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MEMORANDUM

TO: HONORABLE MAYOR &
CITY COUNCIL

FROM: Edward D. Reiskin
Assistant City Administrator

SUBJECT: Amendments to City Charter
Section 604 – Police Commission
Measure

DATE: May 11, 2020

City Administrator
Approval

Date: 5-11-2020

SUMMARY

City staff analyzed the updated proposed amendments to City Charter Section 604 as submitted by Council President Rebecca Kaplan, Council President Pro Tempore Dan Kalb and Councilmember Noel Gallo (Kaplan/Kalb/Gallo resolution) and to the memorandum issued by Councilmember Loren Taylor.

City Administration is supportive of the proposed amendments that provide clarity to the organizational structure and support of the Police Commission; however, staff is concerned that expanding the Commission's current scope of control over Department policies and procedures creates operational and liability issues for the City.

Staff is proposing the following amendments (*Attachment A*) to the Kaplan/Kalb/Gallo resolution which retains the Commission's current oversight authority over the Department. This memo supplements staff's redlined amendments by providing additional context on the proposed changes and provides comments on Councilmember Taylor's memorandum.

City staff will be available to answer questions to these proposed amendments at the Special City Council meeting on May 12, 2020.

PROPOSED AMENDMENTS & ANALYSIS

For all sections below, staff's proposed edits are marked accordingly in **RED**.

Section 604(a)(4)

Staff is recommending this new language in the Kaplan/Kalb/Gallo resolution be removed:

4. No later than two (2) years after the City Council has confirmed the first set of Regular Commissioners and Alternates Commissioners (collectively, Commissioners), the City Auditor shall conduct a performance audit and a financial audit of the Commission and the Agency. Nothing herein shall limit the City Auditor's authority to conduct future performance and financial audits of the Commission and the Agency which may be conducted by an independent contractor selected by the Inspector General in compliance with the City's contracting processes and procedures.

Staff agrees that the City Auditor, or an independent contractor, conduct future performance and financial audits of the Commission and Agency. Staff does not endorse the Inspector General from selecting the contractor that will audit his/her superiors. If this clause remains in the adopted resolution, staff proposes that any independent contractor hired to audit the Commission and Agency be selected and report to the City Auditor's Office.

Councilmember Taylor's memorandum recommends the City Auditor conduct a performance audit of the Commission and the Agency every two years. Staff does not have a position on the timing of such audits, provided they are conducted or managed by the City Auditor's Office.

Sections 604(b)(4) and Section 604(b)(5)

Staff is proposing the following amendments to the Kaplan/Kalb/Gallo resolution:

4. Propose changes, including modifications to the Department's proposed changes, to any policy, procedure, custom, or General Order of the Department which governs use of force, use of force review boards, profiling based on any of the protected characteristics identified by federal, state, or local law, or First Amendment assemblies, or which contains elements expressly listed in federal court orders or federal court settlements which pertain to the Department and are in effect at the time this Charter Section 604 takes effect for so long as such federal court orders and settlements remain in effect ~~for so long as such federal court orders and settlements remain in effect.~~ After the termination or expiration of such federal court orders and settlements, the Inspector General may recommend to the Commission, in writing and supported by relevant findings, the need for modifications to the Department's policies, procedures, customs, or General Orders which govern the discipline procedures for sworn employees, truthfulness, or which are directly related to principles of constitutional policing. ~~If the Commission notifies the City Council that it accepts the Inspector General's recommendation by no fewer than six (6) affirmative votes, the City Council may authorize the Commission, by ordinance passed by no fewer than six (6) votes, to propose changes, including modifications, to the Department's proposed changes, to the policies, procedures, customs, or General Orders identified in the Inspector General's recommendation.~~ All such proposed changes and modifications shall be submitted by the Commission Chair or his or her designee to the City Council for approval or rejection. If the City Council does not approve, or modify and approve, or reject the Commission's proposed changes or modifications within one hundred and twenty (120) days of the Commission's vote on the proposed changes, the

~~Department's proposed changes will become final, or where the Department has not proposed a change, existing Department policy will remain in effect. changes or modifications will become final.~~

5. Approve or reject the Department's proposed changes to all policies, procedures, customs, and General Orders of the Department which govern use of force, use of force review boards, profiling based on any of the protected characteristics identified by federal, state, or local law, or First Amendment assemblies, or which contains elements expressly listed in federal court orders or federal court settlements which pertain to the Department and are in effect at the time this Charter Section 604 takes effect for so long as such federal court orders and settlement remain in effect ~~for so long as such federal court orders and settlement remain in effect. After the termination or expiration of such federal court orders and settlements the Inspector General may recommend to the Commission, in writing and supported by relevant findings, the need for the Commission to approve or reject the Department's proposed changes to policies, procedures, customs, or General Orders which govern the discipline procedures for sworn employees, truthfulness, or which are directly related to principles of constitutional policing. If the Commission notifies the City Council that it accepts the Inspector General's recommendation by no fewer than six (6) affirmative votes, the City Council may authorize the Commission, by ordinance passed by no fewer than six (6) votes, to approve or reject the Department's proposed changes, to the policies, procedures, customs, or General Orders identified in the Inspector General's recommendation.~~ If the Commission does not approve or reject the Department's proposed changes within one hundred and twenty (120) days of the Department's submission of the proposed changes to the Commission, the Department's proposed changes will become final. If the Commission rejects the Department's proposed changes, notice of the Commission's rejection, together with the Department's proposed changes, shall be submitted by the Commission Chair or her or his designee to the City Council for review. If the City Council does not approve ~~or reject~~ the Commission's decision within one hundred and twenty (120) days of the Commission's vote on the Department's proposed changes, the ~~Commission's decision~~ Department's proposed changes will become final. The Chief of Police may, on a temporary basis and without Commission approval, make changes to policies, procedures, customs, or General Orders of the Department that are necessary to respond to exigent circumstances related to public safety. If such unilateral changes otherwise require Commission approval under this section 604(b)(5), the Department shall provide notice to the Chair of the Commission within forty-eight (48) hours of making such changes and such changes shall expire sixty (60) days from when they take effect unless approved by the Commission or the City Council.

