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CITY OF OAKLAND

CITY HALL • ONE FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

COUNCILMEMBER LOREN TAYLOR  
DISTRICT 6

(510) 238-7006  
District6@Oaklandca.gov

AGENDA MEMORANDUM

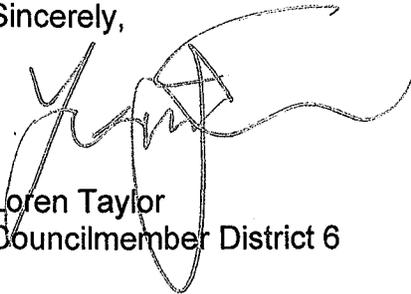
Date: May 30, 2019  
To: Member of the City Council and Members of the Public  
From: Councilmember Loren Taylor  
Subject: Police Commission Professional Service Providers Contract

Colleagues on the City Council and Members of the Public:

The proposed change in the purchasing ordinance is requested to ensure the independence of the Police Commission in executing its duties under Measure LL and the associated enabling ordinance. The Inspector General position established in the ordinance has remained unfilled due to an impasse on whether the City Charter will be violated if that position were to report directly to the Commission versus to the City Administrator. Similar purchasing power as established through this proposed ordinance has been granted to the City Auditor, who like the Police Commission, requires independence from the City Administrator to effectively carry out her/his duties.

For all the foregoing reasons, I respectfully urge your support for the attached Resolution.

Sincerely,

  
Loren Taylor  
Councilmember District 6

Item: \_\_\_\_\_  
City Council (or Committee)  
Meeting Date

19 MAY 30 PM 4:19

Approved as to Form and Legality

**DRAFT**

City Attorney's Office

**DRAFT**

**OAKLAND CITY COUNCIL**

**ORDINANCE NO. \_\_\_\_\_ C.M.S.**

**INTRODUCED BY COUNCILMEMBER LOREN TAYLOR**

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**ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 2.04, *PURCHASING SYSTEM*, TO ADD SECTION 2.04.022 TO AUTHORIZE THE POLICE COMMISSION TO PURCHASE PROFESSIONAL SERVICES NECESSARY TO FULFILL ITS DUTIES AS DEFINED IN MEASURE LL, CODIFIED IN SECTION 604 OF THE OAKLAND CITY CHARTER**

**WHEREAS**, the voters of the City of Oakland overwhelmingly voted yes (83.19%) for Measure LL on November 8, 2016, which established a the Oakland Police Commission; and

**WHEREAS**, Measure LL amended the Oakland City Charter to add section 604, entitled "Police Commission", and section 604(b) provides:

**"(b) Powers and Duties.** The powers and duties of the Commission are as follows:

1. Organize, reorganize and oversee the Agency [Community Police Review 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

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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"; and

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**WHEREAS**, an effective and well-functioning independent police commission is a vital tool in strengthening trust and accountability to improve community-police relations; and

**WHEREAS**, the lack of independence, real or perceived, of the Police Commission weakens trust and accountability between the community and the police department and undermine community cohesion and weaken public safety; and

**WHEREAS**, to be able to perform its functions, the Police Commission must have necessary key personnel, who are responsive to their requests, to fulfill their duties; and

**WHEREAS**, on July 10, 2018 the Oakland City Council adopted an enabling ordinance to (1) enable implementation of Charter section 604 creating the Oakland Police Commission and Community Police Review Agency, establish a position of Civilian Inspector General, and requiring an annual report and presentation by the Community Policing Advisory Board (Ordinance No. 13498 C.M.S.; see Attachment A); and

**WHEREAS**, the enabling legislation added, among other things, sections 2.45.100, 2.45.110, 2.45.120 to the Oakland Municipal Code to establish the Office of Inspector General and to appoint a civilian Inspector General who “shall serve and report to the Commission full time . . . and be hired and supervised by the Commission” (section 2.04.100); and

**WHEREAS**, the Police Commission was entrusted by the voters of Oakland to have the power, authority, and capability to ensure proper oversight of key matters regarding police conduct, which cannot be accomplished without necessary personnel; and

