

**CITY OF OAKLAND MEASURE S1**

<p><b>S1</b> Shall Oakland’s City Charter be amended to: (1) create an Office of Inspector General to review and report on the Police Department’s and the Community Police Review Agency’s (“CPRA’s”) practices regarding police misconduct, and allow the Police Commission (“Commission”) to hire and remove the Inspector General; and (2) change the Commission’s and the CPRA’s powers and duties, and allow the Commission and the CPRA to hire their own attorneys independent of the City Attorney?</p>	YES
	NO

**CITY ATTORNEY’S BALLOT TITLE AND SUMMARY OF MEASURE S1**

**Title:** A proposed amendment to Oakland’s City Charter creating an Office of Inspector General to review and report on the Police Department’s and the Community Police Review Agency’s (“CPRA’s”) practices regarding police misconduct, changing the Police Commission’s (“Commission’s”) and CPRA’s powers, duties and staffing, and allowing the Commission and the CPRA to hire their own attorneys independent of the City Attorney.

**Summary:**

Office of Inspector General

The Police Department (“OPD”) currently has an inspector general who provides the Chief of Police (“Chief”) with analysis of the OPD’s policies and procedures. The Chief and the City Administrator supervise and oversee this inspector general.

This measure would establish a new Office of Inspector General (“OIG”) outside of the OPD to investigate and review the City’s handling of police misconduct. The Police Commission (“Commission”) would hire the Inspector General and could remove the Inspector General for cause. The OIG would have the authority to review police misconduct-related claims, lawsuits, settlements, complaints, and investigations involving the OPD and the Community Police Review Agency (“CPRA”). Subject to limitations, this measure would allow the OIG to request and review OPD and CPRA records, including personnel and investigative records.

Under this measure, the OIG would also audit the OPD’s compliance with the tasks described in the settlement agreement in *Delphine Allen, et al., v. City of Oakland, et al.*, also known as the Riders case. This audit would address improvements in policing standards, the public’s access to the complaint process, reporting and investigations of police misconduct, training and supervision, and identifying at-risk behaviors by police officers.

The OIG would provide written reports regarding its reviews and audits to the Commission and the City Council.

Police Commission

Currently, the Commission reviews OPD policies and

practices and oversees the CPRA’s investigations into police misconduct. The City Attorney currently selects and oversees the Commission’s attorneys.

This measure would allow the Commission to:

- require the Chief to respond to requests for information; and
- hire its own attorneys independent of the City Attorney’s Office.

This measure would also allow the City Council to suspend Commission members for cause.

Community Police Review Agency

The CPRA currently receives and reviews complaints of police misconduct. It must make reasonable efforts to complete its investigations within 180 days. The City Attorney currently selects and oversees the CPRA’s attorneys.

This measure would require the CPRA to complete its investigations within 250 days unless the CPRA Director finds that there are exceptional circumstances requiring more time. This measure would allow the CPRA Director to inform the Commission about OPD employees who have interfered with the CPRA’s investigations.

This measure would also require the CPRA Director to issue written findings and proposed discipline within 48 hours of the CPRA’s completion of investigations into severe uses of force, sexual misconduct, or untruthfulness.

This measure would provide the CPRA with a budget to hire its own attorneys independent of the City Attorney’s Office.

3 €

Print-ready pdf

9/10

## CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE S1

Currently, the Chief of Police ("Chief") is responsible for the Police Department's ("OPD's") day-to-day operations, including investigations of police misconduct and potential discipline. The Police Commission ("Commission") reviews OPD policies and practices and oversees the Community Police Review Agency's ("CPRA's") investigations into police misconduct. In addition to the Chief, the CPRA receives and reviews complaints of police misconduct. After it completes its investigations, the CPRA submits its findings and proposed discipline to the Chief and the Commission. The City Attorney currently selects and oversees the Commission's and the CPRA's attorneys.

This measure would establish an Office of Inspector General ("OIG") outside of the OPD to investigate and review the City's handling of police misconduct. This measure would also change the Commission's and CPRA's powers, duties and staffing, and allow them to hire their own attorneys independent of the City Attorney.

