



Date: February 6, 2017

Subject: **Seeking Public Comment for Draft Police Commission Enabling Ordinance**

Members of the Public,

As provided by the City Council's Public Safety Committee at its meeting of January 24, 2017, we are posting the most recent draft of our Police Commission Ordinance for a 30-day public comment period, in order to provide an extended period of time for the public to review the proposal and provide us with their comments. As the authors of this legislation, we will carefully review all submitted comments.

After the close of the 30-day period, we will further refine the Police Commission Ordinance and then request scheduling for consideration and approval by the Public Safety Committee and ultimately adoption by the City Council. The required 10-day noticing of the legislation prior to consideration at committee will provide an additional comment period for the public, during which time we welcome the public to email our offices with any additional comments about the ordinance.

### I. Background about the Oakland Police Commission

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

### II. Summary of Oakland Charter Section 604 already approved by the voters

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

- Establishes a 7-member Police Commission, with two alternates, and provides its core powers and duties;
- Identifies Police Commissioner appointments, terms, vacancies, and removal requirements, including that three Commissioners would be appointed by the Mayor and 4 by a 9-member Selection Panel appointed by the City Council and Mayor, with all Commissioners subject to Council confirmation;

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

### **III. Contents of the draft Police Commission Enabling Ordinance**

The Police Commission Enabling Ordinance consists of the following:

1. Enabling legislation that rests upon the framework established by Charter Section 604, including provisions governing the Police Commission and the CPRA;

2. Renaming the current OPD Office of Inspector General as OPD's Office of Audits and Compliance and establishing a new civilian Office of Inspector General that is independent from OPD;
3. Adding a requirement for the Community Policing Advisory Board that it provide an annual report and presentation to the Police Commission.

With regard to #1 above, note that most of the provisions governing the Commission and the Agency are already provided by the Charter. What the proposed Police Commission Enabling Ordinance would add for the Commission and the CPRA is the following:

*Police Commission:*

- Additional functions and duties, including defining "cause," which the Charter provides is a basis for the Commission to be able to fire the Chief of OPD;
- Additional Commissioner training requirements;
- Clarifying provisions regarding the Charter's background checks requirement;
- Providing that the Commission has the same access to OPD records as the CPRA has under the Charter and creation of an additional enforcement mechanism for failure to provide records to the Commission;
- Clarifying provisions regarding meetings, including Community Roundtables and airing by KTOP-TV10;
- Clarifying provisions regarding committees, public statements, election of the Chairperson, bylaws, and staff assistance;
- Clarifying provisions regarding the Discipline Committee and discipline process required by the Charter;
- Supervision of the new Civilian Inspector General.

*Community Police Review Agency:*

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

#### **IV. Specific explanations for provisions in the draft Police Commission Ordinance**

##### **1. Commissioner background checks**

Charter Section 604 provides that all Police Commissioners, the CPRA Director, and new CPRA investigators must receive background checks, similar to police officers. With respect to the appointment of commissioners, the purpose of these background checks is to provide full information to the Appointing Authorities (the Selection Committee and the Mayor) for their consideration.

The draft Police Commission Enabling Ordinance clarifies that the information obtained from the background check may be used only for purposes of evaluating applicants. Neither Charter Section 604 nor the proposed enabling ordinance

prescribe that the results of background check would prohibit any appointment or hiring.

The Appointing Authorities have broad discretion in deciding who to select for appointment to the Commission. A record of a past criminal conviction, for example, does not mean that that individual is ineligible to serve on the Commission. Whether that information is relevant to the appointment decision is up to the appointing authorities.

For example, in one hypothetical case, an appointing authority may determine that a Commission applicant's background of, for example, serious offenses involving moral turpitude makes that applicant undesirable for appointment. In another hypothetical case, an appointing authority may determine that a Commission applicant's criminal conviction history is irrelevant to the merit of their application or even bolsters their application, due to the applicant's first hand experiences within the criminal justice system.

## **2. The issue of evidentiary hearings**

While Oakland has had the CPRB for many years, a major problem with this structure is its lack of any real authority in actual police discipline process. The police discipline process we have had, which is based on local and state law as well as the City's contract with the Police Officer's union, consists of the Chief of the Police proposing discipline, subject to the oversight of the City Administrator, with an appeal of the discipline by the officer going to binding arbitration, which includes an evidentiary hearing before an arbitrator. For some of those cases, the CPRB also investigates the misconduct, may hold a hearing, and presents *advisory* discipline recommendations to the City Administrator.

