” shall mean both the Selection Panel and the Mayor.

“Chief” shall mean the Chief of Police of the Oakland Police Department.

“Commission” shall mean the Oakland Police Commission.

“Department” shall mean the Oakland Police Department.

“Misconduct” shall mean both a police officer’s affirmative acts of misconduct and/or his or her failure to act.

“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 on-duty or off-duty criminal conduct of a sworn Department employee which rises to the level of a felony or Serious Misdemeanor.

“Serious Misdemeanor” shall mean any misdemeanor crime that, if convicted, could interfere with a police officer’s ability to fulfill his or her job responsibilities. Examples include those crimes that involve violence, intimidation, threats, sexual offenses, theft, dishonesty, possession of drugs, violations of California Penal Code Section 12021(c)(1), and those crimes where bias based on any legally protected characteristic is a motivating factor.

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

2.45.020 – Creation.

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

2.45.030 – Background Checks.

In accordance with federal and state law, a background check shall be performed on each Commissioner and alternate before his or her name is submitted to the City Council for confirmation. The City Administrator’s Office shall retain an independent contractor to perform these background checks, which shall include:

- A. Verification of educational and employment background, and any other information that may be verified by a public records search; and
- B. Results of a criminal records investigation.

The results of each background check shall be disclosed only to the Appointing Authority that is considering the Commissioner or alternate.

2.45.040 – 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 cooperation with the Chief, ensure that all sworn employees of the 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. Prepare and deliver to the Mayor, the City Administrator and the Chief by January 31 of each year, or such other date as set by the Mayor, a proposed budget for providing the education and training identified in subsection (A) above.
- C. 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:
 - 1. Gross neglect of duties or a serious violation of City or Department policy 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
 - 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; 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 Department policies, procedures or General Orders; or
 - 7. A material act of dishonesty, fraud, self-dealing, or other act of moral turpitude.
- D. 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 regarding what information will be required in the Chief's annual report to the Commission.
- E. Conduct an annual performance review of the Inspector General.
 - F. 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.
 - G. Provide policy guidelines to the Agency Director for assistance in determining case prioritization.
 - H. Make available on its website, to the extent permitted by law:
 - 1. The Commission's annual report;
 - 2. The Chief's annual and semi-annual reports; and
 - 3. The Inspector General's annual report.
 - I. 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.
 - J. Direct the Department to develop a proposed policy prohibiting, with appropriate exceptions, the Department's Internal Affairs Division from investigating the Department's non-sworn employees, subject to applicable state law.
 - K. Direct the Chief to:
 - 1. Submit semi-annual reports to the City Council's Public Safety Committee, to the extent permitted by applicable law, which shall include:
 - a. 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;
 - b. The number of pending investigations in IAD, and the types of Misconduct that are being investigated;
 - c. The number of investigations completed by IAD, and the results of the investigations;
 - d. The number of training sessions provided to Department sworn employees, and the subject matter of the training sessions;
 - e. Revisions made to Department policies and general orders;
 - f. Number of, and circumstances surrounding, officer-involved shootings and the results of any Executive Force Review Board or Force Review Board hearings;
 - g. Number of officers disciplined and the level of discipline imposed; and
 - h. The number of closed investigations which did not result in discipline of the subject officer.
 - 2. Immediately notify the Chair of the Commission, the Agency Director and the Inspector General of any Serious Incident. The Commission shall also direct the Chief 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.
- 3. Brief the Commission Chair, the Agency Director and the Inspector General at least once a month regarding allegations of all Serious Incidents under investigation.
- 4. Order all officers subject to subpoena (pursuant to the Commission’s subpoena powers as described in City Charter section 604(b)(3)) to comply with all requirements of the subpoena.
- L. In association with the Agency Director, establish rules and procedures for the mediation and resolution of complaints of Misconduct.
- M. 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.

2.45.050 – Access to Documents.

Subject to applicable law, the Commission shall have 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 relevant and necessary to the performance of its duties. In addition and subject to applicable law, the Commission shall have 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 relevant to a Serious Incident. However, the Discipline Committees shall have access to all files, including personnel records, necessary to render a decision as described in City Charter section 604(g)(2).

