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AGENDA REPORT

TO: Public Safety Chair Desley Brooks,
other City Councilmembers, and
members of the Public

FROM: Dan Kalb and Noel Gallo,
Councilmembers

SUBJECT: Police Commission Enabling
Ordinance

DATE: June 1, 2017

RECOMMENDATION

ADOPT AN ORDINANCE ENABLING IMPLEMENTATION OF THE CITY CHARTER AMENDMENT CREATING THE OAKLAND POLICE COMMISSION AND THE COMMUNITY POLICE REVIEW AGENCY AND ESTABLISHING A CIVILIAN INSPECTOR GENERAL AND AMEND SECTION 5.3 OF RESOLUTION NO. 79235 CREATING THE COMMUNITY POLICING ADVISORY BOARD TO REQUIRE THE COMMUNITY POLICING ADVISORY BOARD TO PRESENT AN ANNUAL REPORT TO THE COMMISSION.

SUMMARY

This legislation is an enabling ordinance for the new Charter Section 604, which established the Police Commission ("Commission") and the Community Police Review Agency ("CPRA"). The Police Commission 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 the CPRA;
2. Establishment of a new civilian Office of Inspector General that is independent from OPD, reports to the Commission, and conducts audits of OPD performance and constitutional policing practices and reviews of OPD policies and procedures, including non-compliance with the foregoing;
3. Addition of a requirement for the Community Policing Advisory Board that it provide an annual report and presentation to the Police Commission.

With regard to #1 above, most of the provisions governing the Commission and the CPRA are already provided by the Charter. The proposed Police Commission Enabling Ordinance would add two new sections to the Oakland Municipal Code, one for the Commission and the other for CPRA, consisting of the following:

Police Commission:

- An additional circumstance for authorizing voting by Commissioner Alternates;
- Clarifying provisions regarding the Selection Panel;

- An additional conflict of interest eligibility requirement for Selection Panel members and Commissioners related to attorneys representing claims against OPD;
- Additional functions and duties, including defining "cause," which the Charter provides is a basis for the Commission to be able to fire the Chief of OPD;
- Authorization of Commission review and rejection of dismissal or administrative closure of Class I complaints by CPRA;
- Additional Commissioner training requirements;
- Clarifying provisions regarding the Charter's background checks requirement;
- Providing that the Commission has the same access to OPD records as the CPRA has under the Charter and creation of an additional enforcement mechanism for failure to provide records to the Commission;
- Clarifying provisions regarding meetings, including Community Roundtables and airing by KTOP-TV10;
- Clarifying provisions regarding the committees, public statements, election of the Chairperson, bylaws, and staff assistance;
- Clarifying and implementation provisions regarding the Discipline Committee and discipline process required by the Charter;
- Supervision of the new Civilian Inspector General;
- ~~Requiring the City Council to budget at least a .5 FTE administrative position reporting to the Commission.~~

Community Police Review Agency:

- Additional functions and duties for the CPRA and its Director;
- Clarifying provisions regarding the Charter's background checks requirement for investigators;
- Authorization of a mediation program;
- Creation of an additional enforcement mechanism for failure to provide records to the CPRA.

MAJOR CHANGES SINCE INFORMATIONAL REPORT ON DRAFT ENABLING ORDINANCE PRESENTED AT JANUARY 24, 2017 PUBLIC SAFETY COMMITTEE MEETING

In order to ensure that the Commission Enabling Ordinance received through public review and provide an enhanced opportunity for public input, the authors of the legislation (Councilmembers Kalb & Gallo) took the unusual first step of scheduling a preliminary draft of the Ordinance as an informational report for committee review this past January, rather than the usual practice of scheduling legislation to committee with the action recommendation of promptly forwarding the legislation to the City Council for adoption. In response to the public feedback provided at the January 24th Public Safety Committee meeting, the authors updated the January 24th version to incorporate feedback received at committee, which was published on February 6th for a special extended public comment period. The February 6th version made these major changes to the January 24th version:

- Authorizes the Commission to establish bylaws;
- Limits the use by the Mayor and Selection Panel of Charter-required background checks of Commissioner appointment finalists – only for purposes of evaluating the appointments;
- Requires video-taping and airing on KTOP of Commission meetings;
- Provides the Discipline Committee with the authority to request that the CPRA Director and/or Chief of Police, or their designee, attend Discipline Committee meetings to present their recommendations.

Following publication of the February 6th version, much more public comment was received during the special public comment period. Moreover, the Coalition for Police Accountability provided additional on-going feedback following the close of the public comment period.

The legislation filed on June 1st for the June 13th Public Safety Committee meeting made these major changes to the February 6th version:

- Regarding Commissioner background check requirement, clarifies that the requirement shall not be construed as requiring Mayor or Selection Panel to reject an applicant because of the results of the background check and the results shall be kept confidential to greatest extent permitted by law;
- Adds an additional circumstance for authorizing voting by Commissioner Alternates;
- Adds an additional conflict of interest eligibility requirement for Selection Panel members and Commissioners related to attorneys representing claims against OPD;
- Authorizes Commission review and rejection of dismissal or administrative closure of Class I complaints by CPRA;
- Requires the misconduct record submitted to the Discipline Committee by the Chief to include the subject officer's personnel history for the prior five years; requires all records submitted by Chief or CPRA Director to the Committee to be free of redactions unless required by law;
- Upon imposition of final discipline, requires complainants of police misconduct to receive notice of the disposition of their complaint, to the greatest extent permitted by law;
- Requires the City Council to budget at least an .5 FTE administrative position reporting to the Commission;
- Requires the CPRA to videotape all subject officer interviews in Class I complaints;
- Enhances reporting requirements by the Chief and CPRA Director to the Commission.

BACKGROUND / LEGISLATIVE HISTORY

On April 15, 1980, the City Council established the Citizens' Police Review Board ("CPRB") with jurisdiction to review certain complaints alleging Oakland Police Department ("OPD") officer and park ranger misconduct, to conduct fact-finding investigations, and to make advisory reports to the City Administrator. On July 30, 1996, the City Council expanded the CPRB's jurisdiction to include complaints involving the excessive use of force, and bias based on an individual's

legally protected status (race, gender, national origin, religion, sexual orientation or disability). In 2002, the City Council further expanded the CPRB's jurisdiction to include all complaints filed against police officers and park rangers, and expanded the Board's size from nine (9) members to twelve (12) members. The City Council also granted the CPRB the option of holding evidentiary hearings using three-member panels and permitted Board members to review confidential OPD records in closed session. On November 12, 2002, the City Council passed Ordinance No. 12454 C.M.S., which further refined the CPRB's powers to include making recommendations to the City Administrator regarding litigated cases, and enlarged the amount of time for the CPRB to complete its investigations. The CPRB is *not* empowered to oversee OPD policy or impose discipline.

Public perception persists that certain aspects of OPD are insufficiently transparent and the Department does not effectively hold its officers accountable. This has led to an erosion of public trust in the police discipline process and accountability generally.

Last year, after multiple meetings with the Oakland Coalition for Police Accountability and other interested stakeholders, Councilmembers Noel Gallo and Dan Kalb introduced a Charter measure to create a civilian Commission with real authority in the police discipline process and oversight of OPD rules, policies, and practices. This proposal included disbanding the CPRB, which only had an advisory role in police discipline, and reorganizing its investigatory staff as the CPRA. After the City Council approved placing the Charter Amendment on the ballot, it became Measure LL and was overwhelmingly passed by the voters in November. Measure LL created Section 604 in the Oakland City Charter.

ANALYSIS

While complaints against Oakland officers decreased in the wake of Oakland's early adoption of a body worn camera program and OPD has made notable progress in recent years regarding compliance with certain NSA requirements, public mistrust in our police force remains significant and there are remaining challenges that need to be addressed. There is widespread belief, both in Oakland, the greater Bay Area, and across the state and the country, that police officers are frequently not held accountable for misconduct. Maintaining public trust and confidence in OPD is necessary for the Department to be able to provide the highest level of service to the community. In order to increase the public trust and confidence in OPD, improvements should be made to the processes for providing OPD oversight and accountability.

Appointing qualified members of the public to a Police Commission, entrusting the Commission with oversight of OPD, and requiring the Commission to hold public hearings on policy matters, would increase public transparency, which in turn would build a higher level of trust and confidence in the services provided by OPD. In addition, Oakland's residents and police officers alike deserve the most thorough and fair system possible for imposing discipline.

Most of the core provisions governing the Commission are already in law as Charter Section 604. Section 604 does the following:

- Establishes a 7-member Police Commission, with two alternates, and provides its core powers and duties;
- Identifies Commissioner appointments, terms, vacancies, and removal requirements, including that three Commissioners would be appointed by the Mayor and 4 by a 9-member Selection Panel appointed by the City Council and Mayor, with all Commissioners subject to Council confirmation;
- Provides Police Commissioner eligibility requirements, including that no current police or former OPD officers may be Commissioners;
- Empowers the Police Commission to review and comment on Department policies and procedures, as well as propose, amend, or reject changes to policies or procedures governing use of force, use of force review boards, profiling based on any protected characteristics, First Amendment assemblies, or elements expressly listed in federal order or settlements pertaining to the Police Department, provided however the Commission may be overruled by the City Council;
- Changes hiring and firing of the Chief of Police as follows:
 - (1) In lieu of hiring by the City Administrator, the Chief is hired by the Mayor from a list of finalists vetted by the Commission;
 - (2) In lieu of the City Administrator being able to terminate the Chief at will, the Commission, by a vote of 5 or more Commissioners, may terminate the Chief for cause, or the Mayor may terminate the Chief at will;
- Provides the Commission with a non-City Attorney legal advisor;
- Disbands the Citizen's Police Review Board and re-assigns its staff into the new civilian CPRA, with the Executive Director of the Board becoming the new Interim Director of this agency;
- Requires CPRA staffing to include no fewer than one investigator for every one hundred sworn officers, with at least one being a licensed attorney;
- Requires background checks for all new CPRA investigators;
- Empowers the civilian CPRA to conduct investigations of any complaints of police misconduct, allows the Commission to direct the CPRA to initiate such investigations, and mandates that the CPRA must investigate, at minimum, all complaints of misconduct involving use of force, in-custody deaths, profiling based on protected characteristics, and First Amendment assemblies;
- When reasonable belief exists that a sworn OPD employee has committed a crime, requires the CPRA, after consultation with the Commission, to forward the information to the Alameda County District Attorney;
- Empowers the civilian CPRA, upon completion of an investigation, to independently make findings and propose discipline;
- Establishes that:
 - (1) If the Chief agrees with CPRA findings and proposed discipline, he or she shall notify the officer of the intent to impose discipline;
 - (2) If the Chief disagrees with the CPRA, the disagreement shall be submitted to a rotating Discipline Committee comprised of three Commissioners, which shall resolve the dispute between the Chief's and CPRA's findings and proposed discipline, after which the Chief shall notify the Officer of the discipline;

- Enables the City Council to establish enabling legislation and add additional duties consistent with the Charter provisions.

The Commission Enabling Ordinance provides further clarification regarding Charter Section 604's provisions and the operations of the Commission and CPRA.

In addition, the Enabling Ordinance adds two new aspects to the Section 604 framework. *First*, the Ordinance would establish a civilian Office of the Inspector General for OPD, independent of the Department and reporting to the Commission. While the Department currently has an in-house sworn Inspector General, one of the best models for on-going oversight of police discipline can be found in the City of Los Angeles' Office of Inspector General. The L.A. Inspector General is a civilian who is charged with conducting systemic reviews of the disciplinary process and other LAPD policies and reports directly to the City of Los Angeles' Police Commission to ensure a necessary level of independence. The creation of a civilian Inspector General reporting to the Commission came from the Christopher Warren Commission reforms following the protests and riots stemming in large part from the Rodney King jury verdict. Additionally, the July 2016 Report of Blue Ribbon Panel on Transparency, Accountability, and Fairness in Law Enforcement, established in 2015 as an advisory body to the San Francisco District Attorney's office, recommended the establishment of an independent Office of the Inspector General for San Francisco's Police Department. The Enabling Ordinance also transfers the existing policy analyst position from the current CPRB to the new Office of Inspector General.

Second, the establishment of the Commission creates an additional potential forum for the input received from the Community Policing Advisory Board (CPAB). Since the Commission will specialize in OPD oversight, Section 4 of the Ordinance amends the Resolution establishing the CPAB to require that the CPAB's annual report currently provided to the Mayor, City Council, City Administrator, and Chief of Police also be provided to the Commission as well. In addition, CPAB would be required to provide an annual presentation on its reports to the Commission.

FISCAL IMPACT

In addition to some intermittent training costs for new Commissioners, the legislation would result in additional ongoing staff costs associated with the hiring of the following staff:

Position	FTE	Year to start	Estimated annual personnel cost
Inspector General	1	FY 18-19 (within 1 year of confirmation of first Commissioners)	\$240,000
Police Program & Audit Supervisor	1	FY 18-19 (hired by IG)	\$180,000
Administrative	.5	FY 17-18	\$75,000

Furthermore, airing Commission meetings on KTOP will result in a modest cost per meeting. That cost increases to at least \$3,045 per meeting for each of the minimum of two Commission meetings per year that are held off-site. The expenses for the positions within the Office of Inspector General likely would not be incurred until the 2018-19 fiscal year.

Overall long-term savings are anticipated, due to (1) increased police accountability reducing police misconduct lawsuits and (2) enhanced community oversight institutionalizing gains from the NSA as well as accelerating completion of the NSA and the resulting cessation of the City's costs from the ongoing judicial oversight.

PUBLIC OUTREACH / INTEREST

The Coalition for Police Accountability was extensively consulted in the development of the legislation. Substantial input was also obtained from other groups and individuals who provided feedback and recommendations on the legislation.

COORDINATION

The City Attorney's office was extensively consulted in the development of the legislation. The authors of the legislation also obtained input and/or information relevant to the legislation from the Executive Director of the CPRB, City Administrator, Police Department, and Mayor's office.

SUSTAINABLE OPPORTUNITIES

Economic: There are no significant economic opportunities associated with this report.

Environmental: There are no environmental opportunities associated with this report.

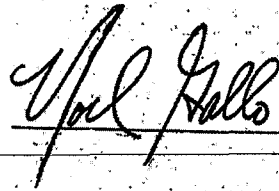
Social Equity: The Police Commission will result in increased civilian oversight of the Police Department and provide more access to residents for providing input on police matters. Providing increased accountability in the police discipline process is responsive to widespread, repeated requests from the public for reform, especially from disadvantaged communities with a history of extensive police contact.

For questions regarding this report, please contact Oliver Luby, Policy Manager, at 510-238-7013.

Respectfully submitted,



Dan Kalb
Councilmember, District 1



Noel Gallo
Councilmember, District 5

Prepared by:
Oliver Luby, Policy Manager
Office of Councilmember Dan Kalb

Attachments:

Various public comments submitted during special extended public comment period following the Public Safety Committee meeting of January 24, 2017

The Police Commission Enabling Ordinance

Closed Mar 08, 2017 · Discussion · 22 Participants · 3 Topics · 24 Answers · 0 Replies · 16 Votes

22

PARTICIPANTS

3

TOPICS

24

ANSWERS

0

REPLIES


16

VOTES

SUMMARY OF TOPICS

ANNUAL REPORTING/PRESENTATION REQUIREMENTS FOR THE COMMUNITY POLICING ADVISORY BOARD 1 Answers · 0 Replies

William Glover · Citizen · (Postal Code: unknown) · Feb 09, 2017 1:32 am

 0 Votes

Annual reporting and fund raising are helpful. Community policing adds a level to the patrol.

PROVISIONS FOR GOVERNANCE OF POLICE COMMISSION AND THE COMMUNITY POLICE REVIEW AGENCY 22 Answers · 0 Replies

Charles Pine · Citizen · (Postal Code: unknown) · Feb 07, 2017 11:09 am

 2 Votes

Paragraph 2.45.050 C., a list of seven (!) definitions of cause for removal of the police Chief without mayoral consent, includes two objectionable "causes." These are the items:

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

Failure to cooperate and obstruction of investigations are vague criteria. Occasional contention between the commission and Chief is to be expected, and it is important that the commission not be both prosecutor and judge. Yet these "causes" would place the commission in just that pair of roles. The contrast with other causes is clear: they require conviction by an impartial court, clearly identifiable refusal to enforce a policy, etc.

These two causes should be removed.

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Stuart Flashman · Citizen · (Postal Code: 94618) · Feb 09, 2017 1:41 pm

👍 1 Votes

While requiring a background check of applicants for the Police Commission or for staff of the Community Police Review Agency is a good idea, it doesn't appear that applicants would be provided with the results of that background check or allowed to comment on those results. The applicant ought to have the opportunity to review the background check results to identify possible errors and comment on the results. Any applicant comments should have the same confidentiality protections as the background check itself.

Dennis English · Citizen · (Postal Code: unknown) · Feb 09, 2017 3:38 pm

👍 0 Votes

I believe and many would not disagree that there is unequal application of law enforcement in the historically neglected parts of Oakland such as East and West Oakland. When you enter the City of Oakland from the SF/Oakland bay bridge (West Oakland) you see graffiti, illegal dumping of trash, abandoned cars, drug addicts and prostitutes all within one mile from City Hall. On top of that there is gun violence resulting in death that can rival some of the headline news overseas seen on the major media which goes seldom mentioned and unnoticed. Some call it blight and that is just the way things are in the lower bottoms. This part of town was not always like this and there are efforts to make change via development new housing near the old rail station. But, much still needs to be done about the people who are homeless on the streets and are addicted to illegal drugs mostly for self medication due to treatable ailments. Even with all that said, there is a need for law and order. We often defer this to a governing entity such as the City of Oakland. But many times this has failed by revealing internal activities within government labeled corrupt most notably in the police department. So we create another layer of government to watch government.

I believe the solution is to separate the parts of Oakland into three incorporated cities to focus on issues that the residents in those communities see as important priorities.

By doing this, we decentralize control of resources and provide the much needed daily needs of a city such as public works, fire and policing.

charles Brooks III · Citizen · (Postal Code: unknown) · Feb 09, 2017 4:14 pm

👍 0 Votes

First I would like to mention after reviewing the original proposal and the ongoing revised proposals, I see this public police committee as being a bridge between the community the Inspector Generals office, the Internal affairs office, the police office, and mayors office.

The procedures, regulations, duties and functions, over site, and authorization are necessary in beginning a process of fair and equitable law enforcement for both the community and the law enforcement community.

To some degree being that this is a voluntary board I would imagine it would be a benefit to have a member of the commission that's representing the community possess a past history of a criminal record, as they could further the discussion of issues with due process, and overall abuse of constitutional rights when encounters occur with Law

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Enforcement officers.

If the commissions votes to separate from the Mayor and Police Chief, surely the Mayors interim pick should go through the similar process of appointment the commission members underwent. There should not be a separation until the vetting guidelines would be met. There may be more of a conflict of interest otherwise.

The notification of public hearings should also follow the guidelines of The Sunshine Ordinance and the Ralph E Brown Act, otherwise transparency and non compliance to state law will result.

I thank Dan Kalb and Rebecca Kaplan for their arduous work on this project, and I am certain this will be a turning point in police corruption, and opaqueness. It is of the highest importance that mitigation and attrition of Crime in Oakland does not violate the sovereign rights of the residents of Oakland.

Mary Mazzocco · Citizen · (Postal Code: unknown) · Feb 10, 2017 9:09 am

👍 3 Votes

I also support the idea that having a criminal record should not automatically disqualify a candidate, and to giving candidates a right to review and respond to their background checks. Mistakes do get made, and identities stolen.

I am assuming that, like other commissions whose membership is ratified by the city council, this commission would follow Brown Act and Public Records Act guidelines. Although individual officer discipline cases may still be private, more sunshine is needed with regards to trends and outcomes in the department.

richard belew · Citizen · (Postal Code: unknown) · Feb 19, 2017 3:40 pm

👍 3 Votes

The ordinance's current attention to new reporting of OPD mis-conduct should be linked to OPD's existing reporting mechanisms concerning the department's regular conduct. One example of such "normal" reporting now done by OPD is its monthly Uniform Crime Reporting (UCR), sent to the California Attorney General's office. This state-wide UCR reporting has, for example, allowed comparison of Oakland's crime and policing to other California cities via the <http://OpenJustice.doj.ca.gov> resource. In addition to the UCR reports, and in part because of the Obama administration's Police Data Initiative, OPD also provides state-of-the-art reporting to Oakland citizens via the Socrata interface at <http://data.oaklandnet.com> and <http://www2.oaklandnet.com/government/o/OPD/a/data> .

