

CHARTER AMENDMENT TO ESTABLISH A POLICE COMMISSION

The People of the City of Berkeley hereby amend the Charter of the City of Berkeley to read as follows:

Section 1. The Charter of the City of Berkeley is amended to add Article XVIII, to read as follows:

Article XVIII. POLICE COMMISSION

Section 1. Establishment and purpose.

A Police Commission is hereby established in the City of Berkeley. The purpose of the Police Commission is to provide independent, objective, civilian oversight of the Berkeley Police Department and their interactions with any other law enforcement agencies operating in the City of Berkeley, by promoting public trust through police accountability and transparency, by ensuring that police policies and practices reflect the values of the local community, and by helping the Department obtain the resources and training necessary to carry out its duties.

Section 2. Powers and duties.

(a) The Police Commission has the following powers and duties:

(1) To advise and make recommendations to the public, City Council, and City Manager regarding all aspects of the operation of the Berkeley Police Department, including without limitation all written policies, practices, and procedures in relation to the Berkeley Police Department, and their interactions with any other law enforcement, intelligence, and military agencies operating in the City of Berkeley;

(2) To review and approve all Police Department policies, practices and procedures as further described below;

(3) To receive, investigate, and hear complaints against all employees of the Police Department, and to recommend discipline when misconduct is found;

(4) To review complaints against all employees of the Police Department filed with the Police Department, to select complaints for investigation or monitoring, and recommend discipline;

(5) To participate in the hiring of the Chief of Police and other sworn officers as further described below;

(6) To participate in the hiring and dismissal of Commission staff as further described below;

(7) To access records of City Departments, compel attendance of Police Department employees, and exercise the power of subpoena as necessary to carry out its functions and as further described below;

(8) To adopt rules and regulations necessary for the conduct of its business; and

(9) Any other powers and duties as the City Council may assign it.

Section 3. Independent agency; budget authority and allocation

(a) Notwithstanding Article VII of the Charter, the Police Commission and its staff shall be independent of the City Manager.

(b) The Commission is authorized to propose a budget to the City Council for its operations, and the Council shall allocate to the Police Commission a budget sufficient for the Commission and its staff to carry out the responsibilities stated herein.

Section 4. Composition of Police Commission; eligibility

The Police Commission shall be composed of nine Commissioners selected by the City Council.

(a) Each member of the Commission must:

(1) Be a resident of the City;

(2) Be of voting age;

(3) Not be an employee, officer, or contractor with the City; a current sworn police officer from any agency; or a current employee, official, or representative of an employee association representing sworn police officers.

(b) Desirable qualities of a Commissioner are familiarity with human resources, law, police procedures, or police oversight; or involvement in civil rights or community organizations.

Section 5. Commissioner selection.

(a) Candidates for the Commission must complete and file with the City Clerk an application form and an affidavit of residency required by Berkeley Municipal Code section 2.04.145. Commission vacancies will be widely advertised and publicly posted. The Mayor and each Councilmember will nominate one candidate from an applicant pool at a meeting of the City Council. Each individual nominee must be approved by a majority vote of the Council.

(c) The Council shall endeavor to establish a commission that is broadly inclusive and reflective of race, ethnicity, age, sexual orientation, economic status, neighborhoods, and various communities of interest in this City. Toward that end, in soliciting applications for Commissioner positions, the Executive Director of the Commission shall reach out to civic, community, and civil rights organizations, among others.

Section 6. Terms; term limits.

(a) Commissioner terms end four years after appointment, or upon the expiration of the nominating Councilmember's term, whichever is earlier. Commissioners are limited to serving eight consecutive years, and may be reappointed following a break in service of at least four years.

(b) To the extent not in conflict with subsections (a) above, the provisions of Berkeley Municipal Code Section 3.02.040, regarding commissioner term limits and the effect of interruption in service, apply.

Section 7. Conflicts of interest.

Commissioners will be subject to the requirements of the California Political Reform Act and other state and local conflict of interest codes.

Section 8. Expiration of term; termination; leaves of absence; removal.

(a) A Commissioner whose term has expired may continue to serve until a successor Commissioner is appointed, unless and until the sitting commissioner's term expires due to term limits.

(b) The term of a Commissioner who fails to remain eligible to serve on the commission (e.g., by moving out of the City of Berkeley, or becoming an employee of the City) expires automatically as of the date the reason for ineligibility arises.