### Office of Inspector General

The OPD currently has an inspector general who provides the Chief with analysis of OPD's policies and procedures. The Chief and the City Administrator supervise and oversee this inspector general.

This measure would establish a new OIG outside of the OPD to review police misconduct-related claims, lawsuits, settlements, complaints, and investigations involving the OPD and CPRA. The Commission would hire the Inspector General and could remove the Inspector General for cause. Subject to limitations, this measure would allow the OIG to request and review OPD and CPRA records, including personnel and investigative records.

The OIG would also audit the OPD's compliance with tasks described in the settlement agreement in *Allen, et al., v. City of Oakland, et al.*, also known as the Riders case. This audit would address improvements in policing standards, the public's access to the complaint process, reporting and investigations of police misconduct, training and supervision, and identifying at-risk behaviors by police officers.

The OIG would also provide written reports regarding its reviews and audits to the Commission and the City Council.

### Police Commission

This measure would allow the Commission to require the Chief to respond to requests for information.

This measure would allow the Commission to hire its own attorneys independent of the City Attorney's Office.

This measure would allow the City Council to suspend Commission members for cause.

### Community Police Review Agency

The CPRA must currently make reasonable efforts to complete its investigations within 180 days. This measure would require the CPRA to complete its investigations within 250 days unless the CPRA Director finds that there

are exceptional circumstances requiring more time. This measure would allow the CPRA Director to inform the Commission about OPD employees who have interfered with the CPRA's investigations.

This measure would require the CPRA Director to issue written findings and proposed discipline within 48 hours after the CPRA completes investigations involving severe uses of force, sexual misconduct, or untruthfulness.

This measure would provide the CPRA with a budget to hire its own attorneys independent of the City Attorney's Office.

3 e

Print-ready pdf

9/10

**CITY AUDITOR'S FINANCIAL ANALYSIS OF MEASURE S1**

**Summary**

This Measure, if passed by more than 50 percent of the voters, amends Section 604 of the City Charter, which established the Police Commission (Commission) and the Community Police Review Agency (Agency). The Measure will strengthen the independence of the Commission by modifying the powers, duties, and staffing of the Commission and the Agency. The Measure also amends the Charter to establish the Office of the Inspector General (OIG), which will be overseen by the Commission.

**Fiscal Impact**

The Measure requires the City to budget two attorneys and one administrative position for the Agency. It adds the OIG to the Charter and authorizes the Commission to hire legal counsel. The Measure also requires an audit of the Commission and the Agency, every three years.

Many of these costs are currently budgeted by the City as Exhibit 1 below shows, and some additional costs will be incurred.

One Agency attorney position has been budgeted at \$216,000 annually. We estimate a second attorney position will cost an additional \$216,000 annually. The City Council may suspend the budget for one attorney position in a fiscal year or a two-year budget cycle, in the event of a fiscal emergency.

The Measure also requires one administrative position to support the Commission. This position is currently budgeted at \$176,000 annually. Although the job description for this position has not been developed, we estimate the cost to remain consistent with the current budget.

The enabling ordinance, enacted in 2018, requires staffing the OIG with an Inspector General, an auditor, and a policy analyst. The City has budgeted \$927,000 for these positions, but the Inspector General and auditor positions have remained vacant since the enabling ordinance was passed.

The Measure authorizes the Commission to hire or contract for legal counsel. Although these costs are not budgeted, we estimate the Commission will incur \$50,000 to \$100,000 annually in legal costs.

The Measure requires an audit of the Commission and the Agency every three years, at an estimated cost of \$100,000 to \$150,000.

Exhibit 1 identifies the cost items, the estimated annual cost of each item, the budgeted costs, the additional annual costs associated with the Measure, and cost of the triennial audit.