Specifically, the reporting required of both the Office of Inspector General and the Chief of Police should be extended to incorporate these existing reports, with the following requirement:

"OPD currently provides state-of-the-art public reporting of statistics regarding many aspects of their operations via their website and data.oaklandnet.com. Other baseline statistics of OPD operations are reported monthly to the California Attorney General in the form of Uniform Crime Reporting (UCR) or National Incident-Based Reporting System (NIBRS) standards. Resources including but not restricted to those currently provided should be summarized by the [OIG / Chief] as part of a report on the regular patterns and practices of police conduct, as context for issues of misconduct as reported pursuant

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to other parts of this ordinance."

The key feature of the proposed ordinance reporting requirement is that it establishes a baseline of normal "patterns and practices" reporting. This becomes a standard for evaluating OPD mis-conduct, as has been reported by the NSA monitor and will be identified by the Commission and Agency. Nationally, the "patterns and practices" standard has played an important role in civil rights law generally, and in recent Department of Justice consent decrees in particular. The key to this approach is to identify statistical "patterns" of conduct in regular reporting, to then distinguish misconduct within that frame. [The Civil Rights Division's Pattern and Practice Police Reform Work: 1994-Present, <https://www.justice.gov/opa/pr/justice-department-releases-report-civil-rights-division-s-pattern-and-practice-police-reform> Jan 4, 2017] Requiring that both the OIG and Chief provide reports sharing these features will facilitate parallel reporting throughout Commission and Agency operations; different reports from these two offices will only confuse matters further.

When our community tries to fight disease, we've come to realize the best we can do to is to monitor good health: to keep baseline statistics on vital signs and basic lab results to identify when health is declining, factors associated with good health, etc. If we want to identify the patterns underlying prior OPD misconduct, get early warnings of new OPD illness that may arise, and move towards long-term healthy policing in Oakland, we need the same attention to OPD's vital signs provided by their regular reporting mechanisms.

Heather Smith · Citizen · (Postal Code: unknown) · Feb 21, 2017 2:27 pm

👍 0 Votes

<https://karmawon.wordpress.com/2017/01/03/section-1512-of-title-18-prohibits-alameda-district-attorney-from-witness-tampering/>

Heather Smith · Citizen · (Postal Code: unknown) · Feb 21, 2017 2:30 pm

👍 0 Votes

Innocent witnesses to police killing are intentionally being endangered by Oakland city government corruption. We need help to have our good names restored and our innocence restored from the criminal conduct of corrupted city officials see more at <https://karmawon.wordpress.com/2017/01/03/police-blame-the-da-and-the-da-blames-police/>

Rashidah Grinage · Citizen · (Postal Code: unknown) · Feb 23, 2017 10:48 am

👍 21 Votes

The Coalition for Police Accountability is proposing a substitute ordinance because the Kalb. Gallo draft omits several key provisions that are necessary in order for the Commission to function effectively. We based our ordinance on the Kalb.Gallo draft attached above, but our additions and/or substitutions are bold and underlined. Our proposal includes more detailed information about required staffing, which should inform the City Council's 2 year budget, and also clarifies the role of the Commission in overseeing and holding accountable the Agency that does the investigations of complaints. We will be asking the Public Safety Committee to endorse our substitute ordinance and forward to the full Council for adoption.

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Bruce Schmiechen · Citizen · (Postal Code: unknown) · Feb 23, 2017 12:02 pm

👍 7 Votes

The Coalition that sponsored the Measure has made some improvements on the original draft. Also, I see some coalition suggestions were included in the second draft, like background checks not excluding people with prior convictions from serving on the commission. I support the Coalition version, as well as welcome their further suggestions as the implementation proceeds - these are the folks who have done the heavy lifting in getting this measure passed and deserve to be a principal voice in implementation.

Linda Handy · Citizen · (Postal Code: unknown) · Feb 23, 2017 7:06 pm

👍 5 Votes

I fully support the proposal of the Coalition for Police Accountability as more representative of the communities wishes.

John Jones III · Citizen · (Postal Code: unknown) · Feb 23, 2017 7:24 pm

👍 7 Votes

As a third generation Deep East Oakland resident who was personally impacted by police brutality in the City of Oakland, I am in FULL support of the Coalition for Police Accountability's substitute ordinance. Specifically as a formerly incarcerated person who has demonstrated personal transformation through my advocacy on behalf of this beautiful community, I STRONGLY recommend removing background checks as a prerequisite to serve on the Commission. In my professional capacity as a Life Coach for at risk young adults in Oakland, as well as my personal experience, I have observed that a majority of people impacted by police brutality have a criminal record. No one is the sum of their mistakes. Every resident deserves a voice and has the shared responsibility of working towards public safety for all.

Michael Tigges · Citizen · (Postal Code: unknown) · Feb 23, 2017 7:33 pm

👍 2 Votes

Suggestion for clarification of section 2.45.190 - Authority of Public Ethics Commission: Insert after "If the Agency does not receive the files and records requested pursuant to Section 604(£)(2) of the City Charter within fifteen (15) business days of its request, the Public Ethics Commission" shall only at the request of the Agency and in collaboration ...

Append to the end of the clause: The investigation and actions of the PEC shall conform to the timelines of the Agency and/or Commission as specified by law and necessity. If investigations or actions by the PEC are incomplete within the timeline, the PEC will provide a report to the Agency 10 days before the deadline specifying actions taken and barriers encountered in applying enforcement powers within its preview.

Marianne Barlow · Citizen · (Postal Code: unknown) · Feb 25, 2017 12:02 am

👍 4 Votes

I support the Coalition for Police Accountability's substitute ordinance.

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Elise Bernstein · Citizen · (Postal Code: unknown) · Feb 26, 2017 3:59 pm

👍 4 Votes

"I fully support the Substitute Ordinance filed by the Coalition for Police Accountability. I am a resident of Oakland's District 6, and a member of a local neighborhood group that acts for racial justice. I am deeply concerned about the performance of the Oakland Police Department which clearly reflects the racial bias of many police officers, their inadequate training, especially in how to use de-escalation techniques to avoid violence, and the ineptness of both the Police union and city officials in managing the department. Politics, rather than justice, have been a leading force in the OPD. The current political national climate is frightening in the growing trend of increased violence to people of color, immigrants, refugees, and women and requires our local Police to be more sensitive to bigotry and resolute in protecting residents from any such political discrimination. This Substitute Ordinance on establishing a Police Commission will address these issues and more. Rather than rush this public review in 30 days, I think that more time should be allowed for community input on the Ordinance of at least another 30-60 days."

Pamela Drake · Citizen · (Postal Code: unknown) · Mar 01, 2017 11:14 am

👍 2 Votes

As a member of the Coalition for Police Accountability, I support the Substitute Ordinance filed by our large and diverse coalition of community groups, all of whom have been fighting for real police accountability for decades. The coalition put together this unique charter change proposal and we are grateful to CMs Kalb and Gallo for their collaboration with us. But, the promise of community engagement toward tangible accountability can only be fulfilled by continuing this collaboration and honoring the community members most impacted by the decades long failures of city government to oversee the police department.

Pauka Hawthorn · Citizen · (Postal Code: unknown) · Mar 03, 2017 4:47 pm

👍 1 Votes

I am actually Paula Hawthorn, must have mistyped when entering my name. I strongly support the Substitute Ordinance as files by the Coalition for Police Accountability. This substitute ordinance has several improvements over the Kalb/Gallo ordinance, among which are setting out exactly how many staff need to be budgeted for (so the Commission will be up & running before another budget cycle); stating that the Commission offices need to be very visible and accessible to the public; and making sure that the Commission's Discipline Committee is able to get more information when necessary. I also support Richard Belew's call for more data transparency.

William Chorneau · Citizen · (Postal Code: unknown) · Mar 06, 2017 3:55 pm

👍 1 Votes

I urge the council to support the substitute ordinance submitted by the Coalition for Police Accountability. The changes strengthen the ordinance and will improve the ability of the Police Commission to fulfill it's mission.

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Allene Warren · Citizen · (Postal Code: unknown) · Mar 06, 2017 10:44 pm

👍 0 Votes

I am in support of the substitute ordinance submitted by the Coalition for Police Accountability. However, I feel involvement of the PEC and the time frames allowed for their actions may hinder the Commission's ability to meet mandated time lines for resolution.

Leigh Davenport · Citizen · (Postal Code: unknown) · Mar 07, 2017 2:49 pm

👍 1 Votes

Anti Police-Terror Project statement attached

Jacob Goldenberg · Citizen · (Postal Code: unknown) · Mar 07, 2017 4:03 pm

👍 1 Votes

We are students at the UC Berkeley Law School's Policy Advocacy Clinic, and we submit these comments to the Public Safety Committee regarding the City of Oakland's Police Commission Enabling Ordinance. On behalf of the Coalition for Police Accountability (CPA), we have researched various aspects of Measure LL and the proposed enabling ordinance. In preparing these comments, we have carefully reviewed existing state law, Oakland's current practices, and police accountability practices in other California cities. Thank you for your consideration.

Chris Brown · Citizen · (Postal Code: unknown) · Mar 08, 2017 1:00 pm

👍 0 Votes

Attached, please find comments regarding the Police Commission Enabling Ordinance.

RENAMING OF THE OFFICE OF INSPECTOR GENERAL & ESTABLISHING A NEW CIVILIAN OFFICE OF INSPECTOR GENERAL

🗨️ 1 Answers · 0 Replies

William Glover · Citizen · (Postal Code: unknown) · Feb 10, 2017 8:03 am

👍 0 Votes

Have a public ribbon cutting!!

PROPOSED BY THE COALITION FOR POLICE ACCOUNTABILITY

CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

-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.

2.45.025 Selection Panel

The Police Commission Selection Panel established pursuant to City Charter Section 604 (c) shall represent the gender, ethnic, racial, sexual orientation,

religious, and geographic diversity of Oakland, and should include people who have been involved in the criminal justice system in Oakland. The Selection Panel shall consist of nine (9) members who shall be residents of Oakland. The City Administrator's Office shall create and widely circulate an application for nominations (by self or other) to the Selection Panel. Each member of the Oakland City Council and the Mayor will appoint one member to the Selection Panel. The This nine-member Selection Panel will review all applications for the Police Commission and from them select and choose the initial four (4) nominees to serve as Police Commissioners. The Mayor shall announce his/her 3 choices at least 3 weeks prior to the deadline by which time the Selection Panel must present their slate of 4 candidates so that the latter can take into consideration the profiles of the Mayor's choices and ensure that there is diversity among all 7 candidates in background, skill-sets, and experience.

2.45.030 – Bylaws and Rules.

_____The Commission may prepare its own Bylaws to govern its operations. Any such Bylaws shall be approved by a vote of not less than five (5) affirmative votes.

2.45.40 – Background Checks.

In accordance with federal and state law, a background check shall be performed on candidates for the position of 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. The Appointing Authority may use the results of the background check solely for the purpose of evaluating the candidates for Commissioner and alternate.

2.45.50 – 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 serious violations 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 annual performance reviews of the Inspector General and the Agency Director. These reviews shall be based on previously mutually agreed-upon performance measures that have been in place for the year being reviewed. The reviews shall be "360" reviews, in which feedback of staff and other personnel familiar with the work of Inspector General or the Agency Director is considered as a part of the evaluation.**
- 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. The number of, and circumstances surrounding, officer- involved shootings, the results of any Executive Force Review Board or Force Review Board hearings, and a summary of the Department's monthly Use of Force Reports;
 - 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.

2.45.055 – No Automatic Rollover of Terms of Commissioners

Upon the expiration of a Commissioner's term pursuant to Section 604 (c)(4) of the City Charter the former Commissioner shall not be automatically re-appointed but shall be subject to the ordinary selection process for Commissioners specified in sections 604(c)(2) or (3) of the City Charter.

2.45.60 – Access to Documents.

Subject to applicable law, the Commission and the Inspector General 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).

2.45.70– 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.

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. Video recordings of all open sessions of Commission meetings shall be aired on KTOP-TV10. **All votes of the Commissioners shall be made available to the public except when such votes are required to be confidential pursuant to state or local law.**

- A. 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.

B. Duties of Alternates:

1. **Alternate members of the Commission shall be required to adhere to the responsibilities, expectations, and regulations mandated of regular members, including, but not limited to, rules governing orientation, training, attendance and ethical requirements for Commission membership.**

2. Distinguishing alternates from voting members of the Commission:

a. Alternate members of the Commission shall not be entitled to vote on specific matters before the Commission unless an alternate’s vote is necessary to achieve a quorum of voting Commissioners, or either the City Charter or Ordinance of the City Council has explicitly authorized the Chairperson of the Commission to designate an Alternate as a temporary voting member.

b. Designation of alternates during a regular member's authorized leave: in addition to the power to designate one or more alternate members as temporary voting members of the Commission in order to establish a quorum in accordance with Charter §604(d)(3), the Chairperson of the Commission may designate an alternate member as a temporary voting member of the Commission should a regular member be placed on authorized leave. In such cases, that regular member's position may be temporarily filled by an alternate member for the duration of the regular member's leave. Upon the return of the regular member to his or his position on the Commission following the leave period, the alternate member shall revert back his or her role as alternate.

2.45.80 - 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"). The Commission, with the assistance of the City Administrator, shall be responsible for oversight of the OIG.

- 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. All OIG staff, other than the Inspector General, shall be civil service employees in accordance with Article IX of the City Charter, and shall report to the Inspector General. Except for the Inspector General, the Commission shall not have any authority to hire, supervise, evaluate or fire OIG staff.
 - 1. Within thirty (30) days after the first Inspector General is hired 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.

2.45.90 - 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 shall serve at the pleasure of the Commission, and 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-, including but not limited to the supervision and direction of all staff. The Commission shall periodically conduct a performance evaluation of the Inspector General.
- 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.

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

The functions and duties of the Office of Inspector General shall include, without limitation:

- 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 any early warning system(s) and
 - 6. Trends and patterns regarding use of force and officer-involved shootings.
 - 7. **The Policy Analyst will contribute to the report prepared by the Inspector General and shall include the training and policy implications of complaints being investigated by the Agency.** 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.

2.45.110– 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 **and at no time shall there be more than one Discipline Committee member who was appointed by the Mayor.**

2.45.120 – 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 order to be produced** any additional **records or documents including a video deposition of the officer who is the subject of discipline as well as other parties involved in the incident who were interviewed,** and videotape and/or audiotape from the Agency's and the Department's investigation files that it deems relevant to its deliberations. **Such records or documents shall include the disciplinary history of the officer and information about whether he or she was an Oakland Police Academy graduate or a hire from another police department. All records and documents shall be submitted to the Discipline Committee in their original un-redacted form. The Discipline Committee** shall also have the authority to require the Chief and the Agency Director, or their non-attorney designees, to appear before the Discipline Committee to present their findings and recommendations and to answer questions.
- 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. **Pursuant to state law, the Commission must provide written notification to the complaining party of the disposition of his or her complaint and any discipline ordered against the subject officer within 30 days of disposition.**
- G The Subject Officer may appeal the imposition of discipline or termination to the Civil Service Board. In addition, the Subject Officer may grieve the imposition of discipline or termination as prescribed in a collective bargaining agreement.

2.45.130 - Establishment of Other Committees

The Commission must obtain City Council approval prior to the creation of any other standing committee if there are costs associated with staffing the standing committee and/or costs related to complying with noticing and reporting requirements resulting from its establishment.

2.45.140 - 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.

2.45.150 - Election of Chairperson.

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

2.45.160- Staffing.

Immediately upon the confirmation of the first group of Commissioners, the City Administrator shall provide staff to the Commission. Three months prior to the City Council's confirmation of the slate of Commissioners, Human Resources will create and post job descriptions for all staffing positions that are not already CPRB employees. Within 3 months of the Commissioners' confirmation, they shall identify 4 candidates for each unfilled position to present to the City Administrator and/or the City Attorney who will select from those lists

the persons who will be hired.

Such staff shall consist of, at a minimum, a .5 FTE administrative director, a .5 FTE counsel and appropriate clerical support personnel. Staff for the Agency shall include, at a minimum, one investigator per 100 sworn officers and clerical support staff. The CPRB contract counsel shall serve as interim counsel to the Agency until the Commission selects new counsel pursuant to Section 604(e)(1) of the City Charter

. Commission shall provide the City Administrator with its proposal **for such additional** staff positions **as are** necessary to permit the Commission and the Agency to fulfill their 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.

2.45.170 – Commissioner Training.

Within three (3) months of appointment, or as soon thereafter as possible, each Commissioner shall:

- A. Become familiar with City Charter section 604 and with Chapters 2.45 and 2.46 of the Oakland Municipal Code.

- B. Receive training in basic principles of constitutional due process and administrative hearing procedures;
- C. Receive training in the legal requirements for maintaining the confidentiality of personnel records and other confidential documents or information;
- D. 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
- E. Receive information regarding constitutional civil rights guaranteed to all citizens as such rights are affected by law enforcement.

In addition, within twelve (12) months of appointment, or as soon thereafter as possible, each Commissioner shall:

- F. Receive the training and orientation specified by Section 604(c)(9) of the City Charter;
- G. **Complete an abbreviated 10 hour Citizen' Police Academy curriculum offered in a two-day course which includes the following modules:**
 - **Verbal Judo & Patrol Function (De-escalation techniques and overview of the Patrol Division)**
 - **Special Ops & Special OPD Units**
 - **Laws of Arrest & Search and Seizure and Use of Force**
 - **Recently revised OPD policies in crowd control and the use of excessive force**
- H. Participate in a Department "ride- along;"
- I. Complete the Department's Procedural Justice Training, Implicit Bias Training, and Crisis Intervention Training;
- J. **Participate in NACOLE training in "Core Competencies" for practitioners of civilian police oversight.**
- K. **Participate in training related to the racial equity impacts related to police recruitment, training, policies and practices.**

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.

2.45.180 - 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.

2.45.190 – 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.

2.45.200– 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.

2.26.030– 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 **and provide the means for filing complaints on-line via the Commission/Agency's website. The complaint form will include the ability to upload attachments including additional written information or pictures.**

- C. Ensure that all investigators receive any necessary training in conducting fair and impartial investigations.
- D. In consultation with and upon 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 Council Districts from which the complaints originated, as well as the demographic profiles of the complainants;**
 5. The number of officers **who were found to have engaged in misconduct and the level of discipline that was forwarded to the Commission for consideration;** and
 6. The number of closed investigations **which did not result in allegations that were sustained by the Agency and forwarded to the Commission for administrative closure.**
- F. **The Agency shall be located in a street-level, visible venue that is accessible by public transportation with directional signage as visitors enter City Hall . Agency office hours and phone numbers will be clearly visible on the office door, within the office, and on related City of Oakland and Agency websites and after-hours telephone messages.**

2.26.040– Agency Director.

The Agency Director shall **report to the Commission. The City Administrator shall not have authority to supervise the Director or the Agency. 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. **Reporting to the Commission at least once each month on the workload of the Agency, including summaries of complaints and their disposition. Such reports shall be made at a public meeting of the Commission.**
- G. 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. **Such other duties may include attendance by the Director at meetings to answer questions from the public regarding the work of the Agency.**

2.46.50 – 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.

The results of the background checks may be used for the purpose of evaluating the candidates for the Agency Director and for Agency investigator.

2.46.060 – Mediation Program.

Upon the agreement of the Chief, the Agency Director, the complainant(s) and the Subject Officer(s), the Agency Director shall appoint a qualified mediator with at least five (5) years of experience in mediating employment or other relevant disputes, from a conflict resolution company or association that employs mediators 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 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.

DRAFT

Public comment:

Police Commission Enabling Ordinance

The most recent draft of the Police Commission Enabling Ordinance does nothing to address the major inherent flaws in Charter Section 604. Policing will never be the answer to keeping our communities safe, and City Council's energy is better spent defunding the Oakland Police Department and investing in community-based drivers of public safety.