Staff agrees with the amendment provided in the Kaplan/Kalb/Gallo resolution which authorizes the Chief of Police to temporarily implement or amend a policy given exigent circumstances. However, staff does not agree with the proposed amendments that can expand the subject matter boundaries currently provided in the City Charter. Expansion of such oversight will create operational and liability issues that Department staff will need to address for each additional policy or procedure added to the Commission's scope of authority.

The proposed amendment may lead to the Commission making proposed changes to any manner of policy and procedure without the benefit of decades of training, experience, and expertise in state and federal law, and national best practices. More significantly, if the Department's policies veer from accepted standards, this can create major training and liability issues as training is standardized for law enforcement agencies. For the Department to develop and provide its own custom training for officers because it is unable to rely on standard industry training is unreasonable and would create tremendous liability for the City.

Given the amount of time it takes Department staff to work through an ad hoc committee with the Commission, or research and draft its own proposed changes to a policy in opposition to a proposal by the Commission, the Department may be deluged by proposals if the Charter gives the Commission essentially unlimited scope over policy development. This can create an unreasonable burden on Department staff time, diverting attention and resources to more pressing public safety matters.

If the Commission's scope of policy review is expanded and unlimited by subject matter area, then staff's proposed change to enacting the Department's proposed policy change or existing policy becomes more apparent. Currently, the City Charter states that if the City Council does not take action on the Commission's proposed policy changes within 120 days, then the changes or modifications presented by the Commission become final. Staff is proposing that City Council inaction would result in the Department's proposed policy or existing policy to remain in effect.

For Section 604(b)(4), Councilmember Taylor's memorandum included similar language to the Kaplan/Kalb/Gallo resolution, and staff will maintain its position on that section. For Section 604(b)(5), the Councilmember appears to be in agreement with staff in not expanding the scope of authority already provided to the Commission. Councilmember Taylor also provides exigency language for the Chief of Police, which staff supports.

Sections 604(b)(11)

Staff added "as permitted by law" in order to make clear that the Department may only follow the Charter when it is able to do so within the law.

11. Send the Chairperson of the Commission ~~or another Commissioner appointed by the Chairperson~~ the Agency Director and/or the Inspector General or their designees to serve as a non-voting members of any ~~level one~~ Oakland Police Force Review Board, as permitted by law.

Section 604(e)(5)

Staff does not have a proposed edit to this section; however, the City Council should be advised that this will require a new classification or an amendment to an existing class specification, which would allow a civil service employee to report and be supervised by a volunteer commission.

5. The City Administrator ~~shall~~ may assign a staff member to act as liaison to the Commission. The City shall allocate a sufficient budget for one full-time civil service employee who shall report to the Commission through the Chair and whose duties shall include ~~to providing~~ administrative support to the Commission, and attending Commission meetings.

Section 604(f)(5)

Staff is proposing the following amendment to authorities granted to the Inspector General:

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

The Police Commission is tasked with reviewing the Mayor’s budget in 604(b)(7). The Police Commission will also have the authority in 604(b)(8) to request a “description of Department expenditures on community priorities as identified by the Commission.”

This clause is duplicative of powers assigned to the Police Commission. The Commission can direct the Inspector General to assist in reviewing the Mayor’s budget and department expenditures through their managerial authority over the position. Therefore, staff recommends deletion of this clause.

Section 604(g)(2)

The Kaplan/Kalb/Gallo resolution authorizes the Police Commission to request the Agency further investigate a claim before the Discipline Committee. Both City staff and the Police Commission have stated the proposed amendment should be removed.

2. If the Chief of Police disagrees with the Agency’s findings and/or proposed discipline, the Chief of Police shall ~~prepare~~ notify the Agency Director of his or her own findings

and/or proposed discipline ~~which shall be submitted to~~. The Agency Director shall submit the Chief's findings and proposed discipline in addition to the Agency's findings and proposed discipline to the Chair of the Commission. The Chair of the Commission shall appoint a Discipline Committee comprised of three Commissioners. The City Administrator shall not have authority to reject or modify the Chief of Police's findings and proposed discipline. ~~After reviewing the Agency's submission and after consulting with the Agency Director about the time available under applicable statutory deadlines, the Agency's findings and proposed discipline shall also be submitted to the Discipline Committee which shall may require the Agency to further investigate the complaint by notifying the Agency Director, in writing, of the specific issues that need further investigation.~~ After reviewing both submissions, the Discipline Committee shall and resolve any dispute between the Agency and the Chief of Police. Based solely on the record presented by the Agency and the Chief of Police, the ~~Based solely on the record presented by the Agency and the Chief of Police, the~~ The Discipline Committee shall submit its final decision regarding the appropriate findings and proposed discipline to the Chief of Police who shall notify the subject officer. The City Administrator shall not have the authority to reject or modify the Discipline Committee's final decision regarding the appropriate findings and level of discipline. The Discipline Committee shall not have the authority to conduct its own investigation.