**Exhibit 1**

Cost Item	Total Annual Cost	Current Budgeted Cost	Fiscal Impact of the Measure	
			Additional Annual Costs	Other Costs
Agency Attorney	\$432,000	\$216,000	\$216,000	
Commission Attorney	\$50,000 - \$100,000	-0-	\$50,000 - \$100,000	
OIG	\$927,000	\$927,000	-0-	
Agency Administrative Staff	\$176,000	\$176,000	-0-	
Audit (triennial)	-	-	-	\$100,000 - \$150,000
<b>Total</b>	<b>\$1,585,000 - \$1,635,000</b>	<b>\$1,319,000</b>	<b>\$266,000 - \$316,000</b>	<b>\$100,000 - \$150,000</b>

We estimate the Measure will add \$266,000 to \$316,000 in annual costs and an additional \$100,000 to \$150,000 every three years.

The OIG will require office space, but we are unable to estimate this cost because it is project-specific.

Future personnel costs may increase due to cost of living adjustments and future union negotiations.

Our analysis is based on the information available at the time our analysis was developed.

3a

Print-ready pdf

q110

## ARGUMENT IN FAVOR OF MEASURE S1

Oakland residents want effective and independent oversight of the Oakland Police Department, which is essential to accountability, community safety and public trust. Serious police misconduct impedes effective community safety. We need improved oversight and handling of misconduct cases, and effective policy-making in order to better protect our community for everyone.

OPD has been under federal oversight for way too long and needs to get its house in order and make more progress by enabling independent, effective oversight. A broad community coalition has worked together, with councilmembers and experts, to bring forward Measure S1 to help protect our community. It will ensure:

- Effective monitoring, analysis and implementation with an independent Inspector General;
- The ability to receive independent unbiased legal advice;
- A pathway away from federal oversight of the OPD, coupled with long-term authority to research and propose policies to ensure true constitutional policing;
- Necessary access to all relevant information related to misconduct.

The Police Commission has done important work, instituting vital policies regarding stops and searches and use of force; and thus, improving the safety and well-being of our community. And more is needed. The Inspector General cannot be effective if the position is put under the same chain of command as OPD. It is vital that the Commission have independent access to legal counsel and a well-respected civilian Inspector General.

For improvements and accountability at OPD, and effectiveness of the Police Commission, we respectfully ask for your YES vote on Measure S1.

When voting this year, please return your ballot early if mailing, and consider bringing it to an official ballot drop spot.

s/REVEREND DR. GEORGE CUMMINGS

Director, Faith in Action East Bay

s/REBECCA KAPLAN

City Councilmember At-Large

s/MARIANO CONTRERAS

Latino Task Force

s/DAN KALB

Oakland City Councilmember

s/REGINA JACKSON

Chair, Police Commission

## NO ARGUMENT AGAINST MEASURE S1 WAS SUBMITTED

3a

Print-ready pdf

9/10

## FULL TEXT OF MEASURE S1

**Section 1.** Amendments to Section 604 of the Charter of the City of Oakland.

### 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 Charter Section 604, as well as those assigned to the Commission by Ordinance.

2. There hereby is are established a Community Police Review Agency (hereinafter, Agency) and an Office of Inspector General (hereinafter, OIG), which shall have the functions and duties enumerated in this Charter Section 604, as well as those assigned to the Agency them 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 Regular Commissioners and Alternates Commissioners (collectively, Commissioners), the City Auditor shall conduct a performance audit and a financial audit of the Commission and the Agency. Performance audits shall be conducted at least once every three (3) years thereafter. Nothing herein shall limit the City Auditor's authority to conduct future performance and financial audits of the Commission and the Agency which may be conducted by an independent contractor selected by the Inspector General, in consultation with the City Auditor, in compliance with the City's contracting processes and procedures.

5. The City Administration shall not exercise any managerial authority over Commissioners, the Agency Director or the Inspector General, and shall not initiate an investigation for the purpose of removing a Commissioner. City employees maintain the right to file, and appropriate City officials and/or staff maintain authority to investigate, complaints alleging violations of applicable Civil Service Rules, City policies, including Administrative Instructions, Memoranda of Understandings (MOUs), and employment laws and regulations.

