

OFFICE OF THE CITY ATTORNEY CITY OF OAKLAND

Frequently Asked Questions (FAQs)

Regarding City Charter Amendment Creating the Oakland Police Commission (Effective January 10, 2017 - Voter- approved ballot initiative, Measure LL, November 2016 election)

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Revised:

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I. INTRODUCTION

In November 2016, Oakland voters overwhelmingly passed Measure LL, an amendment to the Oakland City Charter adding new section 604 to Article VI, which establishes a seven-member Oakland Police Commission (“Commission”) and the Community Police Review Agency (“Agency”). The Agency replaces the Citizens’ Police Review Board (the “CPRB”).

Measure LL grants the Commission certain powers and duties related to the oversight of the Oakland Police Department (the “OPD”). Measure LL does not authorize the Commission to hold evidentiary hearings in matters related to police discipline. However, it does authorize the Agency to independently (and simultaneously with the OPD’s Internal Affairs Division) investigate certain complaints of police misconduct or failure to act, and to propose the Agency’s own findings and level of discipline. If the Agency and the Chief of Police (“Police Chief”) agree on the findings and level of discipline for a particular complaint, their findings and level of discipline will be final and the Commission will have no role in the disciplinary decision. If the Agency and the Chief of Police (“Police Chief”) disagree on the appropriate findings and level of discipline for a particular complaint, their findings and proposed discipline will be

submitted to a Discipline Committee that will be composed of three Commissioners. The Discipline Committee will decide the appropriate findings and level of discipline.¹

The Commission has the authority to review and comment on all of the OPD's policies and procedures, and has the authority to propose changes to certain categories of OPD's policies and procedures.²

This memorandum answers frequently asked questions about the Charter amendment. Like other FAQs issued by this Office, this is a general guide and resource, and does not constitute legal advice, legal conclusions or analysis. The full text of the Charter amendment starts on page 11. If you have questions or seek clarifications about this guide, please email info@oaklandcityattorney.org.

II. MEASURE LL AMENDS THE CITY CHARTER

1. Why does it matter that Measure LL is an amendment to the City Charter instead of an ordinance?

Answer: Oakland's City Charter can be amended only by a majority vote of Oakland residents. Establishing the Commission by City Charter amendment ensures that the Commission can be disbanded only by a majority vote of Oakland voters. If the Commission had been established by ordinance, the City Council could disband the Commission or revise the Commission's powers with five or more affirmative votes of Councilmembers.

III. ESTABLISHMENT OF THE OAKLAND POLICE COMMISSION

1. Who picks the Commissioners?

Answer: The Mayor appoints three Commissioners and one alternate, subject to City Council confirmation. The Selection Panel will submit a slate of four (4) Commissioners and one alternate to the City Council for approval. The City Council must approve or reject the Selection Panel's slate in its entirety.

2. What is the Selection Panel?

Answer: Measure LL establishes a nine (9) member Selection Panel for the purpose of appointing four Commissioners and one alternate. The Mayor and each City Council member appointed one person to the Selection Panel (the Mayor's appointment was subject to City Council confirmation). It solicited

¹ The City Administrator will no longer have the authority to review and/or approve the final findings and level of discipline.

² The Citizens' Police Review Board does not have the authority to review, or propose changes to, OPD's policies and procedures.

applicants who wanted to serve on the Commission, reviewed applications and interviewed applicants. After the first group of seven Commissioners and two alternates is appointed, the Selection Panel will re-convene, as needed, to designate replacements for the four Commissioners and one alternate it initially appointed. The City Council also must approve any slate of replacements in its entirety.

3. When was the Selection Panel formed?

Answer: The Selection Panel was formed in May 2017. The Selection Panel had one hundred and twenty (120) days from the date of its formation to submit a slate of four Commissioners and one alternate to the City Council for approval.

4. Who can apply to be a Commissioner?

Answer: Any Oakland resident who is at least 18 years old. Measure LL requires, to the extent practicable, that appointments to the Commission be broadly representative of Oakland's diversity, including representation from communities experiencing the most frequent contact with the OPD. In addition, appointments must include, to the extent practicable, members with knowledge and/or experience in the following subject matter areas: human resources practices, management, policy development, auditing, law, investigations, law enforcement, youth representation, civil rights and civil liberties.