At this point in the case, two separate entities have spent months investigating the claim, and requesting the Agency further investigate the case may impact statutory deadlines or the appeal process. Therefore, staff agrees with the Police Commission that the Discipline Committee makes its decision based solely on the records presented by the Chief and Agency.

Section 604(g)(4)

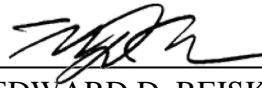
The Kaplan/Kalb/Gallo resolution added a clause allowing the Inspector General to attend *Skelly* hearings. Staff is proposing a deletion of this statement.

4. All employees are afforded their due process and statutory rights including *Skelly* rights. ~~Subject to state law, the Inspector General may attend, but may not participate in, *Skelly* meetings for the purpose of noting relevant patterns and making policy recommendations.~~ After the findings and imposition of discipline have become final, the subject officer shall have the right to grieve/appeal the findings and imposition of discipline if such rights are prescribed in a collective bargaining agreement. Whenever the discipline determination of a Discipline Committee is the subject of a hearing before the Civil Service Board or a labor arbitrator, the Agency Director, in consultation with the City Attorney, shall decide whether an Agency Attorney or the Office of the City Attorney shall represent the City.

Staff does not agree that the Inspector General should be permitted to be present at *Skelly* hearings and therefore, is proposing a deletion of the clause added by the Kaplan/Kalb/Gallo resolution. Allowing the Inspector General to attend *Skelly* hearings may not violate officers' due

process but it is certainly not in the spirit of affording officers a right to present their case in opposition to the Department's or Agency's findings in a neutral setting.

Respectfully submitted,



EDWARD D. REISKIN
Assistant City Administrator

For questions, please contact Richard J. Luna, Assistant to the City Administrator, at (510) 238-4756.

Attachments (1):

- A. Proposed amendments to Kaplan/Kalb/Gallo resolution

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

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

RESOLUTION PROPOSING TO AMEND CITY CHARTER SECTION 604 TO ENSURE THE INDEPENDENCE OF THE OAKLAND POLICE COMMISSION, DIRECTING THE CITY ADMINISTRATOR TO GIVE WRITTEN NOTICE TO EMPLOYEE ORGANIZATIONS THAT MAY BE AFFECTED, AND DIRECTING THE CITY ADMINISTRATOR TO MEET AND CONFER, AS APPROPRIATE, SUBJECT TO FURTHER COUNCIL INSTRUCTIONS.

WHEREAS, on April 15, 1980, the City Council established the Citizens' Police Review Board (hereinafter, Board) with jurisdiction to review certain complaints alleging Oakland Police Department officer misconduct, to conduct fact-finding investigations, and to make advisory reports to the City Administrator; and

WHEREAS, on July 30, 1996, the City Council expanded the Board's jurisdiction to include complaints involving the excessive use of force, and bias based on an individual's legally protected status (race, gender, national origin, religion, sexual orientation or disability); and

WHEREAS, on November 12, 2002, the City Council passed Ordinance No. 12454 C.M.S., which further refined the Board's powers to include making recommendations to the City Administrator regarding litigated cases, and enlarged the amount of time for the Board to complete its investigations. The Board, however, was not empowered to oversee Department policy, impose discipline or adjudicate disciplinary appeals; and

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

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

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

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

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

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

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

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

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

WHEREAS, maintaining public trust and confidence in the Police Department is essential for the Department to be able to provide the highest level of service to the community; and

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

RESOLVED: That the City Council hereby proposes to amend Charter section 604 to add, delete, or modify sections as set for the below (section numbers and titles are indicated in capitalized **bold type**; additions are indicated by underscoring, deletions are indicated by ~~strike-through~~ type; portions of the provisions not cited or not shown in underscoring or strike-through type are not changed).

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

Section 1. Amendments to Section 604 of the Charter of the City of Oakland.

SECTION 604 – POLICE COMMISSION

(a) Creation and Role.

1. There hereby is established the Oakland Police Commission (hereinafter, Commission), which shall oversee the Oakland Police Department (hereinafter, Department) in order to ensure that its policies, practices, and customs conform to national standards of constitutional policing. The Commission shall have the functions and duties enumerated in this Charter Section 604, as well as those assigned to the Commission by Ordinance.
2. There hereby ~~is~~ are established a Community Police Review Agency (hereinafter, Agency) and an Office of Inspector General (hereinafter, OIG), which shall have the functions and duties enumerated in this Charter Section 604, as well as those assigned to the Agency them by Ordinance.
3. Nothing herein shall prohibit the Chief of Police or a commanding officer from investigating the conduct of a Department sworn employee under his or her command, nor shall anything herein prohibit the Chief of Police from taking disciplinary or corrective action with respect to complaints investigated solely by the Department.
4. No later than two (2) years after the City Council has confirmed the first set of Regular Commissioners and Alternates Commissioners (collectively, Commissioners), the City Auditor shall conduct a performance audit and a financial audit of the Commission and the Agency. Nothing herein shall limit the City Auditor's authority to conduct future performance and financial audits of the Commission and the Agency ~~which may be conducted by an independent contractor selected by the Inspector General in compliance with the City's contracting processes and procedures.~~
5. The City Administration shall not exercise any managerial authority over Commissioners, the Agency Director and the Inspector General, and shall not initiate an investigation for the purpose of removing a Commissioner.

(b) Powers and Duties.

