

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY

  
CITY ATTORNEY

ORDINANCE NO. 12454 C.M.S.

**An Ordinance Repealing Ordinance Nos. 11905 and 12102 C.M.S., which Prescribe The Powers and Duties of the Citizens' Police Review Board ("CPRB"), and Re-enacting the Provisions of the Ordinance with Amendments that (1) Require Five Affirmative Votes of the Board for Findings Other than Not Sustained", (2) Require that Officers Provide Supplemental Statements to CPRB Investigators in Certain Circumstances, (3) Authorize Additional Complaint Resolution Processes, (4) Authorize CPRB Staff to Investigate Complaints that are the Subject of Litigation and Make Recommendations Directly to the City Manager, and (5) Provide that Three-Member Panels' Recommendations/ Findings will be Placed on the Full Board's Agenda as Consent Calendar Items and may be Pulled from the Consent Calendar Agenda for Discussion or Hearing only upon Passing a Motion by Five or more Affirmative Votes**

**WHEREAS**, the Citizens' Police Review Board was established by ordinance by the City Council of the City of Oakland for the purpose of reviewing certain complaints of conduct by police officers, conducting fact-finding investigations of these complaints, and thereafter making advisory reports to the City Manager of the facts of these complaints; and

**WHEREAS**, notions of the public accountability and procedural fairness invite expansion and refinement of the Board's jurisdiction and its processes for fact-finding and recommendations; and

**WHEREAS**, at a Special Meeting of the City Council convened on or about April 26, 1994, the City Council determined that existing boards and commissions should be amended to incorporate uniform requirements regarding the selection of members, and the general responsibilities of boards and commissions;

**WHEREAS**, at a meeting of the City Council in April 2001, the City Council accepted certain revisions to the existing ordinance implementing the Citizens' Police Review Board; now therefore

The Council of the City of Oakland does ordain as follows:

**SECTION 1.** Ordinance Nos. 11905 and 12102 C.M.S. hereby are repealed.

## **SECTION 2. Creation of the Citizens' Police Review Board**

Pursuant to Section 601 of the Charter of the City of Oakland there is hereby created a Citizens' Police Review Board (hereinafter "Board"). It shall be the duty of the Board to investigate and review certain complaints regarding the conduct of Oakland police officers and park rangers and thereafter deliver in a timely manner advisory reports to the City Manager regarding the facts of and a recommended disposition of these complaints. In addition, the Board may, consistent with the limitations set forth in section 6.C.4 of this Ordinance, recommend policy changes to the Public Safety Committee with regards to matters within its jurisdiction.

## **SECTION 3. Membership of the Board**

### **A. Composition of the Board**

The Citizens' Police Review Board shall consist of twelve (12) members who shall serve without compensation. Three (3) of the twelve (12) members shall serve as alternates.

1. To the extent practicable, appointments to the Board shall reflect the City's social and economic diversity.
2. To the extent practicable, appointments to the Board shall reflect the geographical diversity of the City.

### **B. Board Member Qualifications**

1. The members of the Board shall be Oakland residents who have attained a minimum of eighteen (18) years of age.
2. One (1) of the nine (9) regular members of the Board and one (1) of the three (3) alternates must be under twenty-five (25) years of age at the time of appointment.
3. Within nine months of appointment each Board member must complete the Citizens' Police Academy and the Police Department's "ride-along" program.

### **C. Appointment of Board Members**

1. Members will be appointed as follows: recommendation by Council members, appointment by the Mayor, and confirmation by the Council.
2. Council members must submit recommendations to the Mayor for consideration at least 30 days prior to expiration of an existing board member's term.

#### **D. Term of Board Members**

1. Members shall be appointed to staggered terms, said terms to commence upon the date of appointment, except that an appointment to fill a vacancy shall be for the unexpired portion of the term only.

2. All appointments shall be for a period of two (2) years.

3. No person shall be appointed to serve more than two (2) consecutive terms as a member of the Board.

4. In the event an appointment to fill a vacancy has not occurred by the conclusion of a Board member's term, that member may continue to serve as a member of the Board during the subsequent term in a holdover capacity for a period not to exceed one year, to allow for the appointment of a Board member to serve the remainder of said subsequent term.

#### **E. Elections of Officers and Meetings**

The Board shall elect a chairperson and vice chairperson from its members at the first meeting of February of each year. These members shall serve in such capacity for a period of one (1) year, except that in the event of a vacancy, the duly elected member shall serve in that capacity for the remainder of the term. The Board shall meet at least once each month at an established time suitable for its purpose. Such meetings shall be designated regular meetings. Meetings called by the chairperson and meetings scheduled for a time or place other than for regular meetings shall be designated special meetings. Written notice of special meetings shall be given to the City Clerk, Board members, the Council and the press at least twenty-four (24) hours before the meeting is scheduled to convene.

