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OAKLAND

2018 JUN -7 PM 5:26

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Stephanie Hom
Interim Assistant City
Administrator

SUBJECT: Police Commission Enabling
Ordinance

DATE: May 31, 2018

City Administrator Approval

Date:

6/7/18

RECOMMENDATION

Receive An Informational Report From the Police Commission On Its Comments To The City Council Regarding Measure LL – Police Commission Enabling Ordinance; and

Consider 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.

Staff recommends that the City Council take no action on this draft ordinance but rather adopt an ordinance that complies with the City Charter.

EXECUTIVE SUMMARY

Adoption of the draft ordinance of March 20, 2018 would be a violation of the City Charter and inconsistent with the City Attorney's legal opinion. This report provides the following content for the City Council's consideration:

Attachment A - Draft Ordinance (1) Enabling Implementation Of The City Charter Amendment Creating The Oakland Police Commission And The Community Police Review Agency, (2) Establishing A Civilian Inspector General, And (3) Requiring An Annual Report And Presentation By The Community Policing Advisory Board To The Commission, as last amended by the City Council at its meeting of March 20, 2018 and submitted to the Police Commission for review and comment.

Attachment B - Memorandum from the Oakland Police Commission to the Oakland City Council dated April 30, 2018 transmitting recommendations regarding the draft ordinance.

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Attachment C - Memorandum from the Selection Panel for the Police Commission to the Oakland City Council dated May 23, 2018 transmitting recommendations regarding the draft ordinance.

Attachment D - Legal Opinion from the City Attorney to President Reid and Members of the City Council regarding the Appointing Authority Over Staff to the Oakland Police Commission Item 11 on the Council's March 20, 2018 Agenda.

BACKGROUND/LEGISLATIVE HISTORY

On November 8, 2016, Oakland voters approved Measure LL with 83.19% (137,032 votes) in favor of the measure. Measure LL establishes a Police Commission to oversee the Police Department's policies and procedures, and a Community Police Review Agency (CPRA) to investigate police misconduct and recommend discipline. The Police Commission is comprised of seven regular and two alternate members. All commissioners are Oakland residents and serve in a volunteer capacity.

The Measure LL City Charter amendment allows for "enabling legislation" that furthers the goals and purposes of Measure LL. The City Council has discussed adopting enabling legislation and at its July 18, 2017 meeting, the Council directed the City Administrator to offer meet and confer with the applicable labor unions, as required by state law, over the relevant provisions of the draft Police Commission Enabling Ordinance; and to return to the City Council after the completion of the meet and confer process.

City staff facilitated the meet and confer process based on the July 18, 2017 draft Police Commission Enabling Ordinance, which has been concluded. The City Council heard the item at its Closed Session meeting on February 6, 2018.

At the March 20, 2018 City Council meeting, the City Council made changes to the draft ordinance prepared by the City Attorney's Office and submitted this draft to the Police Commission for review and comment within forty-five (45) days, consistent with the City Charter.

On April 30, 2018, the Police Commission transmitted its recommendations regarding the draft ordinance to the City Council via the City Clerk.

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ANALYSIS AND POLICY ALTERNATIVES

The City Attorney's Office has not approved the draft ordinance as to form and legality. The draft ordinance is inconsistent with the City Attorney's legal opinion dated March 20, 2018.

While the voter-approved Measure LL City Charter amendment partially exempts the Director of the CPRA from the appointing authority of the City Administrator, all other City positions fall under the City Administrator's appointing authority and the Police Commission Enabling Ordinance requires clarification to ensure this consistency and compliance with the City Charter.

FISCAL IMPACT

The complete fiscal impact associated with the implementation of Measure LL establishing the Police Commission and the draft Police Commission Enabling Ordinance is unknown. For the FY 2018-19 Mid-Cycle Budget Amendments, the Police Commission has requested a budget of \$126,000 that has been included in the FY 2018-19 Proposed Mid-Cycle Budget currently under deliberations by the City Council.

The draft Police Commission Enabling Ordinance includes several sections that reference the allocation of a sufficient budget for the following that are not clearly defined at this time:

1. Staff positions for the civilian Office of the Inspector General,
2. Staff positions and training to support the Police Commission, and
3. Additional staff positions to support the CPRA.

COORDINATION

This report was drafted in coordination of the Office of the City Attorney.