The powers and duties of the Commission are as follows:

1. Organize, reorganize and oversee the Agency and the OIG, and contract with professional service providers as authorized by Ordinance.
2. Conduct public hearings at least once a year on Department policies, rules, practices, customs, and General Orders. The Commission shall determine which Department policies, rules, practices, customs, or General Orders shall be the subject of the hearing.
3. Consistent with state law and in accordance with Section 1207 of the City Charter, entitled "Oaths and Subpoenas," issue subpoenas to compel the production of books, papers and documents and take testimony on any matter pending before it except that the Commission shall not have any authority to issue subpoenas for the purpose of investigating any City employee who is not a police officer. If any person subpoenaed fails or refuses to appear or to produce required documents or to testify, the majority of the members of the Commission may find him in contempt, and shall have power to take proceedings in that behalf provided by the general law of the State.
4. Propose changes, including modifications to the Department's proposed changes, to any policy, procedure, custom, or General Order of the Department which governs use of force, use of force review boards, profiling based on any of the protected characteristics identified by federal, state, or local law, or First Amendment assemblies, or which contains elements expressly listed in federal court orders or federal court settlements which pertain to the Department and are in effect at the time this Charter Section 604 takes effect for so long as such federal court orders and settlements remain in effect. ~~for so long as such federal court orders and settlements remain in effect. After the termination or expiration of such federal court orders and settlements, the Inspector General may recommend to the Commission, in writing and supported by relevant findings, the need for modifications to the Department's policies, procedures, customs, or General Orders which govern the discipline procedures for sworn employees, truthfulness, or which are directly related to principles of constitutional policing. If the Commission notifies the City Council that it accepts the Inspector General's recommendation by no fewer than six (6) affirmative votes, the City Council may authorize the Commission, by ordinance passed by no fewer than six (6) votes, to propose changes, including modifications, to the Department's proposed changes, to the policies, procedures, customs, or General Orders identified in the Inspector General's recommendation.~~ All such proposed changes and modifications shall be submitted by the Commission Chair or his or her designee to the City Council for approval or rejection. If the City Council does not approve, or modify and approve, ~~or reject~~ the Commission's proposed changes or modifications within one hundred and twenty (120) days of the, -Department's proposed changes will

become final, or where the Department has not proposed a change, existing Department policy will remain in effect. Commission's vote on the proposed changes, the changes or modifications will become final.

5. Approve or reject the Department's proposed changes to all policies, procedures, customs, and General Orders of the Department which govern use of force, use of force review boards, profiling based on any of the protected characteristics identified by federal, state, or local law, or First Amendment assemblies, or which contains elements expressly listed in federal court orders or federal court settlements which pertain to the Department and are in effect at the time this Charter Section 604 takes effect for so long as such federal court orders and settlements remain in effect. ~~for so long as such federal court orders and settlement remain in effect.~~ After the termination or expiration of such federal court orders and settlements the Inspector General may recommend to the Commission, in writing and supported by relevant findings, the need for the Commission to approve or reject the Department's proposed changes to policies, procedures, customs, or General Orders which govern the discipline procedures for sworn employees, truthfulness, or which are directly related to principles of constitutional policing. If the Commission notifies the City Council that it accepts the Inspector General's recommendation by no fewer than six (6) affirmative votes, the City Council may authorize the Commission, by ordinance passed by no fewer than six (6) votes, to approve or reject the Department's proposed changes, to the policies, procedures, customs, or General Orders identified in the Inspector General's recommendation. If the Commission does not approve or reject the Department's proposed changes within one hundred and twenty (120) days of the Department's submission of the proposed changes to the Commission, the Department's proposed changes will become final. If the Commission rejects the Department's proposed changes, notice of the Commission's rejection, together with the Department's proposed changes, shall be submitted by the Commission Chair or her or his designee to the City Council for review. If the City Council does not approve ~~or reject~~ the Commission's decision within one hundred and twenty (120) days of the Commission's vote on the Department's proposed changes, the ~~Commission's decision~~ Department's proposed changes will become final. The Chief of Police may, on a temporary basis and without Commission approval, make changes to policies, procedures, customs, or General Orders of the Department that are necessary to respond to exigent circumstances related to public safety. If such unilateral changes otherwise require Commission approval under this section 604(b)(5), the Department shall provide notice to the Chair of the Commission within forty-eight (48) hours of making such changes and such changes shall expire sixty (60) days from when they take effect unless approved by the Commission or the City Council.

6. Review and comment, at its discretion, ~~on all~~ any other policies, procedures, customs, and General Orders of the Department. All such comments shall be submitted to the Chief of Police who shall provide a written response to the Commission upon request.

7. Review the Mayor's proposed budget to determine whether budgetary allocations for the Department are aligned with the Department's policies, procedures, customs, and General Orders. The Commission shall conduct at least one public hearing on the Department budget per budget cycle and shall forward to the City Council any recommendations for change.

8. Require the Chief of Police or his or her designee to attend Commission meetings and require the Chief of Police to submit an annual report to the Commission regarding such matters as the Commission shall require, including but not limited to a description of Department expenditures on community priorities as identified by the Commission. The Chief of Police or her or his designee shall also respond to requests made by the Commission by a majority vote of those present. The Chief of Police or her or his designee shall provide to the Commission Chair an estimate of the time required to respond to the Commission's requests.

9. Report at least once a year to the Mayor, the City Council, and to the public to the extent permissible by law, the information contained in the Chief's report in addition to such other matters as are relevant to the functions and duties of the Commission.