(c) The provisions of Berkeley Municipal Code Section 3.02.020, establishing a termination procedure for absence from meetings, Section 3.02.030, leaves of absence, and Section 3.02.035, regarding alternate commissioners, apply to the Police Commission.

(d) A Commissioner may be removed only by a majority vote of the Council upon recommendation of the Commission. Such a recommendation must be made by a supermajority vote of seven Commissioners, and the only grounds for recommending removal are: conviction of a felony, substantial neglect of duty, or gross misconduct, while in office; inability to discharge the powers and duties of the office; or absence from six regular meetings in a calendar year except when the absence is excused in accordance with Berkeley Municipal Code Sec. 3.02.030.

Section 9. Commission Chairperson and Vice-Chairperson.

The Commission shall elect one of its members as chairperson and one as vice-chairperson, whose terms shall be one year each, or until their successor is elected. No chairperson is eligible to serve more than two consecutive terms, or portions thereof. Following election of the initial chairperson and vice-chairperson, the Commission shall elect subsequent officers each January.

Section 10. Commissioner stipends.

Each Commissioner is entitled to receive a stipend of \$100.00 for each regular and special full commission meeting attended, and \$20.00 per hour for each subcommittee meeting and Board of Inquiry (BOI) hearing attended as a member of the subcommittee or the BOI. However, the total stipend paid may not exceed \$500.00 per month per Commissioner.

Section 11. Commissioner training.

The Commission shall establish mandatory training requirements for Commissioners, with input from the Executive Director and Chief of Police.

Section 12. Commission meetings; quorum; rules of procedure; subcommittees.

(a) At the beginning of each calendar year, the Commission shall establish a regular meeting schedule consisting of at least 18 meetings. Special meetings may be called by the chairperson of the Commission or by a majority of the Commission.

(b) A majority of appointed Commissioners constitutes a quorum to conduct business, and a minimum of four affirmative votes is required to take any action.

(c) The Commission shall establish rules of procedure governing the conduct of its business.

(d) The Commission may establish subcommittees that it deems necessary to carry out its functions. The Chairperson shall appoint subcommittee members at a Commission meeting, and may include members of the public who express an interest in the business of the subcommittee. Public subcommittee members will serve without compensation. The Commission may establish further rules and procedures for the appointment of members of the public to subcommittees.

(e) On the petition of fifty or more residents in the City of Berkeley filed in the Office of the Commission, the Commission shall hold a special meeting in an appropriate and convenient location for the individuals so petitioning for the purpose of responding to the petition and hearing and inquiring into the matters identified therein as the concerns of the petitioners. Copies of the petition shall be filed by the Commission with the City Clerk and the City Council. Notice of such meeting shall be given in the same manner as notice is given for other meetings of the Commission. In no case shall the Commission meet later than ten business days following the date that the petition is filed.

Section 13. Commission staff.

(a) The Commission shall hire an Executive Director, who shall serve at the pleasure of the Commission. The Executive Director shall serve as secretary to the Commission and carry out the work of the Commission as described herein, including, without limitation, day-to-day operations of the Commission office and staff, and performance appraisals and discipline of all subordinate employees.

(b) The Executive Director shall, with the Commission's consent, hire a Chief Investigator. The Executive Director may dismiss the Chief Investigator at will, with the Commission's consent.

(c) The Executive Director has the sole authority to hire and dismiss consultants, additional investigators, and all subordinate employees as needed.

(d) The powers in this Section 13 are conferred notwithstanding Article VII, Sections 28(b) and (c) and Article XVI, Section 199 of this Charter.

(e) The Commission and Executive Director may use the City's Human Resources Department for hiring, performance evaluation, discipline, and removal of employees.

Section 14. Legal counsel.

The Commission and its Executive Director may use the services of the City Attorney's Office for legal advice; the Commission may also seek the services of outside counsel when it deems necessary.

Section 15. Commission reports.

(a) The Executive Director shall issue an annual report to the public describing the Commission's activities during the year, and which shall include: a summary of the number, type, and disposition of complaints filed with the Commission; a summary of the number, type, and disposition of complaints filed with the Police Department that Commission staff has reviewed; policy investigations and reviews undertaken; and such other information as the Commission may request.