The Commission will ultimately serve as a barrier to justice for the following reasons:

Major conflicts of interest

The charter and enabling ordinance state that "no current police or former OPD officers may be Commissioners". This is woefully inadequate. *Given the well-documented, undeniable violations of public trust in Oakland, why would the City not develop strict conflict of interest guidelines to address very real concerns about corruption?*

Recommendation:

In order to have any semblance of impartiality, the ordinance also needs to disqualify candidates with the following conflicts of interest:

- Current or former police officer in ANY jurisdiction
- Current or prior work experience in any District Attorney's office or as a non-sworn police department employee in ANY jurisdiction
- Current or prior work as an expert witness on behalf of any prosecutor
- Recipient of any campaign or charitable donation (directly or indirectly) from any police union or association representing sworn officers
- Current or former employment in any organization that collaborates with or receives funding, awards or formal positive recognition from law enforcement or prosecutors
- Marriage or family relation to any current or former sworn officer or District Attorney
- Any other associations/relationships that could create a perception of a conflict of interest, special allegiance or bias toward law enforcement

While policing and prosecutorial experience might be cited by some as necessary expertise for serving on this Commission, the hard reality is that time and time again, law enforcement relationships and the "Blue Code of Silence" supercede professional judgement and common sense when officials are called to make decisions.

Examples:

One need only look at San Francisco Commissioners with prosecutorial pasts and brothers and cousins who are SFPD officers to see the problem. These are just a few recent examples on a Police Commission

that the Oakland charter repeatedly cites as a good example. The public cannot and does not trust those individuals to make impartial decisions:

- Former President Suzy Loftus was an SF DA and former SF Deputy Chief John Loftus is her second cousin through marriage. Loftus recently resigned from the Commission and now works for the San Francisco Sheriff. Her Twitter feed includes a 2013 photo of herself, her kids, former Chief Greg Suhr and Kamala Harris with the caption, "Proud of my law enforcement family."
- Former President - also a former SF DA - Thomas "Tippy" Mazzucco's father was an SFPD Investigator and worked at the infamous Bayview Station. Mazzucco later gave a "Gold Medal of Valor" to the officer who murdered Kenneth Harding, Jr. for MUNI fare evasion in the Bayview.
- Petra DeJesus's brother is a Sergeant. She recused herself from his high-profile "Videogate" disciplinary hearing and suspension, but he was later promoted to Sergeant.
- Julius Turman was arrested for felony domestic battery and then-DA (and political friend of Turman) Kamala Harris's office chose not to prosecute. That choice not to prosecute domestic battery was out of character for Harris.

The Police Officers' Association contract and state law supercede charter

The Police Commission is ultimately toothless for the following reasons:

First, due to the binding arbitration agreement with the Police Officers' Association, an officer always has the right to take their disciplinary **recommendation** to arbitration. Regardless of what the Agency Director and Chief agree or disagree upon, the decision is not up to them.

As court-appointed investigator Edward Swanson found, "in the 26 arbitrations covering the past five years he investigated, the city prevailed in only seven cases." (East Bay Express)

Second, Oakland's Police Commission documents repeatedly include the caveat, "to the extent permitted by applicable law."

The main applicable California state law is the "Police Officers Bill of Rights" or *Copley (Copley Press Inc. vs. Superior Court of San Diego, 2006)*, which mandates specific procedures for officer discipline and extra "rights" for police officers that do not apply to any other public employees. According to *Copley*, the public has no legal right to know about police officer disciplinary records and any "personnel records", whose definition is left up to interpretation.

A former cop and supervisor in the corrupt Chicago "Independent Police Review Authority" will direct the new Community Police Review Agency

Per the charter: *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.*

The Executive Director of the Board is former Indianapolis Police Sergeant Anthony Finnell.

Prior heading the CPRB in Oakland for almost 3 years, Finnell was the Supervising Investigator for Chicago's infamously corrupt and now-defunct "Independent Police Review Authority" (US DoJ investigation fact sheet here: <https://www.justice.gov/opa/file/925851/download>). Interestingly, Finnell recently (1/18/17) filed a FOIA request for his own work history and personnel file from the City of Chicago's Human Resources department. www.cityofchicago.org/city/en/depts/dhr/dataset/foialog.html

For obvious reasons, someone who began their career policing in the late 80s/early 90s and was in a supervisory role doling out non-punishments to Chicago PD is not fit to serve as the head of a "Community" police review board. Finnell has been here for only three years* AND this job cannot be held by law enforcement if the Commission wants any semblance of fairness.

The Community Police Review Agency Director must be an actual member of the community with no law enforcement history or ties.

*According to his 2014 \$100 donation to Shakir-Gilmore for Oakland School Board, he lives in Livermore.

###

Memorandum

To: City of Oakland Public Safety Committee
From: Jacob Goldenberg and Magaly Chavez
Re: Public Comment on the Police Commission Enabling Ordinance
Date: March 7, 2017

INTRODUCTION

We submit these comments to the Public Safety Committee regarding the City of Oakland's Police Commission Enabling Ordinance. On behalf of the Coalition for Police Accountability (CPA), we have researched various aspects of Measure LL and the proposed enabling ordinance. In preparing these comments, we have carefully reviewed existing state law, Oakland's current practices, and police accountability practices in other California cities.

We summarize our research findings related to several key aspects of CPA's revised draft of the Police Commission Enabling Ordinance, including: (1) disclosure to complainants of the disposition of their cases, (2) the filing of on-line complaints, (3) the Police Commission's oversight of the Agency Director, (4) the role of Alternate Commissioners, and (5) re-appointment of Commissioners at the end of their terms. These items will directly affect the access, transparency and accountability of Oakland's new police review system.

1. Disclosure to Complainants of Case Disposition

Section 2.45.120, Subsection F of the CPA's draft ordinance requires that the Commission "provide written notification to the complaining party of the disposition of his or her complaint and any discipline ordered against the subject officer within 30 days of disposition."

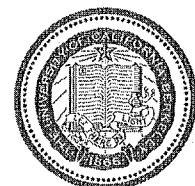
The proposed language requires that Oakland comply with California law. California Penal Code § 832.7(e) requires that a department or agency charged with the adjudication of allegations of police misconduct "provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition."¹ The code provides an exception to the general rules requiring that the dispositions of individual complaints alleging police misconduct remain confidential,² and explicitly requires that the complainant themselves be informed of the "disposition" of their specific case.³

In addition to ensuring compliance with state law, the proposed provision will increase community trust and police accountability.

2. Filing On-line Complaints

Section 2.26.030, Subsection B of the CPA's draft ordinance would require the Agency to "provide the means for filing complaints on-line via the Commission/Agency's website."

The chart below summarizes the various methods for filing police misconduct complaints in Oakland and ten other California cities.⁴



City	Methods for Filing Police Misconduct Complaints							
	Phone	Mail	In-Person (>1 location)	In-Person (1 location)	Fax	On-line	Email	Hotline
<i>Oakland</i>	X	X	X		X			X
<i>Anaheim</i>		X				X		
<i>Berkeley</i>	X	X	X		X		X	
<i>Fremont</i>	X			X			X	
<i>Fresno</i>		X				X		
<i>Long Beach</i>	X	X	X				X	
<i>Los Angeles</i>	X	X	X		X		X	
<i>Sacramento</i>	X			X		X		
<i>San Diego</i>	X	X	X				X	X
<i>San Francisco</i>	X	X	X					
<i>San Jose</i>	X	X	X		X		X	

With the exception of Oakland and San Francisco, all other cities allow residents to submit complaints through either an official form on the city's website or by email. Oakland's current methods of filing complaints can be inconvenient for people who have to take time off of work to file complaints during business hours. Allowing residents to file complaints on-line or by email allows access at all hours and from any location.

Providing Oakland residents with the opportunity to file police misconduct complaints on-line will increase access and bring Oakland in line with most other California cities.

3. Police Commission Oversight of the Agency Director

Numerous sections of the CPA's draft ordinance increase the Police Commission's oversight of the Agency's Director.⁵

Other California cities empower Civilian Police Commissions to oversee directly and hold accountable the work of civilian investigative department heads. For example, the Los Angeles Civilian Inspector General (charged with auditing Police Department investigatory practices and overseeing disciplinary investigations) reports directly to the Los Angeles Civilian Police Commission. The Commission is empowered to remove the Civilian Inspector General at will.⁶

Similarly, the San Francisco Office of Citizen Complaints is required by charter to "prepare in accordance with rules of the Commission monthly summaries of the complaints received and shall prepare recommendations quarterly concerning policies or practices of the department which could be changed or amended to avoid unnecessary tension with the public or a definable segment of the public while insuring effective police services."⁷ The City of San Francisco recognizes that by holding oversight bodies accountable, the city can "avoid unnecessary tension with the public [...] while insuring effective police services."⁸

Oakland can take similar steps toward achieving these outcomes by clarifying the Agency Director's chain of command, including accountability mechanisms, and ensuring adequate oversight of the Agency charged with investigating allegations of police misconduct.

4. Role of Alternate Commissioners

Section 2.45.70, Subsection B of the CPA's draft ordinance outlines the duties and responsibilities of Alternate Commissioners.⁹

Measure LL requires that both “Regular” and “Alternate” Commissioners be nominated to the Police Commission, but it does not distinguish between the responsibilities of Regular and Alternate Commissioners.¹⁰ It is important to define the roles of Alternate Commissioners both to protect the power of the seven Regular Commissioners and to ensure that the two Alternate Commissioners are prepared and available to serve if necessary.

In 2016, the Oakland Civilian Police Review Board (CPRB) held lengthy public discussions about what responsibilities and powers should be assigned to Alternate Members.¹¹ Some CPRB members suggested that Alternate Members be afforded full voting powers to ensure that a quorum would be obtained when Regular Members were absent.¹²

Affording full voting powers to Alternate Commissioners under Measure LL would contradict the plain language of the charter, which states that they may vote *only* when needed to ensure a quorum.¹³ Moreover, because Measure LL allows for the removal of Commissioners with extensive absences¹⁴—and the replacement of such Commissioners with alternates¹⁵—it is unnecessary to afford such powers to Alternate Commissioners under circumstances when a quorum of Regular Commissioners is present.

San Diego’s Civilian Review Board (“CRB”) has specially designated Alternate Members, and the CRB’s governing bylaws make explicit the precise roles and duties of alternates. In San Diego, Alternate Members may be called into full service on the CRB only under three specific circumstances: ~~(1) when an Appointed Member is placed on leave,~~ (2) during periods of case review backlog, and (3) when an Appointed Member resigns prior to completion of her full term.¹⁶ Once Alternate Members have fulfilled the duties required in these capacities, they return to their prior status.¹⁷

CPA’s proposed provisions strike the appropriate balance between having prepared and qualified Alternate Commissioners ready and preserving the power of Regular Commissioners.

5. Re-Appointment of Commissioners

Section 2.45.055 of the CPA’s draft ordinance would establish that “former Commissioners shall not be automatically re-appointed but shall be subject to the ordinary selection process for Commissioners specified in sections 604(c)(2) or (3) of the City Charter.”

Other California cities also require Commissioners up for renewal to undergo a full confirmation at the end of their term. For example, San Francisco requires that “the Mayor transmit a *nomination or renomination* to the Clerk of the Board of Supervisors no later than 60 days prior to the expiration of the term of a member nominated by the Mayor.”¹⁸ Similarly, Los Angeles, Long Beach, and Berkeley do not allow for an automatic rollover of commissioners.¹⁹ They require renomination for vacancies resulting from expired terms even when commissioners are eligible for renomination.²⁰

Requiring Commissioners eligible for renewed terms to submit to the ordinary selection process will increase public trust in the Commission, hold Commissioners accountable to the public for their actions, and fulfill the duties of the Mayor, City Council, and Selection Panel.

CONCLUSION

We hope these comments provide context for the Public Safety Committee about the CPA’s draft enabling ordinance. The CPA is the community expert on these issues, and its draft ordinance is consistent with state law and best practices.

¹ CAL. PENAL CODE § 832.7(e) (Westlaw 2016).

² CAL. PENAL CODE §.832.7(a) (Westlaw 2016). *See also* Copley Press Inc. v. Superior Court, 39 Cal. 4th 1272 (2006).

³ CAL. PENAL CODE § 832.7(e) (Westlaw 2016).

⁴ Sources for the jurisdiction-specific details in the chart include: *Anaheim Police Department*, CITY OF ANAHEIM, <http://www.anaheim.net/2495/Custom-Service> (last visited Feb. 26, 2017); *Filing an Individual Complaint with the Police Review Commission*, CITY OF BERKELEY, http://www.ci.berkeley.ca.us/Police_Review_Commission/Home/Complaints.aspx (last visited Feb. 26, 2017); *Fremont Police*, CITY OF FREMONT, <http://www.fremontpolice.org/FAQ.aspx?QID=88> (last visited Feb. 25, 2017); *Fresno Police Department*, CITY OF FRESNO, <http://www.fresno.gov/Government/DepartmentDirectory/Police/default.htm> (last visited Feb. 28, 2017); *Long Beach Police-Citizen Complaint Procedure*, CITY OF LONG BEACH, <http://www.longbeach.gov/police/contact-us/citizen-complaint-procedure/> (last visited Feb. 24, 2017); *Los Angeles Police Department-Commend an Employee or Report Employee Misconduct*, CITY OF L.A., http://www.lapdonline.org/our_communities/content_base_view/9217 (last visited Feb. 24, 2017); *Office of Public Safety & Accountability-Complaint Process*, CITY OF SACRAMENTO, <http://www.cityofsacramento.org/City-Manager/Public-Safety-and-Accountability/complaint-process> (last visited Feb. 24, 2017); *San Diego Police Department-Commendations and Complaints*, CITY OF SAN DIEGO, <https://www.sandiego.gov/police/services/officercomments> (last visited Feb. 24, 2017); *Office of Citizen Complaints*, CITY & COUNTY OF SAN FRANCISCO, <http://sfgov.org/occ/complaint-process> (last visited Feb. 27, 2017); *Internal Affairs Unit*, COUNTY OF SAN JOSE, <http://www.sjpd.org/COP/IA.html> (last visited Feb. 24, 2017).

⁵ *E.g.* CPA Proposed Police Commission Ordinance §§ 2.45.50, Subsection E, 2.46.040 (Feb. 22, 2017).

⁶ L.A., CAL., CITY CHARTER §§ 571(b)(4), 573.

⁷ S.F., CAL., CITY CHARTER art. IV, § 4.127.

⁸ *Id.*

⁹ The provisions drafted by CPA are based on language from the San Diego's CRB on Police Practices bylaws as well as original language drafted by the outgoing Oakland CPRB to address some concerns regarding the roles of alternates relative to full board members. *See* SAN DIEGO, CAL., CRB BYLAWS art. 3, § 2 (2014), <https://www.sandiego.gov/sites/default/files/legacy/citizensreviewboard/pdf/crbbylaws>; OAKLAND CPRB, MINUTES OF MAY 26, 2016 5-6, (June 9, 2016), <http://www2.oaklandnet.com/oakca1/groups/ceda/documents/agenda/oak059042.pdf>.

¹⁰ OAKLAND, CAL., CITY CHARTER §604(c)(1).

¹¹ *Id.* Different bodies use the titles "Commissioner" or "Member" for those serving on civilian police oversight bodies.

¹² *Id.*

¹³ OAKLAND, CAL., CITY CHARTER §604(d)(3).

¹⁴ OAKLAND, CAL., CITY CHARTER §604(c)(8).

¹⁵ OAKLAND, CAL., CITY CHARTER §604(c)(10).

¹⁶ SAN DIEGO, CAL., CRB BYLAWS art. 3, § 2 (2014), <http://www.sandiego.gov/sites/default/files/legacy/citizensreviewboard/pdf/crbbylaws>.

¹⁷ *Id.*

¹⁸ S.F., CAL., CITY CHARTER § 4.109 (emphasis added).

¹⁹ L.A., CAL., CITY CHARTER § 502; LONG BEACH, CAL., CITY CHARTER § 1151; LONG BEACH, CAL., CITIZEN POLICE COMPLAINT COMMISSION BYLAWS art. III (2016), <http://www.longbeach.gov/citymanager/cpcc/supporting-information/#charter>; BERKELEY, CAL., ORDINANCE 4644-N.S. (1973) (amended 1982), http://www.ci.berkeley.ca.us/Police_Review_Commission/Home/Ordinance_4644.aspx.

²⁰ In Los Angeles and Long Beach, the Mayor appoints Commissioners, contingent on City Council confirmation. In Berkeley, Commissioners are appointed by individual Councilmembers.



6114 LaSalle Avenue, Suite 168
Oakland, California 94611

e-mail: Oaklanders@makeoaklandbetternow.org
website: www.makeoaklandbetternow.org
blog: www.oaktalk.com

March 7, 2017

Via E-Mail

Oakland City Council
Public Safety Committee Chairperson
Desley Brooks and Committee Members
Noel Gallo, Abel J. Guillén and Larry Reid
Oakland City Hall
1 Frank H. Ogawa Plaza
Third Floor
Oakland, CA 94612

Re: Comment on Draft Police Commission Enabling Ordinance

Dear Council Members:

The following constitute Make Oakland Better Now!'s comments on the February 6, 2017 iteration of the Police Commission Enabling Ordinance. We also include several comments on features in The Coalition on Police Accountability's proposed substitute ordinance. There are some areas where we agree with the Coalition's suggestions, and others where we support adoption of the February 6 draft ordinance.

2.45.025 -- Selection Panel (Coalition Proposal): We certainly support a diverse and representative selection committee. We also believe that if possible, the Commission should have at least one member with a history of involvement with the criminal justice system. However, as written, this provision is too limiting (and, read literally, requires at least two selection panel members with criminal justice system backgrounds). A requirement of religious diversity probably involves Constitutional issues. We would urge a section that encourages diversity of life experience, education, training, background, geographic location within the city, gender, ethnicity, race and sexual orientation, but without imposing a requirement of representation from all categories, particularly to a panel only consisting of eight members. We also note that the panel needs to be in place by April 10; given the time limitations, Council should not be constrained by continued changes to rules for the panel.

2.45.040 – Background Checks (February 6 Draft): The earlier version of this provision was the cause of considerable community concern. We believe that background checks are important but that this does not mean a criminal record should be automatically disqualifying. We understand the revised version of this provision makes it clear that the background checks are only to provide maximum information to appointing authorities, not to eliminate categories of candidates. As presently written, we support this provision.

2.45.100 – Functions and Duties of the Office of Inspector General, Subpart A(7) (Coalition Proposal): We agree with the Coalition that the Inspector General's annual report should include "the training and policy implications of complaints being investigated by the

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1 Frank H. Ogawa Plaza
Third Floor
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Agency.” However, as the Inspector General is a department director, he or she should not be told in advance who in his or her department is responsible for writing this part of the report. The Inspector General should be guided by his or her judgment of whether this element should be written by the policy analyst.

2.45.110 – Establishment of the Discipline Committee (Conflicting Kalb & Gallo / Coalition Provisions): We support this provision as submitted by Council Members Kalb and Gallo. The Coalition substitute measure endeavors to limit the power of Commission members appointed by the mayor, and while it may or may not be outright contrary to the Charter measure enacted by the voters, it is inconsistent with the spirit of the voter’s Charter measure, which makes all commissioners equal regardless of who appoints them. In any event, we believe the Commission-elected Chairperson should have the authority to determine who serves on Discipline Committees.

2.45.120 – Discipline (February 6 Draft): We know there has been concern expressed in the community about the Discipline Committee’s inability to independently obtain and review evidence, examine and cross-examine witnesses, etc. We agree with Council Members Kalb and Gallo that this inability is built into the Charter amendment enacted by the voters, and section 2.45.120 is consistent with the Charter. We support it.

2.45.160 -- Staff assistance (Conflicting Kalb & Gallo / Coalition Provisions): We believe it is very important to adequately staff the Police Commission to accomplish its essential work, and will regularly urge such adequate staffing during the budget process. However, we do not believe in by charter or ordinance or ordinance provisions that dictate staffing or budgeting levels. For this reason, we disagree with the Coalition’s proposal to lock in staffing levels. Staffing should be part of the budget process. We support the provision as submitted by Council Members Kalb and Gallo.

2.45.170 – Commissioner Training (Conflicting Kalb & Gallo / Coalition Provisions): We support more training, not less. And we believe that as a matter of context, commissioners should have training on police crime-fighting activities, as well as the other matters required by both the Charter and the proposal by Council Members Kalb and Gallo. We do believe, however, that there should be flexibility in terms of commissioner training. Police officer training should be an evolving process, and so should Commissioner training. We have two suggestions. First, that commissioners be required to complete the citizen’s police academy or equivalent training. In other words, the important training that is part of the academy should be provided to commissioners, but does not need to be in ten consecutive weekly sessions. Secondly, we would propose adding a provision directing the Inspector General or

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Agency Director to make Commissioner training recommendations to the Commission, which can modify them (while seeking budget allocations from Council where necessary).