10. Acting Notwithstanding any other provision of this Charter or any provision of the Oakland Municipal Code, and acting separately or jointly with the Mayor, remove the Chief of Police by a vote of not less no fewer than five (5) affirmative votes. If acting separately, the Commission may remove the Chief of Police only after adopting a finding or findings of cause, which shall be defined by City ordinance. The Commission must make its finding of just cause by not less no fewer than five (5) affirmative votes and must follow a process for notification, substantiation and documentation which shall be defined by ordinance. Upon removal, by the Commission, by the Mayor, or by the Mayor and the Commission acting jointly, or upon the notice of vacancy of the position of Chief of Police, the Mayor, in consultation with the Chair of the Commission, shall immediately appoint an Interim Chief of Police. No person appointed to the position of Interim Chief of Police shall simultaneously hold additional non-sworn employment with the City, or simultaneously serve as an elected official or officer of the City. Such appointment shall not exceed six (6) months in duration unless an extension to a date certain is approved by a majority vote of the Commission. The Commission, with the assistance of the City Administrator, shall prepare and distribute a job announcement, and prepare a list of at least four three (3) candidates and transmit the names and relevant background materials to the Mayor. The Mayor shall appoint one person from this list, or reject the list in its entirety and request a new list from the Commission. This provision shall not apply to any recruitment for the position of Chief of Police that is pending at the time of the Commission's first meeting.

11. Send the Chairperson of the Commission or another Commissioner appointed by the Chairperson the Agency Director and/or the Inspector General or

their designees to serve as a non-voting members of any level-one Oakland Police Force Review Board, as permitted by law.

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

~~12~~13. Perform such other functions and duties as may be prescribed by this Charter or by City ordinance.

(c) Appointment, Terms, Vacancies, Removal.

1. The Commission shall consist of seven (7) regular members and two (2) alternate members, all of whom shall be Oakland residents of at least eighteen (18) years of age. The City Council shall, by ordinance, specify additional qualifications for Regular and Alternate Commissioners, and may also specify disqualifying characteristics. Alternate Commissioners shall be eligible to serve on any Commission standing or ad hoc committee, including any Discipline Committee. —To the extent practicable, appointments shall be broadly representative of Oakland's diversity and shall include members with knowledge and/or experience in the fields of human resources practices, management, policy development, auditing, law, investigations, law enforcement, youth representation, civil rights and civil liberties, as well as representation from communities experiencing the most frequent contact with the Department. The City Council may require, by ordinance, that some or all of the Commissioners have expertise in a specified subject matter. Background checks shall be required for all Commissioners. ~~members and alternates.~~ Such background checks shall not be performed by the Department. Commissioners shall be issued identification cards, but shall not be issued and shall not display, wear, or carry badges that so resemble a peace officer's badge that an ordinary reasonable person would believe that Commissioners have the authority of a peace officer. ~~The following shall not be eligible to serve as a Commissioner:~~

~~a. current sworn police officer;~~

~~b. current City employee;~~

~~c. former Department sworn employee; or~~

~~d. current or former employee, official or representative of an employee association representing sworn police officers.~~

2. Within two hundred and ten (210) days of the enactment of this Section, the Mayor shall appoint three (3) Oakland residents as Regular Commissioners, at least one of whom shall be a retired judge or lawyer with trial experience in criminal

~~law or police misconduct,~~ and one (1) Oakland resident as an Alternate Commissioner, and submit the names of these appointees to the Council for confirmation. The Council shall have sixty (60) days after the completion of the background checks and from the date of receipt of the Mayor's submission to accept or reject each of the Mayor's appointees as Commissioners. The Mayor shall appoint an Oakland resident to fill any Commission vacancies that were previously filled by a Mayor's appointee. If the City Council does not accept or reject the Mayor's appointee within sixty (60) days after the completion of the background check and receipt of the Mayor's submission, the appointee shall be deemed appointed.

3. All other Commissioners ~~and the other alternates~~ shall be appointed as follows:

a. There is hereby established a nine (9) member Selection Panel. Within ninety (90) days of the enactment of this Section, each City Council member shall appoint one (1) person, and the Mayor shall appoint one (1) person, to the Selection Panel. ~~No current Department employee is eligible to be a member of the Selection Panel.~~ The City Council shall, by ordinance, specify qualifications and/or disqualifying characteristics for Selection Panel members. The Selection Panel, with the assistance of the City Administrator, will solicit applications from those willing to serve on the Commission. The Selection Panel will review the applications, and interview applicants to serve as members of the Commission.

b. Within one hundred and twenty days (120) of its formation, the Selection Panel, by a two-thirds (2/3) vote, shall submit a slate of four (4) regular members and one (1) alternate member to the City Council. The City Council may require the nominees to appear before the Council or a Committee of the Council. If the City Council does not accept or reject the slate in its entirety within sixty (60) days after the completion of the background checks and submission by the Selection Panel, the four (4) regular members and one (1) alternate member shall be deemed appointed.

c. Each year the Selection Panel shall re-convene, as needed, to designate replacements for the five (5) Commissioner (four (4) regular members and one (1) alternate) vacancies initially filled by the Selection Panel, ~~and shall~~ The Selection Panel shall, by a two-thirds (2/3) vote of the members present but by a vote of no fewer than five (5) members, submit a slate of names of such designated persons to the City Council for acceptance or rejection. If the City Council does not accept or reject the entire slate within sixty (60) days after the completion of the background checks and submission by the Selection Panel, all designated replacements shall be deemed appointed.

d. Each year the Mayor and each Councilmember may replace her or his assigned person on the Selection Panel. Selection Panel members may serve up to five (5) years. Upon a vacancy on the Selection Panel, the Councilmember who

appointed the Selection Panel member (hereinafter referred to as the Appointing Authority) shall appoint a replacement. If the Appointing Authority does not appoint the replacement within one hundred and twenty (120) days of the date of resignation, removal or expiration of the Selection Panel member's term, the Selection Panel, by a two-thirds vote of those present but by a vote of no fewer than five (5) Selection Panel members, shall choose a replacement for the vacancy. All such replacements must be confirmed by the City Council.