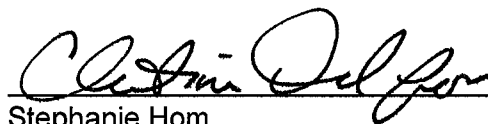
ACTION REQUESTED OF THE CITY COUNCIL

Receive An Informational Report From the Police Commission On Its Comments To The City Council Regarding Measure LL – Police Commission Enabling Ordinance; and

Consider 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.

Staff recommends that the City Council take no action on this draft ordinance but rather adopt an ordinance that complies with the City Charter.

Respectfully submitted,



Stephanie Hom
Interim Assistant City Administrator

Attachments (4):

- A. Draft Ordinance (1) Enabling Implementation Of The City Charter Amendment Creating The Oakland Police Commission And The Community Police Review Agency, (2) Establishing A Civilian Inspector General, And (3) Requiring An Annual Report And Presentation By The Community Policing Advisory Board To The Commission, as last amended by the City Council at its meeting of March 20, 2018 and submitted to the Police Commission for review and comment.
- B. Memorandum from the Oakland Police Commission to the Oakland City Council dated April 30, 2018 transmitting recommendations regarding the draft ordinance.
- C. Memorandum from the Selection Panel for the Police Commission to the Oakland City Council dated May 23, 2018 transmitting recommendations regarding the draft ordinance.
- D. Legal Opinion from the City Attorney to President Reid and Members of the City Council regarding the Appointing Authority Over Staff to the Oakland Police Commission Item 11 on the Council's March 20, 2018 Agenda.

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBERS KALB AND GALLO

CITY ATTORNEY'S OFFICE

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 communities of color, 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 component of 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 to serve 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 Department sworn employee’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.

“OIG” shall mean the civilian Office of Inspector General created by this Chapter 2.45.

“Serious Incident” shall mean a Department sworn employee-involved shooting, death or serious bodily harm caused by the action and/or inaction of a Department sworn employee, 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 sworn 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. With the exception of the first Selection Panel previously formed under City Charter section 604(c)(3), 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. To the extent required by law, the City will provide the employee unions with notice of such proposed bylaws prior to implementation.

2.45.045 – Confidentiality of Personnel Information.

The Commission, the Agency, the OIG and their staff shall maintain the confidentiality of Department sworn employee personnel records (as defined by California Penal Code section 832.7) as required by state and local law. Failure to maintain the confidentiality of Department sworn employee personnel records, whether or not intentional, may subject Commission, Agency and OIG staff to discipline, up to and including termination of employment.

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.

The results of the background check identified in subsection (A) above shall be treated as public records, and shall be considered by the appropriate Appointing Authority prior to submitting the names of the final candidates to the City Council for confirmation.

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 in accordance with state and local law, including without limitation, California Penal Code 832.7 and the California Public Records Act (Cal. Gov't Code sec. 6250, *et seq.*). 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 consistent with section 604(b)(6) of the Oakland City Charter.
- D. Prepare and deliver to the Mayor, the City Administrator and the Chief by April 30 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 two hundred and forty (240) 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 Department sworn employee-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 Department sworn employees disciplined and the level of discipline imposed; and
 10. The number of closed investigations which did not result in discipline of the Subject Officer.

The Chief's annual report shall not disclose any information in violation of state and local law regarding the confidentiality of personnel records, including but not limited to California Penal Code section 832.7.

G. Conduct an annual performance review of the Agency Director~~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~~her/his 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.

G.H. Provide annual comments, observations and assessments to the City Administrator regarding the Inspector General's job performance.

H.I. 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.

The City Attorney's semi-annual reports shall not disclose any information in violation of state and local law regarding the confidentiality of personnel records, including but not limited to California Penal Code section 832.7.

I.J. Provide policy guidelines to the Agency Director for assistance in determining case prioritization.

J.K. 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.

No information shall be distributed using any print media, or posted using any electronic media, in violation of state and local law regarding the confidentiality of personnel records, including but not limited to California Penal Code section 832.7.

- ~~K.L.~~ 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.M.~~ Review the Agency's dismissal and/or administrative closure of all complaints of Misconduct 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 request that the Chief to:
- ~~0.~~ 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 request that 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.
 - ~~0.~~ Brief the Commission Chair, the Agency Director and the Inspector General at least once a month regarding allegations of all Serious Incidents under investigation.
- ~~P.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. To the extent required by law,

the City will provide the employee unions with notice of such proposed bylaws prior to implementation.

Q.O. Receive 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.