Our process has therefore been similar to the system employed in Berkeley, where the citizens police review body is only advisory. It is not like the processes in San Francisco or Los Angeles where their Police Commissions have the authority to determine the final outcome for police discipline.

At the recommendation of the Coalition for Police Accountability, one of our primary goals with the Police Commission Charter Amendment was to replace the CPRB with a structure that gave civilian oversight (independent from the Administration) real authority in the police discipline process. Part of that was accomplished by giving the Director of the new CPRA agency parity with the Chief of Police in proposing discipline (as well as eliminating the City Administrator from being able to overrule the Chief). On every instance of proposed police discipline, the Director and the Chief must consult. If they agree, the proposed discipline moves forward. However, if they disagree, the Charter provides that a rotating Discipline Committee of the Police Commission shall determine the proposed discipline based *solely* on the investigative record submitted by the Director and the Chief. This is a major achievement beyond what Berkeley has or what Oakland used to have.

The Charter explicitly limits the Discipline Committee to solely considering the records presented by the CPRA Director and the Chief of Police. Moreover, the Charter does not provide the full Police Commission with any other role in individual police discipline cases other than via the Discipline Committee. Questioning of witnesses and the respondent is conducted by the CPRA staff and by OPD's Internal Affairs in the course of their

investigations, which helps inform the Director's and Chief's proposed discipline and findings.

For the more serious cases of misconduct, the current draft enabling ordinance does require that any audio and/or video recordings be included in the records presented to the Discipline Committee. Additionally, we have included a requirement that the Discipline Committee may request the in-person explanations from the Director and Chief, or their representatives, regarding specifics in the records submitted to the Discipline Committee.

Were we to include in the ordinance a provision that allows the full Commission to, for example, conduct evidentiary hearings of alleged police misconduct before discipline is proposed, these hearings would be outside the Charter's discipline framework. In other words, the Discipline Committees would not be allowed to consider the information in the hearings since they would not be part of the records created by the Chief and Agency Director.

### **3. Role of the Public Ethics Commission regarding providing records to Commission and Agency**

This Public Ethics Commission (PEC) enforcement mechanism is a parallel process to the Police Commission's subpoena power and corresponding access to court enforcement of the subpoena. Nothing in the draft enabling ordinance curtails that subpoena power via the PEC enforcement role; they are separate and independent.

The PEC enforcement role was added because the authors previously received public feedback that subpoena power alone may not be strong enough to protect the Police Commission's access to records and that there should be administrative penalties for failure to provide records lawfully requested by the Police Commission or the CPRA. Since Chapter 2.25 of the Oakland Municipal Code has an existing enforcement mechanism under the PEC for when City officials or employees fail to provide records lawfully requested by PEC, a simple way to provide penalties for the similar situation where records are not provided to the Commission/CPRA is for the Enabling Ordinance to simply mirror the existing mechanism in Chapter 2.25.

We welcome the public's thoughts on the elements in the proposed enabling ordinance. Thank you for your interest in this effort.

Respectfully submitted,



Dan Kalb, Councilmember, District 1, & Member, Public Safety Committee



Noel Gallo, Councilmember, District 5, & Member, Public Safety Committee

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OAKLAND CITY COUNCIL  
ORDINANCE NO. \_\_\_\_\_ C.M.S.

~~DISCUSSION FOR FEEDBACK ON 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 RENAMING THE CURRENT OFFICE OF THE INSPECTOR GENERAL AS THE OFFICE OF AUDITS AND COMPLIANCE, AND (3) REQUIRING AN ANNUAL REPORT AND PRESENTATION BY THE COMMUNITY POLICING ADVISORY BOARD TO THE COMMISSION

**WHEREAS**, On November 8, 2016, the City of Oakland's voters passed Measure LL to add Section 604 to the Oakland City Charter, setting up the establishment of the Oakland Police Commission; and

**WHEREAS**, An enabling ordinance is vital companion for implementation of the Charter Amendment passed by the voters; and

**WHEREAS**, [PENDING]; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** That the City Council hereby adopts the addition of Chapters 2.45 and 2.46 to the Oakland Municipal Code to enable the implementation of City Charter Section 604 which establishes the Oakland Police Commission and the Community Police Review Agency, and to establish the Office of Inspector General and to appoint a civilian Inspector General who shall be responsible for its day-to-day operations.