2.26.030 – Functions and duties, Subparts B & F

We certainly agree that if there is going to be a capacity to accept police misconduct complaints, it should be as accessible as follows. The location for making complaints should be readily accessible and visible, and there should be ease of access for online complaints.

We will be staying in touch with the Committee and the Council on these matters.

Best regards,

From the Make Oakland Better Now! board

cc: City Council Member Dan Kalb

Dear Members of the Oakland City Council,

I, along with friends, colleagues and coworkers, have read with great interest both the Memorandum for Draft Police Commission Ordinance (Draft), dated February 6, 2017, and the Substitute Ordinance as proposed by the Coalition for Police Accountability (Substitute). After thorough discussion, I would like to offer our combined opinions on the proposals' acceptability.

For most of this letter, I refer to the Substitute Ordinance, except where I specifically refer to the original Draft Ordinance. I do this because, in my opinion, the existence of the Substitute, and the degree to which it differs from the Draft, indicate that adopting an only slightly modified version of the Draft will not work. I believe that the Substitute is an evolution of the Draft and the final ordinance will be an evolution from both of these.

Generally, I divide comments into two groups, those addressing the mission and reach of the new Commission and those addressing the advisability and prospective efficacy of specific provisions. Ideally I would suggest answers along with the criticisms but that invites the belief that, after some quibbling about details, one or both of the proposals would be rehabilitated. That is not true - neither of these proposed ordinances is acceptable.

On the whole, I believe the Draft and the Substitute are both departures from attempts by Oakland citizens and politicians to form the Oakland Police Department into an organization that serves all of the people of Oakland while recognizing the history of policing in Oakland and the widely varying interests of the City's diverse residents. Previous efforts featured a continuum of transparency and accountability, each effort attempting to create the fullest possible transparency of policy, operations, officer disciplinary process and disciplinary outcome. Both of these proposed ordinances will result in reduced transparency and accountability.

Many of the comments here are conveyed as questions, indicating that we see issues but need to rely on the expertise of others to answer the questions those issues raise. Some identified issues are dealt with generally in the original ordinance passed in November. Regarding those issues, our point is that the implementing ordinance should include more detail and specificity. Here are our combined thoughts on the proposed ordinances:

Reports and Accountability

- Both of these proposals require numerous reports by the various entities managing the Police Department. They detail the contents of the reports, when they will be published and to whom. The reports provide information but there's no discussion of how these reports create accountability.
- It seems to be that a major portion of the ordinances' "accountability" is related to firing senior administrators, something that may not be possible under existing union contracts. The Commission is also empowered to forward complaints to the Ethics Commission if department

heads aren't forthcoming with requested information. These are both shallow examples of "accountability", "firing the boss." Relying on fear of retribution as a means of managing senior managers is ironic when transposed with what would be decreased oversight of and visibility into the rank and file disciplinary process, as referenced later in this document.

Qualifications of Commissioners and Staff

- Background checks are required of staff but are not specified for Commissioners. Commissioners may not be able to be exposed to confidential information or even comply with the requirements of their positions without "passing" a background check. For example, people taking part in a "Civilian Ride-Along", something Commissioners must do, must "pass" a background check.
 - Nothing is specified about how Commissioners will be "evaluated."
 - There is no specification of what disqualifies someone from becoming a Commissioner. This is likely to be in conflict with state laws on the subject of access to confidential information regarding personnel and policing operations.
-

Training

- Training should not be abbreviated. It should include in-depth treatment of all aspects of policing or, at the least, should include all the substantive subjects now taught in the Citizens' Academy. This is more than 16 hours of training.
- A single ride-along is not enough exposure to policing. To understand the operations of the police department, Commissioners should be "frequent riders."
- The ordinances should include provisions for a subcommittee that specifies, in detail, the contents of "training" and monitors the progress of Commissioners in completing mandated training.
- Failure of a Commissioner to complete training should be sufficient cause to remove the Commissioner from the Commission. The action should be required in the Ordinance.

Funding

- If, as it seems to read, the Community Police Review Agency offices are specified to be in City Hall, whose space will they occupy and where will those residents move?
- If not in City Hall, specifying a storefront constrains the City to find, possibly renovate and operate real estate for which the City will be paying market value.
- How will funds flow from the City to the new agency if it is not under management of the City Administrator? Is there a precedent for such a mechanism?
- Who will determine and manage the budget of the new agency?

- How does this ordinance compel the City Council to “allocate a sufficient budget for the OIG to perform its functions...”? What is the legal force of this carve-out? What is “sufficient budget?” Who decides?
- Who funds the Skelly Officer? To whom does he or she report? What rules govern his or her tenure?

Discipline Process and Transparency

- The process of investigating a complaint, proposing discipline, possible review by a Skelly Officer and possible Skelly hearing are all invisible to the public. There is no view into the discipline process, so long as the Police Chief and the Agency Director agree on discipline, and when there is a view, it’s only the view of the three-person Discipline Committee. The public is losing access to information about the process; this is regressive.
- We are concerned that the ad hoc discipline committees may come up against 3304 deadlines if, after a disagreement on a finding, they need to be constituted, gather existing evidence and, possibly, request additional evidence, meet, evaluate the evidence and then specify a discipline. ~~Only when there’s a disagreement on discipline will the Commission have access to details~~ about instances of police misconduct. There is no opportunity for Commissioners to learn from knowing the details of actual cases; there will be no basis for understanding the need to change or adopt policies. What will be the driving force of policy evolution?
- The weaknesses in the existing disciplinary process, that complainants receive form letters providing only the barest of information about the outcome of a complaint, remain unresolved. Neither proposal offers an improvement in transparency.
- Because of the time the proscribed process takes, and because there’s no provision for it in the ordinances, there are no opportunities for the Commission to hold hearings. The commission and, by way of police policy changes, the public will have limited insight into areas where policies have failed in the past.

Start-up and Operation Process

- Will having the authority to hire and fire City employees that emanate from somewhere other than the City Administrator, have an effect on police and staff union agreements?
- Having the Commission conduct the performance reviews of any City employee is both cumbersome and practically impossible. Obtaining the feedback of City staff and “other personnel familiar with the work” of employees requires the Commission to access personnel information to which it is not privy. It also has Commissioners or their appointees interviewing City employees, which amounts to directing the work of a City employee inasmuch as they will not be able to do their regularly assigned work while they are answering Commissioners’ inquiries. This violates both union work rules and city ordinances.

- The commission is not privy to enough information about City operations to manage or direct the Agency Director. From where will the Director receive authority and direction in managing City employees if not from the City Administrator?
- If the replacement process for a Commissioner is triggered by the expiration of that Commissioner's term, how long will that Commissioner's seat be vacant? Or, will the Commissioner continue to serve until replaced?
- Are all Commissioner votes public? Even routine ones such as approval of minutes?

Miscellaneous

- Aren't all officers hired by the Department required to attend the Department's Academy?

I thank the members of the City Council for their time and attention to these concerns. If any of you, or members of your staff, would like to contact me to discuss this matter in greater detail, my information listed below.

Yours truly,



Chris Brown

Chris Brown

Email: chris@chrisbrown.org

Text Messages: 408-813-6408

Cell Phone: 408-813-6408

Chris Brown

Addendum to Comments about the Proposed Ordinances for Implementing Measure LL

This addendum contains analysis intended to provide a general context for some of the concerns I describe in my letter.

Brief Summary

As currently written, the Revised Ordinance substantially limits the opportunity for community engagement with regard to oversight of the Police Department by empowering a Skelly Officer rather than the Police Commission Discipline Committee, to review the evidence and deliberate regarding the recommended discipline relating to complaints of police misconduct. The Proposed Ordinance calls for a Skelly Officer to hear discipline cases and decide to modify or affirm discipline proposed by the Chief of Police or Agency Director against a subject officer. Only in cases where the Chief of Police and Agency Director do not agree on the Final Discipline approved by the Skelly Officer, will the Police Commission Discipline Committee receive a report from the Skelly Officer regarding the proposed discipline and related evidence and review the discipline case. Thus, the Police Chief and Agency Director will effectively determine which cases the Police Commission Discipline Committee has the opportunity to review. The Revised Ordinance does not specifically state to whom the Skelly Officer will report, or who the Skelly Officer will report to. The Proposed Ordinance only states that a Skelly Officer will be assigned. If the Skelly Officer is not already a Citizens Police Review Board (CPRB) employee, according to section 2.45 entitled "Staffing", the Skelly Officer will be hired by the City Administrator.

Additionally, the Police Commission Discipline Committee will only hear police misconduct cases after the Skelly hearing and report has been completed and Final Discipline has been recommended by the Skelly Officer, in those cases where the Police Chief and Agency Director do not agree on the Final Discipline. This distinction is significant in that after the Skelly hearing, the record of the disciplinary hearing will be set and there will not be an opportunity to review the decision of the Skelly Officer regarding the evidence considered in formulating the proposed discipline. Moreover, there will not be an opportunity to introduce new evidence or include evidence that may have been excluded by the Skelly Officer after the Skelly hearing. The Discipline Committee will act like an appellate body limiting its review to the record of the hearing conducted by the Skelly Officer. Thus, the Discipline Committee will have substantially less input and involvement in the review and consideration of police misconduct cases than is presently available under the Ordinance establishing the Citizens' Police Review Board where the Citizens' Police Review Board decides which police misconduct complaints to hear, reviews the evidence, deliberates regarding the evidence presented and the proposed discipline, and issues a determination on complaints of police misconduct.

Analysis of Ordinance

1. To What Extent is the Oakland Community Involved in Police Misconduct Hearings Under the Revised Ordinance?

Pursuant to Subparts B and C of Section 2.45.120 of the Revised Ordinance entitled "Discipline", the Police Commission Discipline Committee will only hear the police misconduct cases where the discipline

is not agreed upon by the Police Chief and the Director of the Community Review Police Agency. Accordingly, the Chief and Agency Director will in effect, determine which cases are heard by the Commission Discipline Committee.

Subparts B and C of Section 2.45.120 of the Revised Ordinance entitled "Discipline" provide as follows:

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.

The Revised Ordinance does not state that the Discipline Committee can conduct a new hearing, and assess the credibility of the witnesses or review new evidence. Therefore, the Revised Ordinance appears to scale back the community engagement aspect of police oversight by 1) only allowing a fraction of police misconduct cases to be heard by the Discipline Committee instead of allowing the Commission to select the cases that it reviews like the CPRB Board does now; and 2) limiting the authority of the Discipline Committee to a review of whether the Skelly Officer abused his or her discretion regarding the review and admission of evidence to support the allegations of misconduct.

2. Who Hires the Skelly Officer and to Whom Does the Skelly Officer Report?

With regard to the hiring and supervision of the Skelly Officer, Section 2.45 of the Revised Ordinance entitled "Staffing", provides as follows:

2.45.160- Staffing.

Immediately upon the confirmation of the first group of Commissioners, the City Administrator shall provide staff to the Commission. Three months prior to the City Council's confirmation of the slate of Commissioners, Human Resources will create and post job descriptions for all staffing positions that are not already CPRB employees. Within 3 months of the Commissioners' confirmation, they shall identify 4 candidates for each unfilled position to present to the City Administrator and/or the City Attorney who will select from those lists the persons who will be hired.

Such staff shall consist of, at a minimum, a .5 FTE administrative director, a .5 FTE counsel and appropriate clerical support personnel. Staff for the Agency shall include, at a minimum, one investigator per 100 sworn officers and clerical support staff. The CPRB contract counsel shall serve as interim counsel to the Agency until the Commission selects new counsel pursuant to Section 604(e)(1) of the City Charter.

Commission shall provide the City Administrator with its proposal for such additional staff positions as are necessary to permit the Commission and the Agency to fulfill their 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.

Given that the Revised Ordinance does not identify how the Skelly Officer referenced in Chapter 2.45 is selected, hired or supervised, the Skelly Officer could be a new employee that is hired and supervised by the City Administrator. The Skelly Officer could also be a member of the Police Department. The Revised Ordinance as currently written would reduce the transparency and community engagement in police oversight that is presently afforded under the Ordinance governing the City of Oakland Citizens Police Review Board by transferring the authority to review and decide cases of police misconduct to the Skelly Officer.

3. What is a Skelly hearing and Skelly Officer?

By way of background, the term "Skelly hearing" refers to a hearing where a public employee must be given notice of and an opportunity to respond to proposed discipline before the discipline is imposed, as well an opportunity to refute factual allegations underlying the proposed discipline. In *Skelly v. State Personnel Board*, (1975) 15 Cal. 3d 194, the California Supreme Court ruled that a public employee had a property interest in continued employment, and hence could not be deprived of his job without a due process hearing involving notice of the proposed discipline which notice must allege the specific rule or policy violation underlying the allegation of misconduct, as well as the factual basis for the allegation. The notice provided to the subject employee must also be served with all documents that were relied upon by the official proposing discipline of the employee. The Skelly process also requires that the notice to the employee provide a deadline for his or her response and an effective date of discipline.

It is important to note that if the employer, in this case the City of Oakland Police Department, does not provide the officer with all of the materials on which the Chief of Police relied in his decision to impose discipline on the officer, the Skelly hearing is defective and the officer may be entitled to set aside the decision imposing discipline. (*Parker v. City of Fountain Valley* (1981) 127 Cal. App. 3d 99, 116-118.)

The Revised Ordinance says that "the Department shall offer the Subject Officer a Skelly hearing to be conducted by an assigned Skelly Officer." However, the Revised Ordinance is silent regarding who the Skelly Officer will be. Absent clarification in the Revised Ordinance, the Skelly Officer can be a new employee hired by the City Administrator under section 2.45 "Staffing", or the Skelly Officer can be an employee that is already in the Police Department.

March 8, 2017

From Mark Graham, resident of Elk Grove, California

MarkElliottG@gmail.com

To: oluby@oaklandnet.com.

Subject:

Public Comment for Draft Police Commission Enabling Ordinance

Distinguished Members of the the Public Safety Committee of the Oakland City Council,

The Draft Police Commission Enabling Ordinance introduced by Councilmembers Dan Kalb and Noel Gallo is a big step in the right direction of police accountability and oversight. Thank you for getting this far. And thank you to the voters of Oakland who approved Measure LL creating section 604 of the Charter in the November 8, 2016 general election. Following are my recommendations for changes to the draft ordinance.

#1) In general I support the substitute ordinance proposed by the Coalition for Police Accountability.

#2) Regarding Section 2.45.010 Definitions

The draft says, “‘Agency’ shall mean the Community Review Police Agency.” It appears the words are out of order.

Recommendation: The definition should say, “‘Agency’ shall mean the Community Police Review Agency.”

#3) Regarding 2.45.120 – Discipline

This section says, in subsection (E), “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.”

However the draft ordinance does not say what the penalty will be for a member of the Discipline Committee who violates this section.

Recommendation: The ordinance should identify the penalty.

#4) Regarding 2.45.100 (B), which says:

“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.”

Recommendation: the training should also include all of the items under 2.45.170 – Commissioner Training.”

#5) Regarding 2.45.050 – 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.

Recommendation: Amend paragraph A. by adding:

- #a) All of the items in the draft ordinance under “2.45.170 – Commissioner Training.”;
- #b) “the appropriate use of various types and amounts of force up to and including deadly force, with an emphasis that deadly force is only to be used as a last resort and that verbal communication is the best and most effective tool of police work and should be used as the first resort”;

#c) “the inappropriateness and illegality of the ‘code of silence’ found in many police departments, an unwritten agreement among police officers that they are expected to and will be supported in covering up crimes by their fellow officers by remaining silent about what they have observed their fellow officers doing and by other acts or failures to act.”;

Rationale: There is a code of silence within the Oakland PD as in many other PDs that says that one police officer will not speak out about the crimes of another officer and will, in many cases, lie under oath or lie during an investigation to cover up the crimes of another officer. Besides being illegal the harm caused by the practice of the code of silence to relationships between the police and the community and to the effectiveness and fairness of the criminal justice system cannot be overstated.

Communication should be emphasized during training as the best and most effective method of police work. Communication is broad and can be used in many different ways. It can be used to find out what is going on in a given situation and to resolve problems while they are minor problems and before they become major problems.

#6) Regarding 2.45.050 – Functions and Duties of the Commission.

2.45.050 contains (K)(1)d. which says that the Commission shall
“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:”

“d. The number of training sessions provided to Department sworn employees, and the subject matter of the training sessions;”

Recommendation: The subject matter of the training sessions shall include, without limitation, all of the items identified in my previous comment, #5).

#7) Regarding 2.45.100 – Functions and Duties of the Office of Inspector General.

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.

Recommendation: Paragraph B should be amended by adding, after the phrase “work related stress management”, all of the items identified in my comment #5).

#8) Regarding 2.45.100 – Functions and Duties of the Office of Inspector General.

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).

Recommendation: Paragraph B should be amended by adding, after the phrase “policies and procedures”, the words “including, without limitation” and then all of the items identified in my comment #5).

#9) Regarding 2.45.050 (K)(1) which says that the Commission shall “K. Direct the Chief to:

“Submit semi-annual reports to the City Council’s Public Safety Committee, to the extent permitted by applicable law, which shall include:”

Recommendation: Add section i. which will say:

The number of police officers then employed by the Police Department:

- I who are military veterans
- II who have been diagnosed with post traumatic stress disorder (PTSD); or
- III who are then taking, or have taken in the past five years, prescription medications intended to alter the patient’s mood.

Rationale:

The Police Department should disclose to the public the number of police officers in each of these three categories for reasons directly related to on the job performance and management of stress.

I who are military veterans

Military veterans come from a job and environment where killing of civilians happens frequently, it is accepted as “collateral damage” by the government, soldiers cover up each other’s crimes and there is virtually no accountability, (no press, no U.S. or state or local laws to follow, no civilian courts and no prosecutors, elected or otherwise). War zones are generally free-for-all that encourage and condone savage, deadly and unnecessarily violent behavior. Soldiers violate the Geneva Convention and other treaties regarding conduct during war. The Wikileaks disclosures of videos, photographs and documents made possible by Chelsea Manning (formerly Bradley Manning), whose 35 year prison sentence was commuted by President Barack Obama, shows all of the above to be true.

II who have been diagnosed with post traumatic stress disorder (PTSD):

Many military veterans suffer from PTSD, post traumatic stress disorder. This makes them prone to extreme and violent reactions when faced with stressful situations. PTSD also causes nightmares and flashbacks of violence. Police work is full of stressful situations.

The most natural thing for a military veteran to do is to bring his set of beliefs and his conduct from the war zone to the streets of a city, in this case the streets of Oakland, when hired by the P.D. Other things being equal a military veteran is more likely to use unnecessary force, up to and including deadly force, than a police officer who is not a military veteran. The PD can save lives by NOT hiring military veterans. It can also create better relationships and trust between the PD and members of the community and avoid and prevent incidents that damage those relationships and that trust.

When a city hires a military veteran to be a police officer it sets up the possibility of the following scenario. While on patrol when a police officer hears a sound like a gunshot, which may or may not actually be a gunshot, he may have a flashback to an experience in a war zone in Iraq or Afghanistan (for example) where an IED (improvised explosive device) exploded near him and his unit, blowing the head off one of his friends and blowing the legs off of another friend. At the time on the battlefield or war zone all of the soldiers nearby went into a rage, shooting every person not easily identified as an American within a 360 radius. This included men, women and children. They did this with the full permission and approval of the commanding officer. It was standard operating procedure in a war zone. This is not an exaggeration: disclosures from Wikileaks have provided proof of such incidents and one can safely assume they are common practice and that the few incidents disclosed on Wikileaks are only the tip of the iceberg. Members of Iraq Veterans Against the War (IVAW) have described witnessing such incidents. This flashback causes the military veteran turned police officer to react as he did in the war zone; namely, by killing nearby civilians in a fit of rage.

III who are then taking, or have taken in the past five years, prescription medications intended to alter the patient’s mood.

Those suffering from PTSD are often taking prescription medications to numb the mind and alter their mood and behavior. The problem is that such medications often cause violent behavior

such as killing innocent people. A review of mass shootings in the U.S. over the last ten years shows that in most cases the shooter was taking one or more prescription medications at the time of the incident.

#10) Regarding 2.45.050 (K) (1) which says that the Commission shall
“K. Direct the Chief to:

“Submit semi-annual reports to the City Council’s Public Safety Committee, to the extent permitted by applicable law, which shall include:”

Recommendation: Add section j. which will say: “The number of meetings held with community members designed to build trust.”