R.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.

S.Q. Solicit and consider input from members of the public regarding the quality of their interactions with the Agency and the Commission.

2.45.075 – Serious Incidents.

Within forty-eight (48) hours of knowing or having a Reasonable Suspicion that a Serious Incident has occurred, the Chief or her or his designee shall 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 Chief or her or his designee shall also 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. The Chief or her or his designee shall also brief the Commission Chair, the Agency Director and the Inspector General at least once a month regarding allegations of all Serious Incidents under investigation.

*REVISION
MATTER?*

2.45.080 – Access to Documents.

A. Subject to applicable law, the Commission shall have access to all Agency and Department files and records, with the exception of personnel records, and to all files and records of other City offices, departments or agencies that are relevant and necessary to the performance of its duties, with the exception of personnel records.

- 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.
- E. The Commission and the OIG shall follow Department policies and procedures regarding the release of videotape and audio tape recordings of alleged Class 1 violations committed by police officers.
- F. To the extent possible, any confidential documents, files and records shall be made available to the Commissioners, the Inspector General and the Discipline Committees in electronic format on a secure server. Each individual who has access to this server shall have his or her own password. Each page of any printed copies of confidential documents, records or files shall bear a watermark consisting of the name of the individual for whom the printed copies are made. All such copies must be stored in a secure place, and must be shredded when no longer needed. Upon expiration of his or her term, a Commissioner must return to the City any and all copies of confidential materials that have not been shredded.

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 effective date of this Chapter 2.45, 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 OIG shall serve the Commission full time. ~~shall be responsible for oversight of the OIG.~~

A. The powers, functions and duties of the OIG shall be those assigned, or 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).

A.B. The Chief may assign a sworn Department employee to act as a liaison from the Department to the OIG.

~~B. The Chief shall assign a sworn Department employee 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 position and funding then assigned-budgeted to the Agency shall be transferred-reallocated 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 Commission shall have the authority to prioritize the functions and duties of the Office of Inspector General, which 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 Department sworn employee-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 for sworn Department employees.
- 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.
- H. Any reports, plans, audits, reviews and recommendations generated by the OIG shall not disclose information in violation of state and local law regarding the confidentiality of personnel records, including but not limited to California Penal Code section 832.7.

2.45.130– Establishment of the Discipline Committee.

A separate Discipline Committee will be established for each Department sworn employee discipline or termination case. 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 Department sworn employee 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 sworn 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 (if not received electronically) 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 its first regular meeting, the members shall elect a chairperson and a vice-chairperson. Beginning February 1, 2019, the members shall elect a chairperson and a vice-chairperson at the first regular meeting of each year.

2.45.180 - Staff assistance.

- A. Within two hundred and forty (240) 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 under her/his jurisdiction 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 be hired, to the extent practicable, within 3 months of the effective date of this Chapter 2.45 or as soon as possible thereafter. ~~The administrative staff person described in this subsection (C) shall be hired, to the extent practicable, within sixty (60) days of the effective date of this Chapter 2.45, and shall report to the Commission. In addition, this administrative staff person 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 six (6) months of appointment, or as soon thereafter as possible and with the exception of the first group of Commissioners and alternates, 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;
- 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.*);
- G. Receive training in open session in the legal requirements of California's Meyers Miliias Brown Act (Cal. Gov't Code section 3500, *et seq.*) (MMBA), the Public Employment Relations Board's administration of the MMBA, the

City's Memoranda of Understanding with the Oakland Police Officers' Association and other represented City employees, the City's Civil Service Board, and other relevant City personnel policies and procedures; and

- H. Receive training in open session in the legal requirements of California's Public Safety Officers Procedural Bill of Rights Act (Cal. Gov't Code section 3300, *et seq.*), and other California Code sections pertaining to peace officers' rights.

The first group of Commissioners and alternates shall comply with the requirements of subsections (A) through (H) within twelve (12) months of their appointment.

In addition, within twelve (12) months of appointment, or as soon thereafter as possible and with the exception of the first group of Commissioners and alternates, each Commissioner and alternate shall:

- I. Receive the training and orientation specified by section 604(c)(9) of the City Charter;
- J. Participate in a Department "ride-along" and attend a police academy curriculum designed for them by the Chief after consultation with the Commission. The curriculum shall be designed so that criminal background checks will not be required for attendance;
- K. Complete the Department's Implicit Bias Training, and Crisis Intervention Training;
- L. Complete Peace Officer Standards and Training (POST) Learning Domains 15 (Laws of Arrest) and 16 (Search and Seizure); and
- M. Receive training regarding racial equity.

