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ACTION CALENDAR

March 27, 2018

To: Honorable Mayor and Members of the City Council
 From: Councilmember Kriss Worthington

Subject: Berkeley Community United for Police Oversight Ballot Measure

RECOMMENDATION:

Place the Ballot Measure that has been submitted to the City by Berkeley Community United for Police Oversight on the November 2018 ballot.

BACKGROUND:

After lengthy community discussions the group, Berkeley Community United for Police Oversight, has created a ballot measure to address community concerns surrounding police accountability.

In order to show that Council supports a community-driven process, and as a sign of recognition to Berkeley community members in their efforts, Council should place this measure on the ballot. The City Council's decision on whether or not to place the measure on the ballot is a separate decision of any or all councilmembers supporting or opposing the initiative. This will give the voters the opportunity to decide for themselves if they support this measure.

The minimum wage ballot measure discussions continued beyond the dates of adding and removing items to meet the deadline of the registrar voters. On this important issue, we seek to make a prompt decision to avoid as much confusing and controversy as possible in order to allow voters to make this decision

FINANCIAL IMPLICATIONS:

Approximately \$10-15 thousand to place a measure on the ballot

ENVIRONMENTAL SUSTAINABILITY:

Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

CONTACT PERSON:

Councilmember Kriss Worthington 510-981-7170

Attachments:

1. PDF Proposed Ballot Measure

1 THE PEOPLE OF THE CITY OF BERKELEY DO ADOPT AS FOLLOWS:

2 Article XVIII –Berkeley Police Commission

3
4 **(a) Definitions.**

5
6 “Chief” shall mean the Chief of Police of the Berkeley Police Department.

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8 “Commission” shall mean the Berkeley Police Commission.

9
10 “Department” shall mean the Berkeley Police Department.

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12 “Misconduct” shall mean both a police officer’s affirmative act that violates, and/or any
13 willful failure to act which violates the Department’s policies, procedures or directives,
14 including without limitation the Department’s General Orders.

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

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21 “Serious Misdemeanor” shall mean any misdemeanor crime that, if convicted, could
22 preclude active law enforcement personnel, or a member or employee of the Department,
23 from successfully fulfilling the responsibilities of their job classification. Examples
24 include those crimes that involve violence, intimidation, threats, sexual offenses, theft,
25 dishonesty, possession of drugs, purchase, ownership or possession of a firearm in
26 violation of California Penal Code section 12021(c)(1), and those crimes where bias
27 based on any legally protected characteristic is a motivating factor.

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

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32 **(b) Creation and Role.**

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34 1. There is hereby established the Berkeley Police Commission (hereinafter,
35 Commission) which shall oversee the Police Department in order to ensure that its
36 policies, practices, and customs conform to constitutional policing and best practices and
37 are responsive to all of Berkeley’s communities.

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39 2. The Commission is an independent Department of the City and shall have the power to
40 retain its own attorney.

41
42 With respect to its employees, the Commission shall, subject to Article VII of this
43 Charter, have the sole power to appoint, assign, reassign, discipline and remove its own
44 managerial and executive staff. The Commission shall have the functions and duties
45 regarding the Berkeley Police Department enumerated in this Section.

46

47 The Commission is empowered to request and receive funding from the City of Berkeley
48 for its reasonable and necessary expenses. Decision-making regarding the budget of the
49 Commission shall be independent of the City Manager's office. With the Commission's
50 consent, the City Council may assign additional powers and duties to the Commission as
51 appropriate. Furthermore, the electorate may give additional powers or duties through
52 initiative ordinance as provided by this charter.

53

54 **(c) Functions and Duties.**

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56 3. The Commission shall assume the functions, duties, and staffing of the Police Review
57 Commission (PRC).

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59 To assist in an orderly transition between the Police Review Commission, herein
60 abolished, and the Police Commission established by this Article, all files, records,
61 books, and publications, and documents of whatever kind of the former Commission shall
62 be promptly deposited in the office of and for the use and benefit of the newly created
63 Police Commission.

64

65 The PRC shall continue in existence until its functions are transferred to the Police Com-
66 mission; but under no circumstances shall the PRC continue in existence for more than
67 thirty (30) days past the first meeting of the Police Commission.

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69 *Record-keeping and confidentiality*

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71 4. In accord with the City's record retention schedule, maintain all electronic
72 communications to, from and/or copied to any Commissioner or alternate regarding any
73 matters within the Commission's jurisdiction, and provide such communications to the
74 City upon request.

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76 5. Maintain the confidentiality of its business, including without limitation, the
77 confidentiality of documents it creates or receives as permitted by the California Public
78 Records Act (Cal. Gov't Code sec. 6250, *et seq.*), to the extent required by state and local
79 law. A Commissioner's intentional failure to maintain such confidentiality may be
80 considered "gross misconduct in office" and grounds for removal by a majority of the
81 Commission.

82

83 6. Review and comment on the education and training the Department provides its sworn
84 employees. The Commission shall provide any recommendations for more or different
85 education and training to the Chief who shall respond in writing.

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87

88 *Commission functions*

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90 7. Police misconduct investigations and discipline are addressed in Section (h) below.

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92 8. The Commission shall conduct public hearings at least once a year on police policies,
93 practices, and customs.

