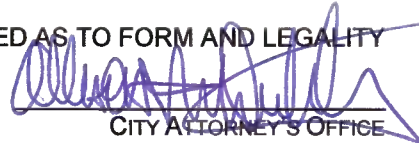


APPROVED AS TO FORM AND LEGALITY



CITY ATTORNEY'S OFFICE

**OAKLAND CITY COUNCIL**

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

**INTRODUCED BY COUNCIL PRESIDENT KAPLAN, COUNCIL PRESIDENT  
PRO TEMPORE KALB, COUNCILMEMBER GALLO, AND COUNCILMEMBER  
TAYLOR**

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**RESOLUTION PROPOSING TO AMEND CITY CHARTER  
SECTION 604 TO ADD THE OFFICE OF INSPECTOR GENERAL  
AND TO GIVE THE OAKLAND POLICE COMMISSION THE  
AUTHORITY TO HIRE AND/OR CONTRACT FOR ITS OWN  
LEGAL ADVISORS, DIRECTING THE CITY ADMINISTRATOR  
TO GIVE WRITTEN NOTICE TO EMPLOYEE  
ORGANIZATIONS THAT MAY BE AFFECTED, AND  
DIRECTING THE CITY ADMINISTRATOR TO MEET AND  
CONFER, AS APPROPRIATE, SUBJECT TO FURTHER  
COUNCIL INSTRUCTIONS.**

**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 misconduct, to conduct fact-finding investigations, and to make advisory reports to the City Administrator; and

**WHEREAS**, 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); and

**WHEREAS**, 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, was not empowered to oversee Department policy, impose discipline or adjudicate disciplinary appeals; and

**WHEREAS**, in 2003, *Delphine Allen, et al. v. City of Oakland* (the Riders case) where multiple Police Department officers violated plaintiffs' civil rights and were found to have planted evidence and used excessive force which resulted in the Negotiated Settlement Agreement ("NSA"); and

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

**WHEREAS**, on July 10, 2018, the City Council approved for final passage an enabling Ordinance No. 13498 C.M.S. to create the Oakland Police Commission and the Community Police Review Agency; and

**WHEREAS**, at the October 11, 2018 Police Commission meeting, a job description for Inspector General was adopted by a 5-0 vote but to date has not been implemented by the City Administrator; and

**WHEREAS**, on April 30, 2019, the City Council passed a Resolution No. 87635 C.M.S. requesting that the City Administrator expedite the process to obtain civil service board approval of and post the job description for the position of Inspector General to support the Police Commission of which the City Administration has refused to act upon; and

**WHEREAS**, on July 16, 2019, the Oakland City Council passed Ordinance No. 13555 C.M.S. to allow the Police Commission the authority to bind the City by written contract, for professional services, again reflecting the need for independence; and

**WHEREAS**, a report by the Oakland Police Department's Inspector General released in July 2019, found that officers failed to report using force against a suspect in over a third of cases from July to September 2018, disproportionately impacting Black Oakland residents; and

**WHEREAS**, on August 19, 2019, the 63<sup>rd</sup> Report of the Independent Monitor for the Oakland Police Department was released indicating that the City was slipping in its compliance with the Negotiated Settlement Agreement ("NSA") and stated that "the City and OPD leadership continue to struggle with using the specific stipulations of the NSA to increase the Department's capacity to identify problems-and, most importantly, to implement effective solutions;" and

**WHEREAS**, public perception persists that the Department and the City do not adequately hold its officers accountable for misconduct; 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; and

**WHEREAS**, ensuring the independence of the Police Commission from the affairs of the City Administration promotes the public trust, police accountability, and ensures that the Department complies with the requirements of the NSA; now, therefore, be it

**RESOLVED:** That the City Council hereby proposes to amend Charter section 604 to add, delete, or modify sections as set for the 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).

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

**Section 1.** Amendments to Section 604 of 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 Charter Section 604, as well as those assigned to the Commission by Ordinance.