#### (b) Powers and Duties.

The powers and duties of the Commission are as follows:

1. ~~Organize, reorganize and o~~Oversee the work of the Agency and the OIG, and contract with professional service providers as authorized by Ordinance.

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 except that the Commission shall not have any authority to issue subpoenas for the purpose of investigating any City employee, including an Agency employee, who is not a police officer. 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 at its discretion or upon direction, by adoption of a resolution, of the City Council, 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 by the Commission Chair or her or his designee to the City Council ~~for review, approval or rejection. If~~ the City Council does not approve, modify and approve, or reject shall consider the Commission's proposed changes or modifications within one hundred and twenty (120) days of the Commission's vote on the proposed changes, and may approve, modify and approve, or reject the changes. If the Council does not approve, modify and approve, or reject the Commission's proposed changes or modifications, 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 by the Commission Chair or her or his designee to the City Council for review. ~~If~~ the City Council does not approve or reject shall consider the Commission's decision within one hundred and twenty

(120) days of the Commission's vote on the Department's proposed changes, and may approve or reject the decision. If the Council does not approve or reject the Commission's decision, the Commission's decision will become final.

6. Review and comment on, at its discretion, ~~on all any~~ other policies, procedures, customs, and General Orders of the Department. All such comments shall be submitted to the Chief of Police, ~~who~~ The Chief of Police shall provide a written response to the Commission upon the Commission's 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 or his or her designee to attend Commission meetings and require the Chief of Police to submit an annual report to the Commission regarding such matters as the Commission shall require, including but not limited to a description of Department expenditures on community priorities as identified by the Commission. The Chief of Police or her or his designee shall also respond to requests made by the Commission, through the Chairperson, by a majority vote of those present. The Chief of Police or her or his designee shall provide to the Commission Chair an estimate of the time required to respond to the Commission's requests.

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 Notwithstanding any other provision of this Charter or any provision of the Oakland Municipal Code, and acting separately or jointly with the Mayor, remove the Chief of Police by a vote of not less no fewer than five (5) 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 not less no fewer than five (5) affirmative votes and must follow a process for notification, substantiation and documentation which shall be defined by ordinance. 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. No person appointed to the position of Interim Chief of Police shall simultaneously hold additional non-sworn employment with the City, or simultaneously serve as an elected official or officer of the City. Such appointment shall not exceed six (6) months in duration unless an extension to a date certain is 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 three (3) 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, the Agency Director, and/or the Inspector General or their designees to serve as a non-voting members of any level one Oakland Police Force Review Board, as permitted by law.~~

12. Hire and/or contract for, by an affirmative vote of at least five (5) members, one or more attorneys to provide legal advice to the Commission related to and within the scope of any of its powers or duties, in accordance with Section 604(i) of this Charter. When considering a candidate for an attorney position, the Commission shall consider the candidate's familiarity with laws applicable to public entities, public meetings, employee privacy, labor relations and law enforcement.

~~13.~~ 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. Alternate Commissioners shall be eligible to serve on any Commission standing or ad hoc committee, including any Discipline Committee. 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. The City Council may require, by ordinance, that some or all of the Commissioners have expertise in a specified subject matter. Background checks shall be required for all Commissioners, members and alternates. Such background checks shall not be performed by the Department. Commissioners shall be issued identification cards, but shall not be issued and shall not display, wear, or carry badges that so resemble a peace officer's badge that an ordinary reasonable person would believe that Commissioners have the authority of a peace officer. 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 Regular 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 Commissioner, 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 alternates~~ 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 City Council shall, by ordinance, specify qualifications and/or disqualifying characteristics for Selection Panel members.~~ 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 (2/3) 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~~ The Selection Panel shall, by a two-thirds (2/3) vote of the members present but by a vote of no fewer than five (5) members, 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. Upon a vacancy on the Selection Panel, the Councilmember who appointed the Selection Panel member (hereinafter

referred to as the Appointing Authority) shall appoint a replacement. If the Appointing Authority does not appoint the replacement within one hundred and twenty (120) days of the date of resignation, removal or expiration of the Selection Panel member's term, the Selection Panel, by a two-thirds vote of those present but by a vote of no fewer than five (5) Selection Panel members, shall choose a replacement for the vacancy. All such replacements must be confirmed by the City Council.