Section 16. Policy review and approval.

(a) The Commission may review police policies, practices, and procedures on its own motion or at the request of a member of the public or the Department. The Executive Director shall carry out any Commission directives required to fulfill this function.

(b) The Executive Director shall conduct any audit or review of the Department necessary to assess the Department's performance and adherence to constitutional policing practices, and shall also conduct any audit or review of the Department's policies and procedures, including any pattern of noncompliance with the foregoing, as necessary or helpful for the Commission to fulfill its duties.

The Commission shall prepare an annual report, summarizing such reviews as the following:

1. The Department's and the Commission's processes and procedures for investigating alleged misconduct, and for determining the appropriate level of discipline for sustained findings of misconduct;
2. Trends and patterns regarding Department training and education, and the Department's use of any early warning system;
3. Training and/or policy issues that arise during the investigations of complaints;
4. Trends and patterns regarding discrimination or harassment based on race, ethnicity, national origin, gender, age, religion, sexual orientation/identity, or socio-economic status in civilian stops or other encounters; and Department compliance with the Responsibility to Report and Take Corrective/Investigative Action as described in BPD General Order B-4, Fair and Impartial Policing, paragraphs 4, 5, and 6; and
5. Trends and patterns regarding use of force and officer-involved shootings.

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

(c) Before taking effect, the Chief shall submit all new Departmental policies and revisions to existing policies to the Commission for review and approval. If the Police Department and the Commission are unable to reconcile their differences about a policy, the policy shall be sent to the City Council for a final decision.

Section 17. Complaints filed with the Commission.

(a) The Commission shall adopt regulations for handling complaints filed with the Commission from members of the public alleging misconduct by Police Department employees, and undertake investigations of complaints as it deems warranted. The regulations must include the following:

(1) A provision for mediation of complaints in lieu of an investigation;

(2) What constitutes a complainant;

(3) Boards of Inquiry (BOI) to hear and decide findings on allegations of misconduct, at which subject employees must appear to testify and answer questions from the BOI Commissioners;

(4) In making findings at a BOI, the standard of proof will be “preponderance of the evidence”;

(5) The time limit for investigations and notification of discipline shall be one year, unless a Government Code section 3304(d) exception applies.

Section 18. Review of complaints filed with the Berkeley Police Department.

(a) The Police Department shall provide the Executive Director with copies of all newly-filed complaints filed with the Department. The Commission shall decide which complaints staff will conduct parallel investigations of, after receiving recommendations from its staff. If Commission staff conducts an investigation, the Department shall share with the Commission all evidence the Department collects during its investigation.

(b) For complaints that Commission staff do not select for investigation, the Executive Director shall have the authority to review and discuss those cases with the Department. If the Executive Director believes that the Commission should open an investigation, s/he may present the case to the Commission to approve an investigation.

(c) The Police Department shall inform Commission staff of its planned disposition before closing an investigation into a complaint.

Section 19. Involvement in discipline of Department employees

(a) If members of a Board of Inquiry make a sustained finding on an allegation against a subject employee, they shall also recommend disciplinary action to the Chief.

(b) After reviewing a Police Department investigation, the Executive Director shall advise the Commission of recommended disciplinary action in any sustained finding. The Commission may affirm, modify, or reject the recommendation, and its decision shall be submitted to the Chief.

(c) If the Chief proposes to impose a disciplinary action that differs from the recommendation of the BOI or the Commission, the Commission shall have the

opportunity to appeal the Chief's proposal to the City Manager. The City Manager shall make the final determination and explain his or her decision in writing to the Commission within 15 business days of the appeal.

(d) This Article does not prohibit the Chief of Police from investigating the conduct of a Police Department employee, or taking disciplinary or corrective action that is otherwise permitted by this Charter and not in conflict with this Article, when such action is warranted; and this Article does not limit or otherwise restrict the disciplinary powers vested in the City Manager and the Chief of Police under other provisions of this Charter, that are not in conflict with this Article.

(e) The City Manager and Chief of Police may impose disciplinary action up to a period consistent with Government Code section 3304. This Section nullifies and supersedes any agreements to the contrary.

Section 20. Access to records of City departments; compelling testimony and attendance.