#### **F. Removal of Board Members**

A member may be removed pursuant to Section 601 of the City Charter, for, among other things, a conviction of a felony, misconduct, incompetence, inattention to or inability to perform duties. To assure participation of Board members, attendance by the members of the Board at all regularly scheduled and special meetings of the Board shall be recorded, and such record shall be provided semi-annually to the Office of the Mayor for review. Absence of a Board member from three (3) consecutive regular meetings or from five (5) regular meetings in a calendar year shall constitute cause for removal.

#### **SECTION 4. Vacancies**

A vacancy on the Board will exist whenever a member dies, resigns, or is removed or whenever an appointee fails to be confirmed by the Council within thirty (30) days of recommendation.

## **SECTION 5. Jurisdiction of the Board and Intake of Complaints by Board and Oakland Police Department**

### **A. Jurisdiction**

The Board may exercise jurisdiction over all citizen complaints concerning the conduct of Oakland Police Officers and Park Rangers that are filed with the Board or with the Oakland Police Department.

### **B. Intake of Complaints**

A complaint may be filed by an individual or by his/her representative so designated in writing by the complainant. Wherever filed, copies of the complaints will be date-stamped and provided to the complainant, when leaving, and the other investigating agency, within 24 hours. This section also applies to complaints filed directly with the Oakland Police Department. The Oakland Police Department and the Board shall use the same complaint form and all complaints, wherever filed, shall be numbered sequentially. Complaint forms will be made available to the public at libraries, resource centers and recreation centers. *The filing of a complaint pursuant to this Ordinance does not constitute the filing of a tort claim against the City of Oakland pursuant to California Government Code section 900 et seq.*

## **SECTION 6. Rules and Procedures**

### **A. Adoption of Rules**

The Board shall, in consultation with the City Manager and the City Attorney, and with the approval of the City Council, establish rules and procedures, except as provided herein, for the conduct of its business.

### **B. Voting Requirements**

The affirmative vote of five (5) members of the Board shall be required for the adoption of any motion or resolution with regard to recommendations for findings or discipline against an officer, for findings of unfounded or exonerated, or for policy recommendations, or for any actions affecting the Police Department. Motions on all other matters, not otherwise established herein, may be approved by a majority of those Board members present. Nine (9) members will be considered to constitute the full Board.

### **C. Reports by the Board**

1. The Board shall make its reports and recommendations in writing unless otherwise directed by the City Council.

2. All reports and recommendations regarding proposed discipline of a police officer or ranger shall contain findings and shall be sent in writing to the City Manager. After careful consideration the City Manager shall respond in writing to the Board as to whether or

not the recommendations were implemented as recommended, implemented with modifications, or not implemented and the reasons therefore.

3. No less than twice each year the Board shall issue a detailed statistical report to the Public Safety Committee regarding complaints filed with the Board, the processing of these complaints and their dispositions.

4. The Board may on a quarterly basis recommend in writing policy changes with regards to matters within its jurisdiction.

**D. Board Committees**

City Council approval must be obtained prior to the creation of any standing committee of the Board. A proposal to create a standing committee of the Board must include information regarding the costs associated with staffing the standing committee, and the costs of complying with noticing and reporting requirements resulting from the establishment of any such standing committee of the Board.

**E. Staff to the Board**

1. The Board shall be assisted by a staff of civilian investigator(s) and other personnel, including a Policy Analyst, who shall work in the Office of the City Manager. The number of investigators shall be increased to one investigator per 100 officers, to be added incrementally as permitted by the City Budget.

2. A non-City Attorney legal advisor licensed to practice law in the State of California shall be assigned to serve the Board when the Board is receiving testimonial evidence or receiving evidence that could lead to an adverse factual finding or recommendation for discipline. The Board's attorney shall not in the regular course of his or her legal practice defend law enforcement officers. The Board's attorney 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 the incident-that is before the Board.

**F. Pre-Hearing Processing and Investigation of Complaints**

1. Individual complaints filed with the Board shall be received and numbered sequentially.. Individuals shall be interviewed at a location other than the Police Administration Building or any satellite station thereof.

2. Copies of all complaints filed with the Board shall be forwarded within 24 hours to the Internal Affairs Division of the Oakland Police Department.

3. The Chief shall order all officers subject to subpoena (as set forth in Section G.2. below) to fully cooperate with the Board's investigator either, at the election of the officer, by authorizing release of any and all statements the officer provided to the Police Department in its investigation of the below-mentioned complaint or by responding directly to

the Board investigator's inquiries. The Chief shall order all officers subject to request for interview or subpoena to fully cooperate with the Board's investigator to provide any supplemental statement requested by the Board's investigator.