2.45.060– Meetings

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

- A. Consistent with City Charter section 604(d)(1), the Commission shall meet at least twice each month at an established time and place suitable to its purpose. Such meetings shall be designated regular meetings, and shall be held at City Hall. If the Commission determines, by a majority vote of those present at a regular meeting, that a second regular meeting in that month is not necessary, it shall provide public notice of the meeting cancellation as required by all applicable State and local laws.
- B. Consistent with City Charter section 604(d)(1), at least twice each year, the Commission shall hold one of its regularly scheduled meetings at a location outside of City Hall. These meetings shall be designated special meetings for purposes of Article II of Chapter 2.20 of the Oakland Municipal Code, and shall include an agenda item titled “Community Roundtable,” or something similar. The purpose of the Community Roundtable agenda item shall be to engage the

community in discussions regarding community policing, building trust between the community and the Department, and other similar and relevant subjects as determined by the Commission. The Commission shall consider inviting to each Roundtable individuals and groups familiar with the issues involved in building and maintaining trust between the Department and the community, including but not limited to representatives from the Department, members of faith-based groups, youth groups, advocacy groups, residents of neighborhoods that experience the most frequent contact with the Department and, to the extent practicable, formerly incarcerated members of the community.

2.45.070 - Office of Inspector General.

Within sixty (60) days after the City Council’s confirmation of the first group of Commissioners and alternates, there shall be established in the City government a civilian Office of Inspector General for the Department (hereinafter referred to as “OIG”) which shall be under the supervision and administrative control of the Commission, with the assistance of the City Administrator.

- A. The powers, functions and duties of the OIG shall be those assigned, authorized and directed by the Commission, and shall include conducting any audit or review of the Department necessary to assess the Department’s performance and adherence to constitutional policing practices, and shall also include conducting any audit or review of the Department’s Training Bulletins, General Orders, and all other policies and procedures, including any pattern of non-compliance with the foregoing, as necessary or helpful for the Commission to fulfill its duties under Charter Section 604(b)(4), (5) and (6).
- B. The Chief shall assign a sworn officer to act as a liaison from the Department to the OIG.
- C. The City shall allocate a sufficient budget for the OIG to perform its functions and duties as set forth in section 2.45.090 below, including budgeting one (1) full-time staff position comparable to the position of Police Program and Audit Supervisor.
- D. Within thirty (30) days after the first Inspector General is hired:
 - 1. The Policy Analyst then assigned to the Agency shall be transferred to the OIG; and
 - 2. One (1) Police Performance Auditor shall be transferred from the Department’s Office of Inspector General—or re-named Office of Audits and Compliance—to the OIG.

2.45.080 – Civilian Inspector General.

- A. Within one hundred and eighty (180) days of the City Council’s confirmation of the first group of Commissioners and alternates, the City Administrator shall hire the first civilian Inspector General from among two (2) or three (3) candidates submitted by the Commission. The job announcement and the description of job responsibilities for the position of Inspector General shall be developed jointly by the Commission and the City Administrator. The City Administrator shall hire all

subsequent civilian Inspectors General from among two (2) or three (3) candidates submitted by the Commission. The Inspector General shall be subject to a background check as described in section 2.45.030 above before hiring except that the results of the background check shall be submitted to the Commission and the City Administrator.

- B. 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.
- C. The Inspector General shall be classified as a department head, and shall be responsible for the day-to-day operations of the OIG.
- D. The Inspector General shall be permitted to attend Executive Force Review Board, Force Review Board, and *Skelly* hearings if he or she chooses to do so.

2.45.090 – Functions and Duties of the Office of Inspector General.

The functions and duties of the Office of Inspector General shall include:

- A. Preparing an annual report, summarizing the results of the annual reviews of:
 - 1. The Department’s processes and procedures for investigating alleged Misconduct;
 - 2. The Department’s processes and procedures for determining the appropriate level of discipline for sustained findings of Misconduct;
 - 3. The Agency’s processes and procedures for investigating alleged Misconduct;
 - 4. The Agency’s processes and procedures for determining the appropriate level of discipline for sustained findings of Misconduct;
 - 5. Trends and patterns regarding Department training and education, and the Department’s use of the Internal Personnel Assessment System (IPAS) and other early warning system(s).