5. Is anyone prohibited from serving on the Commission?

Answer: Measure LL prohibits current and former sworn OPD employees from serving as Commissioners. Measure LL also prohibits the following people from serving as Commissioners: (a) current City employees; (b) current sworn police officers from any agency; and (c) current or former employees, officials or representatives of an employee association representing sworn police officers.

6. How do I apply?

Answer: The application process is currently closed. It will reopen when there are vacancies on the Commission. Please check the City's website for information:

<http://www2.oaklandnet.com/government/o/CityAdministration/d/police-commission/index.htm>.

7. How many Commissioners will serve on the Commission?

Answer: There will be seven (7) Commissioners and two (2) alternates. The alternates will fill any vacancies on the Commission that occur for reasons other than the expiration of a Commissioner's term.

8. How long will each Commissioner serve?

Answer: With the exception of the first group of Commissioners, each Commissioner can serve a maximum of two consecutive three-year terms. The terms of the first group of Commissioners will be staggered. The first appointees will serve terms of two (2), three (3) or four (4) years to facilitate staggered terms in subsequent years.

9. Will Commissioners receive any training to prepare them for the work they will perform as Commissioners?

Answer: Yes. Measure LL requires that all Commissioners receive orientation regarding OPD operations, policies and procedures, including discipline procedures for police officer misconduct and failure to act. In addition, Measure LL requires that all Commissioners receive training regarding procedural justice, conflict resolution, national standards of constitutional policing, best practices for conducting investigations, and other subject areas that may be specified by City ordinance.

10. Can a Commissioner be removed?

Answer: Yes. Both the City Council and the Commission may remove a Commissioner. The City Council may remove a Commissioner for cause by an affirmative vote of at least six (6) members of the Council.

Measure LL gives the Commission the power, by a majority vote, to remove a Commissioner for the following reasons:

- 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; or
- 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.

IV. COMMISSION MEETINGS

1. When will the Commission hold its first meeting?

Answer: It is too early to know the Commission's meeting schedule. The Mayor and the Selection Panel have submitted their Commissioner and alternate appointees to the City Council. The City Council has sixty days from the date of receipt of the appointees and from completion of the background checks to approve or reject the appointees.

2. How often will the Commission meet?

Answer: Measure LL requires that the Commission meet at least twice each month unless it determines that one meeting is sufficient in a particular month. Measure LL also requires the Commission to meet in locations other than City Hall at least twice each year.

3. Who can attend Commission meetings?

Answer: The Commission will be subject to the Brown Act (Cal. Gov't Code sections 54950 – 54963), California's open meeting law and Oakland's Sunshine Ordinance (Chapter 2.20 of the Oakland Municipal Code). Therefore, any member of the public can attend the Commission's open session meetings. As permitted by state law, some meetings of the Commission and/or its committees may be held in closed session. For example, the Discipline Committee will meet in closed session to resolve any disagreements between the Agency Director and the Police Chief regarding the appropriate findings and level of discipline for a subject officer. Such personnel matters are considered by law to be private and confidential, and the Brown Act permits discussion of such matters in closed session. Just as the public may not attend City Council meetings held in closed session (as permitted by law), the public will not be allowed to attend Commission meetings held in closed session.

V. POWERS AND DUTIES OF THE COMMISSION

1. What kind of oversight will the Commission have over the Department?

Answer: Measure LL gives the Commission the power to review and comment on all OPD policies, procedures and customs, and to conduct public hearings, at least once a year, on OPD policies and procedures of its choosing. In addition, the Commission has the power to propose changes to OPD policies and procedures that address use of force, profiling, or First Amendment assemblies (such as citizen protests) and to approve or reject the OPD's changes to these categories of policies.

The Commission has the power to review the Mayor's proposed budget for the OPD, and is required to conduct one public hearing on the OPD's budget per two-year budget cycle. The Commission has the authority to require that the Police Chief submit an annual report to the Commission addressing matters it specifies. The Commission is required to report annually to the City Council regarding matters addressed in the Police Chief's report, and any other matters relevant to the Commission's functions and duties.