The first group of Commissioners and alternates shall comply with the requirements of subsections (I) through (M) within eighteen (18) months of their appointment.

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 Department sworn employee'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 alleged Misconduct. 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 Department sworn employees 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 of Class I allegations agree to be audiotaped or videotaped if, in the Agency's discretion, its investigation would benefit from such taping.
- 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 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 Department sworn employees 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;
 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; and
 9. The number of times a Department employee failed to comply with the Agency's request for an interview or for the production of documents, and the number of times a Department sworn employee failed to comply with a valid subpoena, and whether discipline was imposed for any such non-compliance.

2.46.040 – Agency Director.

The Agency Director shall report to, and be supervised by, 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 a Department employee refused to comply with a written request for information, and the number of times a Department sworn employee refused to comply with a 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 Complaint 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 Complaint Investigator. The results of any background checks of candidates for the position of Agency Director shall be submitted only to the Commission. The results of any background checks of candidates for the position of Agency Complaint Investigator shall be submitted only to the Agency Director.

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 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 Resolution No. 79235 which established the duties of the Community Policing Advisory Board and which amended Resolutions Nos. 72727, 73185, and 73916, , 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:

2325353v5

CITY OF OAKLAND



CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

Police Commission

MEMORANDUM

TO: Oakland City Council

FROM: Oakland Police Commission

DATE: April 30, 2018

SUBJECT: MEASURE LL – Police Commission Enabling Ordinance

RECOMMENDATION

The Oakland Police Commission (“Commission”) discussed and analyzed the edits made to the Measure LL Enabling Ordinance by the Oakland City Council. The Commission also considered comments from the Public. This memorandum represents the Commission’s position on the Measure LL Enabling Ordinance. After considering and weighing various arguments and positions, the Police Commission recommends that that the City Council approve and adopt the positions and edits stated herein regarding these specific sections of the Enabling Ordinance:

- [1] Section 2.45.030 Selection Panel (Subsection F)
- [2] Section 2.45.070 Functions and Duties of the Commission (Subsections D, G, H, L and R)
- [3] Section 2.45.100 Office of Inspector General (Subsection B)
- [4] Section 2.45.180 Staff Assistance (Subsection B and D)

The Commission’s comments follow below:

[1] Section 2.45.030 – Selection Panel

The Commission believes that new members of the Selection Panel should receive training on Measure LL prior to conducting any business or interviews of candidates. The Police Commission believes that this training would be the most effective and convenient if provided to all members of the Section Panel, new and returning.

A Subsection F should be added to Section 2.45.030 to this effect:

F. The City Attorney’s Office shall provide the Selection Panel with an orientation to Measure LL at the Selection Panel’s first meeting in any period.

[2] Section 2.45.070 – Functions and Duties of the Commission

- Subsection D

Subsection D of 2.45.070 currently reads:

Prepare and deliver to the Mayor, the City Administrator and the Chief by April 30 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.

The Police Commission believes that the reference to April 30 should be replaced with March 15 as this is a date consistent with the budget deadlines for other City of Oakland Departments and Commissions. As such, Subsection D should be amended to read:

Prepare and deliver to the Mayor, the City Administrator and the Chief by ~~April 30~~ **March 15** 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.

- Subsection G

Subsection G of 2.45.070 currently reads:

Conduct an annual performance review of the Agency Director. The Commission shall determine the criteria for evaluating the Agency Director's job performance, and communicate those performance criteria, in addition to any other job performance expectations, to the Agency Director one full year before conducting any evaluation of her/his job performance. 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 Agency Director's job performance. Responses to the Commission's requests for comments and observations shall be strictly voluntary.

The Commission believes that the Commission should conduct performance reviews of the Chief of Police, Inspector General and the Agency Director. As such, Subsection G should be revised as follows:

Conduct an annual performance review of **the Chief of Police, Inspector General and the Agency Director**. The Commission shall determine the criteria for evaluating the **job performance of the Chief of Police, Inspector General and the Agency Director** and communicate those performance criteria, in addition to any other job performance expectations, to **the Chief of Police, Inspector General and the Agency Director**, one **(1)** full year before conducting any evaluation of her/his job performance. The Commission may, in its discretion, decide to solicit and consider, as part of its evaluation, comments and observations from **the Mayor, the City Council, the City Administrator, and other City staff, and who are familiar with the Agency Director's job performance**. ~~other individuals or members of the public regarding the job performance~~

of the Chief of Police, Inspector General and/or the Agency Director. Responses to the Commission's requests for comments and observations shall be strictly voluntary.