2. There hereby ~~is~~ are established a Community Police Review Agency (hereinafter, Agency) and an Office of Inspector General (hereinafter, OIG), which shall have the functions and duties enumerated in this Charter Section 604, as well as those assigned to ~~the Agency~~ them 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 Regular Commissioners and Alternates Commissioners (collectively, Commissioners), the City Auditor shall conduct a performance audit and a financial audit of the Commission and the Agency. Performance audits shall be conducted at least once every three (3) years thereafter. Nothing herein shall limit the City Auditor's authority to conduct future performance and financial audits of the Commission and the Agency which may be conducted by an independent contractor selected by the Inspector General, in consultation with the City Auditor, in compliance with the City's contracting processes and procedures.

**(b) Powers and Duties.**

The powers and duties of the Commission are as follows:

1. Organize, reorganize and oversee the Agency and the OIG, and contract with professional service providers as authorized by Ordinance.
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. 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~~ no fewer than five (5) 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 ~~not less~~ no fewer than five (5) 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 is 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~~ the Agency Director and/or the Inspector General or their designees to serve as a non-voting members of any ~~level one~~ Oakland Police Force Review Board, as permitted by law.

12. Hire and/or contract for, by an affirmative vote of at least five (5) members, one or more attorneys to provide legal advice to the Commission related to and within the scope of any of its powers or duties, in accordance with Section 604(i) of this Charter.

1213. 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 Commissioners. ~~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 Regular 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 Commissioner, 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 alternates~~ 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 (2/3) 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 Regular and Alternate Commissioner shall be three (3) years.

5. Commissioners ~~members~~ are limited to no more than two (2) consecutive terms, except that a Commissioner serving a term of ~~no more~~ less 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 Commissioners to replace the regular member for that regular member's remaining term of office. If the Alternate Commissioner chosen to replace the regular member was appointed by the Selection Panel, the Selection Panel shall appoint another Alternate Commissioner. If the alternate chosen to replace the regular member was appointed by the Mayor, the Mayor shall appoint another Alternate Commissioner.

9. All Commissioners ~~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~~ any Commissioner for cause as provided in Section 601 of the Charter. ~~, or members of the~~ Any Commissioner may also 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 Commissioners to establish a quorum and cast votes. Motions on all matters may be approved by a majority of those Commissioners ~~members~~-present.

**(e) Budget and Staffing.**

1. The City shall allocate a sufficient budget for the Commission, including the Agency and the OIG, to perform its functions and duties as set forth in this Charter section 604, including 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 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 604, the Commission may identify special qualifications and experience that candidates for Agency and OIG 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 appointing authority and 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 Commissions and to provide administrative support to the Commission.

6. Upon a vacancy, the Agency Director of the Agency and the Inspector General 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 Agency Director of the Agency or the Inspector General. The Commission may remove the Inspector General only after adopting a finding or findings of cause, which may be defined by City Ordinance. The Commission shall periodically conduct a performance review of the Agency Director and Inspector General. The Agency Director and Inspector General shall be classified as a Department heads, and shall have the authority to hire and fire Agency staff and OIG staff, respectively, in consultation with the City Administrator consistent with state law, City Civil Service Rules and any applicable collective bargaining agreement.

7. The staff of the Agency, OIG and Commission staff, with the exception of the Agency Director and Inspector General themselves, 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.

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~~ it receives 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 Agency Director of the Agency shall issue written findings and proposed discipline regarding the allegations stated in the complaint to the Chair of 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.