2. Can the Commission issue subpoenas?

Answer: Yes. Measure LL gives the Commission the power and authority to issue subpoenas to compel the production of documents and compel the appearance of witnesses to testify on any matter pending before the Commission.

3. What is the Commission's role in hiring a new Police Chief when there is a vacancy?

Answer: Measure LL gives the Commission a key role in the appointment of a new, permanent Police Chief. When there is a vacancy, the Commission, with the assistance of the City Administrator, prepares and distributes a job announcement, and then prepares a list of four candidates to submit to the Mayor for consideration. The Mayor makes the hiring decision but must hire a Police Chief from the Commission's list of candidates.

4. What happens if an Interim Chief is needed, before the appointment of a permanent Chief?

Answer: Measure LL requires the Mayor to work in consultation with the Chairperson of the Commission in appointing any Interim Chief of Police. The appointment of an Interim Chief may not exceed six months unless approved by a majority of the Commissioners, which is four (4) or more votes.

5. Will the Police Chief report to the Commission?

Answer: The Commission has the authority to require the Police Chief to submit annual reports to the Commission. The Police Chief will continue to report to the City Administrator.

6. Can the Commission fire the Chief of Police?

Answer: Yes, the Commission may fire the Chief by an affirmative vote of five (5) Commissioners but only after finding cause for termination. ("Cause" will be defined by City ordinance.) The Commission may act jointly with the Mayor to fire the Police Chief by an affirmative vote of five (5)

Commissioners. If the Commission acts jointly with the Mayor, a finding of cause is not required.

7. Does the Mayor retain independent authority to terminate the Police Chief?

Answer: Yes. The Mayor retains authority to terminate the Police Chief at any time without cause, i.e., the Mayor does not have to show cause for termination. The only limitation on the Mayor's terminating authority is that s/he cannot terminate for any reason that violates law. For example, the Mayor could terminate the Police Chief because she no longer has confidence in the Police Chief or because she does not have a positive rapport with the Police Chief, or because there is a public outcry regarding the Police Chief or because she wants new leadership. The Mayor, of course, cannot terminate the Police Chief for any reason that violates law, such as termination based on the Police Chief's gender or race. To summarize, the Police Chief can be terminated in the following ways: (1) by the Commission for cause, (2) by the Mayor and the Commission without showing cause, or (3) by the Mayor without showing cause.

8. Will the Commission, Agency or OPD decide matters involving police officer discipline?

Answer: The Commission as a whole will not decide matters involving police officer discipline.

Both the Agency and the OPD will investigate certain types of complaints of police officer misconduct, as described in more detail in response to Question Number VI (3) below. If the Police Chief agrees with the Agency's findings and proposed discipline, the Police Chief will send a notice of the findings and intent to impose the proposed discipline to the subject officer. If the Police Chief and Agency disagree on the findings and proposed discipline, they both must submit their findings and proposed discipline to the Commission's Discipline Committee.³

9. What is the Discipline Committee?

Answer: The Discipline Committee, consisting of three Commissioners, will be formed anytime the Chief and the Agency Director disagree on an investigation's findings and/or the proposed discipline to be imposed on the

³ Measure LL makes significant changes to the process of disciplining police officers. The City Administrator will no longer review and approve the findings and proposed discipline issued by the Department, nor will the City Administrator have any authority to review and approve the Agency's findings and proposed discipline.

subject officer. The Discipline Committee will decide, based solely on the record presented by the Agency and the Chief, the appropriate findings and proposed level of discipline.

10. Will the Discipline Committee hold hearings regarding police discipline matters?

Answer: No. Measure LL states that the Discipline Committee must base its decision “solely on the record presented by the Agency and the Chief of Police.” Measure LL prohibits the Discipline Committee from considering any evidence other than what it receives from the Chief and the Agency. This means the Discipline Committee cannot conduct additional proceedings or investigations or otherwise gather additional evidence or consider new evidence from sources other than the Chief and Agency in its decisions on police discipline matters.

Once the Discipline Committee makes its decision, the Chief shall notify the subject officer of the findings and proposed discipline.