- Subsection H

Subsection H of 2.45.070 currently reads:

Provide annual comments, observations and assessments to the City Administrator regarding the Inspector General's job performance.

The Commission believes that Subsection H should be deleted in its entirety. The Commission is responsible for the Inspector General's job performance and as such, there is no need to provide annual comments, observations and assessments to the City Administrator in this regard.

- Subsection L

Subsection L of 2.45.070 currently reads:

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.

Subsection L should be amended as follows:

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. **The Police Commission, on its own authority and by majority vote, shall maintain the right to direct the Agency to investigate Serious Incidents.**

- Subsection R

The Commission believes that it is essential the Commission receive regular reports from the Chief of Police and other members of the Oakland Police Department. These reports should be codified in the Enabling Ordinance.

A Subsection R should be added to Section 2.45.070 to this effect:

The Police Department through the Chief of Police or his or her designee shall report to the Commission on issues requested by the Commission through the Commission's Chair and Vice Chair. The Chief of Police shall attend in person unless impracticable. Presenters from the Police Department shall be equipped with sufficient information to respond to information requested by the Commission.

[3] Section 2.45.100 - Office of Inspector General

Section 2.45.100 currently reads:

Within one hundred and eighty (180) days after the effective date of this Chapter 2.45, 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 OIG shall serve the Commission full time.

The Commission believes that it should be made clear and unequivocal that the Office of Inspector General not only serve the Commission full-time, but that the Office of Inspector General also report to, and be supervised by, the Commission. As such, the section should be amended as follows:

Within one hundred and eighty (180) days after the effective date of this Chapter 2.45, 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 OIG shall serve **and report to** the Commission full time. **The OIG shall be hired and supervised by the Commission.**

- Subsection B

Subsection B of Section 2.45.100 currently reads:

B. The Chief may assign a sworn Department employee to act as a liaison from the Department to the OIG.

The Commission believes that it is important that a sworn Police Department employee liaise between the Commission and the OIG. As such Subsection B should be revised as follows:

B. The Chief ~~may~~ **shall** assign a sworn Department employee to act as a liaison from the Department to the OIG.

[4] Section 2.45.180 – Staff Assistance

- Subsection B

Subsection B of Section 2.45.180 currently reads:

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 under her/his jurisdiction to provide administrative support to the Commission and to act as liaison between the Commission and the City Administrator's office.

The Commission believes that this Subsection B should reflect the Commission's use of a full-time Administrative Analyst II. As such, Subsection B should be amended as follows:

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 under her/his jurisdiction to provide administrative support to the Commission and to act as liaison between the Commission and the City Administrator's office. **This staff person shall be a full-time position and classified as an Administrative Analyst II.**

- Subsection D

The Commission is in favor of non-City Attorney legal advisor to avoid potential conflicts and to avoid the appearance of impropriety with the City Attorney representing several sides of the same issue. As such, Subsection D should be added to Section 2.45.180 composed of the following:

Pursuant to City Charter Section 604(e), the full-time equivalent non-City Attorney legal advisor position assigned by the City Attorney after consultation with the Chair shall be divided into two (2) part time positions: a one-half (1/2) or two-thirds (2/3) time position with specific responsibilities for providing legal services to the Agency related to investigations and discipline, and a one-half (1/2) or one-third (1/3) time position as legal advisor to the Commission. The legal advisor to the Agency and the legal advisor to the Commission shall report to the Commission. Neither the legal advisor to the Agency nor the legal advisor to the Commission shall report to or be supervised by the City Attorney or any Deputy City Attorney. Pursuant to City Charter Section 401(6), the City Attorney shall act as counsel to the Agency and the Commission in any litigation brought against either in their official capacity and shall provide legal advice only upon request of the Commission.

///

CITY OF OAKLAND



SELECTION PANEL FOR THE POLICE COMMISSION

MEMORANDUM

TO: Oakland City Council
FROM: Selection Panel for the Police Commission
DATE: May 23, 2018
SUBJECT: Measure LL – Police Commission Enabling Ordinance

On behalf of the Selection Panel for the Police Commission, the Selection Panel took action on May 23, 2018 to recommend to the City Council the following:

1. Support the Police Commission's recommendations and proposed revisions to the draft enabling ordinance.
2. Delete Section 2.45.025 – Conflict of Interest in the draft enabling ordinance.