(a) Notwithstanding Article VII, Section 28 of this Charter, all departments, officers, and employees of the City shall cooperate with and assist the Commission and its staff and, unless prohibited by state or federal law, produce all records and information the Commission or its staff requests for the purpose of carrying out its duties and functions. The records and information include without redaction or limitation: (1) records relevant to Police Department policies or practices, (2) personnel and disciplinary records of Police Department employees, and (3) Police Department investigative records. Responding departments, officers, or employees of the City shall comply promptly, but in no event later than 10 business days from the date of request.

(b) The Commission and its staff shall maintain the confidentiality of any records and information it receives to the extent required by state or federal law governing such records or information.

(c) The Commission may require the testimony or attendance at Commission proceedings of any member of the Police Department to carry out the Commission's responsibilities.

(d) The Commission is empowered to issue subpoenas to compel the production of books, papers, and documents, and the attendance of persons to take testimony, as needed to carry out its duties and functions; and to enforce subpoenas if necessary.

Section 21. Advice regarding Police Department budget.

The Commission is empowered to review and make recommendations to the Chief of Police regarding the Police Department budget, before and during development of his or her budget proposal to the City Manager. The Chief shall submit his or her final budget proposal to the Commission for review and recommendations at least 30 days before submitting it to the City Manager, but the Commission's failure to complete that review and make recommendations in a timely manner shall not delay the budget process.

Section 22. Hiring and dismissal of Chief of Police.

Notwithstanding Article VII, Section 28 of this Charter, the processes for hiring and dismissing the Chief of Police are as follows:

(a) Upon the notice of vacancy of the position of Chief of Police, the City Manager shall engage with the Police Commission on the job requirements and application process. The Police Commission shall play an active role in the evaluation of candidates and final selection of the Chief of Police.

(b) Upon the recommendation of the Commission, it may propose removal of the Chief to the City Manager.

Section 23. Hiring of subordinate Departmental staff.

(a) The Chief of Police shall include a member of the Commission on all oral boards for all command staff positions, and allow that Commission member to have input.

(b) The Chief shall provide members of the Commission with an opportunity to participate in oral boards or interviews for all non-command, sworn officer positions.

Section 24. Chief or command staff to attend Commission meetings.

The Chief of Police shall attend at least one regular Commission meeting per month for each month a regular meeting is held, and attend a minimum of 12 meetings per year. The Chief shall send a member of his or her command staff to any regular Commission meeting that the Chief does not attend.

Section 25. Berkeley Police Department written reports to the Commission.

The Chief of Police shall submit reports to the Commission on such subjects and at such intervals as the Commission, in consultation with the Chief, may prescribe. At least one report shall provide information on all use of force statistics, and the number of complaints filed with Internal Affairs, the allegations in each complaint, and the disposition of closed complaints, including any discipline imposed.

Section 26. Contract negotiations.

The City Manager shall inform the Police Commission of any prospective changes discussed in contract negotiations that may directly affect the work, duties, or responsibilities of the Commission; and provide the Commission reasonable time to evaluate and respond to those proposals.

Section 27. Commendation program.

The Commission shall establish a regular means of recognizing employees of the Police Department for instances of outstanding service to individuals, the community at large, or the Department.

Section 28. Transition from Police Review Commission to Police Commission.

(a) The Police Review Commission established by Ordinance No. 4,644-N.S., as amended, will continue in existence until its functions are transferred to the Police Commission, but no later than June 30, 2019.

(b) To assist in an orderly transition between the Police Review Commission and the Police Commission established by this Article, PRC staff shall serve as interim Police Commission staff until the Police Commission hires an Executive Director and the Executive Director hires subordinate employees.

(c) The Police Review Commission staff shall transfer all PRC files, records, books, publications, and documents of whatever kind to, and for the use and benefit of, the newly created Police Commission.

Section 29. Review of processes.

The Commission shall conduct a review of its processes every two years after the passage of the initiative in order to ascertain the efficacy of its processes.

Section 30. Repeal of Ordinance No. 4,644-N.S., as amended.

Ordinance No. 4,644-N.S. and all amendments thereto will cease to be operative and are repealed as of the date of the first meeting of the Police Commission established by this Article.

Section 31. Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this Article, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Article, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The People of the City of Berkeley declare that it would have passed this title, and each section, subsection, sentence, clause and phrase of this Article, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases is declared invalid or unconstitutional.