Rationale: Building trust is an essential element of having good relationships between the police department and the community. It is, I assume, one of the City Council’s goals and one of the The Public Safety Committee’s goals. Trust can prevent violent incidents, make police work safer and more enjoyable, and make a city safer.

Here are two examples of meetings held with community members designed to build trust.

First example:

a pick-up basketball game where community members and police officers are on both teams.

Second example:

There should be meetings open to the public for the specific purpose of police officers meeting parents and children up to any age, let’s say for example up to 30 years of age. Each face to face meeting could be very brief. It would consist of, at minimum, the parent introducing himself / herself to the police officer and then introducing the son or daughter, saying where they live (if they want to say that) and where the child goes to school or works (if they want to say that, whichever is applicable) and any other short item the child wants to say to the police officer such as their hobby, favorite musician, or anything the child wants to share that will help the police officer remember him or her. The police officer would not have to disclose anything and could simply say, “Nice to meet you” or something nice.

These meetings can have a powerful effect on building connection and trust between the police and members of the community. A police officer is a LOT less likely to use unnecessary force, especially deadly force, against a person whom they have met face to face, especially with their parents present. Even if the police officer does not remember the child’s name and only remembers the child’s face it could deter unnecessary use of force. The parent and child may also walk away with greater faith or trust in the PD based on meeting one police officer one to one, face to face, in a friendly and social, if contrived and artificial, setting.

#11) Regarding 2.45.050 (K) (1) which says that the Commission shall
“K. Direct the Chief to:

“Submit semi-annual reports to the City Council’s Public Safety Committee, to the extent permitted by applicable law, which shall include:”

Recommendation: Add section k. which will say: “The number of times police officers arrested a person for or charged a person with ‘resisting arrest’ and the number and percentage of those charges that were dropped.”

Rationale: The charge of “resisting arrest” is one of the most overused and abused tactics of police officers. Its use goes back at least to the 1970s. Here is what typically happens. In the course of an interaction with a person the police officer assaults the person causing injuries to the person. The assault by the police officer was unnecessary and the person was only resisting being beaten up. Back at the police station the police officer claims that the person was “resisting arrest”, a false claim.

Since there are usually no witnesses a jury has to decide between the word of the arresting (and assaulting) officer and the accused. Juries usually believe the police and decide that the police officer and not the accused is telling the truth. Many times these charges are dropped for various reasons. A false charge should not be made in the first place and charges should not be used as temporary tools to haul a person in to the station or as a bargaining chip to be given away later in exchange for something else. Reporting on these data will help bring transparency to the Police Department and reduce the number of arrests based on the false claim of “resisting arrest”.

Thank you for your consideration of my comments and good luck. The City of Oakland is counting on you!

Sincerely,

Mark Graham

Comments forwarded by Rashidah Grinage, Coalition for Police Accountability

From: Cathy Leonard <donotreply@wordpress.com>
Date: Tue, Feb 28, 2017 at 5:43 PM
Subject: [Coalition for Police Accountability] Time to ACT!
To: rashidah@coalitionforpoliceaccountability.org

Name: Cathy Leonard

Email: 2lawcel@gmail.com

Website:

Comment: I wholeheartedly support the Coalition for Police Accountability's substitute ordinance. Let's get this right for the future of Oakland and its citizenry. Thank you.

Time: March 1, 2017 at 1:43 am

Contact Form URL: <https://coalitionforpoliceaccountability.com/2017/02/23/time-to-act/>
Sent by an unverified visitor to your site.

From: Alanya Snyder <donotreply@wordpress.com>
Date: Sun, Mar 5, 2017 at 5:14 AM
Subject: [Coalition for Police Accountability] Time to ACT!
To: rashidah@coalitionforpoliceaccountability.org

Name: Alanya Snyder

Email: alanyasnyder@gmail.com

Website:

Comment: As a lifelong Oaklander, co-chair of the 22X Neighborhood Council, and a member of Neighbors for Racial Justice, I am deeply invested in the creation of an effective police accountability Commission to support the overwhelming demand of voters to reform our department. I specifically support the Substitute Ordinance. Without a public voting record of Commissioners, minimum staffing requirements, a visible agency in the city, a focused training for commissioners, and the power to return investigations for more information, we are setting ourselves up for failure as a city. This is no time in the history of Oakland's police record, or in the history of country as a whole, to second guess the importance of third-party accountability to insure our institutions can actually protect our people. Please stand up for the Substitute Ordinance.

Time: March 5, 2017 at 1:14 pm

Contact Form URL: <https://coalitionforpoliceaccountability.com/2017/02/23/time-to-act/>
Sent by an unverified visitor to your site.

From: **Brian Beveridge** <donotreply@wordpress.com>
Date: Sun, Mar 5, 2017 at 11:55 AM
Subject: [Coalition for Police Accountability] Time to ACT!
To: rashidah@coalitionforpoliceaccountability.org

Name: Brian Beveridge

Email: brian.woeip@yahoo.com

Website:

Comment: As a member of the Jobs Commission, I know that meetings must be easily accessible to all, Commission business must be supported by adequate staff (we have Council plus a Secretary and four staff from Contract Compliance), and the Commissioners must be well versed in the operations and issues under their purview. The Commissioners will need time and support to develop their Bylaws and operating procedures. They should be empowered to create such standard reports as needed for their deliberation and the staff must be ready and able to deliver such reports and information. Our Jobs Commission needed the first year to develop our Bylaws and protocols, so all of the Commissioners were reappointed for second terms in order to take advantage of the knowledge developed in that first year. Commission membership must not be a revolving door or little depth will be developed in the deliberations.

Time: March 5, 2017 at 7:55 pm

Contact Form URL: <https://coalitionforpoliceaccountability.com/2017/02/23/time-to-act/>
Sent by an unverified visitor to your site.

From: **Karen McClelland** <donotreply@wordpress.com>
Date: Sun, Mar 5, 2017 at 1:01 PM
Subject: [Coalition for Police Accountability] Time to ACT!
To: rashidah@coalitionforpoliceaccountability.org

Name: Karen McClelland

Email: kemcclelland@gmail.com

Website:

Comment: I support the substitute ordinance because we must provide the Commission with the most effective use of power and support for police accountability.

Time: March 5, 2017 at 9:01 pm

Contact Form URL: <https://coalitionforpoliceaccountability.com/2017/02/23/time-to-act/>
Sent by an unverified visitor to your site.

From: **Ginny Berson** <donotreply@wordpress.com>
Date: Sun, Mar 5, 2017 at 1:23 PM
Subject: [Coalition for Police Accountability] Time to ACT!
To: rashidah@coalitionforpoliceaccountability.org

Name: Ginny Berson

Email: ginny.berson@gmail.com

Website:

Comment: Originally I was going to offer support just for the CPA's proposed change around the training requirements, which I think make much more sense than what is in the Kalb/Gallo ordinance. Their is much too burdensome and largely irrelevant and will screen out people who might otherwise make excellent commissioners. However, I now feel strongly that all four changes that the CPA proposed are better than the Kalb/Gallo ordinance and they will all insure a commission that is in a much better position to do its work and to be successful.

Time: March 5, 2017 at 9:23 pm
IP Address: 73.222.242.215

Contact Form URL: <https://coalitionforpoliceaccountability.com/2017/02/23/time-to-act/>
Sent by an unverified visitor to your site.

From: **jackie dennis** <donotreply@wordpress.com>
Date: Sun, Mar 5, 2017 at 2:05 PM
Subject: [Coalition for Police Accountability] Time to ACT!
To: rashidah@coalitionforpoliceaccountability.org

Name: jackie dennis

Email: jindiaden2@gmail.com

Website:

Comment: I didn't vote for LL to simply have an organization in place to "kind of " take care of police problems. I want the commission to have teeth so real actions can be taken to integrate a police force who work FOR the community. I support all the above suggestions. Also I don't want this to be another "old boy's network" that renews itself again and again. So the not having the "roll over" idea is important to me. thanks for asking us to respond to this.

Time: March 5, 2017 at 10:05 pm

Contact Form URL: <https://coalitionforpoliceaccountability.com/2017/02/23/time-to-act/>
Sent by an unverified visitor to your site.

From: **Saied Karamooz** <donotreply@wordpress.com>
Date: Sun, Mar 5, 2017 at 2:48 PM
Subject: [Coalition for Police Accountability] Time to ACT!
To: rashidah@coalitionforpoliceaccountability.org

Name: Saied Karamooz

Email: saiedrk@gmail.com

Website:

Comment: Dear interested reader,

I support the substitute ordinance based on the following merits:

- 1) The Discipline Committee must be empowered with the most reliable and thorough information to make informed decisions.
- 2) As a graduate of the Citizens Police Academy, I am certain that the relevant portions of the course can be condensed into a one-day session.
- 3) Ensuring commissioners don't become stale is key to success of this initiative. Therefore, it is important that their qualifications are re-evaluated as their terms end. There is absolutely no benefit to having an automatic roll-over. As a key component of their re-evaluation, their voting records must be disclosed publicly.
- 4) Filing complaints must be as barrier-free as possible for all community members, particularly those with physical limitations or unfamiliar with the location. Therefore, a street level location that is clearly marked is an absolute minimum.

5) Proper staffing of the Commission and Agency is paramount to the success of this initiative. An overburdened Commission will not be able to meet its mandates and will lose credibility rapidly: A sure way to ensure its failing fate. If it's not in the budget, it won't happen!

Thank you for kind attention to my views.

Regards,

Saied Karamooz

Time: March 5, 2017 at 10:48 pm

Contact Form URL: <https://coalitionforpoliceaccountability.com/2017/02/23/time-to-act/>
Sent by a verified WordPress.com user.

From: **Sharon Rose** <donotreply@wordpress.com>
Date: Sun, Mar 5, 2017 at 4:41 PM
Subject: [Coalition for Police Accountability] Time to ACT!
To: rashidah@coalitionforpoliceaccountability.org

Name: Sharon Rose

Email: sharonroseESL@gamil.com

Website:

Comment: I am in favor of the substitute ordinance from the Coalition for Police Accountability for the implementation of measure LL. I am particularly concerned that the ordinance clearly address the need for transparency Commission members' votes. The public has a need to know.
Sharon Rose, District 4

Time: March 6, 2017 at 12:41 am

Contact Form URL: <https://coalitionforpoliceaccountability.com/2017/02/23/time-to-act/>
Sent by an unverified visitor to your site.

From: **JENNIFER Y ZILLIAC** <donotreply@wordpress.com>
Date: Sun, Mar 5, 2017 at 5:43 PM
Subject: [Coalition for Police Accountability] Time to ACT!
To: rashidah@coalitionforpoliceaccountability.org

Name: JENNIFER Y ZILLIAC

Email: zilliac@gmail.com

Website:

Comment: We need a strong commission to hold law enforcement accountable. Accountability is the only path to trust in law enforcement. Trust is key to efficacy.

Time: March 6, 2017 at 1:43 am

Contact Form URL: <https://coalitionforpoliceaccountability.com/2017/02/23/time-to-act/>
Sent by an unverified visitor to your site.

From: **Susan Schacher** <donotreply@wordpress.com>
Date: Sun, Mar 5, 2017 at 6:43 PM
Subject: [Coalition for Police Accountability] Time to ACT!
To: rashidah@coalitionforpoliceaccountability.org

Name: Susan Schacher

Email: susan4@jps.net

Website:

Comment: I support the Coalition for Police Accountability and urge you to pass their substitute ordinance.

Time: March 6, 2017 at 2:43 am

Contact Form URL: <https://coalitionforpoliceaccountability.com/2017/02/23/time-to-act/>
Sent by an unverified visitor to your site.

From: **Laura Linden** <donotreply@wordpress.com>
Date: Mon, Mar 6, 2017 at 7:14 AM
Subject: [Coalition for Police Accountability] Time to ACT!
To: rashidah@coalitionforpoliceaccountability.org

Name: Laura Linden

Email: redchickn@yahoo.com

Website:

Comment: Dear members of the Oakland Public Safety Commission and City Council:
I know that Rashidah Grinage and her colleagues have been working on this issue for a very long time. Frankly, I trust them to craft the most thorough and effective ordinance language for the implementation of Measure LL. It is vitally important to respect the wishes of this organization and its supporters, and to ensure the Measure LL ordinance language reflects the spirit and intent of the ballot measure. Not partially -- but completely.

Sincerely,
Laura Linden
Oakland, CA

Time: March 6, 2017 at 3:14 pm

Contact Form URL: <https://coalitionforpoliceaccountability.com/2017/02/23/time-to-act/>
Sent by an unverified visitor to your site.

From: **Brian Hofer** <donotreply@wordpress.com>
Date: Mon, Mar 6, 2017 at 1:04 PM
Subject: [Coalition for Police Accountability] Time to ACT!
To: rashidah@coalitionforpoliceaccountability.org

Name: Brian Hofer

Email: brian.hofer@gmail.com

Website:

Comment: I support adoption of the Coalition for Police Accountability's substitute ordinance.

Time: March 6, 2017 at 9:04 pm

Contact Form URL: <https://coalitionforpoliceaccountability.com/2017/02/23/time-to-act/>
Sent by an unverified visitor to your site.

From: **Sheryl Walton** <donotreply@wordpress.com>
Date: Mon, Mar 6, 2017 at 3:00 PM
Subject: [Coalition for Police Accountability] Time to ACT!
To: rashidah@coalitionforpoliceaccountability.org

Name: Sheryl Walton

Email: sheryl.walton@sbcglobal.net

Website: <http://www.bbbon.net>

Comment: I support the substitute ordinance.

Time: March 6, 2017 at 11:00 pm

Contact Form URL: <https://coalitionforpoliceaccountability.com/2017/02/23/time-to-act/>
Sent by an unverified visitor to your site.

From: **Raymundo Jacquez III** <donotreply@wordpress.com>

Date: Mon, Mar 6, 2017 at 3:42 PM

Subject: [Coalition for Police Accountability] Time to ACT!

To: rashidah@coalitionforpoliceaccountability.org

Name: Raymundo Jacquez III

Email: raymundojacquez@gmail.com

Website:

Comment: I strongly support the substitute ordinance being forwarded by the Coalition for Police Accountability. Measure LL put an independent police commission within reach for Oakland and this ordinance is necessary to make sure that it can do the job it was designed to do! As someone who lives and works in Oakland I sincerely hope that the city council will consider and adopt the substitute ordinance so that we can truly have a better police department.

Time: March 6, 2017 at 11:42 pm

Contact Form URL: <https://coalitionforpoliceaccountability.com/2017/02/23/time-to-act/>
Sent by an unverified visitor to your site.

From: **Dana Berry** <donotreply@wordpress.com>

Date: Mon, Mar 6, 2017 at 3:43 PM

Subject: [Coalition for Police Accountability] Time to ACT!

To: rashidah@coalitionforpoliceaccountability.org

Name: Dana Berry

Email: dnb1966@yahoo.com

Website:

Comment: I support the Police Accountability substitute ordinance to implement measure LL. I believe the language of this substitute ordinance better reflects the true spirit and intent of LL. Thank you!

Time: March 6, 2017 at 11:43 pm

Contact Form URL: <https://coalitionforpoliceaccountability.com/2017/02/23/time-to-act/>
Sent by an unverified visitor to your site.

From: **Jordana Fuchs-Chesney** <donotreply@wordpress.com>
Date: Mon, Mar 6, 2017 at 5:19 PM
Subject: [Coalition for Police Accountability] Time to ACT!
To: rashidah@coalitionforpoliceaccountability.org

Name: Jordana Fuchs-Chesney

Email: tornadosupertrouble@gmail.com

Website:

Comment: I support an oversight commission with the power to make positive change on behalf of the community.

Time: March 7, 2017 at 1:19 am

Contact Form URL: <https://coalitionforpoliceaccountability.com/2017/02/23/time-to-act/>
Sent by an unverified visitor to your site.

From: **Lorelei Bosserman** <donotreply@wordpress.com>
Date: Mon, Mar 6, 2017 at 5:21 PM
Subject: [Coalition for Police Accountability] Time to ACT!
To: rashidah@coalitionforpoliceaccountability.org

Name: Lorelei Bosserman

Email: Lorelei.Bosserman@gmail.com

Website:

Comment: I campaigned for Measure LL, and I support the substitute ordinance from the

Coalition for Police Accountability.

Time: March 7, 2017 at 1:21 am

Contact Form URL: <https://coalitionforpoliceaccountability.com/2017/02/23/time-to-act/>
Sent by an unverified visitor to your site.

From: **Saleem Bey** <donotreply@wordpress.com>
Date: Mon, Mar 6, 2017 at 7:16 PM
Subject: [Coalition for Police Accountability] Time to ACT!
To: rashidah@coalitionforpoliceaccountability.org

Name: Saleem Bey

Email: sbey99@gmail.com

Website:

Comment: We support the substitute ordinance.... and would like to add that any connection to the existing corrupt CPRB personnel taints the credibility of the new ordinance. The community has been ill served by the existing city administrator employees who have repeatedly failed to provide basic justice to the public, otherwise why would the citizens of Oakland vote to change the charter through LL. This is not hearsay, I personally have filed multiple CPRB complaints that have been covered up and closed by the existing CPRB staff. CPRB employees, Karen Tom covered up 07-0538 in 2007 and Joan Saupe closed 13-1062 even though IAD found OPD guilty... Shame on the CPRB when the police find themselves guilty and the persons representing the citizens absolve the police. Most recently in January 2017 the CPRB covered up and buried our complaint 16-0146 against then Assistant Chief Figueroa for cover up. Any ordinance that involves these bureaucratic sycophants defeats that purpose of LL, i.e. being credible to the community, as long as these failing, self serving employees are involved, and continue to be owned by the corrupt City Admin office (specifically Landreth now) LL is no different than current. The current director of CPRB Finnel (an ex-Chicago police officer, hired by Schaaf and Landreth, and who was there during the Chicago PD LaQuan McDonald cover up) will continue under LL..what is different? The investigators and leadership will still be "owned, controlled, and loyal to the City" and not the people. The problem with the current CPRB isn't "their hands are tied" its they are self serving employees, bleeding the tax payer for decades while acting as agents of status quo.

Our stance is hire new investigators, it already takes the current CPRB a year to improperly close and bury citizen's complaints. So what, if it takes 6 months to staff the new commission with credible independent persons, at least the credibility of LL will be in place, with the people from jump street.

Time: March 7, 2017 at 3:16 am

Contact Form URL: <https://coalitionforpoliceaccountability.com/2017/02/23/time-to-act/>
Sent by an unverified visitor to your site.

From: **ruby stein** <donotreply@wordpress.com>
Date: Mon, Mar 6, 2017 at 7:39 PM
Subject: [Coalition for Police Accountability] Time to ACT!
To: rashidah@coalitionforpoliceaccountability.org

Name: ruby stein

Email: rstein94606@gmail.com

Website:

Comment: These are all well thought out additions and changes. They have been discussed with the membership. We need a strong ordinance that will allow Measure LL to do its job.

Time: March 7, 2017 at 3:39 am

Contact Form URL: <https://coalitionforpoliceaccountability.com/2017/02/23/time-to-act/>
Sent by an unverified visitor to your site.

From: **Shauna McQueen** <donotreply@wordpress.com>
Date: Tue, Mar 7, 2017 at 3:43 PM
Subject: [Coalition for Police Accountability] Time to ACT!
To: rashidah@coalitionforpoliceaccountability.org

Name: Shauna McQueen

Email: shauna.mcqueen99@gmail.com

Website:

Comment: In my honest opinion, this police commission is undeniably one of the most important ways to improve policing in our community. Internal investigations cannot be trusted and this new commission truly gives power back to the community. It should have all the necessary resources to fulfill its duties so that our city will not have unfit police officers patrolling our streets.

Time: March 7, 2017 at 11:43 pm

Contact Form URL: <https://coalitionforpoliceaccountability.com/2017/02/23/time-to-act/>
Sent by an unverified visitor to your site.

From: Susan Shawl <donotreply@wordpress.com>
Date: Tue, Mar 7, 2017 at 4:42 PM
Subject: [Coalition for Police Accountability] Time to ACT!
To: rashidah@coalitionforpoliceaccountability.org

Name: Susan Shawl

Email: jazzfan1@sbcglobal.net

Website:

Comment: Please vote for the Substitute Ordinance as submitted by the Coalition for Police Accountability. As a former member of the CPRB (2008 through 2012) and an active member of the Coalition who has participated in the drafting of the Substitute, I feel that the experience and research that has gone into this community wide effort will provide the best working oversight body in the US. We have learned from the problems of other jurisdictions and the ideas proposed are necessary if this is going to succeed. Oakland deserves no less than the best that can be accomplished.