5. The OIG shall audit the Department's compliance with the fifty-two (52) tasks described in the Settlement Agreement in United States District Court case number C00-4599, Delphine Allen, et al., v. City of Oakland, et al., and make recommendations to the Department and the Commission based on its audit(s), even after the Settlement Agreement expires. The OIG may review legal claims, lawsuits, settlements, complaints, and investigations, by, against, or involving the Department and the Agency, to ensure that all allegations of police officer misconduct are thoroughly investigated, and to identify any systemic issues regarding Department and Agency practices and policies. The OIG shall review the Mayor's proposed budget to determine whether budgetary allocations are aligned with community priorities as defined by the Commission. The OIG shall have access and authority to review Department data, investigative records, personnel records, and staffing information, as permitted by law, for the purpose of conducting audits of the Department. The OIG shall have access and authority to review Agency data, investigative records, personnel records, and staffing information for the purpose of conducting audits of the Agency. OIG shall report the results of its audits to the Commission and may publicly report on the results of any audits in a manner consistent with all applicable confidentiality requirements.

**(g) Adjudication.**

1. If the Chief of Police agrees with the Agency's findings and proposed discipline, he or she shall notify the Agency Director who shall notify the Chair of

the Commission of the agreed-upon findings and proposed discipline. The Chief shall send to the subject officer notification of the agreed-upon 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~~ notify the Agency Director of his or her own findings and/or proposed discipline ~~which shall be submitted to~~. The Agency Director shall submit the Chief's findings and proposed discipline in addition to the Agency's findings and proposed discipline to the Chair of the Commission. The Chair of the Commission shall appoint a Discipline Committee comprised of three Commissioners. 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 and whether it will proceed within ~~five (5) business~~ seven (7) 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. Subject to state law, the Inspector General may attend, but may not participate in, *Skelly* meetings for the purpose of noting relevant patterns and making policy recommendations. 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 Charter section 604. The City Council may, on its own initiative, enact legislation or regulations that will further the goals and purposes of this Charter 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.

**(i) Legal Counsel to the Commission**

1. The dollar amount for all employees hired and/or contracts approved according to section 604(b)(12) of this Charter (hereinafter, Commission Attorneys), in aggregate, in a single fiscal year shall not exceed the amount budgeted by the City Council for such fiscal year; and such contracts shall be in the form established by the City for professional legal services contracts. By an affirmative vote of at least five (5) members, the Commission may terminate such contracts or, subject to any applicable personnel rules or collective bargaining agreements, terminate such employment.

2. Commission Attorneys shall represent the City as an organization and shall not commence any claim or other legal proceeding against the City on behalf of the Commission. Commission Attorneys shall respond to any petition or application for a writ of mandate, restraining order or injunction brought against the Commission or against Commissioners in its or their official capacity unless the Commission votes to refer the matter to the City Attorney for response. The City Attorney shall act as legal counsel on behalf of the Commission and Commissioners in all other litigation involving it or them in their official capacity in accord with section 401(6) of this Charter.

3. In accord with their role, Commission Attorneys shall not disclose the confidences of the Commission on any legal matter to any other officer of the City unless:

a. The Commission, either as a body or through its Chair, or the Vice Chair if the Chair is unavailable and the matter is time sensitive, gives Commission Attorney informed consent in writing;

b. The Commission, either as a body or through its Chair, or Vice Chair if the Chair is unavailable and the matter is time sensitive, refers the same legal matter to the City Attorney pursuant to section 401(6) of this Charter;

c. Commission Attorney, in her/his professional discretion, determines it is in the best interests of the Commission to consult with the City Attorney;

d. Commission Attorney, in her/his professional discretion, determines that the Rules of Professional Conduct require referral of the matter to one of the following

City officers: City Administrator, Mayor, City Attorney, Council president, Vice Mayor; or

e. The legal matter becomes, in whole or in part, the subject of litigation involving the City or any City officer, board, commission, including the Police Commission, or other agency in their official capacity.

**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.

and be it

**FURTHER RESOLVED:** That the City Council hereby directs the City Administrator to notify, in writing, any and all employee organizations that may be affected by the proposed amendments; and be it

**FURTHER RESOLVED:** That the City Council hereby directs the City Administrator meet and confer with employee organizations, as may be required by law, subject to and in accordance with the direction of the Council.

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