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

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

- F. Monitoring, evaluating, and making recommendations regarding the Department’s Training Bulletins, General Orders, and all other policies and procedures as requested by the Commission in furtherance of its duties under City Charter section 604(b)(4), (5) and (6).
- G. Monitoring, evaluating, and making recommendations regarding the Department’s risk management practices.

2.45.100– Establishment of the Discipline Committee.

The Chairperson of the Commission shall appoint three (3) Commission members to serve on a Discipline Committee, and shall designate one of these three (3) Commission members as the Chairperson. The Discipline Committee shall decide any dispute between the Agency and the Chief regarding the proposed or final findings or proposed or final level of discipline to be imposed on a Subject Officer.

- A. No Discipline Committee established by the Commission shall decide any dispute between the Chief and the Agency, as directed by Section 604(g) of the City Charter, until each member of the Discipline Committee has completed: (1) orientation regarding Department operations, policies and procedures, including but not limited to discipline procedures for Misconduct, and (2) the training described in section 2.45.160(D), (E) and (F).
- B. Membership in the Discipline Committee shall rotate for each police officer discipline case, as determined by the Chairperson of the Commission.

2.45.110 – Discipline.

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

- A. With respect to Misconduct that is given a Class I designation pursuant to the Department’s Discipline Policy, the Chief and the Agency Director shall include probative videotape and/or audiotape from their respective investigations in their submissions to the Discipline Committee pursuant to City Charter section 604(g)(2). The Discipline Committee shall have the authority to request any additional videotape and/or audiotape from the Agency’s and the Department’s investigation files that it deems relevant to its deliberations.
- B. After the investigation of a complaint has been completed and a decision has been made regarding the proposed findings and the proposed level of discipline (hereinafter referred to as the “Proposed Discipline”), either by agreement between the Chief and the Agency or by decision of the Discipline Committee, the Chief shall send a Notice of Intent to Impose Discipline or a Notice of Intent to Terminate to the Subject Officer. Consistent with City policy and applicable law, the Department shall offer the Subject Officer a *Skelly* hearing to be conducted by an assigned *Skelly* officer. After completion of the *Skelly* hearing, the *Skelly* officer shall issue his or her report which shall include his or her

- recommendation regarding whether the Proposed Discipline should be affirmed or modified in any way.
- C. The *Skelly* report shall be submitted to the Chief and to the Agency Director if the Chief and the Agency Director agreed on the Proposed Discipline. The Chief and the Agency Director shall consider the *Skelly* report and consult with each other regarding the final set of findings and level of discipline to be imposed (hereinafter referred to as “Final Discipline”).
 - 1. If the Chief and the Agency Director agree on the Final Discipline, the Chief shall send a Notice of Discipline or Notice of Termination to the Subject Officer.
 - 2. If the Chief and the Agency Director do not agree on the Final Discipline, the *Skelly* report shall be submitted to the Discipline Committee which shall decide the Final Discipline. After such determination, the Discipline Committee shall direct the Chief to send a Notice of Discipline or Notice of Termination to the Subject Officer.
 - D. The *Skelly* report shall be submitted to the Discipline Committee if the Discipline Committee decided the Proposed Discipline. The Discipline Committee shall consider the *Skelly* report in deciding the Final Discipline. After such determination, the Discipline Committee shall direct the Chief to send a Notice of Discipline or Notice of Termination to the Subject Officer.
 - E. The Discipline Committee shall maintain the confidentiality of all personnel and/or privileged information as required by State and local law. After the Discipline Committee has concluded its deliberations regarding the Proposed Discipline and/or the Final Discipline, it shall return all records and information it received to the party from which it received such records and information. No member of the Discipline Committee may publicly comment about, nor discuss any personnel matter with anyone, including another member of the Discipline Committee, outside of Discipline Committee meetings.
 - F. The Subject Officer may appeal the imposition of discipline or termination to the Civil Service Board. Alternatively, the Subject Officer may grieve the imposition of discipline or termination as prescribed in a collective bargaining agreement.