94

95 9. All policies and procedures of the Police Department shall be subject to the approval
96 of the Commission. In addition, the commission may regulate practices of the BPD
97 where appropriate and consistent with state and federal law and the U.S. and California
98 Constitutions.

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100 The Commission shall have the power to review and modify all written and unwritten
101 policies, practices, and procedures of whatever kind and without limitation, in relation to
102 the Berkeley Police Department, including its relationships with other law enforcement
103 agencies and intelligence and military agencies operating within the City of Berkeley,
104 and with law enforcement generally.

105

106 The Commission shall have the discretion on its own motion to initiate an investigative
107 hearing on any matter within its jurisdiction.

108

109 10. There is hereby established, under the authority of the Police Commission, a Policy
110 Section.

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112 The powers, functions and duties of the Policy Director shall be those assigned,
113 authorized and directed by the Commission, and shall include conducting any audit or
114 review of the Department necessary to assess the Department's performance and
115 adherence to constitutional policing practices, and shall also include conducting any audit
116 or review of the Department's policies and procedures, including any pattern of non-
117 compliance with the foregoing, as necessary or helpful for the Commission to fulfill its
118 duties. The Chief shall assign a sworn officer to act as a liaison from the Department to
119 the Policy Director.

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121 The Commission shall be responsible for oversight of the Policy Section. The Section
122 will be composed of a Policy Director appointed by the Commission, and professional
123 and administrative staff reporting to the Policy Director.

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125 The Commission shall have the authority to prioritize the functions and duties of the
126 Policy Director, which shall include, without limitation:

127

128 a. Preparing an annual report, summarizing the results of the annual reviews of:

129

- 130 1. The Department's processes and procedures for investigating alleged
131 misconduct;
- 132 2. The Department's processes and procedures for determining the appropriate
133 level of discipline for sustained findings of misconduct;
- 134 3. The Commission investigative staff's processes and procedures for
135 investigating alleged misconduct;
- 136 4. The Commission investigative staff's processes and procedures for determining
137 the appropriate level of discipline for sustained findings of misconduct;
- 138 5. Trends and patterns regarding Department training and education, and the
139 Department's use of any early warning system(s);

- 140 6. Training and/or policy issues that arise during the investigations of complaints;
- 141 and
- 142 7. Trends and patterns regarding use of force and officer-involved shootings.
- 143 8. The number of complaints filed and their disposition.

144

145 This annual report shall be presented to the Commission, the Mayor, the City Council,
146 the City Manager, and the Chief and shall include, where appropriate, recommendations
147 for changes in the processes and procedures that were reviewed.

148

149 b. Monitoring and evaluating, on at least an annual basis, the number and percentage of
150 sworn officers who have received in-service training on profiling and implicit bias,
151 procedural justice, de-escalation, diplomacy, situational problem-solving, and work-
152 related stress management, and make recommendations, as appropriate, to the
153 Commission regarding changes to the Department's training programs.

154

155 c. Developing and presenting a plan to the Commission to measure the performance of
156 each element of the Department's discipline process.

157

158 d. Completing all audits or reviews requested by the Mayor, the City Manager, and/or the
159 City Council by an affirmative majority vote. The Policy Director shall report all findings
160 to the office that requested the audit or review.

161

162 e. Monitoring, evaluating, and making recommendations regarding the Department's
163 recruitment and hiring practices for sworn personnel.

164

165 f. Monitoring, evaluating, and making recommendations regarding the Department's
166 policies and procedures as requested by the Commission in furtherance of its duties.

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168 g. Monitoring, evaluating, and making recommendations regarding the Department's risk
169 management practices.

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171 h. The Policy Director may review all police files without limitation, except for criminal
172 investigations.

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174 i. The Policy Director shall assist the Commission in policy investigations.

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176 11. The Commission shall review the budget of the Police Department to determine
177 whether budgetary allocations are aligned with contemporary and constitutional law
178 enforcement standards. The Commission shall have the power to modify the
179 Department's budget request to the city council, consistent with the civil service laws, the
180 labor MOUs, and remaining within 5% of current staffing levels. The City Council will
181 have final authority over the Department budget, except that no program specifically
182 rejected by the Commission may have funds appropriated for it by the City Council.

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184 12. The Commission shall require that the Police Department provide its officers
185 adequate treatment when appropriate for stress management, post-traumatic stress

186 disorder, and other mental and emotional job-related health issues.

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188 13. The Commission shall require that the Berkeley Police Department implement a fair,
189 objective, unbiased promotional and disciplinary matrix.

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192 *Relationship with the Chief of Police*

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194 14. Notwithstanding any other provision of the Charter, the Chief of Police may be
195 removed by the Mayor with approval of a majority of the Council. A request to the
196 Council, approved by a majority of the Commission, to remove the Chief shall be
197 considered by the Council within 45 days.

198

199 15. Upon the notice of vacancy of the office of Police Chief, the Human Resources
200 Department shall cooperate with the commission to prepare a job announcement, describe
201 requirements, and establish an application process. The Commission will have final say
202 over the application process. The Commission shall prepare a list of two candidates and
203 transmit the names to the Mayor and Council. The Mayor shall appoint one person from
204 the list with the approval of the City Council.