4. With the exception of the first group of Commissioners which shall serve staggered terms, the term for each Regular and Alternate Commissioner shall be three (3) years.

5. ~~Commissioners members~~ are limited to no more than two (2) consecutive terms, except that a Commissioner serving a term of ~~no more~~ less 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~~ Commissioners to replace the regular member for that regular member's remaining term of office. If the ~~Alternate~~ Commissioner chosen to replace the regular member was appointed by the Selection Panel, the Selection Panel shall appoint another ~~Alternate~~ Commissioner. If the alternate chosen to replace the regular member was appointed by the Mayor, the Mayor shall appoint another ~~Alternate~~ Commissioner.

9. All ~~Commissioners members~~ shall receive orientation and training as required by ordinance, including but not limited to orientation and training in the areas of 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 labor rights and laws, and other subject matter areas which are specified by City ordinance.

10. The City Council may remove ~~members of the any~~ Commissioner for cause as provided in Section 601 of the Charter. After a hearing, the City Council may also suspend any Commissioner for cause by an affirmative

vote of at least six (6) members of the Council, or rescind such a suspension by the affirmative vote of at least five (5) members of the Council. A Commissioner who is suspended shall be ineligible to conduct Commission business, and the Commission shall select one of the Alternates Commissioners to replace the suspended Commissioner for the duration of the suspension, or members of the Any Commissioner may also 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. The Public Ethics Commission shall have the authority to investigate all allegations which, if true, could be cause for removal of a Commissioner under Section 601 of the Charter and to refer the findings to the City Council.

**(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 Commissioners to establish a quorum and cast votes. Motions on all matters may be approved by a majority of those Commissioners members present unless otherwise specified in this Charter Section 604.

**(e) Budget and Staffing.**

1. The City shall allocate a sufficient budget for the Commission, including the Agency and the OIG, to perform its functions and duties as set forth in this Charter section 604, 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. for no fewer than two full-time legal advisors for the Agency (hereinafter Agency Attorneys). The budget set-aside for one of the Agency Attorneys 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. The Agency Director shall have authority to hire and/or contract with legal advisors subject to said budget. The Agency, including the Agency Staff Attorneys, may consult with the City Attorney on police-officer investigations and discipline, including related hearings, provided there is no conflict of interest.

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 604, the Commission Agency Director and the Inspector General may identify special qualifications and experience that candidates for Agency and OIG staff positions, respectively, 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 appointing authority and the Personnel Director 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~~ may assign a staff member to act as liaison to the Commission. The City shall allocate a sufficient budget for one full-time civil service employee who shall report to the Agency Director and whose duties shall include and to providing administrative support to the Commission, and attending Commission meetings.

6. Upon a vacancy, the Agency Director of the Agency and the Inspector General 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 Agency Director of the Agency or the Inspector General. The Commission may remove the Inspector General only after adopting a finding or findings of cause, which may be defined by City Ordinance. The Commission shall periodically conduct a performance review of the Agency Director and Inspector General. The Agency Director and Inspector General shall be classified as a Department heads, and shall have the authority to hire and fire Agency staff and OIG staff,



respectively, including Agency Attorneys, in consultation with the City Administrator subject to section 604(e)(7) of the City Charter and consistent with state law, City Civil Service Rules and any applicable collective bargaining agreement. The Agency Director and Inspector General, in consultation with the City Administrator, shall have the authority to organize and reorganize the Agency and the OIG, respectively, subject to section 604(e)(7) of the City Charter.