**WHEREAS**, the Police Commission has publicly expressed its need for professional support, to be responsive to their needs and perform their duties; and

**WHEREAS**, the City Council wishes to authorize the Police Commission to retain professional services to support its duties under Charter Section 604;

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

Section 1: Title 2, Chapter 2.04 of the Oakland Municipal Code setting forth authorization and procedures for the procurement of, among other things, professional, technical and scientific services is amended to add, delete or modify sections as set forth below (section numbers and titles are indicated in bold type; additions are indicated by underscoring and deletions are indicated by strike-through type.) Portions of regulations not cited or not shown in underscoring or strike-through are not changed.

## 2.04.022 - Police Commission Authority.

- A. Police Commission Purchase Authority. On behalf of the City of Oakland, the Police Commission shall have the authority to bind the City by written contract for professional, technical or scientific services in an amount that shall not exceed the City Council Approved Line Item Budget for that service provided that the contract has been previously approved by the Police Commission.
- B. Scope of Contract Authority. The Police Commission's contract authority is limited to contracts for professional, technical and/or scientific services that support the Police Commission in fulfilling its functions and duties as specified in Charter Section 604(b) and Enabling Ordinance No. 13498 C.M.S. codified at Oakland Municipal Code Chapter 2.45.

- C. Procedures for Approval and Execution of Contracts.

All Police Commission contract approvals shall require an affirmative vote of four (4) or more members of the Commission who are designated to vote at the time the action to approve a contract is taken. Approval shall be done in open meetings by approval of a resolution properly scheduled in accordance with the Brown Act and Oakland's Sunshine Ordinance (O.M.C. Ch. 2.20). The resolution shall reflect the vote of each member of the commission, date the action was taken and set forth all findings required by Charter Section 902(e) and by Oakland Municipal Code Section 2.04.022.F.

All contracts shall be in writing on a standard form developed by the City Administrator, and prior to execution contractors shall be required to submit proof of insurance (of the type and amounts required by the City) and schedules, forms and other standard documentation required by the City, and shall, pursuant to Charter Section 401(6), be approved by the City Attorney for form and legality before the same are executed.

The Director of the Community Police Review Agency (CPRA Director) is authorized on behalf of the City of Oakland to execute written contracts properly approved by the Commission. The CPRA Director shall not execute a contract until the City Attorney has approved it for form and legality.

No member of the Commission shall direct a contractor to undertake work that exceeds the Council approved budget for the contract. Contractors who perform work in excess of the contract amount are not entitled to payment for such work and work at their own risk.

- D. Contracts Subject to Council Appropriation of Contract Funds, Council Approved Line Item Budget(s). All contracts approved pursuant to this section shall be subject to the prior or concurrent appropriation and allocation of funds by the City Council in (1) the current two-year or mid-cycle adjusted budget for the Police Commission, including any budget adjustments allowed, or (2)

an appropriation resolution as defined in Section 2.04.010 above, or (3) a funding resolution specific to a particular contract(s).

Prior to Commission approval of any contract, the City Council shall expressly approve a line item budget(s) for police commission contract(s) in the two-year budget or midcycle budget, or in appropriation resolutions or other funding resolutions.

- E. Resolutions and Reports. All resolutions approving contracts shall be posted on [REDACTED]. The Commission shall present to the City Council, on an annual basis, a report listing all professional, technical and scientific services contracts authorized by the Commission during the prior year and an evaluation of performance of all service providers
- F. Compliance with Competitive Process, Personnel Findings, Purchasing Programs, and Other Purchasing Requirements. All contracts approved by the Commission are subject to the competitive and other processes and procedures required under Sections 2.04.050 and 2.04.051 as well as the personnel findings, purchasing programs and requirements set forth or referenced in the remainder of this chapter unless City Council waiver by resolution is obtained as necessary for each of the programs/ policies.