Thank you for your consideration.

Respectfully,

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Sarah Chavez-Yoell
Chairperson

CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
Barbara J. Parker
City Attorney

(510) 238-3601
FAX: (510) 238-6500
TTY/TDD: (510) 238-3254

VIA EMAIL AND HAND DELIVERY

March 19, 2018

President Larry Reid and Members of the City Council
City Administrator Sabrina Landreth
One Frank Ogawa Plaza
Oakland, California 94612

**Re: Appointing Authority Over Staff to the Oakland Police Commission
Item 11 on the Council's March 20, 2018 Agenda**

Dear President Reid, Members of the City Council, and City Administrator Landreth:

I. Introduction

At its March 6, 2018 meeting, the Council continued item 11 "Police Commission Enabling Ordinance" to the Council's March 20, 2018 meeting. The City Administrator ("CAO") and City Attorney's Office ("OCA") requested the continuance to provide OCA time to consider the legal issues the City Administrator's February 23, 2018 report raised. Among other things, the CAO's report requested amendment of the enabling ordinance to clarify that the CAO is the appointing authority¹ for staff of the Community Police Review Agency (CPRA) and the staff to the Oakland Police Commission, including the civilian Inspector General and her/his staff.

This issue requires interpretation of the City Charter, regarding the relative powers of the City Council, the City Administrator and City boards/commissions and will be posted on the City Attorney's web site at www.oaklandcityattorney.org.

¹ "Appointing authority," as that phrase relates to the City's civil-service employees, refers to the ultimate authority an official or group of officials has to appoint or remove a particular employee. See Oakland Civil Service Rules §1.01(e). Under the Civil Service Rules and the Oakland City Charter, an employee so appointed is also evaluated and disciplined by the appointing authority and is said to be under the appointing authority's "jurisdiction."

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II. Brief Explanation of Changes

We have determined that certain changes are necessary for the enabling ordinance to comply with the City Charter. Those changes are reflected in the redlined version of the ordinance that is included in the agenda packet for the March 20, 2018 meeting.

As an initial matter, it is not necessary to amend or clarify the appointing authority for CPRA staff. Charter section 604(6) gives the CPRA Director "the authority to hire and fire Agency staff, in consultation with the City Administrator." Thus, the Charter gives the CPRA Director appointing authority over CPRA staff, and this cannot be amended by ordinance.

However, if the Council authorizes administrative support for the Police Commission and/or establishes an Office of Inspector General (OIG) to audit the Police Department, the Inspector General and any other staff will be under the CAO's appointing authority; and thus cannot be under the jurisdiction of the Oakland Police Commission for purposes of personnel administration.

As we explain more fully below, the Council may budget for and require administrative support for the Police Commission. Similarly, the Council may establish an OIG, budget for OIG staff, and require that the office perform specific duties exclusively in service of the Police Commission. However, in terms of personnel administration or "appointing authority" (i.e. hiring, evaluating, disciplining, and firing employees), all the aforementioned personnel would be under the CAO's appointing authority jurisdiction. The redlined enabling ordinance has been amended to comport with the City Charter.

Changes also were necessary to preserve the reporting structure between the Chief of Police and the City Administrator. While Charter Article 604 gives the Police Commission the ability to terminate the Police Chief for cause, it does not give the Police Commission the authority to direct the Chief to perform specific tasks.

To summarize, the draft Police Commission enabling ordinance has been amended to:

- place the Police Commission's Inspector General and her/his office staff under the personnel jurisdiction of the City Administrator;
- require that the Police Commission provide an annual assessment of the Inspector General's job performance to the City Administrator;

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- place the Police Commission's administrative support staff under the personnel jurisdiction of the City Administrator;
- require that the Police Commission ask (rather than direct) the Chief of Police to notify the Commission of certain types of serious incidents;
and
- remove the provision that directed the Chief of Police to appoint a sworn liaison to the OIG.²

III. Discussion

Charter sections 604(b)(12) and 604(h) authorize the Council to assign additional functions and duties to the Police Commission by ordinance to further the goals and purposes of Measure LL. Measure LL, however, must be read in harmony with the rest of the City Charter. So the functions and duties the Council assigns to the Police Commission cannot alter the powers or duties that the Charter reserves to other offices in the City.