7. The staff of the Agency, OIG and Commission staff, with the exception of the Agency Director and Inspector General themselves, shall be civil service employees in accordance with Article IX of the City Charter. Civil service staff of the Agency, OIG or Commission may not be separated from employment unless such separation is approved by the City Administrator. 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, untruthfulness, 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 it receives to the Internal Affairs Division of the Oakland Police Department within one business day of receipt, and the Department shall forward a copy of each complaint it receives to the Agency within one business day of receipt. The Agency Director may report to the Commission on the status of written complaints filed with the Chief of Police asserting that Department employees have resisted attempts by the Agency to conduct reasonable investigative tasks. The Agency Director shall submit to the Commission each month a list of all investigations it is conducting and shall, as permitted by law, answer any questions raised by any Commissioner regarding such investigations at a Commission meeting.

2. Subject to applicable law and provisions of this

Charter Section 604, the Commission, OIG, and Agency shall have the same access to all Department files and records, including the Department's Internal Affairs Division (hereinafter, IAD) files and records, related to sworn employees of the Department with the exception of personnel records, in addition to all files and records of other City departments and agencies related to sworn employees of the Department, as the Department's Internal Affairs Division (IAD) IAD, including but not limited to the same access to electronic data bases as IAD as permitted by law. Requests for access to such files and records shall be made by a majority vote of the Commission, by the Agency Director, or by the Inspector General. By majority vote, the Commission shall have the authority to request information from the Department, and the Chief of Police or her or his designee shall respond to such requests, as permitted by law. Commission requests for personnel records shall have, and the Commission's vote shall articulate, a reasonable nexus to one or more of the Commission's powers and duties enumerated in subsection (b) of this Charter Section 604. Access to personnel records shall be limited to the Agency Director who All those who have access to confidential information shall maintain confidentiality as required by law. The Department and other City departments and agencies shall make every reasonable effort to respond to the Commission's, OIG's, or Agency's requests for files and records within ten (10) days, including but not limited to: (1) records relevant to Police Department policies or practices, and (2) personnel and disciplinary records of Police Department sworn employees, as permitted by law.

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. The Agency shall complete its investigations within two hundred and fifty (250) days of the filing of the complaint with the Agency unless the Agency Director, in his or her discretion, makes a written finding that exceptional circumstances exist in a particular case that are beyond the Agency's control. Within thirty (30) days of completion of the investigation, the Agency Director of the Agency shall issue written findings and proposed discipline regarding the allegations stated in the complaint to the Chair of the Commission and the Chief of Police. The Agency Director shall issue written findings and proposed discipline within forty-eight (48) hours of completion of any investigation of Level 1 use of force (as defined by Department policy), sexual misconduct or untruthfulness. 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.

5. The OIG shall audit the Department's compliance with the fifty-two (52) tasks described in the Settlement Agreement in United States District Court case number C00-4599, Delphine Allen, et al., v. City of Oakland, et al., and make

recommendations to the Department, the Commission, and the City Council based on its audit(s), even after the Settlement Agreement expires. The OIG may review legal claims, lawsuits, settlements, complaints, and investigations, by, against, or involving the Department and the Agency, to ensure that all allegations of police officer misconduct are thoroughly investigated, and to identify any systemic issues regarding Department and Agency practices and policies. The OIG shall have access and authority to review Department data, investigative records, personnel records, and staffing information, as permitted by law, for the purpose of conducting audits of the Department. The OIG shall have access and authority to review Agency data, investigative records, personnel records, and staffing information for the purpose of conducting audits of the Agency. The OIG's access to personnel records for non-sworn employees shall be limited to training records. OIG shall provide written reports of the results of its audits to the Commission and the City Council, and, upon request, shall publicly report on the results of any audits to the Commission and/or the City Council in a manner consistent with all applicable confidentiality requirements. The Inspector General shall receive orientation and training as required by Ordinance, including but not limited to orientation and training in the areas of Department operations, policies and procedures, including discipline procedures for police officer misconduct and failure to act, Procedural Justice, conflict resolution, national standards of constitutional policing, best practices for conducting investigations, and labor rights and laws.

6. Upon the occurrence of a Serious Incident, as defined by Ordinance, the Chief of Police or her or his designee shall immediately notify the Agency Director.