205

206 16. The Chief of Police shall cooperate with the Commission in all reasonable requests to
207 the extent feasible, and shall attend at least twelve regular and special full Commission
208 meetings per calendar year, or half of all full meetings, whichever is greater. In an
209 emergency, the Chief may designate a representative to attend.

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212 *Required reporting*

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214 17. Within one hundred and eighty (180) days of the City Council's confirmation of the first
215 group of Commissioners and alternates and on the anniversary of that date thereafter, notify
216 the Chief regarding what information will be required in the Chief's annual report to the
217 Commission which shall include, at a minimum, the following, while noting that disclosure
218 of legally restricted confidential information to persons beyond the Commission and its staff
219 shall be prohibited:

220

221 a. The number of complaints submitted to the Department's Internal Affairs
222 Division (hereinafter, "IAD") together with a brief description of the nature of the
223 complaints;

224 b. The number of pending investigations in IAD, and the types of Misconduct
225 that are being investigated;

226 c. The number of investigations completed by IAD, and the results of the
227 investigations;

228 d. The number of training sessions provided to Department sworn employees,
229 and the subject matter of the training sessions;

230 e. Revisions made to Department policies;

231 f. The number and location of officer-involved shootings;

232 g. The number of Review Board hearings bearing on Serious Incidents, use of
233 force, or discrimination, and the results;

- 234 h. A summary of the Department's monthly Use of Force Reports;
- 235 i. Number of officers disciplined and the level of discipline imposed; and
- 236 j. The number of closed investigations which did not result in discipline of the
- 237 subject officer.
- 238 k. Police activities including but not restricted to: police- involved shootings;
- 239 in-custody injuries and deaths; civil lawsuits based on allegations of police
- 240 misconduct; use of force incidents; trends and patterns in police stops,
- 241 field investigations, detentions and arrests, taking into account, at a
- 242 minimum, demographics based on age, marital status, religion, gender,
- 243 sexual orientation, gender identity, race, creed, color, or national origin.
- 244 l. Any other matter deemed appropriate by a majority of the Commission
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246 18. The Internal Affairs Division shall report monthly to the Commission on a
247 confidential basis on the status of all complaints active or resolved since the last report.
248 If the Commission deems the report insufficient, it shall have the right to require
249 additional information be provided.

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251 19. The Commission shall report as often as needed, but at least once annually to the
252 Mayor, the City Council and to the public to the extent permissible by law, information
253 pertaining to the following: a summary of all complaints made against BPD members;
254 policing practices, policies and customs; Department personnel practices, policies and
255 customs; Department risk management practices; Department
256 financial/efficiency/performance audits; crime and violence trends; police/community
257 relations and service quality; such other matters as are relevant to the functions and duties
258 of the Commission.

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260 20. Conduct an annual performance review of the Policy Director. The Commission shall
261 determine the criteria for evaluating the Policy Director's and the Investigative Director's job
262 performance, and communicate those performance criteria, in addition to any other job
263 performance expectations, to both the Policy Director and the Investigative Director one full
264 year before conducting any evaluation of their job performances. The Commission may at its
265 discretion decide to solicit and consider, as part of its evaluation, comments and observations
266 from the City Manager and other City staff who are familiar with the Policy Director's and
267 the Investigative Director's job performance. Responses to the Commission's requests for
268 comments and observations shall be strictly voluntary.

269
270 21. Request that the City Attorney submit semi-annual reports to the Commission and to
271 City Council which shall include a listing and summary of:
272 a. To the extent permitted by applicable law, the discipline decisions that were
273 appealed to arbitration;- 274 b. Arbitration decisions or other related results;
- 275 c. The ways in which it has supported the police discipline process; and
- 276 d. Significant recent developments in police discipline.
- 277

278 22. Within two years of its first meeting, the Commission shall determine what
279 methodology to use to measure its own effectiveness and shall produce a report on its
280 effectiveness and recommendations for improvement. Thereafter, the Commission shall

281 submit such reports biennially (every other year).

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283 23. Make available on its website, to the extent permitted by law:

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a. The Commission's annual report

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b. The Chief's annual report

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287 24. Review and comment on the Department's policy and/or practice of publishing

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Department data sets and reports regarding various Department activities, submit its

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comments to the Chief, and request the Chief to consider its recommendations and respond to

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the comments in writing.

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25. Solicit and consider input from members of the public regarding the quality of their

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interactions with the Commission and its staff.

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296 **(d) Appointment, Terms, Vacancies, Removal.**

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26. The Commission shall consist of seven regular members and three alternate members,

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all of whom shall be Berkeley residents. To the extent practicable, appointments shall be

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broadly inclusive of the communities of interest, neighborhoods, and diversity in eco-

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nomical, ethnicity, race, age, and sexual orientation, and persons with disabilities, and

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expertise in fields such as human resources, the law, and police reform. No current sworn

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police officer or officer of an employee association representing sworn police officers is

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eligible to serve as a Commissioner.

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27. With the exception of the first group of Commissioners, the term for each

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Commissioner shall be three years. The expiration date of all terms shall be November 30.

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28. Commission members are limited to no more than two terms. However, when a term

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of office ends and no replacement has been appointed, the incumbent shall continue to

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serve until a replacement is appointed.