**SECTION 2.** Chapters 2.45 is hereby added to the Oakland Municipal Code to read as follows:

## **Chapter 2.45 - OAKLAND POLICE COMMISSION**

### **2.45.010 – Definitions.**

The following words and phrases whenever used in this chapter shall be construed as defined in this section:

“Agency” shall mean the Community Review Police Agency.

“Appointing Authority” shall mean the Selection Panel established by Section 604(c)(3) of the City Charter or the Mayor. “Appointing Authorities” shall mean both the Selection Panel and the Mayor.

“Chief” shall mean the Chief of Police of the Oakland Police Department.

“Commission” shall mean the Oakland Police Commission.

“Department” shall mean the Oakland Police Department.

“Misconduct” shall mean both a police officer’s affirmative acts of misconduct and/or his or her failure to act.

“Serious Incident” shall mean a police officer-involved shooting, death or serious bodily harm caused by the action and/or inaction of a police officer, in-custody death, and/or on-duty or off-duty criminal conduct of a sworn Department employee which rises to the level of a felony or Serious Misdemeanor.

“Serious Misdemeanor” shall mean any misdemeanor crime that, if convicted, could interfere with a police officer’s ability to fulfill his or her job responsibilities. Examples include those crimes that involve violence, intimidation, threats, sexual offenses, theft, dishonesty, possession of drugs, violations of California Penal Code Section 12021(c)(1), and those crimes where bias based on any legally protected characteristic is a motivating factor.

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

### **2.45.020 – Creation.**

Oakland City Charter Section 604 has established the Oakland Police Commission. Effective the sixtieth day after the City Council’s confirmation of the first group of Commissioners and alternates, Ordinance No. 12454 C.M.S., which created the Citizens’ Police Review Board, shall be repealed.

**2.45.030 – Bylaws and Rules.**

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

**2.45.040 – Background Checks.**

In accordance with federal and state law, a background check shall be performed on ~~each~~final candidates for the position of Commissioner and alternate before his or her name is submitted to the City Council for confirmation. The City Administrator’s Office shall retain an independent contractor to perform these background checks, which shall include:

- A. Verification of educational and employment background, and any other information that may be verified by a public records search; and
- B. Results of a criminal records investigation.

The results of each background check shall be disclosed only to the Appointing Authority that is considering the Commissioner or alternate. The Appointing Authority may use the results of the background check solely for the purpose of evaluating the candidates for Commissioner and alternate.

**2.45.~~040~~050 – Functions and Duties of the Commission.**

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

- A. In cooperation with the Chief, ensure that all sworn employees of the Department receive adequate education and training regarding the management of job-related stress, and regarding the signs and symptoms of post-traumatic stress disorder, drug and alcohol abuse, and other job-related mental and emotional health issues.
- B. Prepare and deliver to the Mayor, the City Administrator and the Chief by January 31 of each year, or such other date as set by the Mayor, a proposed budget for providing the education and training identified in subsection (A) above.
- C. Notwithstanding Section 2.29.020 of the Oakland Municipal Code and in accordance with Section 604(b)(10) of the City Charter, have the authority to remove the Chief, without the approval of the Mayor, by a vote of not less than five (5) affirmative votes and only after finding cause. For purposes of removing the Chief, “cause” shall be defined as:
  - 1. Gross neglect of duties or ~~a~~serious ~~violation~~violations of City or Department policy after the Chief has received written warning of the neglect or violation and the Chief has failed to cure the neglect or violation within twenty (20) days; or
  - 2. Conviction of a felony; or
  - 3. Conviction of misdemeanor involving moral turpitude; or
  - 4. Failure or refusal to cooperate with any investigations involving employees of the Department; or