Time: March 8, 2017 at 12:42 am

Contact Form URL: <https://coalitionforpoliceaccountability.com/2017/02/23/time-to-act/>
Sent by an unverified visitor to your site.

From: Hilary Yothers <donotreply@wordpress.com>
Date: Tue, Mar 7, 2017 at 9:04 PM
Subject: [Coalition for Police Accountability] Time to ACT!
To: rashidah@coalitionforpoliceaccountability.org

Name: Hilary Yothers

Email: hilbeanie@yahoo.com

Website:

Comment: Hello,

I am a concerned citizen and have been watching this measure carefully. I think that it's a great step, in fact a giant leap, in the right direction.

I would like to add my support to the revision to the ordinance above so that the Commission has proper accountability and can do what it is supposed to do effectively.

Thank you,
Hilary Yothers

Time: March 8, 2017 at 5:04 am

Contact Form URL: <https://coalitionforpoliceaccountability.com/2017/02/23/time-to-act/>
Sent by an unverified visitor to your site.

From: **Monica** <donotreply@wordpress.com>
Date: Thu, Mar 9, 2017 at 12:53 PM
Subject: [Coalition for Police Accountability] Time to ACT!
To: rashidah@coalitionforpoliceaccountability.org

Name: Monica

Email: monbien@gmail.com

Website: <http://neighborsforracialjustice.org>

Comment: I support the coalition's substitute ordinance as outlined above. Without these specific changes the police commission will lose much of its power and ability to hold police accountable. Please pass these substitutes.

Time: March 9, 2017 at 8:53 pm

Contact Form URL: <https://coalitionforpoliceaccountability.com/2017/02/23/time-to-act/>
Sent by an unverified visitor to your site.

Comment of Diane Sanchez

Hi Oliver,

Thank you for these answers. My question or concern about the Commission's role with the union, was really about undue influence on the Commission's rulings if members are having discussion with the union (or for that matter any parties with a particular bias). It seems to me that the commission and commissioners need to be well informed on a variety of issues that will pertain to their decisions but that there needs to be some line between being informed and being unduly influenced.

I was thinking that there might need to be language around who they meet with or at least a record of meeting so that it's transparent.

thanks again

Diane

> On Feb 16, 2017, at 4:39 PM, Luby, Oliver <OLuby@oaklandnet.com> wrote:

>

> Hi Diane,

>

> Thanks for your feedback. In response to your questions:

>

> 1. Neither the Charter Amendment that was already passed nor the proposed enabling ordinance make any changes to the appeal process for police discipline. Officers retain the right to appeal the discipline to either the Civil Service Commission or binding arbitration. This is referenced in the ordinance (section 2.45.120.F).

>

> 2. This isn't a role for the Commission to have contact with the union. The existing state law requirements for meet and confer and police discipline appeals would not change.

>

> With regard to firing of the Chief, the ability of the Mayor to fire at will and the Commission to fire only for cause are provided by the Charter Amendment, which was passed last year and is already in law.

>

> Best,

> Oliver

>

> -----Original Message-----

> From: Diane Sanchez

> Sent: Thursday, February 16, 2017 2:41 PM

> To: Luby, Oliver

> Subject: Police Commission Ordinance

>

> Hi,

> I'm not quite sure how to use the discussion site...

>

> This looks like a good ordinance but I have a couple of questions and a concern My questions are :

> The civil service commissions role(if any) when I served on the commission we had police officers appear before us regarding terminations or discipline , mostly around multiple car crashes etc. Is the commission in or out of this process?

> My other question is about the relationship to & with the union....nothing is mentioned about the commission or commissioners having or not having contact with the union.

>

> My concern is the authority to fire the police chief....I think that is the Mayors role.

> Diane Sanchez

> District 5

>

Comment of Anand Subramanian

I had a chance to review the Draft Police Commission Enabling Ordinance. Compared to the police oversight models I've studied, I think the oversight structures contemplated by this draft are quite strong. There will likely be hiccups and unforeseen gaps/loopholes, but I'm hopeful this model will give the Commission the access and authority to identify and address them as they emerge. The lack of transparency into personnel records will continue to pose barriers to transparency and accountability, but that must be addressed at the state level.

Best of luck,

Anand Subramanian

Executive Director

Blue Ribbon Panel on Transparency,
Accountability, and Fairness in Law Enforcement

<http://SFBlueRibbonPanel.com>

Comment of David Muhammed

I would like to officially submit the following statement for the record regarding the Enabling Ordinance for the Oakland Police Commission:

The City of Oakland is poised once again to be a leader in the nation with its new Police Commission, which will become a model oversight body in a new age of police accountability. I would like to thank the many community leaders and advocates who pushed for such a body to be created and ultimately the people of Oakland for approving the Police Commission ordinance which will make Oakland a more just, fair, and safe city.

I would also like to thank City Councilmembers Kalb and Gallo for introducing the Enabling Ordinance to implement the Police Commission. I want to especially endorse the inclusion of a Civilian Inspector General. This provision of the Enabling Ordinance will ensure an independent and credible professional will have authority to investigate matters within the Police Department. The Oakland Police Department is on the verge of becoming a model of reform for the country and the new Police Commission gets us even closer.

There have been very good suggested amendments to the Enabling Ordinance provided by residents and informed advocacy groups, which I support. I appreciate the authors for accepting many of these amendments. I therefore fully support this Enabling Ordinance and look forward to its passage.

David Muhammad,
Executive Director
National Institute for Criminal Justice Reform (NICJR)
www.nicjr.org

SHOWS REVISIONS MADE TO THE VERSION POSTED FOR PUBLIC COMMENT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

ON FEB. 6, 2017

2017 JUN -1 PM 5:07

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBERS KALB AND GALLO

CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

~~DRAFT~~

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

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ON FEB. 6, 2017**

WHEREAS, In January 2003, the City entered into a Negotiated Settlement Agreement (hereinafter, NSA) with multiple plaintiffs who sued the City, alleging that Police Department officers violated plaintiffs' civil rights. Since implementation of the NSA, a federal monitoring team has audited – and continues to audit – the Department's progress in complying with each of the fifty-two (52) tasks identified in the NSA; and

WHEREAS, While some important progress has been made in recent years, public perception persists that the Department and the City do not adequately hold its officers accountable for misconduct, leading to an erosion of public trust in this process; and

WHEREAS, Maintaining public trust and confidence in the Police Department is essential for the Department to be able to provide the highest level of service to the community. In order to increase the public trust and confidence in the Department, improvements should be made to the processes for providing Department oversight and accountability. Appointing qualified members of the public to a Police Commission (hereinafter, Commission), entrusting the Commission with oversight of the Department and requiring the Commission to hold public hearings all would increase public transparency, which in turn would build a higher level of trust and confidence in the services provided by the Department; and

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

WHEREAS, The National Association for Civilian Oversight of Law Enforcement, a nonprofit organization dedicated to promoting greater police accountability through the establishment or improvement of citizen oversight agencies, provides various resources on its website, including recommended standards and practices, which include the Police Oversight Principles of European Partners Against Corruption, which provides numerous recommendations for police oversight bodies including that they: (1) have independence from the executive branch of government; (2) are sufficiently separate from the hierarchy of the police subject to their oversight; (3) are governed by persons who are not currently serving as police officers; (4) have adequate finances and resources to perform their functions; (5) have full investigative powers regarding police misconduct allegations; and (6) are representative of a diverse population; and

WHEREAS, 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

**SHOWS REVISIONS MADE TO THE VERSION POSTED FOR PUBLIC COMMENT
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establishment of the ~~Oakland~~ Police Commission and the Community Police Review Agency and disbanding the Citizens' Police Review Board; and

WHEREAS, An enabling ordinance is a vital companion for implementation of ~~the Charter Amendment Measure LL, passed by the voters;~~, because it provides more detailed information about the functions and duties of the Commission and Agency; and also because an enabling ordinance provides direction to the Commissioners and Agency staff regarding the operation of their respective entities; and

~~WHEREAS, [PENDING]; and~~

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

WHEREAS, The July 2016 Report of Blue Ribbon Panel on Transparency, Accountability, and Fairness in Law Enforcement, established in 2015 as an advisory body to the San Francisco District Attorney's office, recommended the establishment of an independent Office of the Inspector General for San Francisco's Police Department; and

WHEREAS, The establishment of the Commission creates an additional potential forum for the input of the Community Policing Advisory Board to be received;

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~~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 Title 2 of the Oakland Municipal Code~~ is amended to add Chapter 2.45, *Oakland Police Commission*, which shall read as follows:

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ON FEB. 6, 2017

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:

“Ad hoc committee” shall mean a temporary committee formed by the Commission comprised of less than a quorum of Commission members to address a specific issue.

“Agency” shall mean the Community Police Review ~~Police~~ Agency.

“Appointing Authority” shall mean the Selection Panel established by ~~Section~~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~~act that violates, and/or his or her failure to act in violation of, the Department’s policies, procedures or directives, including without limitation the Department’s Manual of Rules.

“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~~preclude active law enforcement personnel, or a member or employee of the Department, from successfully fulfilling the responsibilities of their job classification. Examples include those crimes that involve violence, intimidation, threats, sexual offenses, theft, dishonesty, possession of drugs, ~~violations~~purchase, ownership or possession of a firearm in violation of California Penal Code ~~Section~~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 of Police Commission & Repeal of Citizens’ Police Review Board.

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ON FEB. 6, 2017**

Oakland City Charter Section 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.

2.45.025 – Conflict of Interest.

The following persons shall not be eligible to serve as a Commissioner or as a member of the Selection Panel:

- A. Any attorney who represents a person or entity with a pending claim or lawsuit against the Department; or
- B. Any attorney who represented a person or entity that filed a claim or lawsuit against the Department and that claim or lawsuit was finally resolved during the previous year.

This section shall not apply to the Selection Panel members already appointed on the effective date of this Chapter 2.45.

2.45.030 – Selection Panel.

- A. To the extent practicable and with the exception of the first Selection Panel previously formed under City Charter section 604(c)(3), the Mayor and the City Council shall use best efforts to appoint individuals to the Selection Panel who are broadly representative of Oakland's diversity and who represent communities experiencing the most frequent contact with the Department.
- B. Selection Panel members shall be residents of Oakland.
- C. The City Administrator shall post on the City's website the names of all Selection Panel members within four (4) business days of their appointment(s) being received by the City Clerk.
- D. The Selection Panel, with the assistance of the City Administrator, shall determine how to solicit candidates for the positions of Commissioner and alternate, and shall determine, consistent with City Charter section 604, what information candidates must submit as part of their applications.
- E. In accord with the City's record retention schedule, the Selection Panel shall maintain all electronic communications to, from and/or copied to any Selection Panel member regarding any matters within the Selection Panel's jurisdiction, and provide such communications to the City upon request.

2.45.040 - Bylaws and Rules.

The Commission may prepare its own Bylaws to govern its operations. Any such Bylaws shall be approved by a vote of not less than five (5) affirmative votes.

2.45.0402.45.050 – Designation of Alternates as Voting Members

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ON FEB. 6, 2017**

The Chair of the Commission may, in his or her discretion, designate an alternate as a temporary voting member if a Commissioner is absent from a meeting. Consistent with section 604 of the City Charter, there shall not be more than seven (7) voting members of the Commission at any given time.

2.45.060 – Background Checks.

In accordance with federal and state law, a background check shall be performed on the Mayor's and the Selection Panel's final candidates for the position of Commissioner and alternate before ~~his or her name is~~ their names are 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~~ search.

~~The results of each background check~~ The results of the background check identified in subsection (A) above shall be treated as public records. The results of each criminal records search shall be disclosed only to the Appointing Authority that is considering the Commissioner or alternate, and shall remain confidential to the greatest extent permitted by law. The Appointing Authority may use the results of the ~~background check~~ criminal records search solely for the purpose of evaluating the candidates for Commissioner and alternate. Nothing in this Chapter 2.45 shall be construed to require the Selection Panel or the Mayor to disqualify an applicant because of the results of the criminal records search.

2.45.050070 – Functions and Duties of the Commission.

In addition to the powers and duties described in ~~Section~~ section 604 of the Oakland City Charter, the Commission shall:

- A. ~~In cooperation~~ accord with the Chief, ~~ensure that~~ City's record retention schedule, maintain all ~~sworn employees~~ electronic communications to, from and/or copied to any Commissioner or alternate regarding any matters within the Commission's jurisdiction, and provide such communications to the City upon request.
- B. Maintain the confidentiality of the Department ~~receive adequate~~ its business, including without limitation, the confidentiality of documents it creates or receives as permitted by the California Public Records Act (Cal. Gov't Code sec. 6250, *et seq.*), to the extent required by state and local law. A Commissioner's failure to maintain such confidentiality, whether or not intentional, may be considered "gross misconduct in office" for purposes of City Charter section 604(c)(10).
- A-C. Review and comment on the education and training the Department provides its sworn employees regarding the management of job-related stress, and regarding the signs and symptoms of post-traumatic stress disorder, drug and alcohol abuse,

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and other job-related mental and emotional health issues. The Commission shall provide any recommendations for more or different education and training to the Chief who shall respond in writing.

~~B-D.~~ 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 (AC) above.

~~C-E.~~ Notwithstanding ~~Section~~ section 2.29.020 of the Oakland Municipal Code and in accordance with ~~Section~~ 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 any of the following:

1. Continuing, intentional, or willful failure or refusal to perform the duties and responsibilities of the Chief of Police as required by any employment agreement with the City, the City Charter, the City's governing laws and regulations, or any laws, rules or regulations of any governmental entity applicable to the Chief's employment by the City or to City operations, including without limitation, the inability to perform the duties and responsibilities of the Chief of Police as aforementioned as a result of alcoholism or drug addiction; or

~~1.2.~~ ~~Gross neglect of duties or serious violations,~~ material violation of any duty of loyalty to the City, or material violation of City or Department policy, including without limitation any policies or procedures pertaining to harassment and discrimination, 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

3. Conviction by, or entry of a plea of guilty or *nolo contendere*, in a court of competent and final jurisdiction for (a) any crime involving moral turpitude, (b) any felony offense, (c) any crime which is likely to have a material adverse impact on the business operations or financial or other condition of the City, or (d) any crime which has resulted in imprisonment; or

4. Failure or refusal to cooperate with any ~~investigation~~ investigation 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 any Department ~~policies, procedures~~ policy or ~~General Orders~~ procedure; or

7. A material act of dishonesty, fraud, embezzlement, self-dealing, or other act of moral turpitude; or

8. A material breach of confidentiality; or

9. Loss of any professional license or other certification required by state or local law to perform the duties of the position of Chief of Police.

~~D-F.~~ Within one hundred and eighty ~~days~~ (180) days of the City Council's confirmation of the first group of Commissioners and alternates and on the

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anniversary of that date thereafter, notify the Chief regarding what information will be required in the Chief's annual report to the Commission- which shall include, at a minimum, the following:

- ~~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:
 - ~~2.1. 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;~~
 - ~~3.2. The number of pending investigations in IAD, and the types of Misconduct that are being investigated;~~
 - ~~4.3. The number of investigations completed by IAD, and the results of the investigations;~~
 - ~~5.4. The number of training sessions provided to Department sworn employees, and the subject matter of the training sessions;~~
 - ~~6.5. Revisions made to Department policies and general orders;~~
 - ~~6. The number of, and circumstances surrounding, location of officer-involved shootings, the results;~~
 - ~~7. The number of any Executive Force Review Board or Force Review Board hearings, and the results;~~
 - ~~7.8. A summary of the Department's monthly Use of Force Reports;~~
 - ~~8.9. Number of officers disciplined and the level of discipline imposed; and~~
 - ~~9.10. The number of closed investigations which did not result in discipline of the subject officer.~~~~~~

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- G. ~~Immediately~~ Conduct an annual performance review of the Inspector General. The Commission shall determine the criteria for evaluating the Inspector General's and the Agency Director's job performance, and communicate those performance criteria, in addition to any other job performance expectations, to both the Inspector General and the Agency Director one full year before conducting any evaluation of their job performances. The Commission may, in its discretion decide to solicit and consider, as part of its evaluation, comments and observations from the City Administrator and other City staff who are familiar with the Inspector General's and the Agency Director's job performance. Responses to the Commission's requests for comments and observations shall be strictly voluntary.
- H. 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.
- I. Provide policy guidelines to the Agency Director for assistance in determining case prioritization.
- J. Make available on its website, to the extent permitted by law:
1. The Commission's annual report;
 2. The Chief's annual report;
 3. The Agency's reports;
 4. The Agency Director's monthly reports; and
 5. The Inspector General's annual report.
- K. 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.
- L. Review the Agency's dismissal and/or administrative closure of all complaints involving Class I offenses, including any Agency investigative file regarding such complaints, and, in its discretion and by five (5) affirmative votes, direct the Agency to reopen the case and investigate the complaint. For purposes of this subsection, the definition of "Class I offenses" shall be the same as the definition of "Class I offenses" in the Department's Discipline Policy.
- M. In order for the Commission to have all information necessary to fulfill its duties under City Charter section 604(f)(1), direct the Chief to:
- ~~10.1.~~ Within forty-eight (48) hours of knowing or having a Reasonable Suspicion that a Serious Incident has occurred, **notify the Chair of the Commission, the Agency Director and the Inspector General of any Serious Incident.** For purposes of this subsection, "Reasonable Suspicion" shall mean that, from the totality of the circumstances, there is a specific, articulable, and objective basis for suspecting personnel of criminal activity. There must be specific facts beyond the mere allegation of criminal misconduct. **The Commission shall also direct the Chief to provide a confidential status report to the Chair of the Commission, the Agency Director and the Inspector General within ten (10) calendar days**

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of the date on which the Serious Incident occurred, and a second confidential status report to the Chair of the Commission, the Agency Director and the Inspector General within forty-five (45) calendar days of the date on which the Serious Incident occurred.

~~11.2.~~ Brief the Commission Chair, the Agency Director and the Inspector General at least once a month regarding allegations of all Serious Incidents under investigation.

~~12.~~ ~~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.N.~~ In association with the Agency Director and in consultation with the Chief or the Chief's designee, establish rules and procedures for the mediation and resolution of complaints of Misconduct.

~~M.O.~~ 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.

~~P.~~ Review and comment on the Department's policy and/or practice of publishing Department data sets and reports regarding various Department activities, submit its comments to the Chief, and request the Chief to consider its recommendations and respond to the comments in writing.

2.45.060080 – Access to Documents.

A. Subject to applicable law, the Commission and the Inspector General shall have access to all Department files and records, with the exception of personnel records, ~~in addition~~ and to all files and records of other City departments and agencies that are relevant and necessary to the performance of its duties. ~~In addition and subject~~

~~A.B.~~ Subject to applicable law, the Commission shall have access to all Department files and records, with the exception of personnel records, ~~in addition~~ and to all files and records of other City departments and agencies that are relevant to a Serious Incident. ~~However, Notwithstanding the Discipline Committees foregoing,~~ the Commission shall have access to all files, including the personnel records, necessary to ~~render a decision as~~ perform its duties described in City Charter section 604(g)(3) and in section ~~2.45.070(K)~~ of this Chapter of the Oakland Municipal Code.

C. ~~2.45.070~~ The Discipline Committees shall have access to all files, including personnel records, that are included in the Chief's and Agency's submissions, as described in City Charter section 604(g)(2) and in this Chapter 2.45.

D. The Inspector General shall have access to all files, including personnel records, that are necessary to perform his or her duties as described in this Chapter 2.45.

2.45.090 – Meetings

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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. Video recordings of all open sessions of Commission meetings shall be aired on KTOP-TV10.
- 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 offsite meetings shall be designated special meetings subject to the ten-day agenda notice requirement 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~~solicit community testimony and other input 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.
- C. "Final actions," as defined by state and local open meeting laws, taken by the Commission in closed session shall be publicly reported with the vote or abstention on that action of every member present.

2.45.080100 - Office of Inspector General.

Within ~~sixty (60)~~one hundred and eighty (180) days after the City Council's confirmation of the first group of Commissioners and alternates, there shall be established ~~in~~, under the City government purview of the Commission, a civilian Office of Inspector General for the Department (hereinafter referred to as "OIG"). Within one (1) year after the City Council's confirmation of the first group of Commissioners and alternates, the Department's internal Office of Inspector General shall be renamed. The Commission, ~~with the assistance of the City Administrator,~~ shall be responsible for oversight of the OIG.