11. Will the Discipline Committee’s decision be final?

Answer: No. Measure LL does not make any changes to the officer’s due process rights, which include the right to appeal any final decision regarding discipline or termination to binding arbitration or the City’s Civil Service Board, as stated in the Memorandum of Understanding between the City and the Oakland Police Officers’ Association.

12. How will Measure LL affect the City’s efforts to comply with the Negotiated Settlement Agreement?

Answer: The City does not anticipate Measure LL having any negative effect on the City’s efforts to comply with the Negotiated Settlement Agreement (“NSA”). (The NSA resolved *Delphine Allen, et al. v. City of Oakland*, a lawsuit filed against the City that alleged police officer misconduct. A court-appointed monitor and compliance director oversees the OPD’s compliance with the NSA.) Because one of the goals of the NSA is to institutionalize reforms and sustain them after court oversight ends, Measure LL may be helpful to sustain the reforms by providing citizen input regarding OPD policies, appointment and removal of the Police Chief, and discipline.

13. Who will provide legal advice to the Commission?

Answer: Pursuant to City Charter section 401(6), which requires the Oakland City Attorney “advise all officers, boards, commissions, and other agencies of the City on legal matters . . .,” the Oakland City Attorney’s Office will provide legal advice to the Commission.

VI. POWERS AND DUTIES OF THE AGENCY

1. Is the Agency independent of the Commission?

Answer: No. Measure LL gives the Commission the power to establish the organizational structure of the Agency, and the power to oversee the Agency in the performance of its duties.

2. What will the Agency do?

Answer: The Agency will receive, review and prioritize all public complaints concerning the alleged misconduct of police officers.

3. Is the Agency required to investigate all complaints it receives?

Answer: No. Measure LL requires the Agency to investigate public complaints involving: (a) uses of force; (b) in-custody deaths; (c) profiling based on any of the protected characteristics identified by federal, state or local law; and (d) First Amendment assemblies such as citizen protests or marches. In addition, the Commission has the authority to direct the Agency to investigate any other possible misconduct of a police officer, even if the misconduct is not the subject of a public complaint.

4. What resources will the Agency have to conduct investigations?

Answer: Within sixty (60) days of the City Council's confirmation of the first group of Commissioners, the Citizens' Police Review Board (CPRB) will be disbanded and all CPRB staff will be transferred to the Agency. The CPRB's Director will become the Interim Director of the Agency. In addition, Measure LL requires that the Agency have at least one line investigator for every one hundred (100) sworn officers in the Department.

5. Who has the authority to hire a new Agency Director?

Answer: Measure LL gives the Commission a significant role in hiring a new Agency Director. While the City Administrator hires the Agency Director, the City Administrator must hire a new Agency Director from a list of two (2) or three (3) candidates submitted by the Commission.

6. Who will be responsible for evaluating the Agency Director's job performance?

Answer: Measure LL requires the Commission to periodically conduct an evaluation of the Agency Director's job performance.

7. Does the Commission have the power to fire the Agency Director?

Answer: Yes, by an affirmative vote of at least five (5) Commissioners. In addition, the Commission can terminate the Agency Director with an affirmative vote of at least four (4) Commissioners if the Commission has the City Administrator's approval.

8. Who will oversee Agency staff?

Answer: The Agency Director will have the authority to hire and fire staff, but must consult with the City Administrator before doing so. In addition, Agency and Commission employees are civil service employees and may appeal any disciplinary decisions to the Civil Service Board or an arbitrator, as provided in any applicable Memorandum of Understanding.

9. Who can work for the Agency?

Answer: All Commission and Agency staff positions, except the Agency Director, will be Civil Service positions and open to all qualified applicants except: (a) current or former sworn employees of the Oakland Police Department, and (b) any current official, employee or representative of an employee association representing sworn police officers. All applicants for the position of Agency investigator will be subject to background checks.

10. Who will provide legal advice to the Agency?

Answer: Measure LL removes the City Attorney's discretion to assign an in-house (deputy) city attorney to advise the Board. The City Attorney will select a non-City Attorney legal counsel (i.e., outside counsel) to provide legal advice to the Agency after consultation with the Chairperson of the Commission in accord with Measure LL and City Charter section 401(6). Except for the consultation requirement with the Chairperson of the Commission, this is the same procedure the City Attorney followed for many years in selecting legal counsel to advise the Citizen's Police Review Board ("CPRB"), the predecessor to the Agency.