5. Obstruction of any investigation of Department employee misconduct or criminal activity; or
  6. Refusal, which shall include ongoing failure, to administer or enforce Department policies, procedures or General Orders; or
  7. A material act of dishonesty, fraud, self-dealing, or other act of moral turpitude.
- D. Within one hundred and eighty days (180) of the City Council’s confirmation of the first group of Commissioners and alternates and on the anniversary of that date thereafter, notify the Chief regarding what information will be required in the Chief’s annual report to the Commission.
- E. Conduct an annual performance review of the Inspector General.
- F. Request that the City Attorney submit semi-annual reports to the Commission and to City Council which shall include a listing and summary of:
1. To the extent permitted by applicable law, the discipline decisions that were appealed to arbitration;
  2. Arbitration decisions or other related results;
  3. The ways in which it has supported the police discipline process; and
  4. Significant recent developments in police discipline.
- G. Provide policy guidelines to the Agency Director for assistance in determining case prioritization.
- H. Make available on its website, to the extent permitted by law:
1. The Commission’s annual report;
  2. The Chief’s annual and semi-annual reports; and
  3. The Inspector General’s annual report.
- I. Direct the Agency to investigate a Serious Incident when requested by the Mayor, the City Administrator, and/or the City Council by an affirmative majority vote.
- J. Direct the Department to develop a proposed policy prohibiting, with appropriate exceptions, the Department’s Internal Affairs Division from investigating the Department’s non-sworn employees, subject to applicable state law.
- K. Direct the Chief to:
1. Submit semi-annual reports to the City Council’s Public Safety Committee, to the extent permitted by applicable law, which shall include:
    - a. The number of complaints submitted to the Department’s Internal Affairs Division (hereinafter, “IAD”) together with a brief description of the nature of the complaints;
    - b. The number of pending investigations in IAD, and the types of Misconduct that are being investigated;
    - c. The number of investigations completed by IAD, and the results of the investigations;
    - d. The number of training sessions provided to Department sworn employees, and the subject matter of the training sessions;
    - e. Revisions made to Department policies and general orders;
    - f. ~~Number~~The number of, and circumstances surrounding, officer-involved shootings ~~and~~, the results of any Executive Force Review Board or Force Review Board hearings, and a summary of the Department’s monthly Use of Force Reports;

- g. Number of officers disciplined and the level of discipline imposed; and
  - h. The number of closed investigations which did not result in discipline of the subject officer.
2. Immediately notify the Chair of the Commission, the Agency Director and the Inspector General of any Serious Incident. The Commission shall also direct the Chief to provide a status report within ten (10) calendar days of the date on which the Serious Incident occurred, and a second status report within forty-five (45) calendar days of the date on which the Serious Incident occurred.
  3. Brief the Commission Chair, the Agency Director and the Inspector General at least once a month regarding allegations of all Serious Incidents under investigation.
  4. Order all officers subject to subpoena (pursuant to the Commission’s subpoena powers as described in City Charter section 604(b)(3)) to comply with all requirements of the subpoena.
- L. In association with the Agency Director, establish rules and procedures for the mediation and resolution of complaints of Misconduct.
  - M. Receive any and all reports prepared by the Community Policing Advisory Board (hereinafter referred to as “CPAB”) and consider acting upon any of the CPAB’s recommendations for promoting community policing efforts and developing solutions for promoting and sustaining a relationship of trust and cooperation between the Department and the community.

**2.45.050060 – Access to Documents.**

Subject to applicable law, the Commission and the Inspector General shall have access to all Department files and records, with the exception of personnel records, in addition to all files and records of other City departments and agencies relevant and necessary to the performance of its duties. In addition and subject to applicable law, the Commission shall have access to all Department files and records, with the exception of personnel records, in addition to all files and records of other City departments and agencies relevant to a Serious Incident. However, the Discipline Committees shall have access to all files, including personnel records, necessary to render a decision as described in City Charter section 604(g)(2).

**2.45.060070– 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 meetings shall be designated special meetings for purposes of Article II of Chapter 2.20 of the Oakland Municipal Code, and shall include an agenda item titled “Community Roundtable,” or something similar. The purpose of the Community Roundtable agenda item shall be to engage the community in discussions regarding community policing, building trust between the community and the Department, and other similar and relevant subjects as determined by the Commission. The Commission shall consider inviting to each Roundtable individuals and groups familiar with the issues involved in building and maintaining trust between the Department and the community, including but not limited to representatives from the Department, members of faith-based groups, youth groups, advocacy groups, residents of neighborhoods that experience the most frequent contact with the Department and, to the extent practicable, formerly incarcerated members of the community.

**2.45.070080 - Office of Inspector General.**

Within sixty (60) days after the City Council’s confirmation of the first group of Commissioners and alternates, there shall be established in the City government a civilian Office of Inspector General for the Department (hereinafter referred to as “OIG”) ~~which shall be under the supervision and administrative control of the~~. The Commission, with the assistance of the City Administrator, shall be responsible for oversight of the OIG.