4. With the exception of the first group of Commissioners which shall serve staggered terms, the term for each Regular and Alternate Commissioner shall be three (3) years.

5. Commissioners ~~members~~ are limited to no more than two (2) consecutive terms, except that a Commissioner serving a term of ~~no more~~ less than one (1) year shall be allowed to serve two (2) additional consecutive terms.

6. To effect a staggering of terms among the Commissioners, the duration of the first group of Commissioners shall be determined by the Selection Panel as follows: Three (3) regular members, including one (1) of the mayoral appointees, shall have an initial term of three (3) years; two (2) regular members, including one (1) of the mayoral appointees, shall have an initial term of two (2) years; two (2) regular members, including one (1) of the mayoral appointees, shall have an initial term of four (4) years. The alternate member appointed by the Selection Panel shall have an initial term of two (2) years and the alternate member appointed by the Mayor shall have an initial term of three (3) years.

7. A vacancy on the Commission shall exist whenever a member dies, resigns, ceases to be a resident of the City, is convicted of a felony, or is removed.

8. For vacancies occurring for reasons other than the expiration of a regular member's term, the Commission shall select one of the Alternates Commissioners to replace the regular member for that regular member's remaining term of office. If the Alternate Commissioner chosen to replace the regular member was appointed by the Selection Panel, the Selection Panel shall appoint another Alternate Commissioner. If the alternate chosen to replace the regular member was appointed by the Mayor, the Mayor shall appoint another Alternate Commissioner.

9. All Commissioners ~~members~~ shall receive orientation and training as required by ordinance regarding Department operations, policies and procedures, including but not limited to discipline procedures for police officer misconduct and failure to act. All Commission members shall receive training regarding Procedural Justice, conflict resolution, national standards of constitutional policing, best practices for conducting investigations, and other subject matter areas which are specified by City ordinance.

10. The City Council may remove ~~members of the~~ any Commissioner for cause as provided in Section 601 of the Charter. The City Council may also suspend any Commissioner for cause, or rescind a suspension, after a hearing, by the affirmative vote of at least six (6) members of the Council. A Commissioner who is suspended shall be ineligible to conduct Commission business. ~~, or members of the~~ Any Commissioner may also be removed by a majority vote of the Commission only for conviction of a felony, conviction of a misdemeanor involving moral turpitude, a material act of dishonesty, fraud, or other act of moral turpitude, substantial neglect of duty, gross misconduct in office, inability to discharge the powers and duties of office, absence from three consecutive regular Commission meetings or five regular meetings in a calendar year except on account of illness or when absent by permission. The Public Ethics Commission shall have the authority to investigate all allegations which, if true, could be cause for removal of a Commissioner under Section 601 of the Charter and to refer the findings to the City Council.

(d) Meetings, Rules and Procedures.

1. The Commission shall meet at least twice each month unless it determines that one meeting is sufficient in a particular month. The Commission shall notify the public of the time and place of the meeting and provide time for public comment at each meeting. The Commission shall meet at least twice each year in locations other than City Hall.
2. The Commission shall establish rules and procedures for the conduct and operations of its business. Such rules shall be made available to the public.
3. Five (5) members shall constitute a quorum. If a quorum is not established by the regular members in attendance, the Chairperson of the Commission may designate one or more Alternate Commissioners to establish a quorum and cast votes. Motions on all matters may be approved by a majority of those Commissioners members present unless otherwise specified in this Charter Section 604.

(e) Budget and Staffing.

1. The City shall allocate a sufficient budget for the Commission, including the Agency and the OIG, to perform its functions and duties as set forth in this Charter section 604, ~~including at least one full-time-equivalent non-City Attorney legal advisor that is specifically charged with providing legal services to the Agency related to investigations and recommended discipline. The one full-time-equivalent non-City Attorney legal advisor shall be assigned by the City Attorney after consultation with the Chair of the Commission. The non-City Attorney legal advisor shall not in the regular course of his or her legal practice defend law enforcement officers and shall not participate in, nor serve as counsel to the City or any of its Council members or employees in defense of any lawsuit arising from any incident~~

~~involving an Oakland police officer.~~ budgeting for no fewer than two full-time legal advisors for the Agency (hereinafter Agency Attorneys). The budget set-aside for one of the Agency Attorneys may be suspended for a fiscal year or two-year budget cycle upon a finding in the budget resolution that the City is facing an extreme fiscal necessity, as defined by City Council resolution. The Agency Director shall have authority to hire and/or contract with legal advisors subject to said budget. The Agency, including the Agency Staff Attorneys, may consult with the City Attorney on police-officer investigations and discipline, including related hearings, provided there is no conflict of interest.

2. Within sixty (60) days of the City Council's confirmation of the first group of Commissioners ~~and alternates~~, the Oakland Citizens' Police Review Board (hereinafter Board) shall be disbanded and its pending business transferred to the Commission and to the Agency. The Executive Director of the Board shall become the Interim Director of the Agency, and all other staff will be transferred to the Agency.

3. After the effective date of this Charter section 604, the Commission may identify special qualifications and experience that candidates for Agency ~~and~~ OIG staff positions must have. Candidates for future vacancies may be selectively certified in accordance with the Civil Service Personnel Manual, as may be amended from time to time; said selective certification shall be subject to discretionary approval by the appointing authority and the Personnel Director ~~City Administrator or his or her designee~~.

