

CITY OF OAKLAND



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

June 01, 2020

Re: Resolution to Amend City Charter Section 604 (Police Commission)

Dear Oakland City Council,

Circa May 23, 2020, the Oakland Police Commission (“Commission”) received two updated draft resolutions proposing to amend City Charter Section 604. The first draft (hereinafter “Resolution One”) is sponsored by Council President Kaplan, Council President Pro Tempore Kalb, Councilmember Gallo, and Councilmember Taylor. Resolution One proposes a variety of substantive changes. The second draft (hereinafter “Resolution Two”) is sponsored by Council President Kaplan, Council President Pro Tempore Kalb, and Councilmember Gallo. Resolution Two proposes a limited selection of changes, the creation of the Office of the Inspector General (OIG), and language empowering the Commission to hire independent legal counsel. During our May 28, 2020 meeting, the Commission reviewed both resolutions. We used Resolution One as a reference document for our debate, as it most closely comports with the opinions previously expressed by the Commission in our April 27, 2020 Opinion Letter.

We suggest the following edits be made to Resolution One, and we submit our opinion on this draft legislation for your review and comment. Items included in Resolution One that are not the subject of discussion in this opinion letter can be considered to have the support of the Commission.

[1] Section 604, Subsection (a)(4)

It is our opinion that audits of the Commission be conducted at no less than a three-year cycle. A two-year cycle is insufficient time for the Commission to participate in the audit process, receive a final report and recommendations, and take action on recommendations. Additional time would serve to assist the Commission in adapting its operations when auditors present their findings.

[2] Section 604, Subsection (a)(5)

Current language: “The City Administration shall not exercise any managerial authority over Commissioners or their designated staff, and shall not initiate an investigation for the purpose of removing a Commissioner.”

Suggested language: “**The City Administration shall not exercise any managerial authority over Commissioners or their designated staff, and shall not initiate an investigation of a Commissioner unless required by law or collective bargaining agreement.**”

It is our opinion that the phrase “...initiate an investigation for the purpose of removing a

Commissioner.” invites abuse. The current language would permit the City Administration to investigate a Commissioner as long as there is no explicit statement that such an investigation is for the purposes of removal. The proposed replacement language removes this unenforceable standard. We support the language added to section 604(c)(10) that empowers the Public Ethics Commission to investigate allegations against Commissioners.

[3] Section 604, Subsection (b)(5)

Resolution Two contains the following language, hereinafter referred to as the “exigency provision”:

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.

It is our opinion that the abovementioned exigency provision should be removed. This language invites abuse, and provides the Chief of Police with the ability to avoid Commission and Council oversight if “emergency” policy changes are made on a rolling basis. We do not believe that the Chief should hold this power, or that this power is necessary for public safety. In the history of the Commission, we have had one policy that required change on an emergency basis. This policy, (a use of force reporting policy proposed by former Chief Kirkpatrick, and approved by the Commission) created unanticipated backlog for patrol officers due to report writing requirements. The Department timely identified the issue, presented a proposed amendment to the Commission, and the Commission approved the amendment. This is the appropriate process for emergency policy changes. The Commission strongly opposes the creation of an unnecessary “policy exigency”.

[4] Section 604, Subsections (c)(1) and (2)

It is our opinion that language setting forth eligibility requirements for Commissioners should remain in the Charter. Resolution One deletes language that prevents current police officers, current City employees, former Department sworn employees, and current or former police union officials from serving as Commissioners. In its place, Resolution One provides the Council with the ability to determine, by ordinance, qualifying and disqualifying characteristics for Commissioners. This language raises the specter of (1) a mayoral appointment of a police officer or union official to serve as a Commissioner, and (2) a future Council changing Commissioner eligibility in ways that are inconsistent with the intent of this Charter revision – to preserve and protect the Commission’s independence as a police oversight authority.

It is our opinion that the following phrase should be deleted from subsection (c)1: “Commissioners shall ... not be issued and shall not display, wear, or carry badges that identify themselves as Commissioners.”

This language is unnecessary and does not belong in the City Charter. All use of identification in any form by all Commissioners has been appropriate and to suggest otherwise is highly inappropriate.¹

¹ The March 02, 2020 agenda of the Public Ethics Commission, under Attachment 9, contains a February 18, 2020 letter

Impersonation of a peace officer is a crime. There is no evidence that any Commissioner has ever attempted to act with the authority of a peace officer. This issue has been brought to public attention because San Francisco Police Officers claimed that a Commissioner “flashed a badge” at them during an incident in San Francisco. This incident was investigated and the Oakland Public Ethics Commission exonerated the accused Commissioner after review of evidence, which included police body camera footage. We respectfully request that Council refrain from continuing to reference this unfounded allegation against a volunteer Commissioner.

[5] Section 604, Subsection (e)(4)

It is our opinion that the staff of the Community Police Review Agency (CPRA) should consist of no fewer than one line investigator for every seventy (70) sworn officers in the Department. This recommendation is made following consultation with the CPRA Executive Director, who has noted in prior meetings of the Commission that he lacks sufficient staff to engage in on-call responses to high-level allegations of police misconduct. Sufficient staffing of the Agency is an ongoing concern for the Commission. Please note that at the time of this writing, the Agency has no ability to send on-call investigators to the scene if police misconduct occurs during the ongoing demonstrations related to George Floyd’s death by Minneapolis police.

[6] Section 604, Subsection (e)(6)

It is our opinion that the Commission’s Inspector General (OIG) should be an at-will employee, similar to the Executive Director of the CPRA. The Inspector General is not and should not be tasked with audits or reviews of the Commission, given this, the proposed requirement that cause be given for dismissal of the OIG (but not the CPRA Executive Director) is baffling. The Commission must be empowered to select and remove senior staff as necessary for the Commission to conduct its business.

[7] Section 604, Subsection (f)(2)

We strongly support the language added to provide access to Department personnel records. We note that the CPRA has previously struggled with the current Charter language that restricts personnel records access to the Executive Director. We are pleased to note that this bottleneck has been remedied, and that explicit authority to review personnel records is provided to the Commission itself.

[8] Section 604, Subsection (g)(5)

The Commission proposes that the following language be inserted into subsection (g)(5), replacing the language present in Resolution One:

The Commission on its own motion may convene a Discipline Committee for cases when either or both the Agency Director or the Department have not completed an investigation within two hundred and fifty (250) days of the filing of a complaint or when the evidence upon which the findings of either the Department or CPRA do not include required body worn camera footage of the incident in question. The Commission shall adopt additional qualifying criteria for convening a Discipline Committee within its own

addressed to Commissioner Harris. The letter states in relevant part: “PEC Staff found no evidence of the use of your Commissioner badge for the purpose of inducing or coercing staff at the school to allow you to enter the school.”

bylaws. The Discipline Committee may require the Agency to further investigate the complaint by notifying the Agency Director, in writing, of the specific issues that need further investigation. The Commission may convene such a Discipline Committee by a vote of no fewer than five (5) affirmative votes.

Conclusion

Thank you for your consideration of the Commission's comments and edits of Resolution One.

Very truly yours,

Regina Jackson
Chair, Oakland Police Commission