- A. The powers, functions and duties of the OIG shall be those assigned, authorized and directed by the Commission, and shall include conducting any audit or review of the Department necessary to assess the Department’s performance and adherence to constitutional policing practices, and shall also include conducting any audit or review of the Department’s Training Bulletins, General Orders, and all other policies and procedures, including any pattern of non-compliance with the foregoing, as necessary or helpful for the Commission to fulfill its duties under Charter Section 604(b)(4), (5) and (6).
- B. The Chief shall assign a sworn officer to act as a liaison from the Department to the OIG.
- C. The City shall allocate a sufficient budget for the OIG to perform its functions and duties as set forth in section 2.45.090 below, including budgeting one (1) full-time staff position comparable to the position of Police Program and Audit Supervisor. All OIG staff, other than the Inspector General, shall be civil service employees in accordance with Article IX of the City Charter, and shall report to the Inspector General. Except for the Inspector General, the Commission shall not have any authority to hire, supervise, evaluate or fire OIG staff.
- D. Within thirty (30) days after the first Inspector General is hired:

1. The Policy Analyst then assigned to the Agency shall be transferred to the OIG; and
2. One (1) Police Performance Auditor shall be transferred from the Department’s Office of Inspector General—    or re-named Office of Audits and Compliance—    to the OIG.

**2.45.080090 – Civilian Inspector General.**

- A. Within one hundred and eighty (180) days of the City Council’s confirmation of the first group of Commissioners and alternates, the City Administrator shall hire the first civilian Inspector General from among two (2) or three (3) candidates submitted by the Commission. The job announcement and the description of job responsibilities for the position of Inspector General shall be developed jointly by the Commission and the City Administrator. The City Administrator shall hire all subsequent civilian Inspectors General from among two (2) or three (3) candidates submitted by the Commission. The Inspector General shall be subject to a background check as described in section 2.45.030 above before hiring except that the results of the background check shall be submitted to the Commission and the City Administrator.
- B. The Inspector General shall serve at the pleasure of the Commission, and may only be removed by an affirmative vote of at least five (5) members of the Commission, or by an affirmative vote of four (4) members with the approval of the City Administrator. The City Administrator shall not have the authority to independently remove the Inspector General.
- C. The Inspector General shall be classified as a department head, and shall be responsible for the day-to-day operations of the OIG—, including but not limited to the supervision and direction of all staff. The Commission shall periodically conduct a performance evaluation of the Inspector General.
- D. The Inspector General shall be permitted to attend Executive Force Review Board, Force Review Board, and *Skelly* hearings if he or she chooses to do so.

**2.45.090100 – Functions and Duties of the Office of Inspector General.**

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

- A. Preparing an annual report, summarizing the results of the annual reviews of:
  1. The Department’s processes and procedures for investigating alleged Misconduct;
  2. The Department’s processes and procedures for determining the appropriate level of discipline for sustained findings of Misconduct;
  3. The Agency’s processes and procedures for investigating alleged Misconduct;
  4. The Agency’s processes and procedures for determining the appropriate level of discipline for sustained findings of Misconduct;

5. Trends and patterns regarding Department training and education, and the Department’s use of ~~the Internal Personnel Assessment System (IPAS) and other any~~ early warning system(s)-); and

6. Trends and patterns regarding use of force and officer-involved shootings.

This annual report shall be presented to the Commission, the Mayor, the City Council’s Public Safety Committee, and to the Chief and shall include, where appropriate, recommendations for changes in the processes and procedures that were reviewed.

- B. Monitoring and evaluating, on at least an annual basis, the number and percentage of sworn officers who have received in-service training on profiling and implicit bias, procedural justice, de-escalation, diplomacy, situational problem-solving, and work-related stress management, and make recommendations, as appropriate, to the Commission regarding changes to the Department’s training programs.
- C. Developing and presenting a plan to the Commission to measure the performance of each element of the Department’s discipline process.
- D. Completing all audits or reviews requested by the Mayor, the City Administrator, and/or the City Council by an affirmative majority vote. The Inspector General shall report all findings to the office that requested the audit or review.
- E. Monitoring, evaluating, and making recommendations regarding the Department’s recruitment and hiring practices for sworn personnel.
- F. Monitoring, evaluating, and making recommendations regarding the Department’s Training Bulletins, General Orders, and all other policies and procedures as requested by the Commission in furtherance of its duties under City Charter section 604(b)(4), (5) and (6).
- G. Monitoring, evaluating, and making recommendations regarding the Department’s risk management practices.