- 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

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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 City Charter ~~Section~~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 2.45.090120 below, including budgeting one (1) full-time staff position comparable to the position of Police Program and Audit Supervisor. All OIG staff, ~~other than~~including the Inspector General, shall be civil service employees in accordance with Article IX of the City Charter, ~~and~~. All OIG staff shall report to the Inspector General. Except for the Inspector General, the Commission shall not have any authority to hire, supervise, evaluate or fire OIG staff.
- D. Within thirty (30) days after the first Inspector General is hired, the Policy Analyst then assigned to the Agency shall be transferred to the OIG.
 - 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.~~

2.45.090110 – Civilian Inspector General.

- A. Within one ~~hundred and eighty (180) days~~(1) year 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,~~ with the assistance of the Human Resources Management Department and in accordance with the City's Civil Service Rules, shall prepare a job description of job responsibilities and list of required qualifications for the position of Inspector General ~~shall be developed jointly by civilian Inspector General. After all required approvals have been obtained for adding this position to the City's Classification Plan (as defined by the City's Civil Service Rules), the Commission and, with the assistance of the City Administrator. The City Administrator, shall hire~~ be responsible for hiring the first and 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 2.45.030060 above before hiring except that the results of the background check shall be submitted only to the Commission.~~
- B. Within ninety (90) days of his or her appointment, the Inspector General shall, at a minimum, receive the training described in City Charter section 604(c)(9) and in section 2.45.190(A) through (F) of this Chapter 2.45. The Commission may require any additional training it deems necessary for the Inspector General to perform the functions and duties of the OIG.

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- ~~A.~~ The Inspector General shall report to the Commission and the City Administrator.
- ~~B.C.~~ The Inspector General shall serve at the pleasure of the Commission, and may only be removed by according to the City's Civil Service Rules and any applicable memorandum of understanding between the City and a union, after 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.D.~~ The Inspector General shall be classified as a department head, and shall be responsible for the day-to-day operations of the OIG, including but not limited to the supervision and direction of all staff. The Commission shall periodically conduct a performance evaluation of the Inspector General-OIG staff.
- E. The Inspector General shall be permitted to attend, as an observer, Executive Force Review Board, Force Review Board, and, to the extent permitted by law, *Skelly* hearings if he or she chooses to do so. The Inspector General shall not have any decision-making authority regarding the specific cases being heard, and shall maintain the confidentiality of the hearings as required by law. The Inspector General shall not be permitted to attend any Executive Force Review Board, Force Review Board, or *Skelly* hearing until he or she has completed the training identified in section 2.45.100190(C).

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

The functions and duties of the Office of Inspector General shall include, without limitation:

- 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 any early warning system(s); and
 6. Training and/or policy issues that arise during the investigations of complaints; and
 - ~~6.7.~~ Trends and patterns regarding use of force and officer-involved shootings.
- This annual report shall be presented to the Commission, the Mayor, the City Council's Public Safety Committee, the City Council 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

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- 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.

2.45.140130- 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~~ Committees 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~~ 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 190(A) through (F).
- B. Membership in the ~~Discipline Committee~~ Committees shall rotate for each police officer discipline or termination case, as determined by the Chairperson of the Commission.

2.45.120140 - Discipline.

In accordance with ~~Section~~ 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~~ require

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the Chief and the Agency Director to provide any additional videotape ~~and/or~~, audiotape, and/or documents (including without limitation any existing transcripts of subject officer or witness interviews) from the Agency's and the Department's investigation files that it deems relevant to its deliberations, and shall also have the authority to require the Chief and the Agency Director, or their non-attorney designees, to appear before the Discipline Committee to present their findings and recommendations and to answer questions.

B. The record submitted to the Discipline Committee by the Chief regarding any Misconduct shall include the subject officer's history of discipline for the previous five (5) years. All documents submitted to the Discipline Committee by either the Agency Director or the Chief shall not include any redactions unless such redactions are required by law.

~~B-C.~~ 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-D.~~ 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~~ based solely on the record reviewed and considered by the Skelly Officer (which shall include the Notice of Intent to Discipline or Terminate with all attachments). The Discipline Committee shall also have the authority to require the Chief and the Agency Director, or their non-attorney designees, to appear before the Discipline Committee to present their recommendations and to answer questions. After determining the Final Discipline, the Discipline Committee shall direct the Chief to send a Notice of Discipline or Notice of Termination to the Subject Officer.

~~D-E.~~ The *Skelly* report shall be submitted to the Discipline Committee if the Discipline Committee decided the Proposed Discipline. The *Skelly* report shall also be submitted to the Chief and the Agency Director. The Discipline Committee shall consider the *Skelly* report in deciding the Final Discipline. After such

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determination, the Discipline Committee shall direct the Chief to send a Notice of Discipline or Notice of Termination to the Subject Officer.

F. After the Final Discipline has been determined by either the agreement of the Agency Director and the Chief, or by the Discipline Committee, and to the greatest extent permitted by law, the complainant(s) shall be informed of the disposition of the complaint.

~~E.G.~~ E.G. 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~~ Members of the Discipline Committee ~~may~~ shall not retain copies of the records they receive from the Chief and the Agency, nor shall they publicly comment about, ~~nor~~ discuss any personnel matter with anyone, including another member of the Discipline Committee, outside of Discipline Committee meetings, except as required by a valid subpoena. This subsection (G) shall not preclude any member of a Discipline Committee from participating in any grievance procedure, including without limitation testifying in an appeal before the Civil Service Board or an arbitration or other type of administrative hearing.

~~F.H.~~ F.H. The Subject Officer may appeal the imposition of discipline or termination to the Civil Service Board. In addition, the Subject Officer may grieve the imposition of discipline or termination as prescribed in a collective bargaining agreement.

2.45.130150 - 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. City Council approval shall not be required for creating temporary or *ad hoc* committees.

2.45.140160 - Public Statements of the Commission

The Commission may authorize one of its members to 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 in a public meeting. Commissioners may publicly discuss their roles as Commissioners and the Commission's public and official business for the purpose of educating the community provided they adhere to the notice requirements of the Brown Act and Oakland's Sunshine Ordinance.

2.45.150170 - Election of Chairperson.

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

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2.45.160180 - Staff assistance.

- A. 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~~ section 604 of the City Charter.
- B. Pursuant to City Charter section 604(e)(5) and, to the extent practicable, within one (1) week of the City Council's confirmation of the first group of Commissioners and alternates, the City Administrator shall assign an administrative staff person to provide administrative support to the Commission and to act as liaison between the Commission and the City Administrator's office.
- C. At a minimum, the City Council shall allocate the equivalent of an additional one-half of a full-time administrative position (0.5 FTE) to the City budget for the purpose of providing adequate administrative support for the Commission. The administrative staff person described in this subsection (C) shall report to the Commission, and may only be removed according to the City's Civil Service Rules and any applicable memorandum of understanding between the City and a union, after an affirmative vote of five (5) members of the Commission. Upon a vacancy, the Commission shall have the authority to fill this position. The City's Department of Human Resources Management shall provide timely assistance to the Commission for this purpose.

2.45.170190 - Commissioner Training.

Within three (3) months of appointment, or as soon thereafter as possible, each Commissioner and alternate shall:

- A. Become familiar with City Charter section 604 and with Chapters 2.45 and 2.46 of the Oakland Municipal Code.
- B. Receive training in basic principles of constitutional due process and administrative hearing procedures;
- C. Receive training in the legal requirements for maintaining the confidentiality of personnel records and other confidential documents or information;
- D. 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
- E. Receive information regarding constitutional civil rights guaranteed to all citizens as such rights are affected by law enforcement-; and
- F. Receive training in the legal requirements of California's Political Reform Act (Cal. Gov't Code section 81000, *et seq.*), Oakland's Conflict of Interest Code (Oakland Municipal Code Chapter 3.16), California's Brown Act (Cal. Gov't Code section 54950, *et seq.*), Oakland's Sunshine Ordinance (Oakland Municipal Code Chapter 2.20), and California's Public Records Act (Cal. Gov't Code section 6250, *et seq.*).

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In addition, within twelve (12) months of appointment, or as soon thereafter as possible, each Commissioner and alternate shall:

- ~~F.G.~~ Receive the training and orientation specified by ~~Section~~section 604(c)(9) of the City Charter;
- ~~G.H.~~ Complete the ~~Citizens'~~Citizens' Police Academy and participate in a Department "ride-along;²²." Upon request of the Commission, and with concurrence by the Chief, Commissioners may attend an abbreviated citizen police academy in lieu of the full Citizens' Police Academy;
- ~~H.I.~~ Complete the Department's ~~Procedural Justice Training~~, Implicit Bias Training, and Crisis Intervention Training;
- ~~H.J.~~ Complete Peace Officer Standards and Training (POST) Learning Domains 15 (Laws of Arrest) and 16 (Search and Seizure); and
- K. Receive training regarding racial equity.

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. Within the Commission's budget there shall be a line item for attendance at conferences offered by organizations such as the National Association for Civilian Oversight of Law Enforcement ("NACOLE").

2.45.180200 - 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.

2.45.190210 - Authority of Public Ethics Commission.

If either the ~~Agency~~Commissioner or the Inspector General does not receive the files and records requested pursuant to ~~Section~~section 604(f)(2) of the City Charter or pursuant to this Chapter 2.45 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~~section 604(f)(2) of the City Charter- or this Chapter 2.45. 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.

2.45.200220 - 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.

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~~SECTION~~**SECTION 3.** ~~Chapter 2.46 is hereby added to~~ Title 2 of the Oakland Municipal Code ~~is~~ amended to add Chapter 2.46, *Community Police Review Agency*, which shall 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 Police 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 affirmative act that violates, and/or his or her failure to act in violation of,~~ the Department’s policies, procedures or directives, including without limitation the Department’s Manual of Rules.

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

2.46.020– Creation

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

Oakland City Charter section 604 has established the Community Police Review Agency. It is in the public interest to facilitate the Agency’s receipt of public complaints regarding the alleged Misconduct of police officers. Thus, some of the Agency staff should be located in a street-level or ground-floor, visible office that is accessible by public transportation. The Commission, in consultation with the Agency Director, shall determine the number of existing Agency staff who would work at such a location. Hours of operation for this location shall be clearly posted on the office door and inside the office. The address of this office location, together with hours of operation and a telephone number shall be posted on the City’s website and on the Agency’s website.

2.46.030 – Functions and duties.

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

- A. Use the same complaint form as used by the Department in receiving all public complaints concerning alleged Misconduct, including complaints from

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- 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 accepting the online filing of complaints and attachments via 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. Request the Commission to issue a subpoena, in accordance with City Charter section 604(b)(3), to compel a Subject Officer and any other sworn employee of the Department to fully cooperate with an Agency investigation. The Chief shall order all officers subject to any subpoena issued by the Commission to comply with all requirements of the subpoena.
- E. Videotape the interviews of all Subject Officers who are alleged to have committed a Class I offense. For purposes of this subsection, the definition of "Class I offense" shall be the same as the definition of "Class I offense" in the Department's Discipline Policy.
-
- F. Request, without requiring, that the complainant(s) and witnesses agree to be videotaped if, in the Agency's discretion, its investigation would benefit from such videotaping.
- D.G. In consultation with and upon 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.H. 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 and the identification of the Council District from which the complaint originated;
 2. The demographic profiles of the complainants to the extent that information exists or is voluntarily provided by the complainants;
 - ~~2-3.~~ 3. The number of the Agency's pending investigations, and the types of ~~Police Officer~~ police officer Misconduct that is being investigated;
 - ~~3-4.~~ 4. The number of investigations completed by the Agency, the results of the investigations, and the amount of time spent on the investigations;
 - ~~4-5.~~ 5. The number of officers ~~disciplined~~ for whom sustained findings of Misconduct were made and the level of discipline ~~imposed~~ and proposed;
 6. The number of closed investigations which did not result in sustained findings and/or discipline of the ~~subject officer~~ Subject Officer;
 7. The number of cases referred to mediation; and
 - ~~5-8.~~ 8. The number of cases in which the Agency failed to meet (a) the one-hundred-and-eighty-day (180) goal specified by City Charter section

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604(f)(3), and/or (b) the deadline specified by California Government Code section 3304.

2.46.040 – Agency Director.

The Agency Director shall report to the Commission, and 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. Reporting to the Commission once a month regarding the Agency's pending cases. The following information shall be included in the Agency Director's monthly written report:
 - 1. The case number;
 - 2. The name of the complainant;
 - 3. The initials of the investigator assigned to investigate the complaint;
 - 4. The date the complaint was filed with the Agency and the date the complaint was filed with the Department's Internal Affairs Division;
 - 5. The date by which the investigation must be completed if the Agency is to meet the one-hundred-and-eighty-day (180) goal specified by City Charter section 604(f)(3);
 - 6. The deadline by which the investigation must be completed, as specified by California Government Code section 3304;
 - 7. The date of the incident that is the subject of the complaint; and
 - 8. If City Charter section 604(f)(1) requires the Agency to investigate the complaint, whether the complaint involves 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. If City Charter section 604(f)(1) does not require the Agency to investigate the complaint, a brief, general description of the type of complaint. This brief, general description must be similar in length and generality to the description of the types of complaints the Agency is required to investigate, as stated in City Charter section 604(f)(1); and
 - 9. The number of times the Department and/or Department employee has refused to comply with a written request for information or valid subpoena.
- D.E. Conducting annual job performance evaluations of all Agency staff;
- E.F. Responding to questions and issues raised by the public, as permitted by applicable law; and
- F.G. Any other duties assigned by the Commission, consistent with the Agency's powers and duties as described in Section section 604 of the City Charter and subject to any constraints imposed by the Agency's budget.

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2.46.050 – Background Checks.

In accordance with federal and state law and consistent with ~~Section~~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~~search.

The results of the background checks may be used solely for the purpose of evaluating the candidates for the Agency Director and for Agency investigator.

2.46.060 – Mediation Program.

Upon the agreement of the Chief, the Agency Director, the complainant(s) and the Subject Officer(s), the Agency Director shall appoint a qualified mediator with at least five (5) years of experience in mediating employment or other relevant disputes, from a conflict resolution company or association that employs mediators, to mediate a final and binding resolution of the complaint in accordance with the Commission's established rules and procedures. ~~No~~Any Commissioner, City employee, or former Department sworn officer ~~may~~shall not be appointed mediator. Both the Chief and the Agency Director must approve of any settlement offer before it is proposed to the subject officer and/or before any such offer is accepted.

2.46.070 – Authority of Public Ethics Commission.

If the Agency does not receive the files and records requested pursuant to ~~Section~~section 604(f) of the City Charter or pursuant to this Chapter 2) ~~of the City Charter.~~45 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~~section 604(f)(2) of the City Charter or this Chapter 2.45. 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.~~

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~~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 65. 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 76. 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:

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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: _____

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2017 JUN -1 PM 5:07

APPROVED AS TO FORM AND LEGALITY



CITY ATTORNEY'S OFFICE

INTRODUCED BY COUNCILMEMBERS KALB AND GALLO

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ADOPT AN 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 (3) REQUIRING AN ANNUAL REPORT AND PRESENTATION BY THE COMMUNITY POLICING ADVISORY BOARD TO THE COMMISSION

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

WHEREAS, In January 2003, the City entered into a Negotiated Settlement Agreement (hereinafter, NSA) with multiple plaintiffs who sued the City, alleging that Police Department officers violated plaintiffs' civil rights. Since implementation of the NSA, a federal monitoring team has audited – and continues to audit – the

Department's progress in complying with each of the fifty-two (52) tasks identified in the NSA; and

WHEREAS, While some important progress has been made in recent years, public perception persists that the Department and the City do not adequately hold its officers accountable for misconduct, leading to an erosion of public trust in this process; and

WHEREAS, Maintaining public trust and confidence in the Police Department is essential for the Department to be able to provide the highest level of service to the community. In order to increase the public trust and confidence in the Department, improvements should be made to the processes for providing Department oversight and accountability. Appointing qualified members of the public to a Police Commission (hereinafter, Commission), entrusting the Commission with oversight of the Department and requiring the Commission to hold public hearings all would increase public transparency, which in turn would build a higher level of trust and confidence in the services provided by the Department; and

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

WHEREAS, The National Association for Civilian Oversight of Law Enforcement, a nonprofit organization dedicated to promoting greater police accountability through the establishment or improvement of citizen oversight agencies, provides various resources on its website, including recommended standards and practices, which include the Police Oversight Principles of European Partners Against Corruption, which provides numerous recommendations for police oversight bodies including that they: (1) have independence from the executive branch of government; (2) are sufficiently separate from the hierarchy of the police subject to their oversight; (3) are governed by persons who are not currently serving as police officers; (4) have adequate finances and resources to perform their functions; (5) have full investigative powers regarding police misconduct allegations; and (6) are representative of a diverse population; and

WHEREAS, 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 Police Commission and the Community Police Review Agency and disbanding the Citizens' Police Review Board; and

WHEREAS, An enabling ordinance is a vital companion for implementation of Measure LL, passed by the voters, because it provides more detailed information about the functions and duties of the Commission and Agency, and also because an enabling ordinance provides direction to the Commissioners and Agency staff regarding the operation of their respective entities; and

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

WHEREAS, The July 2016 Report of Blue Ribbon Panel on Transparency, Accountability, and Fairness in Law Enforcement, established in 2015 as an advisory body to the San Francisco District Attorney's office, recommended the establishment of an independent Office of the Inspector General for San Francisco's Police Department; and

WHEREAS, The establishment of the Commission creates an additional potential forum for the input of the Community Policing Advisory Board to be received;

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. Title 2 of the Oakland Municipal Code is amended to add Chapter 2.45, *Oakland Police Commission*, which shall 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:

“Ad hoc committee” shall mean a temporary committee formed by the Commission comprised of less than a quorum of Commission members to address a specific issue.

“Agency” shall mean the Community Police Review 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 act that violates, and/or his or her failure to act in violation of, the Department’s policies, procedures or directives, including without limitation the Department’s Manual of Rules.

“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 preclude active law enforcement personnel, or a member or employee of the Department, from successfully fulfilling the responsibilities of their job classification. Examples include those crimes that involve violence, intimidation, threats, sexual offenses, theft, dishonesty, possession of drugs, purchase, ownership or possession of a firearm in violation 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 of Police Commission & Repeal of Citizens’ Police Review Board.

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.

2.45.025 – Conflict of Interest.

The following persons shall not be eligible to serve as a Commissioner or as a member of the Selection Panel:

- A. Any attorney who represents a person or entity with a pending claim or lawsuit against the Department; or

- B. Any attorney who represented a person or entity that filed a claim or lawsuit against the Department and that claim or lawsuit was finally resolved during the previous year.

This section shall not apply to the Selection Panel members already appointed on the effective date of this Chapter 2.45.

2.45.030 – Selection Panel.

- A. To the extent practicable and with the exception of the first Selection Panel previously formed under City Charter section 604(c)(3), the Mayor and the City Council shall use best efforts to appoint individuals to the Selection Panel who are broadly representative of Oakland's diversity and who represent communities experiencing the most frequent contact with the Department.
- B. Selection Panel members shall be residents of Oakland.
- C. The City Administrator shall post on the City's website the names of all Selection Panel members within four (4) business days of their appointment(s) being received by the City Clerk.
- D. The Selection Panel, with the assistance of the City Administrator, shall ~~determine how to solicit candidates for the positions of Commissioner and~~ alternate, and shall determine, consistent with City Charter section 604, what information candidates must submit as part of their applications.
- E. In accord with the City's record retention schedule, the Selection Panel shall maintain all electronic communications to, from and/or copied to any Selection Panel member regarding any matters within the Selection Panel's jurisdiction, and provide such communications to the City upon request.

2.45.040 - Bylaws and Rules.

The Commission may prepare its own Bylaws to govern its operations. Any such Bylaws shall be approved by a vote of not less than five (5) affirmative votes.

2.45.050 – Designation of Alternates as Voting Members

The Chair of the Commission may, in his or her discretion, designate an alternate as a temporary voting member if a Commissioner is absent from a meeting. Consistent with section 604 of the City Charter, there shall not be more than seven (7) voting members of the Commission at any given time.

2.45.060 – Background Checks.

In accordance with federal and state law, a background check shall be performed on the Mayor's and the Selection Panel's final candidates for the position of Commissioner and alternate before their names are 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 search.