11. What resources will the City Attorney have to retain outside legal counsel to advise the Agency?

Answer: Measure LL requires that the City allocate sufficient funds for the City Attorney to pay outside legal counsel to provide legal services to the Agency related to investigations and recommended discipline. City Charter section 604(e) provides that the City shall budget "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."

FULL TEXT OF THE CHARTER AMENDMENT

OAKLAND CITY CHARTER 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 Section, as well as those assigned to the Commission by Ordinance.
2. There hereby is established a Community Police Review Agency (hereinafter, Agency), which shall have the functions and duties enumerated in this Section, as well as those assigned to the Agency 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 Commissioners and alternates, 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.

(b) Powers and Duties.

The powers and duties of the Commission are as follows:

1. Organize, reorganize and oversee the Agency.
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. 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. All such proposed changes and modifications shall be submitted to the City Council for approval or rejection. If the City Council does not approve, 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 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. 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 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 will become final.
6. Review and comment, at its discretion, on all 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 to submit an annual report to the Commission regarding such matters as the Commission shall require.
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 separately or jointly with the Mayor, remove the Chief of Police by a vote of not less than five 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 no less than five affirmative votes. 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. Such appointment shall not exceed six (6) months in duration unless 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 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 to serve as a non-voting member of any level one Oakland Police Force Review Board.
12. 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. 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. Background checks shall be required for all Commission members and alternates. Such background checks shall not be performed by the Department. 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 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, 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 alternate 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 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 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 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.
4. With the exception of the first group of Commissioners which shall serve staggered terms, the term for each Commissioner shall be three (3) years.
5. Commission members are limited to no more than two (2) consecutive terms, except that a Commissioner serving a term of no more 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 to replace the regular member for that regular member's remaining term of office. If the alternate chosen to replace the regular member was appointed by the Selection Panel, the Selection Panel shall appoint another alternate. If the alternate chosen to replace the regular member was appointed by the Mayor, the Mayor shall appoint another alternate.
9. All Commission members shall receive orientation 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 Commission for cause as provided in Section 601 of the Charter, or members of the Commission may 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.

(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 members to establish a quorum and cast votes. Motions on all matters may be approved by a majority of those Commission members present.

(e) **Budget and Staffing**

1. The City shall allocate a sufficient budget for the Commission, including the Agency, to perform its functions and duties as set forth in this section, including budgeting 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.
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, the Commission may identify special qualifications and experience that candidates for Agency 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 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 assign a staff member to act as liaison to the Commission and to provide administrative support to the Commission.
6. Upon a vacancy, the Director of the Agency 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 Director of the Agency. The Commission shall periodically conduct a performance review of the Agency Director. The Agency Director shall be classified as a Department head, and shall have the authority to hire and fire Agency staff, in consultation with the City Administrator.

7. Agency and Commission staff, with the exception of the Agency Director, 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, 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 to the Internal Affairs Division of the Oakland Police Department within one business day of receipt.
2. Subject to applicable law, the Agency shall have the same 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, as the Department's Internal Affairs Division (IAD). Access to personnel records shall be limited to the Agency Director who shall maintain confidentiality as required by law. The Department and other City departments and agencies shall make every reasonable effort to respond to the Agency's requests for files and records within ten (10) days.
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. Within thirty (30) days of completion of the investigation, the Director of the Agency shall issue written findings and proposed discipline regarding the allegations stated in the complaint

to the Commission and the Chief of Police. 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.

(g) Adjudication

1. If the Chief of Police agrees with the Agency's findings and proposed discipline, he or she shall send to the subject officer notification of 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 his or her own findings and/or proposed discipline which shall be submitted to 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. The Agency's findings and proposed discipline shall also be submitted to the Discipline Committee which shall review both submissions 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 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, 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 it will proceed within five (5) business 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. 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.

(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 section 604. The City Council may, on its own initiative, enact legislation or regulations that will further the goals and purposes of this 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.