**2.45.100110– Establishment of the Discipline Committee.**

The Chairperson of the Commission shall appoint three (3) Commission members to serve on a Discipline Committee, and shall designate one of these three (3) Commission members as the Chairperson. The Discipline Committee shall decide any dispute between the Agency and the Chief regarding the proposed or final findings or proposed or final level of discipline to be imposed on a Subject Officer.

- A. No Discipline Committee established by the Commission shall decide any dispute between the Chief and the Agency, as directed by Section 604(g) of the City Charter, until each member of the Discipline Committee has completed: (1) orientation regarding Department operations, policies and procedures, including but not limited to discipline procedures for Misconduct, and (2) the training described in section 2.45.160(D), (E) and (F).
- B. Membership in the Discipline Committee shall rotate for each police officer discipline case, as determined by the Chairperson of the Commission.

**2.45.110120 – Discipline.**

In accordance with Section 604(g)(4) of the City Charter, all Department employees shall be afforded their due process and statutory rights, including *Skelly* rights, as follows:

- A. With respect to Misconduct that is given a Class I designation pursuant to the Department’s Discipline Policy, the Chief and the Agency Director shall include probative videotape and/or audiotape from their respective investigations in their submissions to the Discipline Committee pursuant to City Charter section 604(g)(2). The Discipline Committee shall have the authority to request any additional videotape and/or audiotape 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. After the investigation of a complaint has been completed and a decision has been made regarding the proposed findings and the proposed level of discipline (hereinafter referred to as the “Proposed Discipline”), either by agreement between the Chief and the Agency or by decision of the Discipline Committee, the Chief shall send a Notice of Intent to Impose Discipline or a Notice of Intent to Terminate to the Subject Officer. Consistent with City policy and applicable law, the Department shall offer the Subject Officer a *Skelly* hearing to be conducted by an assigned *Skelly* officer. After completion of the *Skelly* hearing, the *Skelly* officer shall issue his or her report which shall include his or her recommendation regarding whether the Proposed Discipline should be affirmed or modified in any way.
- C. The *Skelly* report shall be submitted to the Chief and to the Agency Director if the Chief and the Agency Director agreed on the Proposed Discipline. The Chief and the Agency Director shall consider the *Skelly* report and consult with each other regarding the final set of findings and level of discipline to be imposed (hereinafter referred to as “Final Discipline”).
  1. If the Chief and the Agency Director agree on the Final Discipline, the Chief shall send a Notice of Discipline or Notice of Termination to the Subject Officer.
  2. If the Chief and the Agency Director do not agree on the Final Discipline, the *Skelly* report shall be submitted to the Discipline Committee which shall decide the Final Discipline. After such determination, the Discipline Committee shall direct the Chief to send a Notice of Discipline or Notice of Termination to the Subject Officer.
- D. The *Skelly* report shall be submitted to the Discipline Committee if the Discipline Committee decided the Proposed Discipline. The Discipline Committee shall consider the *Skelly* report in deciding the Final Discipline. After such determination, the Discipline Committee shall direct the Chief to send a Notice of Discipline or Notice of Termination to the Subject Officer.
- E. The Discipline Committee shall maintain the confidentiality of all personnel and/or privileged information as required by State and local law. After the Discipline Committee has concluded its deliberations regarding the Proposed Discipline and/or the Final Discipline, it shall return all records and information it

received to the party from which it received such records and information. No member of the Discipline Committee may publicly comment about, nor discuss any personnel matter with anyone, including another member of the Discipline Committee, outside of Discipline Committee meetings.

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

#### **2.45.120130– 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.

#### **2.45.130140 - Public Statements of the Commission**

The Commission may issue statements to the public regarding the Commission’s official business, to the extent such business is not confidential or privileged under State or local law, only after the statement has been approved by an affirmative vote of not less than four (4) votes. Commissioners may publicly discuss their roles as Commissioners and the Commission’s public and official business for the purpose of educating the community.

#### **2.45.140150 - Election of Chairperson.**

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

#### **2.45.150160 - Staff assistance.**

Within one hundred and eighty (180) days of the City Council’s confirmation of the first group of Commissioners and alternates and on an ongoing basis as appropriate, the Commission shall provide the City Administrator with its proposal for the staff positions necessary to permit the Commission and the Agency to fulfill its functions and duties as set forth in this Chapter 2.45, Chapter 2.46, and as set forth in Section 604 of the City Charter.