The results of the background check identified in subsection (A) above shall be treated as public records. The results of each criminal records search shall be disclosed only to the Appointing Authority that is considering the Commissioner or alternate, and shall remain confidential to the greatest extent permitted by law. The Appointing Authority may use the results of the criminal records search solely for the purpose of evaluating the candidates for Commissioner and alternate. Nothing in this Chapter 2.45 shall be construed to require the Selection Panel or the Mayor to disqualify an applicant because of the results of the criminal records search.

2.45.070 – 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 accord with the City’s record retention schedule, maintain all electronic communications to, from and/or copied to any Commissioner or alternate regarding any matters within the Commission’s jurisdiction, and provide such communications to the City upon request.
- B. Maintain the confidentiality of its business, including without limitation, the confidentiality of documents it creates or receives as permitted by the California Public Records Act (Cal. Gov’t Code sec. 6250, *et seq.*), to the extent required by state and local law. A Commissioner’s failure to maintain such confidentiality, whether or not intentional, may be considered “gross misconduct in office” for purposes of City Charter section 604(c)(10).
- C. Review and comment on the education and training the Department provides its sworn employees 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. The Commission shall provide any recommendations for more or different education and training to the Chief who shall respond in writing.
- D. 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 (C) above.
- E. 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 any of the following:
 - 1. Continuing, intentional, or willful failure or refusal to perform the duties and responsibilities of the Chief of Police as required by any employment agreement with the City, the City Charter, the City’s governing laws and regulations, or any laws, rules or regulations of any governmental entity

applicable to the Chief's employment by the City or to City operations, including without limitation, the inability to perform the duties and responsibilities of the Chief of Police as aforementioned as a result of alcoholism or drug addiction; or

2. Gross neglect of duties, material violation of any duty of loyalty to the City, or material violation of City or Department policy, including without limitation any policies or procedures pertaining to harassment and discrimination, 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
3. Conviction by, or entry of a plea of guilty or *nolo contendere*, in a court of competent and final jurisdiction for (a) any crime involving moral turpitude, (b) any felony offense, (c) any crime which is likely to have a material adverse impact on the business operations or financial or other condition of the City, or (d) any crime which has resulted in imprisonment; or
4. Failure or refusal to cooperate with any investigation 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 any Department policy or procedure; or
7. A material act of dishonesty, fraud, embezzlement, self-dealing, or other act of moral turpitude; or
8. A material breach of confidentiality; or
9. Loss of any professional license or other certification required by state or local law to perform the duties of the position of Chief of Police.

F. Within one hundred and eighty (180) days 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 which shall include, at a minimum, the following:

1. 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;
2. The number of pending investigations in IAD, and the types of Misconduct that are being investigated;
3. The number of investigations completed by IAD, and the results of the investigations;
4. The number of training sessions provided to Department sworn employees, and the subject matter of the training sessions;
5. Revisions made to Department policies;
6. The number and location of officer-involved shootings;
7. The number of Executive Force Review Board or Force Review Board hearings, and the results;
8. A summary of the Department's monthly Use of Force Reports;

9. Number of officers disciplined and the level of discipline imposed; and
 10. The number of closed investigations which did not result in discipline of the subject officer.
- G. Conduct an annual performance review of the Inspector General. The Commission shall determine the criteria for evaluating the Inspector General's and the Agency Director's job performance, and communicate those performance criteria, in addition to any other job performance expectations, to both the Inspector General and the Agency Director one full year before conducting any evaluation of their job performances. The Commission may, in its discretion decide to solicit and consider, as part of its evaluation, comments and observations from the City Administrator and other City staff who are familiar with the Inspector General's and the Agency Director's job performance. Responses to the Commission's requests for comments and observations shall be strictly voluntary.
- H. 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.
- I. Provide policy guidelines to the Agency Director for assistance in determining case prioritization.
- J. Make available on its website, to the extent permitted by law:
1. The Commission's annual report;
 2. The Chief's annual report;
 3. The Agency's reports;
 4. The Agency Director's monthly reports; and
 5. The Inspector General's annual report.
- K. 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.
- L. Review the Agency's dismissal and/or administrative closure of all complaints involving Class I offenses, including any Agency investigative file regarding such complaints, and, in its discretion and by five (5) affirmative votes, direct the Agency to reopen the case and investigate the complaint. For purposes of this subsection, the definition of "Class I offenses" shall be the same as the definition of "Class I offenses" in the Department's Discipline Policy.
- M. In order for the Commission to have all information necessary to fulfill its duties under City Charter section 604(f)(1), direct the Chief to:
1. Within forty-eight (48) hours of knowing or having a Reasonable Suspicion that a Serious Incident has occurred, notify the Chair of the Commission, the Agency Director and the Inspector General. For purposes of this subsection, "Reasonable Suspicion" shall mean that, from the totality of the circumstances, there is a specific, articulable, and objective basis for suspecting personnel of criminal activity. There must be specific facts beyond the mere allegation of criminal misconduct. The

Commission shall also direct the Chief to provide a confidential status report to the Chair of the Commission, the Agency Director and the Inspector General within ten (10) calendar days of the date on which the Serious Incident occurred, and a second confidential status report to the Chair of the Commission, the Agency Director and the Inspector General within forty-five (45) calendar days of the date on which the Serious Incident occurred.

2. Brief the Commission Chair, the Agency Director and the Inspector General at least once a month regarding allegations of all Serious Incidents under investigation.
- N. In association with the Agency Director and in consultation with the Chief or the Chief's designee, establish rules and procedures for the mediation and resolution of complaints of Misconduct.
- O. 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.
- P. Review and comment on the Department's policy and/or practice of publishing Department data sets and reports regarding various Department activities, submit its comments to the Chief, and request the Chief to consider its recommendations and respond to the comments in writing.

2.45.080 – Access to Documents.

- A. Subject to applicable law, the Commission and the Inspector General shall have access to all Department files and records, with the exception of personnel records, and to all files and records of other City departments and agencies that are relevant and necessary to the performance of its duties.
- B. Subject to applicable law, the Commission shall have access to all Department files and records, with the exception of personnel records, and to all files and records of other City departments and agencies that are relevant to a Serious Incident. Notwithstanding the foregoing, the Commission shall have access to the personnel records necessary to perform its duties described in City Charter section 604(g)(3) and in section 2.45.070(K) of this Chapter of the Oakland Municipal Code.
- C. The Discipline Committees shall have access to all files, including personnel records, that are included in the Chief's and Agency's submissions, as described in City Charter section 604(g)(2) and in this Chapter 2.45.
- D. The Inspector General shall have access to all files, including personnel records, that are necessary to perform his or her duties as described in this Chapter 2.45.

2.45.090– 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. Video recordings of all open sessions of Commission meetings shall be aired on KTOP-TV10.
- 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 offsite meetings shall be designated special meetings subject to the ten-day agenda notice requirement 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 solicit community testimony and other input 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.
- C. "Final actions," as defined by state and local open meeting laws, taken by the Commission in closed session shall be publicly reported with the vote or abstention on that action of every member present.

2.45.100 - Office of Inspector General.

Within one hundred and eighty (180) days after the City Council's confirmation of the first group of Commissioners and alternates, there shall be established, under the purview of the Commission, a civilian Office of Inspector General for the Department (hereinafter referred to as "OIG"). Within one (1) year after the City Council's confirmation of the first group of Commissioners and alternates, the Department's internal Office of Inspector General shall be renamed. The Commission shall be responsible for oversight of the OIG.

- 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 policies and procedures, including any

- pattern of non-compliance with the foregoing, as necessary or helpful for the Commission to fulfill its duties under City 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 2.45.120 below, including budgeting one (1) full-time staff position comparable to the position of Police Program and Audit Supervisor. All OIG staff, including the Inspector General, shall be civil service employees in accordance with Article IX of the City Charter. All OIG staff shall report to the Inspector General. Except for the Inspector General, the Commission shall not have any authority to hire, supervise, evaluate or fire OIG staff.
 - D. Within thirty (30) days after the first Inspector General is hired, the Policy Analyst then assigned to the Agency shall be transferred to the OIG.

2.45.110 – Civilian Inspector General.

- A. Within one (1) year of the City Council's confirmation of the first group of Commissioners and alternates, the Commission, with the assistance of the Human Resources Management Department and in accordance with the City's Civil Service Rules, shall prepare a job description and list of required qualifications for the position of civilian Inspector General. After all required approvals have been obtained for adding this position to the City's Classification Plan (as defined by the City's Civil Service Rules), the Commission, with the assistance of the City Administrator, shall be responsible for hiring the first and all subsequent civilian Inspectors General. The Inspector General shall be subject to a background check as described in section 2.45.060 above before hiring except that the results of the background check shall be submitted only to the Commission.
- B. Within ninety (90) days of his or her appointment, the Inspector General shall, at a minimum, receive the training described in City Charter section 604(c)(9) and in section 2.45.190(A) through (F) of this Chapter 2.45. The Commission may require any additional training it deems necessary for the Inspector General to perform the functions and duties of the OIG.
- C. The Inspector General shall report to the Commission, and may only be removed according to the City's Civil Service Rules and any applicable memorandum of understanding between the City and a union, after an affirmative vote of five (5) members of the Commission. The City Administrator shall not have the authority to independently remove the Inspector General.
- D. The Inspector General shall be responsible for the day-to-day operations of the OIG, including but not limited to the supervision and direction of all OIG staff.
- E. The Inspector General shall be permitted to attend, as an observer, Executive Force Review Board, Force Review Board, and, to the extent permitted by law, *Skelly* hearings if he or she chooses to do so. The Inspector General shall not have any decision-making authority regarding the specific cases being heard, and shall maintain the confidentiality of the hearings as required by law. The Inspector General shall not be permitted to attend any Executive Force Review

Board, Force Review Board, or *Skelly* hearing until he or she has completed the training identified in section 2.45.190(C).

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

The functions and duties of the Office of Inspector General shall include, without limitation:

- 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 any early warning system(s);
 - 6. Training and/or policy issues that arise during the investigations of complaints; and
 - 7. Trends and patterns regarding use of force and officer-involved shootings. This annual report shall be presented to the Commission, the Mayor, the City Council's Public Safety Committee, the City Council 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 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.

2.45.130– 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 Committees 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 2.45.190(A) through (F).
- B. Membership in the Discipline Committees shall rotate for each police officer discipline or termination case, as determined by the Chairperson of the Commission.

2.45.140 – 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 require the Chief and the Agency Director to provide any additional videotape, audiotape, and/or documents (including without limitation any existing transcripts of subject officer or witness interviews) from the Agency’s and the Department’s investigation files that it deems relevant to its deliberations, and shall also have the authority to require the Chief and the Agency Director, or their non-attorney designees, to appear before the Discipline Committee to present their findings and recommendations and to answer questions.
- B. The record submitted to the Discipline Committee by the Chief regarding any Misconduct shall include the subject officer’s history of discipline for the previous five (5) years. All documents submitted to the Discipline Committee by either the Agency Director or the Chief shall not include any redactions unless such redactions are required by law.
- C. 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.

D. 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 based solely on the record reviewed and considered by the *Skelly* Officer (which shall include the Notice of Intent to Discipline or Terminate with all attachments). The Discipline Committee shall also have the authority to require the Chief and the Agency Director, or their non-attorney designees, to appear before the Discipline Committee to present their recommendations and to answer questions. After determining the Final Discipline, the Discipline Committee shall direct the Chief to send a Notice of Discipline or Notice of Termination to the Subject Officer.

E. The *Skelly* report shall be submitted to the Discipline Committee if the Discipline Committee decided the Proposed Discipline. The *Skelly* report shall also be submitted to the Chief and the Agency Director. 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.

F. After the Final Discipline has been determined by either the agreement of the Agency Director and the Chief, or by the Discipline Committee, and to the greatest extent permitted by law, the complainant(s) shall be informed of the disposition of the complaint.

G. 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. Members of the Discipline Committee shall not retain copies of the records they receive from the Chief and the Agency, nor shall they publicly comment about, or discuss any personnel matter with anyone, including another member of the Discipline Committee, outside of Discipline Committee meetings, except as required by a valid subpoena. This subsection (G) shall not preclude any member of a Discipline Committee from participating in any grievance procedure, including without limitation testifying in an appeal before the Civil Service Board or an arbitration or other type of administrative hearing.

- H. The Subject Officer may appeal the imposition of discipline or termination to the Civil Service Board. In addition, the Subject Officer may grieve the imposition of discipline or termination as prescribed in a collective bargaining agreement.

2.45.150– 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. City Council approval shall not be required for creating temporary or *ad hoc* committees.

2.45.160 - Public Statements of the Commission

The Commission may authorize one of its members to 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 in a public meeting. Commissioners may publicly discuss their roles as Commissioners and the Commission's public and official business for the purpose of educating the community provided they adhere to the notice requirements of the Brown Act and Oakland's Sunshine Ordinance.

2.45.170 - Election of Chairperson.

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

2.45.180 - Staff assistance.

- A. 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.
- B. Pursuant to City Charter section 604(e)(5) and, to the extent practicable, within one (1) week of the City Council's confirmation of the first group of Commissioners and alternates, the City Administrator shall assign an administrative staff person to provide administrative support to the Commission and to act as liaison between the Commission and the City Administrator's office.
- C. At a minimum, the City Council shall allocate the equivalent of an additional one-half of a full-time administrative position (0.5 FTE) to the City budget for the purpose of providing adequate administrative support for the Commission. The administrative staff person described in this subsection (C) shall report to the Commission, and may only be removed according to the City's Civil Service Rules and any applicable memorandum of understanding between the City and a

union, after an affirmative vote of five (5) members of the Commission. Upon a vacancy, the Commission shall have the authority to fill this position. The City's Department of Human Resources Management shall provide timely assistance to the Commission for this purpose.

2.45.190 – Commissioner Training.

Within three (3) months of appointment, or as soon thereafter as possible, each Commissioner and alternate shall:

- A. Become familiar with City Charter section 604 and with Chapters 2.45 and 2.46 of the Oakland Municipal Code.
- B. Receive training in basic principles of constitutional due process and administrative hearing procedures;
- C. Receive training in the legal requirements for maintaining the confidentiality of personnel records and other confidential documents or information;
- D. 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;
- ~~E. Receive information regarding constitutional civil rights guaranteed to all citizens as such rights are affected by law enforcement; and~~
- F. Receive training in the legal requirements of California's Political Reform Act (Cal. Gov't Code section 81000, *et seq.*), Oakland's Conflict of Interest Code (Oakland Municipal Code Chapter 3.16), California's Brown Act (Cal. Gov't Code section 54950, *et seq.*), Oakland's Sunshine Ordinance (Oakland Municipal Code Chapter 2.20), and California's Public Records Act (Cal. Gov't Code section 6250, *et seq.*).

In addition, within twelve (12) months of appointment, or as soon thereafter as possible, each Commissioner and alternate shall:

- G. Receive the training and orientation specified by section 604(c)(9) of the City Charter;
- H. Complete the Citizens' Police Academy and participate in a Department "ride-along." Upon request of the Commission, and with concurrence by the Chief, Commissioners may attend an abbreviated citizen police academy in lieu of the full Citizens' Police Academy;
- I. Complete the Department's Implicit Bias Training, and Crisis Intervention Training;
- J. Complete Peace Officer Standards and Training (POST) Learning Domains 15 (Laws of Arrest) and 16 (Search and Seizure); and
- K. Receive training regarding racial equity.

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. Within the Commission's budget there shall be a line item for attendance at conferences offered by

organizations such as the National Association for Civilian Oversight of Law Enforcement (“NACOLE”).

2.45.200 - 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.

2.45.210 – Authority of Public Ethics Commission.

If either the Commissioner or the Inspector General does not receive the files and records requested pursuant to section 604 of the City Charter or pursuant to this Chapter 2.45 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 as required by section 604 of the City Charter or this Chapter 2.45. 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.

2.45.220– 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. Title 2 of the Oakland Municipal Code is amended to add Chapter 2.46, *Community Police Review Agency*, which shall 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 Police Review Agency.

“Commission” shall mean the Oakland Police Commission.

“Department” shall mean the Oakland Police Department.

“Misconduct” shall mean both a police officer’s affirmative act that violates, and/or his or her failure to act in violation of, the Department’s policies, procedures or directives, including without limitation the Department’s Manual of Rules.

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

2.46.020– Creation

Oakland City Charter section 604 has established the Community Police Review Agency. It is in the public interest to facilitate the Agency’s receipt of public complaints regarding the alleged Misconduct of police officers. Thus, some of the Agency staff should be located in a street-level or ground-floor, visible office that is accessible by public transportation. The Commission, in consultation with the Agency Director, shall determine the number of existing Agency staff who would work at such a location. Hours of operation for this location shall be clearly posted on the office door and inside the office. The address of this office location, together with hours of operation and a telephone number shall be posted on the City’s website and on the Agency’s website.

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 are as follows:

-
- 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 accepting the online filing of complaints and attachments via 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. Request the Commission to issue a subpoena, in accordance with City Charter section 604(b)(3), to compel a Subject Officer and any other sworn employee of the Department to fully cooperate with an Agency investigation. The Chief shall order all officers subject to any subpoena issued by the Commission to comply with all requirements of the subpoena.
 - E. Videotape the interviews of all Subject Officers who are alleged to have committed a Class I offense. For purposes of this subsection, the definition of “Class I offense” shall be the same as the definition of “Class I offense” in the Department’s Discipline Policy.
 - F. Request, without requiring, that the complainant(s) and witnesses agree to be videotaped if, in the Agency’s discretion, its investigation would benefit from such videotaping.

- G. In consultation with and upon 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.
- H. 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 and the identification of the Council District from which the complaint originated;
 - 2. The demographic profiles of the complainants to the extent that information exists or is voluntarily provided by the complainants;
 - 3. The number of the Agency's pending investigations, and the types of police officer Misconduct that is being investigated;
 - 4. The number of investigations completed by the Agency, the results of the investigations, and the amount of time spent on the investigations;
 - 5. The number of officers for whom sustained findings of Misconduct were made and the level of discipline proposed;
 - 6. The number of closed investigations which did not result in sustained findings and/or discipline of the Subject Officer;
 - 7. The number of cases referred to mediation; and
 - 8. ~~The number of cases in which the Agency failed to meet (a) the one-hundred-and-eighty-day (180) goal specified by City Charter section 604(f)(3), and/or (b) the deadline specified by California Government Code section 3304.~~

2.46.040 – Agency Director.

The Agency Director shall report to the Commission, and 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. Reporting to the Commission once a month regarding the Agency's pending cases. The following information shall be included in the Agency Director's monthly written report:
 - 1. The case number;
 - 2. The name of the complainant;
 - 3. The initials of the investigator assigned to investigate the complaint;
 - 4. The date the complaint was filed with the Agency and the date the complaint was filed with the Department's Internal Affairs Division;
 - 5. The date by which the investigation must be completed if the Agency is to meet the one-hundred-and-eighty-day (180) goal specified by City Charter section 604(f)(3);

6. The deadline by which the investigation must be completed, as specified by California Government Code section 3304;
 7. The date of the incident that is the subject of the complaint; and
 8. If City Charter section 604(f)(1) requires the Agency to investigate the complaint, whether the complaint involves 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. If City Charter section 604(f)(1) does not require the Agency to investigate the complaint, a brief, general description of the type of complaint. This brief, general description must be similar in length and generality to the description of the types of complaints the Agency is required to investigate, as stated in City Charter section 604(f)(1); and
 9. The number of times the Department and/or Department employee has refused to comply with a written request for information or valid subpoena.
- E. Conducting annual job performance evaluations of all Agency staff;
 - F. Responding to questions and issues raised by the public, as permitted by applicable law; and
 - G. 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 search.

The results of the background checks may be used solely for the purpose of evaluating the candidates for the Agency Director and for Agency investigator.

2.46.060 – Mediation Program.

Upon the agreement of the Chief, the Agency Director, the complainant(s) and the Subject Officer(s), the Agency Director shall appoint a qualified mediator with at least five (5) years of experience in mediating employment or other relevant disputes, from a conflict resolution company or association that employs mediators, to mediate a final and binding resolution of the complaint in accordance with the Commission's established rules and procedures. Any Commissioner, City employee, or former Department sworn officer shall not be appointed mediator. Both the Chief and the Agency Director must approve of any settlement offer before it is proposed to the subject officer and/or before any such offer is accepted.

2.46.070 – Authority of Public Ethics Commission.

If the Agency does not receive the files and records requested pursuant to section 604 of the City Charter or pursuant to this Chapter 2.45 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 of the City Charter or this Chapter 2.45. 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 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 5. 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 6. 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: _____