4. The staff of the Agency shall consist of no fewer than one line investigator for every one hundred (100) sworn officers in the Department, rounded up or down to the nearest one hundred (100). The number of investigators shall be determined at the beginning of each budget cycle based on the number of sworn officers employed by the Department the previous June 1. At least one investigator shall be a licensed attorney. The budget set-aside for such minimum staffing may be suspended for a fiscal year or two-year budget cycle upon a finding in the budget resolution that the City is facing an extreme fiscal necessity, as defined by City Council resolution.

5. The City Administrator ~~shall~~ may assign a staff member to act as liaison to the Commission. The City shall allocate a sufficient budget for one full-time civil service employee who shall report to the Commission through the Chair and whose duties shall include ~~to providing~~ administrative support to the Commission, and attending Commission meetings.

6. Upon a vacancy, the Agency Director of the Agency and the Inspector General shall be hired ~~by the City Administrator from among two (2) or three (3) candidates submitted by the Commission. By an affirmative vote of at least five (5) members, or by an affirmative vote of four (4) members with the approval of the City Administrator,~~ the Commission may terminate the Agency Director of the

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

7. The staff of the Agency, OIG and Commission staff, with the exception of the Agency Director and Inspector General themselves, shall be civil service employees in accordance with Article IX of the City Charter. Background checks shall be required for all Agency investigator applicants before they are hired by the Agency. Such background checks shall not be performed by the Department. Staff of the Board who are transferred to the Agency as discussed in section (e)(2) above shall not be subject to background checks.

8. No current or former sworn employee of the Department, or current official, employee or representative of an employee association representing sworn police officers, is eligible for any staff position in the Agency, or the Commission.

(f) Investigations.

1. Beginning sixty (60) days after the City Council's confirmation of the first group of Commissioners and alternates, the Agency shall receive, review and prioritize all public complaints concerning the alleged misconduct or failure to act of all Department sworn employees, including complaints from Department non-sworn employees. The Agency shall not be required to investigate each public complaint it receives, beyond the initial intake procedure, but shall investigate public complaints involving uses of force, in-custody deaths, profiling based on any of the protected characteristics identified by federal, state, or local law, untruthfulness, and First Amendment assemblies. The Agency shall also investigate any other possible misconduct or failure to act of a Department sworn employee, whether or not the subject of a public complaint, as directed by the Commission. The Agency shall forward a copy of each complaint ~~received~~ it receives to the Internal Affairs Division of the Oakland Police Department within one business day of receipt, and the Department shall forward a copy of each complaint it receives to the Agency within one business day of receipt. The Agency Director may report to the Commission any resistance by the Department to the Agency conducting reasonable investigative tasks. The Agency Director shall submit to the Commission each month a list of all investigations it is conducting and shall, as permitted by law, answer any questions raised by any Commissioner regarding such investigations at a Commission meeting.

2. Subject to applicable law, the Commission, OIG, and Agency shall have the same access to all Department files and records, including the Department's

Internal Affairs Division (hereinafter, IAD) files and records, related to sworn employees of the Department with the exception of personnel records, in addition to all files and records of other City departments and agencies related to sworn employees of the Department, as the Department's Internal Affairs Division (IAD) IAD, including but not limited to the same access to electronic data bases as IAD as permitted by law. Requests for access to such files and records shall be made by a majority vote of the Commission, by the Agency Director, or by the Inspector General. By majority vote, the Commission shall have the authority to request information from the Department, and the Chief of Police or her or his designee shall respond to such requests, as permitted by law. Access to personnel records shall be limited to the Agency Director who All those who have access to confidential information shall maintain confidentiality as required by law. The Department and other City departments and agencies shall make every reasonable effort to respond to the Commission's, OIG's, or Agency's requests for files and records within ten (10) days, including but not limited to: (1) records relevant to Police Department policies or practices, and (2) personnel and disciplinary records of Police Department sworn employees, as permitted by law.

3. The Agency shall make every reasonable effort to complete its investigations within one hundred and eighty (180) days of the filing of the complaint with the Agency. The Agency shall complete its investigations within two hundred and fifty (250) days of the filing of the complaint with the Agency unless the Agency Director, in his or her discretion, makes a written finding that exceptional circumstances exist in a particular case that are beyond the Agency's control. Within thirty (30) days of completion of the investigation, the Agency Director of the Agency shall issue written findings and proposed discipline regarding the allegations stated in the complaint to the Chair of the Commission and the Chief of Police. The Agency Director shall issue written findings and proposed discipline within twenty-four (24) hours of completion of any investigation of Level 1 use of force (as defined by Department policy), sexual misconduct or untruthfulness. The City Administrator shall not have the authority to reject or modify the Agency's findings and proposed discipline.

4. To the extent allowed by law and after consultation with the Commission, the Agency shall forward information to other enforcement agencies, including but not limited to the Alameda County District Attorney, when such information establishes a reasonable basis for believing that a crime may have been committed by a sworn Department employee.