#### **2.45.160170 – Commissioner Training.**

Within ~~twelvethree~~ (3) months of appointment, or as soon thereafter as possible ~~after appointment~~, each Commissioner shall ~~become~~:

- A. Become familiar with City Charter section 604 and with Chapters 2.45 and 2.46 of the Oakland Municipal Code. ~~In addition, each Commissioner shall receive the training and orientation specified by Section 604(c)(9) of the City Charter. In addition, each Commissioner must:~~

- ~~B. Complete the Citizens' Police Academy and participate in a Department “ride-along;”~~
- ~~C. Complete the Department’s Procedural Justice Training, Implicit Bias Training, and Crisis Intervention Training;~~
- ~~D. Complete Peace Officer Standards and Training (POST) Learning Domains 15 (Laws of Arrest) and 16 (Search and Seizure);~~
- ~~E.B.~~ Receive training in basic principles of constitutional due process and administrative hearing procedures;
- ~~F.C.~~ Receive training in the legal requirements for maintaining the confidentiality of personnel records and other confidential documents or information;
- ~~G.D.~~ Receive briefing on the Negotiated Settlement Agreement in the case of *Delphine Allen, et al. v. City of Oakland*, and all related court orders for so long as they remain in effect; and
- ~~H.E.~~ Receive information regarding constitutional civil rights guaranteed to all citizens as such rights are affected by law enforcement.

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

- F. Receive the training and orientation specified by Section 604(c)(9) of the City Charter;
- G. Complete the Citizens' Police Academy and participate in a Department “ride-along;”
- H. Complete the Department’s Procedural Justice Training, Implicit Bias Training, and Crisis Intervention Training;
- I. Complete Peace Officer Standards and Training (POST) Learning Domains 15 (Laws of Arrest) and 16 (Search and Seizure);

The City Administrator shall assist the Commission in scheduling and facilitating all training and orientation required by this section and by section 604 of the City Charter.

#### **2.45.170180 - 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.

#### **2.45.180190 – Authority of Public Ethics Commission.**

If the Agency does not receive the files and records requested pursuant to Section 604(f)(2) of the City Charter within fifteen (15) business days of its request, the Public Ethics Commission shall have the authority to investigate allegations that the head of the offending City department or agency failed to provide the requested files or records to the Agency as required by Section 604(f)(2) of the City Charter. Such requirements shall be subject to enforcement by the City in the same manner as violations of Chapter 2.25 of the Oakland Municipal Code.

**2.45.190200– Reporting to City Council.**

The Commission shall submit its first annual, written report to the Mayor, City Council and the public within eighteen (18) months of the City Council’s confirmation of the first group of Commissioners and alternates. The Commission’s subsequent reports shall be submitted annually on or near the anniversary of that date.

**SECTION 3.** Chapter 2.46 is hereby added to the Oakland Municipal Code to read as follows:

**Chapter 2.46 - COMMUNITY POLICE REVIEW AGENCY**

**2.46.010 – Definitions.**

The following words and phrases whenever used in this chapter shall be construed as defined in this section:

“Agency” shall mean the Community Review Police Agency.

“Commission” shall mean the Oakland Police Commission.

“Department” shall mean the Oakland Police Department.

“Police Officer Misconduct” shall mean both affirmative acts of misconduct and a police officer’s failure to act.

**2.46.020 – Creation**

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

**2.46.030 – 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 shall include:

- A. Use the same complaint form as used by the Department in receiving all public complaints concerning alleged Misconduct, including complaints from Department non-sworn employees. All complaints, wherever filed, shall be date-stamped and numbered sequentially. A copy of the numbered and date-stamped complaint shall be provided to the complainant and to the Department’s Internal Affairs Division within one (1) business day of receipt.
- B. Make complaint forms available to the public by posting the forms and information about the complaint process on the Agency’s website, and by making information about the complaint process available at other public locations to be determined by the Agency Director.

- C. Ensure that all investigators receive any necessary training in conducting fair and impartial investigations.
- D. In consultation with and upon the approval of the Commission, establish rules and procedures for the operation of its business including, but not limited to, procedures for the intake of complaints.
- E. No less than twice a year and as permitted by applicable law, issue a report to the Public Safety Committee which shall include the following information:
  - 1. The number of complaints submitted to the Agency together with a brief description of the nature of the complaints;
  - 2. The number of the Agency’s pending investigations, and the types of Police Officer Misconduct that is being investigated;
  - 3. The number of investigations completed by the Agency, the results of the investigations, and the amount of time spent on the investigations;
  - 4. The number of officers disciplined and the level of discipline imposed; and
  - 5. The number of closed investigations which did not result in discipline of the subject officer.