The Council's authority to establish an OIG and/or other Commission staff positions also derives from Charter sections 600 and 902, which authorize the Council to create, organize and reorganize City functions. Specifically, Charter section 600 empowers the Council to establish "duties, powers and functions which in the judgment of the Council will provide the most efficient and economical service possible." It goes on to say that "[a]ll departments or administrative agencies so created shall be administered by the City Administrator or by a department head or other officer appointed by and responsible to him/her." Charter Section 503 reserves to the City Administrator, subject to civil service rules, "the power to appoint, assign, reassign, discipline and remove all directors or head of departments and all employees under his [or her] jurisdiction."

There are two categories of exceptions to the default rule that personnel administration is under the City Administrator's jurisdiction. The first category is elected officials. The City Administrator obviously is not the appointing authority for elected officials such as the Mayor, Auditor, Council Members and City Attorney and they are

² Lastly, Section 2.45.150 previously required the Commission to obtain Council approval before establishing "other standing committee[s]." OCA recommends striking the word "other" as the Commission does not yet have any standing committees. The Commission's discipline committees are not standing committees because will be formed as-needed, on a case-by-case basis with changing membership, and they have no predetermined meeting times.

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the appointing authorities for staff in their offices.³ The second, category is City offices, departments, agencies, boards/commissions and positions that the Charter explicitly provides are outside of the City Administrator's jurisdiction. The Charter provides the following exceptions to the City Administrator's jurisdiction:

- Charter section 603(g)(3) provides that the Executive Director of the PEC serves "at the pleasure of the Commission" such that the "City Administrator shall not have the authority to remove the Executive Director";
- Article VII of the Charter creates the Port Department and vests in the Port Board of Commissioners exclusive control and management of the department. Consistent with the Port Board's jurisdiction over the Port Department, Charter sections 706(20) and 706(21) give the Port Board the power to "appoint a Port Attorney" and fix her/his compensation, as well as the power to "employ and appoint and Executive Director, and such other officers, employees and agents as may be necessary" to Port business;
- Charter section 604(e)(6) explicitly gives the Police Commission the power to "periodically conduct a performance review of the Agency Director" but stops short of giving the Police Commission full appointing authority. The Police Commission may terminate the CPRA Director, but the City Administrator appoints new directors from among candidates the Commission submits;
- Charter section 604(e)(6) gives the CPRA Director "the authority to hire and fire Agency staff, in consultation with the City Administrator"; and
- Charter section 604(b)(10) gives the Police Commission the power to terminate the Police Chief for just cause, grants the Mayor authority to terminate the Police Chief and the authority to appoint the Police Chief from a list of not less than four candidates presented by the Commission.

³ Consequently, Charter section 218, which prohibits Council interference in administrative services, only contemplates administrative services being delivered by "the City Administrator, Mayor and other appointed or elected officers."

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In each of these instances, the exception to or limitation on the City Administrator's usual authority is in the Charter.⁴ Administrative support for boards and commissions is provided by the City Administrator by employees under the City Administrator's jurisdiction, except when the Charter explicitly provides an exception. For example, Charter Article IX established the Civil Service Board, and section 904 required the Council to "by ordinance provide a modern system of personnel administration for the competitive civil service." The Council's ordinance, at 2.08.040 provides "[t]he City Administrator shall provide the [Civil Service] Board with assistance from City employees under his/her jurisdiction."

IV. Conclusion

The Council may authorize and budget for staff to support the Police Commission to further the goals of Measure LL, and, subject to the Civil Service Rules, the Council may give that staff certain functions or duties to carry out in service of the Police Commission. But the staff who provide services to the Commission are under the City Administrator's personnel jurisdiction (i.e. appointing authority) because the Charter does not provide an exception to the City Administrator's jurisdiction. Based on the foregoing we have presented redlined amendments to the enabling ordinance that were included in the supplemental agenda packet for the Council's March 20, 2018 meeting.

Very truly yours,


BARBARA J. PARKER
City Attorney

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⁴ Notably, the City Attorney's appointing authority, unlike other elected officials, is explicitly spelled out in the Charter. See City Charter §401(6). This makes sense when one recalls that the City Attorney was not always elected. Thus, back when the City Attorney was appointed, the Charter explicitly provided independent jurisdiction for that office, whereas independent jurisdiction was a given for the elected offices.