4. All records of the Police Department relating to the incident which gave rise to the complaint that is being investigated by the Board, with the exception of personnel records, shall be made available to the Board through its investigator within restrictions of applicable federal, state, local law and appropriate contractual agreements. Relevant records which, under this section, are not public records shall be provided in confidence to the Board's investigators who shall release them only to the Board in closed session and the Board shall maintain the confidentiality of the information. No public finding of fact by the Board based upon information in a nonpublic record shall reference the information in that record. Factual findings of the Board inextricably intertwined with information in a nonpublic record shall be communicated to the City Manager, when appropriate, by a letter from the Board and said letter shall not be a public record.

### **G. Hearings**

1. The Board shall receive training in basic principles of due process and administrative hearing procedures.

2. The Board shall have the power to subpoena civilian witnesses, and those police officers and park rangers who are identified in a complaint as having engaged in or witnessed conduct whose review is within the jurisdiction of the Board.

3. It shall be the sole and exclusive responsibility of the Board's attorney to determine the order and conduct of any public hearing conducted pursuant to this Ordinance and to rule on the admissibility of any evidence in any hearing which may lead to an adverse finding of fact or recommendation for discipline against a police officer, provided that the Board, by motion, may, by six (6) votes, overrule any ruling under this provision made by the Board's attorney.

4. The hearing may follow an informal hearing procedure consistent with accepted practices of administrative procedure. Board members, the Board's attorney, and ~~the Board's investigator~~ staff may reasonably question all witnesses. The officer who is the subject of the complaint or the officer's representative will be allowed reasonable cross examination of the complainant and witnesses and the complainant or the complainant's representative will be allowed reasonable cross-examination of the officer and witnesses.

5. The burden shall be placed upon the complainant to prove, by a preponderance of the evidence, the allegation(s) of the complaint.

6. The Board's attorney and staff may, at the request of the Board, assist it in formulating factual findings and legal conclusions but shall have no voting role in any Board action.

7. Prior to the Board's making any findings or recommendations, the Board's staff and the Board's attorney, with the assistance of the Police Department staff, as needed, shall instruct the Board on the Police Department's applicable rules, orders, and regulations and law. The Board shall take into account all pertinent City and Police Department rules and regulations and orders in making its findings and recommendations.

8. The Board shall have a goal of completing its fact-finding and conclusions on an individual complaint within ~~sixty~~ 180 days from the date of its filing with the Board. In those instances where the goal cannot be achieved, the Board shall assure that the complainant receives notification of the status of the disposition initially upon the expiration of ~~sixty~~ 180 days following the registration of the complaint and every sixty (60) days thereafter until disposition. The written results of the Board's findings and recommendation(s) shall be forwarded to the City Manager for his or her consideration.

9. After the appropriate investigation, and upon the recommendation of staff, the Board may ~~dismiss~~ render a disposition on a complaint without hearing it if it concludes that a hearing would not facilitate the fact-finding process and that good cause has not been shown for further action.

10. The Board will provide policy direction to staff for determining case priority. Using those policy guidelines, staff will refer cases for investigation, summary disposition, or to appropriate complaint resolution processes in accordance with their priority and the nature of the complaint.

a. The Board may utilize different investigatory and complaint resolution processes, including but not limited to voluntary conciliation, voluntary mediation, three member panels, full Board hearing, and staff recommendation to the City Manager for disposition without hearing.

b. Cases that are the subject of litigation will be investigated but not brought to hearing while the litigation is pending. However, the Board's staff may make recommendations on these cases directly to the City Manager while the litigation is pending.

11. In cases heard by three member panels, three members shall constitute a quorum. The findings and recommendations of the panel will be placed on the Board's agenda as consent calendar items and shall be deemed adopted and approved by the Board unless the case is pulled for discussion or hearing upon passing a motion by five or more affirmative votes.

c. A three-fourths vote of the Board is required to overrule a staff assignment of priority.

12. After the City Manager takes action on a Board recommendation, that action will be reported, to the greatest extent permitted by law, to the complainant.

**H. Standing Subcommittee**

The Chair may appoint a standing subcommittee of the Board to work with staff to select complaints for hearing and schedule hearings.

**SECTION 7. Mediation**

Upon the consent of the complainant and the officer against whom a complaint is filed, a civilian investigator and/or outside mediators contracted for this purpose are authorized to mediate a final and binding resolution of any complaint in accordance with the Board's established rules and procedures.

**SECTION 8. Effective Date**

This Ordinance shall take effect upon the date of passage.

**Introduction Date: OCT 29 2002**

IN COUNCIL, OAKLAND, CALIFORNIA, NOV 12, 2002

**PASSED BY THE FOLLOWING VOTE:**

AYES-	BRUNNER, <del>CHANG</del> , MAYNE,
NOES-	NADEL, <del>REID</del> , SPEES, WAN
ABSENT-	AND PRESIDENT DE LA FUENTE - 5 Ayes
ABSTENTION-	De La Fuente, Reid, Chang - 3 Noes

ATTEST:



CEDA FLOYD

City Clerk and Clerk of the Council  
of the City of Oakland, California