**2.46.040 – Agency Director.**

The Agency Director shall be responsible for the day-to-day operations of the Agency. The Agency Director’s job responsibilities shall include, but not be limited to, the following:

- A. Identifying the staff positions, in addition to the position of Investigator, necessary to perform the Agency’s functions and duties;
- B. Assigning complaints to investigators, consulting with investigators regarding, and monitoring the progress of, their investigations;
- C. Monitoring the workload of all Agency staff;
- D. Conducting annual job performance evaluations of all Agency staff;
- E. Responding to questions and issues raised by the public, as permitted by applicable law; and
- F. Any other duties assigned by the Commission, consistent with the Agency’s powers and duties as described in Section 604 of the City Charter and subject to any constraints imposed by the Agency’s budget.

**2.46.050 – Background Checks.**

In accordance with federal and state law and consistent with Section 604(e)(7) of the City Charter, background checks shall be performed on all new Agency investigators and on the Agency Director, before hiring. The City Administrator’s Office shall retain an outside person or entity to perform these background checks, which shall include:

- A. Verification of educational and employment background, and any other information that may be verified by a public records search; and
- B. Results of a criminal records investigation.

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

**2.46.060 – Mediation Program.**

Upon the agreement of the Chief, the Agency Director, the complainant(s), and the Subject Officer(s), ~~and the Agency Director,~~ the Agency Director shall appoint a qualified mediator, ~~or conflict resolution association that employs mediators,~~ with at least five (5) years of experience in mediating employment or other relevant disputes, from a conflict resolution company or association that employs mediators, to mediate a final and binding resolution of the complaint in accordance with the Commission’s established rules and procedures. No Commissioner, City employee, or former Department sworn officer may be appointed mediator.

**2.46.070 – Authority of Public Ethics Commission.**

If the Agency does not receive the files and records requested pursuant to Section 604(f)(2) of the City Charter within fifteen (15) business days of its request, the Public Ethics Commission shall have the authority to investigate allegations that the head of the offending City department or agency failed to provide the requested files or records to the Agency as required by Section 604(f)(2) of the City Charter. Such requirements shall be subject to enforcement by the City in the same manner as violations of Chapter 2.25 of the Oakland Municipal Code.

**SECTION 4.** Section 2.29.020 of the Oakland Municipal Code is hereby amended, to add, delete, or modify sections as set forth below (sections number and titles are indicated in capitalized **bold type**; additions are indicated by underscoring, deletions are indicated by strike-through type; portion of the provisions not cited or not shown in underscoring or strike-through type are not changed):

**Section 2.29.020 – Police Department.**

There is established in the City government a Police Department which shall be under the supervision and administrative control of the City Administrator. The powers, functions and duties of said Department shall be those assigned, authorized and directed by the City Administrator. The management and operation of the Police Department shall be the responsibility of the Chief of Police who shall serve as Director of said Department, subject to the direction of the City Administrator. In the Police Department there shall be an Office of the Chief of Police and the following Bureaus: Field Operations East, Field Operations West, and Services; and there shall be the following divisions: Support Operations, Internal Affairs, Office of ~~the Inspector General~~ Audits and Compliance, Criminalistics, Personnel & Training, Communications, Fiscal Services, Records, Research & Planning, Information Systems, CompStat/Ceasefire, Neighborhood Services, and Criminal Investigation.

**SECTION 5.** Section 5.3 of the provisions establishing the Community Policing Advisory Board, as passed by Resolution No. 72727 and amended by Resolutions Nos. 73185, 73916, and, most recently, 79235, is hereby amended, to add, delete, or modify sections as set forth below (sections number and titles are indicated in capitalized **bold**

**type;** additions are indicated by underscoring, deletions are indicated by strike-through type; portion of the provisions not cited or not shown in underscoring or strike-through type are not changed):

5.3 The Community Policing Advisory Board shall oversee, monitor, and report at least annually on the implementation of Resolution 72727 C.M.S. and shall provide an annual report of its recommendations to the Mayor, City Council, City Administrator, Police Commission and Chief of Police on further steps necessary to carry out its objectives. In addition, the Community Policing Advisory Board shall provide an annual presentation on its report to the Police Commission.

**SECTION 6. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

**SECTION 7. Effective Date.** This Ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

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: \_\_\_\_\_