2.45.120– Establishment of Other Committees

The Commission must obtain City Council approval prior to the creation of any other standing committee. A proposal to create a standing committee of the Commission must include information regarding the costs associated with staffing the standing committee, if any, and the costs of complying with noticing and reporting requirements resulting from its establishment.

2.45.130 - Public Statements of the Commission

The Commission may issue statements to the public regarding the Commission’s official business, to the extent such business is not confidential or privileged under State or local law, only after the statement has been approved by an affirmative vote of not less than four (4) votes. Commissioners may publicly discuss their roles as Commissioners and the Commission’s public and official business for the purpose of educating the community.

2.45.140 - Election of Chairperson.

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

2.45.150 - Staff assistance.

Within one hundred and eighty (180) days of the City Council’s confirmation of the first group of Commissioners and alternates and on an ongoing basis as appropriate, the Commission shall provide the City Administrator with its proposal for the staff positions necessary to permit the Commission and the Agency to fulfill its functions and duties as set forth in this Chapter 2.45, Chapter 2.46, and as set forth in Section 604 of the City Charter.

2.45.160 – Commissioner Training.

Within twelve months of appointment, or as soon as possible after appointment, each Commissioner shall become familiar with City Charter section 604 and with Chapters 2.45 and 2.46 of the Oakland Municipal Code. In addition, each Commissioner shall receive the training and orientation specified by Section 604(c)(9) of the City Charter. In addition, 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;
- E. Receive training in the legal requirements for maintaining the confidentiality of personnel records and other confidential documents or information;
- F. 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; and
- G. Receive information regarding constitutional civil rights guaranteed to all citizens as such rights are affected by law enforcement.

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.

2.45.170 - Hearings

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

2.45.180 – Authority of Public Ethics Commission.

If the Agency does not receive the files and records requested pursuant to Section 604(f)(2) of the City Charter within fifteen (15) business days of its request, the Public Ethics Commission shall have the authority to investigate allegations that the head of the offending City department or agency failed to provide the requested files or records to the Agency as required by Section 604(f)(2) of the City Charter. Such requirements shall be subject to enforcement by the City in the same manner as violations of Chapter 2.25 of the Oakland Municipal Code.

2.45.190– 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.

SECTION 3. Chapter 2.46 is hereby added to the Oakland Municipal Code to read as follows:

Chapter 2.46 - COMMUNITY POLICE REVIEW AGENCY

2.46.010 – Definitions.

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

“Agency” shall mean the Community Review Police Agency.

“Commission” shall mean the Oakland Police Commission.

“Department” shall mean the Oakland Police Department.

“Police Officer Misconduct” shall mean both affirmative acts of misconduct and a police officer’s failure to act.

2.46.020 – Creation

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

2.46.030 – Functions and duties.

In addition to the powers and duties prescribed in Section 604 of the Oakland City Charter, the Agency’s functions and duties shall include:

- A. Use the same complaint form as used by the Department in receiving all public complaints concerning alleged Misconduct, including complaints from Department non-sworn employees. All complaints, wherever filed, shall be date-stamped and numbered sequentially. A copy of the numbered and date-stamped complaint shall be provided to the complainant and to the Department’s Internal Affairs Division within one (1) business day of receipt.
- B. Make complaint forms available to the public by posting the forms and information about the complaint process on the Agency’s website, and by making information about the complaint process available at other public locations to be determined by the Agency Director.
- C. Ensure that all investigators receive any necessary training in conducting fair and impartial investigations.
- D. In consultation with and the approval of the Commission, establish rules and procedures for the operation of its business including, but not limited to, procedures for the intake of complaints.
- E. No less than twice a year and as permitted by applicable law, issue a report to the Public Safety Committee which shall include the following information:
 - 1. The number of complaints submitted to the Agency together with a brief description of the nature of the complaints;
 - 2. The number of the Agency’s pending investigations, and the types of Police Officer Misconduct that is being investigated;
 - 3. The number of investigations completed by the Agency, the results of the investigations, and the amount of time spent on the investigations;
 - 4. The number of officers disciplined and the level of discipline imposed; and
 - 5. The number of closed investigations which did not result in discipline of the subject officer.