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29. A vacancy on the Commission shall exist whenever a regular or alternate member

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dies, resigns, ceases to be a resident of the City, is convicted of a felony, or is removed.

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Additionally, elevation of an alternate member to fill a vacancy among the regular

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membership shall constitute a vacancy in the alternate pool.

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30. For vacancies occurring for reasons other than the expiration of a regular member's

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term, an alternate chosen by the Commission shall replace the regular member and

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assume the term of office of such member.

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31. Members of the Commission may be removed by a majority vote of the Commission

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only for conviction of a felony, substantial neglect of duty, gross misconduct in office,

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inability to discharge the powers and duties of office, absence from three consecutive

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regular Commission meetings or five regular meetings in a calendar year except when

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absent by permission. Procedures and regulations for approving absences shall be

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developed and adopted by the Commission.

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Initial selection of Commissioners.

32. There is hereby established a Selection Panel. Within ninety days (90) of the enactment of this Section, each City Council member shall appoint one person and the Mayor shall appoint two people to the Selection Panel. To the extent practicable, the Mayor and the City Council shall use best efforts to appoint individuals to the Selection Panel who are broadly representative of Berkeley’s diversity and who represent communities experiencing the most frequent contact with the Department.

No police officer or member of an employee association representing sworn police officers is eligible to be a member of the Selection Panel. The Selection Panel will conduct outreach to the community; will solicit applications from those willing to serve on the Police Commission; will review the applications, and interview applicants to serve as regular or alternate members of the Commission. Each January the Mayor and each Council member may replace their appointee(s) on the Selection Panel. Selection Panel members may serve up to five years.

33. Within one hundred and twenty days (120) of its formation the Selection Panel shall submit a slate of seven (7) regular members and three (3) alternate members to the City Council. If the City Council does not accept or reject the submission within sixty (60) days the person(s) shall be deemed appointed. If Council rejects a submission, the entire slate of names will return to the Selection Panel, which will send a revised slate back to Council for consideration.

If three slates of commissioners are rejected by Council, or 240 days have elapsed since formation of the Selection Panel, whichever occurs first, the Selection Panel shall pick the regular and alternate members of the Commission without need for approval by the City Council.

34. To effect a staggering of terms among the Commissioners, duration of the first group of Commissioners shall be determined by the Selection Panel as follows:

- Class I: Two regular and one alternate members shall have an initial term of approximately two years, ending on November 30, 2021.
- Class II: Three regular and one alternate members shall have an initial term of approximately three years, ending on November 30, 2022.
- Class III: Two regular and one alternate members shall have an initial term of approximately four years, ending on November 30, 2023.

Selection of Commissioners in following years.

- 374 35. Each year the Selection Panel shall re-convene to designate replacements for
375 Commissioner vacancies as needed and shall submit the names of such designated
376 persons to the City Council for acceptance or rejection. These vacancies include two
377 types:
378 a. Vacancies occurring due to the expiration of a regular member's term on the following
379 November 30.
380 b. Vacancy of an alternate member for any reason.

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382 If the City Council does not accept or reject the submission within sixty (60) days the
383 person(s) shall be deemed appointed. If Council rejects a submission of a member of a
384 slate submitted by the Selection Panel, the entire slate of names will return to the
385 Selection Panel, which will send a revised slate back to Council for consideration. The
386 sitting Commissioners will continue to serve until the Council approves a new class of
387 Commissioners.

- 388
389 36. All final Commissioner candidates, whether in the initial or subsequent years, shall
390 be subject to a background check before their names are submitted to the City Council for
391 confirmation. The City Manager's office shall retain an independent contractor to
392 perform these background checks, which shall include verification of educational and
393 employment background, and any other information that may be verified by a public
394 records search. The results of the background check identified in subsection (A) above
395 shall be treated as public records.

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398 **(e) Meetings, Rules and Procedures.**

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400 37. The Commission shall meet at least twice each month. The Commission shall notify
401 the public of the time and place of the meeting and provide time for public comment at
402 each meeting. The regular place of meeting shall be in an appropriate location in the City
403 capable of accommodating at least 50 people, but shall not be in the Public Safety
404 Building. At least once a year, and more frequently if the Commission desires, the
405 Commission shall meet in other locations throughout the City for the purpose of
406 encouraging interest and facilitating attendance by people in the various neighborhoods
407 in the City at the meetings. Commission staff shall arrange for audiotape of all full
408 Commission meetings to be recorded and made publicly available, and if feasible, for
409 video recordings to be aired on local cable television.

- 410
411 38. The Commission shall establish rules and procedures for the conduct of its business.
412 Such rules shall be made available to the public.

- 413
414 39. The Commission may appoint such subcommittees as are deemed necessary or
415 desirable for the purposes of this Article, provided that membership on such subcommit-
416 tees shall not be limited to the Commission members but may include members of the
417 public who express an interest in the business of the subcommittees. The public
418 members of such subcommittees shall serve without compensation.