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**2.04.030 - City Council approval requirements.**

- A. Council Award of Purchases or Contracts in Excess of City Administrator's Authority. The Council shall award any purchase orders or contracts in excess of the City Administrator's authority as follows:
1. City Council Authority. The Council shall award all contracts in the following amounts:
    - a. Supplies, Services or Combination. Purchases in excess of two hundred fifty thousand dollars (\$250,000.00) in any single transaction or term agreement; and
    - b. Professional Services. Purchases in excess of two hundred fifty thousand dollars (\$250,000.00) in any single transaction or term agreement.
- B. Council Award of Purchases or Contracts in Excess of the Police Commission's Authority or Approved Budget. Only the Council is authorized to award contracts that exceed the: 1) authority of the Police Commission set forth in Section 2.04.022, or 2) Council approved line item budget(s) for the contracts or services.

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- C. **Validity of Contracts.** Legislative actions of the Council awarding any contract shall not constitute a contract. No contract shall be binding or of any force or effect until signed by the City Administrator or the CPRA Director. The City Administrator's or CPRA Director's signature shall constitute certification that there remains an unexpended and unapplied balance of the appropriations or funds sufficient to pay the estimated expense of executing the contract.
  - D. **Contract Extensions, Renewals, Amendments.** The requirements for City Council approval specified in Section 2.04.030 shall apply to all expenditures, extensions, amendments or renewals of an existing or expired contract or term agreement whenever aggregated expenditures under the original contract or term agreement, or extensions, renewals or amendments that exceed: (1) the City Administrator's contract approval limit or the Police Commission's contract budget, or (2) the total contract amount approved by Council in a City resolution.

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2.04.051 - Competitive process and qualification-based awards for professional services contracts.

- A. **Request for Qualifications or Proposal for Professional Services Contracts in Excess of Fifty Thousand Dollars (\$50,000.00).**
  - 1. **City Administrator Responsibility.** The City Administrator or the City Administrator's designee shall conduct a request for proposal ("RFP") or request for qualifications ("RFQ") process for the award of contracts that exceed fifty thousand dollars (\$50,000.00) and are exempt from bidding under Subsection 2.04.050.1.1. The RFP/Q process shall be conducted in accordance with Section 2.04.040.B.4, above. The City's RFP and RFQ processes shall be set forth in a City Administrator's administrative instruction. The RFP or RFQ requirement applies, but is not limited to, contracts for professional, technical or specialized services. The selection and award of contracts for professional services shall be based on demonstrated competence and qualifications for the types of services to be performed, at fair and reasonable prices to the City.
  - 2. **Police Commission Responsibility.** The CPRA Director shall conduct a request for proposal ("RFP") or request for qualifications ("RFQ") process for all contracts to be awarded by the Police Commission. The RFP/Q process shall be conducted in accordance with Section 2.04.040.B.4, above.
- B. **Waiver—City Administrator Authority, City Council Authority.** Upon a finding by the City Administrator that it is in the best interests of the City, the City Administrator may waive said RFP/Q requirements for professional services contracts up to fifty thousand dollars (\$50,000.00). The foregoing is not applicable to the Police Commission. Upon a finding by the City Council or its

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designee that it is in the best interests of the City, the City Council may waive said RFP/Q requirements for contracts in any amount.

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

Section 4. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise, this ordinance shall become effective upon the seventh day after final adoption.

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IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

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

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## Notice and Digest

### **ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 2.04, *PURCHASING SYSTEM*, TO ADD SECTION 2.04.022 TO AUTHORIZE THE POLICE COMMISSION TO PURCHASE PROFESSIONAL SERVICES NECESSARY TO FULFILL ITS DUTIES AS DEFINED IN MEASURE LL, CODIFIED IN SECTION 604 OF THE OAKLAND CITY CHARTER**

This Ordinance will amend Oakland's Purchasing Ordinance codified at Oakland Municipal Code Title I, Chapter 2.04, to add provisions that authorize Oakland's Police Commission to authorize contracts for professional, technical and scientific services needed for the Commission to fulfill its powers and duties as specified in Oakland Charter section 604(b). This amendment further provides that the contracting budget for the Commission shall be limited by specific line item allocations approved by the City Council, and will authorize the Director of the Community Police Review Agency, who is hired by and reports to the Commission, to execute contracts approved by the Commission on its behalf.

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