2.46.040 – 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, but not be limited to, the following:

- A. Identifying the staff positions, in addition to the position of Investigator, necessary to perform the Agency’s functions and duties;
- B. Assigning complaints to investigators, consulting with investigators regarding, and monitoring the progress of, their investigations;
- C. Monitoring the workload of all Agency staff;
- D. Conducting annual job performance evaluations of all Agency staff;
- E. Responding to questions and issues raised by the public, as permitted by applicable law; and
- F. Any other duties assigned by the Commission, consistent with the Agency’s powers and duties as described in Section 604 of the City Charter and subject to any constraints imposed by the Agency’s budget.

2.46.050 – Background Checks.

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

- A. Verification of educational and employment background, and any other information that may be verified by a public records search; and
- B. Results of a criminal records investigation.

2.46.060 – Mediation Program.

Upon the agreement of the Chief, the complainant(s), the Subject Officer(s), and the Agency Director, the Agency Director shall appoint a qualified mediator, or conflict resolution association that employs mediators, with at least five (5) years of experience in mediating employment or other relevant disputes to mediate a final and binding resolution of the complaint in accordance with the Commission’s established rules and procedures. No Commissioner, City employee, or former Department sworn officer may be appointed mediator.

2.46.070 – Authority of Public Ethics Commission.

If the Agency does not receive the files and records requested pursuant to Section 604(f)(2) of the City Charter within fifteen (15) business days of its request, the Public Ethics Commission shall have the authority to investigate allegations that the head of the offending City department or agency failed to provide the requested files or records to the Agency as required by Section 604(f)(2) of the City Charter. Such requirements shall be subject to enforcement by the City in the same manner as violations of Chapter 2.25 of the Oakland Municipal Code.

SECTION 4. Section 2.29.020 of the Oakland Municipal Code is hereby amended, to add, delete, or modify sections as set forth below (sections number and titles are indicated in capitalized **bold type**; additions are indicated by underscoring, deletions are indicated by strike-through type; portion of the provisions not cited or not shown in underscoring or strike-through type are not changed):

Section 2.29.020 – Police Department.

There is established in the City government a Police Department which shall be under the supervision and administrative control of the City Administrator. The powers, functions and duties of said Department shall be those assigned, authorized and directed by the City Administrator. The management and operation of the Police Department shall be the responsibility of the Chief of Police who shall serve as Director of said Department, subject to the direction of the City Administrator. In the Police Department there shall be an Office of the Chief of Police and the following Bureaus: Field Operations East, Field Operations West, and Services; and there shall be the following divisions: Support Operations, Internal Affairs, Office of the Inspector General, Audits and Compliance, Criminalistics, Personnel & Training,

Communications, Fiscal Services, Records, Research & Planning, Information Systems, CompStat/Ceasefire, Neighborhood Services, and Criminal Investigation.

SECTION 5. Section 5.3 of the provisions establishing the Community Policing Advisory Board, as passed by Resolution No. 72727 and amended by Resolutions Nos. 73185, 73916, and, most recently, 79235, is hereby amended, to add, delete, or modify sections as set forth below (sections number and titles are indicated in capitalized **bold type**; additions are indicated by underscoring, deletions are indicated by strike-through type; portion of the provisions not cited or not shown in underscoring or strike-through type are not changed):

5.3 The Community Policing Advisory Board shall oversee, monitor, and report at least annually on the implementation of Resolution 72727 C.M.S. and shall provide an annual report of its recommendations to the Mayor, City Council, City Administrator, Police Commission and Chief of Police on further steps necessary to carry out its objectives. In addition, the Community Policing Advisory Board shall provide an annual presentation on its report to the Police Commission.

SECTION 6. 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 Ordinance. 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 7. Effective Date. This Ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

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

Date of Attestation: _____