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420 40. Five members shall constitute a quorum. An alternate member shall be counted for a
421 quorum and shall cast a vote in place of a missing member. The order of service for
422 alternate members for purposes of substitution shall be determined at the first
423 Commission meeting of each year after November 30. There shall not be more than
424 seven (7) voting members of the Commission at any given time.
425

426 41. The affirmative vote of four regular members of the Commission shall be required
427 for the adoption of any motion or recommendation regarding discipline of a police officer.
428 Motions on all other matters may be approved by a majority of those Commission
429 members present, including both regular and alternates seated for voting. To the extent
430 permissible by state law, the vote of each Commissioner shall be made public.
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432 42. The Commission shall elect one of its members as Chair and one as Vice-Chair, who
433 shall each hold office for one (1) year or until their successors are elected, whichever
434 comes first. A Chair shall not be eligible to serve more than two terms in successive
435 years, each of six months or longer, unless no other candidate is nominated for the
436 office. Officers shall be elected no later than the second meeting of the new Commission
437 following its initial appointment, and annually at a meeting in the month of January.
438

439 43. On the petition of one hundred (100) or more residents of the City of Berkeley filed
440 in the office of the Secretary of the Commission, the Commission shall hold a special
441 meeting in an appropriate and convenient location for the individuals so petitioning for
442 the purpose of responding to the petition and hearing and inquiring into matters identified
443 therein as the concern of the petitioners. Copies of the petition shall be filed by the
444 Commission with the City Clerk and the City Council. Notice of such meeting shall be
445 given in the same manner as notice is given for other meetings of the Commission. In no
446 case shall the Commission meet later than ten (10) working days following the date the
447 petition is filed.
448

449 44. In conducting its meetings, the Commission shall comply with all requirements of the
450 Brown Act, California Government Code section 54950, *et seq.*
451

452 **(f) Budget.**
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454 45. The City shall allocate a sufficient budget for the Commission, necessary to perform
455 its functions and duties effectively and efficiently.
456

457 46. By September 16, 2019, the City shall meet a minimum staffing requirement for the
458 Commission. The minimum staffing shall consist of the following full-time positions or
459 their equivalent should classifications change: Executive Director of the Commission and
460 an Operations Support Specialist; an Investigations Director and Investigator(s) and other
461 necessary staff; a Policy Director and one Policy Analyst and other necessary staff. The
462 Commission shall have the number of investigators necessary to fairly and impartially
463 investigate decisions in a way that will be fair to the police officer and the complainant.
464

465 47. Resources shall be provided for appropriate office facilities, equipment, staffing,
466 information technology support, outreach and other essential requirements.

467

468 48. Sufficient resources shall be provided so that the Commission and staff may attend
469 training regarding the best practices of policing, police oversight, auditing, policy
470 analysis, investigations, and human resources. Such training shall be consistent with the
471 most current national standards, including offerings of the National Association of
472 Civilian Oversight of Law Enforcement (NACOLE), and the Commission on Police
473 Officer Standards and Training (POST) or similar professional development
474 organizations and opportunities

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476 49. Commissioners and alternates shall receive a stipend of one hundred dollars (\$100)
477 per regular or special meeting of the full commission they attend, and \$20 (twenty
478 dollars) per hour for attending subcommittee, Board of Inquiry, and Discipline
479 Committee meetings. The stipend will be subject to a limit of \$1000 per commissioner
480 per month beginning in 2019. The regular and subcommittee rates and the monthly
481 stipend limit will be adjusted annually for inflation to conform with the Consumer Price
482 Index (CPI). Procedures and regulations for accounting for hours worked and
483 compensation and for adjusting the rate of and limit on stipends shall be developed and
484 adopted by the Commission and filed with the office of City Clerk.

485

486 **(g) Staffing.**

487

488 50. The Executive Director, the Investigations Director, and the Policy Director shall be
489 hired by the Commission. The Commission shall periodically conduct a performance
490 review of the three Directors. The Directors shall be at-will employees and shall serve at
491 the pleasure of the Commission. By an affirmative vote of at least five members, the
492 Commission may terminate any of the three Directors.

493

494 The Policy Director and the Investigations Director shall report to the Executive Director
495 of the Commission, and may only be removed after an affirmative vote of five (5)
496 members of the Commission. The City Manager shall not have the authority to
497 independently remove the Policy Director or the Investigations Director.

498

499 The Commission shall employ such staff as may be necessary to perform its
500 functions efficiently.

501

502 51. For an interim period from the effective date of this Charter amendment until the
503 new Police Commission appoints the Executive Director, the PRC Officer will also serve
504 as the Acting Executive Director of the Police Commission.

505

506 52. Commission staff, with the exception of the three Directors, shall be civil service
507 employees in accordance with Article VII of the City Charter. The Commission shall not
508 have any authority to hire or fire staff other than the three Directors. After the effective
509 date of this Charter amendment, the Executive Director shall identify special
510 qualifications and experience that the Policy Analyst, Investigators, and Operation
511 Support Specialist candidates must possess. Candidates for future vacancies shall be
512 selectively certified in accordance with the Civil Service procedures, except that said

513 selective certification shall not be subject to discretionary approval by City management.
514 The Executive Director, the Investigations Director, and the Policy Director shall appoint
515 lower-level staff in their respective sections, subject to confirmation by the Commission.
516