5. The OIG shall audit the Department's compliance with the fifty-two (52) tasks described in the Settlement Agreement in United States District Court case number C00-4599, Delphine Allen, et al., v. City of Oakland, et al., and make recommendations to the Department and the Commission based on its audit(s), even after the Settlement Agreement expires. The OIG may review legal claims, lawsuits, settlements, complaints, and investigations, by, against, or involving the Department and the Agency, to ensure that all allegations of police officer

misconduct are thoroughly investigated, and to identify any systemic issues regarding Department and Agency practices and policies. ~~The OIG shall review the Mayor's proposed budget to determine whether budgetary allocations are aligned with community priorities as defined by the Commission.~~ The OIG shall have access and authority to review Department data, investigative records, personnel records, and staffing information, as permitted by law, for the purpose of conducting audits of the Department. The OIG shall have access and authority to review Agency data, investigative records, personnel records, and staffing information for the purpose of conducting audits of the Agency. OIG shall report the results of its audits to the Commission and may publicly report on the results of any audits in a manner consistent with all applicable confidentiality requirements.

6. Upon the occurrence of a Serious Incident, as defined by Ordinance, the Chief of Police or her or his designee shall immediately notify the Agency Director.

(g) Adjudication.

1. If the Chief of Police agrees with the Agency's findings and proposed discipline, he or she shall notify the Agency Director who shall notify the Chair of the Commission of the agreed-upon findings and proposed discipline. The Chief shall send to the subject officer notification of the agreed-upon findings and intent to impose discipline. The Chief of Police may send such notification to the subject officer before IAD has begun or completed its investigation.

2. If the Chief of Police disagrees with the Agency's findings and/or proposed discipline, the Chief of Police shall ~~prepare~~ notify the Agency Director of his or her own findings and/or proposed discipline which shall be submitted to. The Agency Director shall submit the Chief's findings and proposed discipline in addition to the Agency's findings and proposed discipline to the Chair of the Commission. The Chair of the Commission shall appoint a Discipline Committee comprised of three Commissioners. The City Administrator shall not have authority to reject or modify the Chief of Police's findings and proposed discipline. ~~After reviewing the Agency's submission and after consulting with the Agency Director about the time available under applicable statutory deadlines, the Agency's findings and proposed discipline shall also be submitted to the Discipline Committee which shall may require the Agency to further investigate the complaint by notifying the Agency Director, in writing, of the specific issues that need further investigation.~~ After reviewing both submissions, the Discipline Committee shall and resolve any dispute between the Agency and the Chief of Police. Based solely on the record presented by the Agency and the Chief of Police, the ~~Based solely on the record presented by the Agency and the Chief of Police, the~~ The Discipline Committee shall submit its final decision regarding the appropriate findings and proposed discipline to the Chief of Police who shall notify the subject officer. The City Administrator shall not have the authority to reject or modify the Discipline Committee's final decision regarding the appropriate findings and level of

discipline. The Discipline Committee shall not have the authority to conduct its own investigation.

3. If the Chief of Police prepares his or her own findings and proposed discipline and provides it to the Agency before the Agency's investigation is initiated or completed, the Agency may close its investigation or may choose not to conduct its own investigation in order to allow final discipline to proceed as proposed by the Chief, except that ~~if the Agency is required to conduct an investigation by subsection (f) above~~ in investigations of Level 1 uses of force, sexual misconduct or untruthfulness, the Commission must approve the Agency's decision by a majority vote. If the Agency chooses not to close its investigation, imposition of final discipline shall be delayed until the Agency's investigation is completed and the Agency makes its findings and recommendations for discipline. The Agency shall notify the Chief of its final decision regarding how and whether it will proceed within ~~five (5) business~~ seven (7) days of the Chief's notice of completion of his or her investigation.

4. All employees are afforded their due process and statutory rights including *Skelly* rights. ~~Subject to state law, the Inspector General may attend, but may not participate in, Skelly meetings for the purpose of noting relevant patterns and making policy recommendations.~~ After the findings and imposition of discipline have become final, the subject officer shall have the right to grieve/appeal the findings and imposition of discipline if such rights are prescribed in a collective bargaining agreement. Whenever the discipline determination of a Discipline Committee is the subject of a hearing before the Civil Service Board or a labor arbitrator, the Agency Director, in consultation with the City Attorney, shall decide whether an Agency Attorney or the Office of the City Attorney shall represent the City.

5. The Commission may review the findings and discipline in any investigation of Level 1 use of force, sexual misconduct and untruthfulness, even if the Chief and the Agency agreed on the findings and discipline. The Commission shall conduct such review solely for the purposes of facilitating the Commission's oversight of the Agency, for formulating Agency policy and for making policy recommendations to the Department. The Commission may conduct such review only after the findings are no longer subject to review or modification by a Discipline Committee. The Commission shall not have the authority to reject or modify any findings or discipline. The Commission may delegate its authority to conduct the review described in this section 604(g)(5) to the Inspector General. Nothing in this section 604(g)(5) shall limit or modify the authority of a convened Discipline Committee as described in section 604(g)(2).

(h) Enabling Legislation.

The Commission may make recommendations to the City Council for enacting legislation or regulations that will further the goals and purposes of this Charter section 604. The City Council may, on its own initiative, enact legislation or

regulations that will further the goals and purposes of this Charter section 604. Once the Commission is seated, subsequent legislation or regulations shall be submitted to the Commission for review and comment. The Commission shall have forty-five (45) days to submit its comments to the City Council, such time to be extended only by agreement of the City Council.

(i) Legal Counsel to the Commission

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

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

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

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

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

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

d. Commission Attorney, in her/his professional discretion, determines that the Rules of Professional Conduct require referral of the matter to one of the following City officers: City Administrator, Mayor, City Attorney, Council president, Vice Mayor; or

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

Section 2. Severability. If any section, subsection, sentence, clause or phrase of this Measure is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Measure. The voters hereby declare that they would have passed this Measure and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

and be it

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

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

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

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

NOES –

ABSENT –

ABSTENTION –

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