**(g) Adjudication.**

1. If the Chief of Police agrees with the Agency's findings and proposed discipline, he or she shall notify the Agency Director who shall notify the Chair of the Commission of the agreed-upon findings and proposed discipline. The Chief shall send to the subject officer notification of the agreed-upon 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-notify the Agency Director of his or her own findings and/or proposed discipline which shall be submitted to. The Agency Director shall submit the Chief's findings and proposed discipline in addition to the Agency's findings and proposed discipline to the Chair of the Commission. The Chair of the Commission shall appoint 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 After reviewing the Agency's submission and after consulting with the Agency Director about the time available under applicable statutory deadlines, the Discipline Committee may require the Agency to further investigate the complaint

by notifying the Agency Director, in writing, of the specific issues that need further investigation. After reviewing both submissions, the Discipline Committee shall 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 in investigations of Level 1 uses of force, sexual misconduct or untruthfulness, 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 and whether it will proceed within five (5) business seven (7) 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. Whenever the discipline determination of a Discipline Committee is the subject of a hearing before the Civil Service Board or a labor arbitrator, the Agency Director, in consultation with the City Attorney, shall decide whether an Agency Attorney or the Office of the City Attorney shall represent the City. The Agency Director shall notify the subject officer of the Agency Director's decision no more than fourteen (14) calendar days after the date that the subject officer invokes the right to a hearing.

5. On its own motion and by no fewer than five (5) affirmative votes, the Commission may convene a Discipline Committee for cases involving allegations of Level 1 use of force, sexual misconduct and untruthfulness when either the Agency or the Department have not completed an investigation within two hundred and fifty (250) days of the filing of a complaint or when the evidence upon which either the Department or the Agency bases its findings does not include available body-worn camera footage of the incident under investigation, or when body-worn camera footage of the incident was required under Department policy but such footage was not recorded or was otherwise unavailable. The Discipline Committee may require the Agency to further investigate the complaint by notifying the Agency Director, in writing, of the specific issues that need further investigation.

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

**(i) Legal Counsel to the Commission**

1. The dollar amount for all employees hired and/or contracts approved according to section 604(b)(12) of this Charter (hereinafter, Commission Attorneys), in aggregate, in a single fiscal year shall not exceed the amount budgeted by the City Council for such fiscal year; and such contracts shall be in the form established by the City for professional legal services contracts. By an affirmative vote of at least five (5) members, the Commission may terminate such contracts or, subject to any applicable personnel rules or collective bargaining agreements, terminate such employment.

2. Commission Attorneys shall represent the City as an organization and shall not commence any claim or other legal proceeding against the City on behalf of the Commission. Commission Attorneys shall respond to any petition or application for a writ of mandate, restraining order or injunction brought against the Commission or against Commissioners in its or their official capacity unless the Commission votes to refer the matter to the City Attorney for response. The City Attorney shall act as legal counsel on behalf of the Commission and Commissioners in all other litigation involving it or them in their official capacity in accord with section 401(6) of this Charter.

3. In accord with their role, Commission Attorneys shall not disclose the confidences of the Commission on any legal matter to any other officer of the City unless:

a. The Commission, either as a body or through its Chair, or the Vice Chair if the Chair is unavailable and the matter is time sensitive, gives Commission Attorney informed consent in writing;

b. The Commission, either as a body or through its Chair, or Vice Chair if the Chair is unavailable and the matter is time sensitive, refers the same legal matter to the City Attorney pursuant to section 401(6) of this Charter;

c. Commission Attorney, in her/his professional discretion, determines it is in the best interests of the Commission to consult with the City Attorney;

d. Commission Attorney, in her/his professional discretion, determines that the Rules of Professional Conduct require referral of the matter to one of the following City officers: City Administrator, Mayor, City Attorney, Council president, Vice Mayor; or

e. The legal matter becomes, in whole or in part, the subject of litigation involving the City or any City officer,

board, commission, including the Police Commission, or other agency in their official capacity.

**Section 2. Severability.** If any section, subsection, sentence, clause or phrase of this Measure is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Measure. The voters hereby declare that they would have passed this Measure and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

3a

Print-ready pdf

9/10