517 53. No current or former member of the Berkeley Police Department or official of an
518 employee association representing sworn police officers is eligible for any staff position
519 in the Commission. The Executive Director, the Investigations Director, and the Policy
520 Director shall have relevant experience in managing similar agencies where they have
521 had the responsibility of advocating for the public interest.
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523 54. The Executive Director shall be classified as a Department head.
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526 **(h) Investigations.**
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528 55. There is hereby established, under the authority of the Police Commission, a civilian
529 Investigations Section.
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531 56. The Executive Director shall supervise the Investigations Director. The Section will
532 be composed of an Investigations Director appointed by the Commission, and
533 professional and administrative staff reporting to the Investigations Director.
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535 The powers, functions and duties of the Investigations Section shall be those assigned,
536 authorized and directed by the Commission, and shall include initial review of all
537 complaints and allegations against sworn BPD officers, recommendations to the
538 Commission on which complaints and allegations should be investigated by the
539 Section, investigation of the complaints and allegations chosen by the Commission.
540 The Chief shall assign a sworn officer to act as a liaison from the Department to the
541 Investigations Section.
542

543 The Commission, its staff, and the Department will all work diligently to ensure that
544 investigations and notifications to the police officer shall be completed within the
545 one-year timeframe required by state law for the imposition of discipline. Any failure
546 to complete an investigation and appropriate notification within one year as required
547 by state law, which results in an inability to impose discipline on an officer who
548 would otherwise be subject to discipline, may be subject any responsible
549 commissioner or employee to discipline or removal.
550

551 57. The Chief of Police or her/his designee shall notify the Investigations Director, the
552 Commission Executive Director, and the Chair of the Commission within twenty-four
553 (24) hours that a Serious Incident has occurred, of the filing of an internal or external
554 complaint against a BPD officer, or of reasonable suspicion that an officer has committed
555 a crime. Unless informed otherwise by Commission staff, IAD shall proceed with
556 investigation of the incident.
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558 The Chief shall also provide a confidential status report to the Investigations Director, the
559 Commission Executive Director, and the Chair of the Commission within ten (10)
560 calendar days of the date on which a suspected crime occurred, and brief the
561 Investigations Director, the Commission Executive Director, and the Chair of the
562 Commission at least once a month regarding allegations of all such crimes under
563 investigation.

564

565 58. The Investigations Section shall view all complaints, whether they come directly from
566 the public or are referred to it by the Police Department. Within 21 days, the
567 investigative staff shall recommend to the Commission which of these complaints merit
568 its investigation.

569

570 Commission staff shall make an initial report to the Commission chair about new
571 complaints and investigations within 24 hours, and to the Commission by its next
572 meeting.

573

574 In an urgent situation, the Investigations Director, in consultation with the Commission
575 chair, may make a provisional decision whether or not Commission staff shall investigate
576 a complaint. This decision shall be reviewed and upheld or overturned by the
577 Commission at the next possible meeting.

578

579 In recommending complaints for investigation, the staff shall prioritize the following:
580 uses of force, in-custody deaths, profiling based on any of the protected characteristics
581 identified by federal, state, or local law, and First Amendment assemblies; urgency for
582 response to public concerns; availability of witness(es) and/or evidence; the prior history
583 of either the complainant or the subject officer(s).

584

585 The Commission shall provide further policy guidelines to the Investigations Director for
586 assistance in determining case prioritization.

587

588 The investigative staff shall forward a copy of each external complaint received from
589 outside the BPD to the Internal Affairs Division of the Berkeley Police Department
590 within 24 hours of receipt.

591

592 59. Within 30 days of receipt of the Investigation Section's recommendations, the
593 Commission shall direct the Investigations Section which public or department-generated
594 complaints to investigate. The Commission shall direct staff to investigate a Serious
595 Incident when requested by the Mayor, the City Manager, and/or the City Council by an
596 affirmative majority vote. The staff and the Commission shall have access to BPD files on
597 all department-conducted internal investigations. Upon completion of the investigation,
598 staff shall make a finding regarding each such complaint. If a complaint is upheld, the
599 Investigations Section shall recommend discipline.

600

601 When the Commission determines that the Investigations Section shall investigate a
602 complaint, the Commission will become the lead agency on the investigation. IAD
603 shall provide information on such a complaint to the Investigations Director or the

604 Commission upon request. IAD must fully cooperate and assist with the Commission
605 upon request. Additionally, IAD must also report to the Investigative Section any
606 evidence they develop or encounter about a complaint.

607

608 IAD shall process complaints under applicable state law and BPD procedure for any
609 cases that the Commission elects not to investigate.

610

611 60. Subject to applicable law, the Commission, its Boards of Inquiry, the Discipline
612 Committees, the Executive Director, the Investigations Section, and the Policy
613 Director shall have access to all Department files and records, including personnel
614 records, and to all files and records of other City departments and agencies, that are
615 relevant and necessary to the performance of its duties.

616

617 61. Within 90 days of direction by the Commission to investigate, the Investigations
618 Section shall complete investigations of misconduct.

619

620 62. The Police Department shall respond to Commission staff requests regarding
621 investigation within ten (10) business days. A responsible BPD employee who fails to
622 comply with this requirement shall be subject to discipline if appropriate.

623

624 63. The Investigations Section shall immediately forward to the Alameda County District
625 Attorney's Office any evidence of criminal misconduct when there is reasonable
626 suspicion to believe a police officer has been involved in a felony or serious
627 misdemeanor.

628

629 64. The Commission shall review the Investigations Section's dismissal and/or
630 administrative closure of complaints involving use of force or discrimination, including
631 any Investigations Section file regarding such complaints, and, at its discretion and by
632 five (5) affirmative votes, direct the Investigations Section to reopen the case and
633 investigate the complaint.

634

635 65. In conjunction with the Investigations Director and in consultation with the Chief or
636 the Chief's designee, the Commission shall establish rules and procedures for the
637 mediation and resolution of complaints of Misconduct.

638

639 66. The Executive Director shall convene a separate Police Commission Board of
640 Inquiry (BOI) to make a judgment on each complaint for which the Commission is
641 the lead investigative agency. The BOI shall review the recommendations from the
642 Investigations Section and hold evidentiary hearings. The Board will be composed
643 of three sitting Commissioners. However, the Commission shall sit as a Board of
644 the whole to hear complaints involving the death of a person. Also, if the
645 Commission so decides by a vote of six Commissioners, the Commission shall sit
646 as a Board of the whole to hear other complaints. Any Board of the whole shall
647 require a quorum of five Commissioners.

648

649 Within forty-five (45) days of completion of the investigation, the Board of Inquiry
650 shall complete its hearing, affirm or modify the staff's disposition of the
651 allegations, and establish the Proposed Discipline. The Executive Director shall
652 communicate the findings and Proposed Discipline to the Chief of Police within
653 four (4) days.

654

655 67. The Commission shall create regulations for the Board of Inquiry process
656 based on the BOI regulations of the Police Review Commission, modified to suit
657 the needs of the Police Commission herein established. Any modifications, without
658 limitation, may be made by a majority vote of the Commission.

659

660 Until the Police Commission creates new BOI regulations, Police Commission
661 BOIs may utilize an interim, modified version of the PRC BOI regulations, to be
662 created by the Executive Director of the Police Commission. The Executive
663 Director shall bring proposed interim regulations to the first meeting of the new
664 Police Commission for adoption. The Executive Director's draft interim
665 regulations shall include these changes to the PRC version:

- 666 • References to the PRC shall be updated to refer to the Police Commission
- 667 • Any provisions of the PRC regulations that conflict with the language of
668 this charter amendment shall be corrected to comply with it.
- 669 • The Board of Inquiry hearing shall review and vote to affirm or modify the
670 staff's recommended disposition of the allegations in the complaint
671 (sustained, not sustained, exonerated, or unfounded). The Board will also
672 vote to affirm or modify the staff proposal on discipline.
- 673 • The standard of proof shall be changed to "preponderance of evidence"
674 from "clear and convincing evidence."
- 675 • The disciplinary deadline may be changed from the present 120 days to any
676 deadline, consistent with state law, that the Commission deems prudent,
677 once the Commission is established and can consider this matter.

678

679 The Commission shall establish rules and procedures for Discipline Committees,
680 ensuring protection for officers' due process and statutory rights including *Skelly*
681 rights.

682

683 68. Up to three members of the Commission may attend meetings of the Berkeley Police
684 Department incident Review Boards as observers.

685

686 69. City management will consult in a timely way with the Commission on terms of all
687 future MOUs between City and the police employee association(s). Any change that
688 affects the Commission's power to adjudicate complaints shall be subject to ratification
689 by the Commission by a majority vote.

690

691 70. The Commission, with the assistance of the Investigations staff, shall establish

692 additional rules and procedures for the Investigations Section, governing, for example,
693 intake of complaints, use of forms, audio and video recording of testimony, public
694 information, training for Investigations staff, production of subpoenas to compel
695 testimony from sworn officers, and periodic reports to the City Council.

696
697 71. The Commission may utilize dispute resolution methods other than formal
698 administrative hearings, including, but not limited to voluntary conciliation, mediation,
699 and referral to the Chief of Police for disposition without a hearing.

700
701 The Commission shall establish a mediation program. Upon the agreement of the
702 Chief, the Investigations Director, the complainant(s) and the Subject Officer(s), the
703 Investigations Director shall appoint a qualified mediator to mediate a final and binding
704 resolution of the complaint in accordance with the Commission's established rules and
705 procedures. Any Commissioner, City employee, or former Department sworn officer
706 shall not be appointed mediator. Both the Chief and the Investigations Director must
707 approve of any settlement offer before it is proposed to the subject officer and/or before
708 any such offer is accepted.

709
710 72. The Commission shall have the power to issue subpoenas to compel the appearance
711 of witnesses, and the production of books, papers, records, and documents, and take
712 testimony on any pending matter. The Commission may seek a contempt order as
713 provided by the general law of the State for a person's failure or refusal to appear, testify,
714 or produce subpoenaed documents.

715
716 73. Complaints in which the complainant is the subject of criminal prosecution may be
717 investigated, but shall not be brought to a hearing while the prosecution is pending.

718
719

720 **(i) Adjudication of Discipline.**

721

722 74. Upon notification by the Commission of a sustained complaint, the Chief of Police
723 shall notify the police officer of his or her rights to an administrative appeal. Subsequent
724 to administrative appeals, if requested, and Skelly hearings, the Chief of Police will
725 recommend a final discipline. If the Final Discipline is different from the discipline
726 proposed by the Commission, the issue of discipline will be decided by the Discipline
727 Committee within 30 days of the BOI setting the Proposed Discipline

728

729 75. The Chairperson of the Commission shall appoint three (3) Commission
730 members to serve on a Discipline Committee, and shall designate one of these three
731 (3) Commission members as the Chairperson. The Discipline Committees shall
732 decide any dispute between the Commission and the Chief regarding the final level
733 of discipline to be imposed on a Subject Officer.

734

735 A. No Discipline Committee established by the Commission shall decide any
736 dispute between the Chief and the Commission, until each member of the
737 Discipline Committee has completed: (1) orientation regarding

738 Department operations, policies and procedures, including but not limited
739 to discipline procedures for misconduct, and (2) the training described
740 herein.

741 B. Membership in the Discipline Committees shall rotate for each
742 police officer discipline or termination case, as determined by the
743 Chairperson of the Commission.
744

745 All Department employees shall be afforded their due process and statutory rights,
746 including *Skelly* rights, as follows:
747

748 A. After the investigation of a complaint has been completed and a decision
749 has been made regarding the proposed findings and the proposed level of
750 discipline (hereinafter referred to as the "Proposed Discipline"), either
751 by agreement between the Chief and the Commission or by decision of
752 the Discipline Committee, the Chief shall send a Notice of Intent to
753 Impose Discipline or a Notice of Intent to Terminate to the Subject
754 Officer. Consistent with City policy and applicable law, the Department
755 shall offer the Subject Officer a *Skelly* hearing to be conducted by an
756 assigned *Skelly* officer. After completion of the *Skelly* hearing, the *Skelly*
757 officer shall issue his or her report which shall include his or her
758 recommendation regarding whether the Proposed Discipline should be
759 affirmed or modified in any way.

760 B. The *Skelly* report shall be submitted to the Chief and to the Investigations
761 Director. The Chief and the Investigations Director shall consider the
762 *Skelly* report and consult with each other regarding the final set of
763 findings and level of discipline to be imposed (hereinafter referred to
764 as "Final Discipline").

765 1. If the Final Discipline is the same as the Proposed Discipline,
766 the Chief shall send a Notice of Discipline or Notice of
767 Termination to the Subject Officer.

768 2. If the Final Discipline differs from the Proposed Discipline, or
769 the Chief and the Investigations Director do not agree on the
770 Final Discipline, the *Skelly* report shall be submitted to the
771 Discipline Committee which shall decide the Final Discipline
772 based on the record reviewed and considered by the *Skelly*
773 Officer (which shall include the Notice of Intent to Discipline or
774 Terminate with all attachments). The Discipline Committee shall
775 also have the authority to require the Chief and the
776 Investigations Director, or their non-attorney designees, to
777 appear before the Discipline Committee to present their
778 recommendations and to answer questions. After determining the
779 Final Discipline, the Discipline Committee shall direct the Chief
780 to send a Notice of Discipline or Notice of Termination to the
781 Subject Officer.

782 C. After the Final Discipline has been determined by either the agreement
783 of the Investigations Director and the Chief, or by the Discipline

- 784 Committee, and to the greatest extent permitted by law, the
785 complainant(s) shall be informed of the disposition of the complaint.
786 D. The Discipline Committee shall maintain the confidentiality of all personnel
787 and/or privileged information as required by State law. After the Discipline
788 Committee has concluded its deliberations regarding the Proposed
789 Discipline and/or the Final Discipline, it shall return all records and
790 information it received to the Commission office, which shall retain such
791 records confidentially. Members of the Discipline Committee shall not
792 retain copies of the records they receive from the Chief and the
793 Investigations Section, nor shall they publicly comment about, or discuss
794 any personnel matter with anyone, including another member of the
795 Discipline Committee, outside of Discipline Committee meetings, except in
796 the Commission review provided for in paragraph 69, or as required by a
797 valid subpoena. This subsection (D) shall not preclude any member of a
798 Discipline Committee from participating in any grievance procedure,
799 including without limitation testifying in an appeal before the Civil Service
800 Board or an arbitration or other type of administrative hearing.
801 E. The Subject Officer may appeal the imposition of discipline or termination
802 to the Civil Service Board. In addition, the Subject Officer may grieve the
803 imposition of discipline or termination as prescribed in a collective
804 bargaining agreement.
805

806 76. Within twenty-one (21) days of the Discipline Committee setting the Final Discipline,
807 the Commission shall review the decision of the Discipline Committee and either uphold
808 or modify the Final Discipline. The Commission shall impose appropriate discipline or
809 delegate its authority to impose discipline to the Chief of Police, who shall impose such
810 discipline.
811

812 **(j) Legality.**
813

814 77. Sections of this Amendment shall be deemed to be severable. Should any section,
815 paragraph, or provision of this Amendment be declared by the courts to be
816 unconstitutional or invalid, such holdings shall not affect the validity of this Ordinance as
817 a whole or in part, other than the part so declared to be unconstitutional or invalid.
818

819 78. Effective the thirtieth day after the first meeting of the new Police Commission,
820 Ordinance No. 4644-N.S., which created the Police Review Commission, and Ordinance
821 No. 5503-N.S. in amendment thereof, shall both be repealed.
822

823 79. Wherever this Amendment conflicts with other provisions of the City Charter, this
824 Amendment overrides previous versions of the Charter.

