

Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
SPECIAL MEETING
AGENDA**

**Monday, May 7, 2018
6:00 P.M.**

South Berkeley Senior Center
2939 Ellis Street, Berkeley

- 1. CALL TO ORDER & ROLL CALL**
- 2. APPROVAL OF AGENDA**
- 3. PUBLIC COMMENT**
(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers. They may comment on items on the agenda or any matter within the PRC's jurisdiction at this time.)
- 4. APPROVAL OF MINUTES**
Regular Meeting of April 25, 2018.
- 5. CHAIR'S REPORT**
- 6. OLD BUSINESS (discussion & action)**
Recommendation from Commission Reform Subcommittee regarding a proposed Charter amendment to reform the structure for civilian oversight of police in response to the City Council's November 14, 2017 referral: continued review, possible revision, and approval for submission to the Council.
- 7. PUBLIC COMMENT**
(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on items on the agenda at this time.)
- 8. ADJOURNMENT**

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Communication Access Information (A.R.1.12)

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

SB 343 Disclaimer

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Police Review Commission, located at 1947 Center Street, 1st floor, during regular business hours.

Contact the Police Review Commission at (510) 981-4950 or prc@cityofberkeley.info.

PRC SPECIAL MEETING ATTACHMENTS
May 7, 2018

MINUTES

April 25, 2018 Regular Meeting Minutes Page 5

AGENDA-RELATED

Item 6. – City Council annotated agenda of Nov. 14, 2017: Referral to Police Review Commission to Write a Charter Amendment Ballot Measure. Page 11

Item 6. – Proposed Chapter Amendment to Establish a Police Commission – showing amendments by PRC as of 4-25-18. Page 13

Item 6. – Handout from April 25, 2018 PRC meeting:
- From Commissioner Roberts Page 23

Item 6. – Handout from April 25, 2018 PRC meeting:
- From Commissioner Perezvelez Page 25

Item 6. – Handout from April 25, 2018 PRC meeting:
- From Commissioner Prichett Page 26

Item 6. – Handout from April 25, 2018 PRC meeting:
- From Commissioner Lippman (with background materials). Page 27

Item 6. – Getting It Right: Building Effective Civilian Review Boards to Oversee Police. Submitted by Commissioner Calavita. Page 33

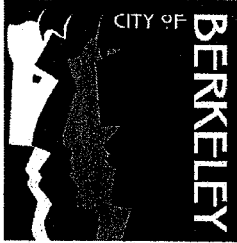
Item 6. – Op-ed from www.dailycal.org 2018/04/30: Police Review Commission reform is vital for Berkeley, by Kate Harrison. Page 63

Item 6. – Email from Mansour Id-Deen, dated 5-1-18, re: add an additional revision related to full implementation of General Order B-4. Page 65

Item 6 – Memo from PRC Officer to Commissioners, dated 5-2-18, re: Editorial revisions to proposed Charter amendment. Page 67

KJL:mgm





Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
REGULAR MEETING
MINUTES
(unapproved)**

**Wednesday, April 25, 2018
7:00 P.M.**

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. CALL TO ORDER & ROLL CALL BY CHAIR MATTHEWS AT 7:13 P.M.

Present: Commissioner Sahana Matthews (Chair)
Commissioner Gwen Allamby
Commissioner Kitty Calavita
Commissioner George Perezvelez
Commissioner Michael Sherman
Commissioner Ari Yampolsky
Commissioner Victoria Legg (*Temporary Appt.*)
Commissioner George Lippman (*Temporary Appt.*)

Absent: Commissioners Andrea Prichett, Terry Roberts

PRC Staff: Katherine J. Lee, PRC Officer; Byron Norris, PRC Investigator.

BPD Staff: Chief Andy Greenwood, Capt. Rico Rolleri, Lt. Angela Hawk, Sgt. Ben Cardoza, Sgt. Sean Ross (BPA)

2. APPROVAL OF AGENDA

With the reordering of the agenda to consider Item #8 after Item #9, the agenda was approved by general consent.

3. PUBLIC COMMENT

There were 7 speakers.

4. APPROVAL OF MINUTES

Motion to approve Regular Meeting Minutes of April 11, 2018.

Moved/Seconded (Perezvelez/Allamby) **Motion Carried**

Ayes: Allamby, Calavita, Matthews, Perezvelez, Sherman, Yampolsky, Legg, and Lippman.

Noes: None

Abstain: None

Absent: Prichett, Roberts

5. CHAIR'S REPORT

- Russell Bloom, the BART Independent Auditor, is present today; he is a former PRC commissioner.
- Kitty Calavita, new appointee to the Commission, introduced herself. She moved to Berkeley 2010; has a PhD in sociology, specializing in law & criminology; taught at UC Irvine; has researched immigration policy; most recent project on prisoner grievance systems in Calif.
- Victoria Legg, temporary appointee, introduced herself; She is on the Disaster & Fire Safety Commission and its Undergrounding Subcommittee; on the Vision 2050 Task Force Steering Committee; a co-leader of the quality of life workgroup.
- The Chair will be attending the Center for Policing Equity (CPE) conference with Chief Greenwood next week, and CPE will be presenting here after that.
- The Chair will be on leave this summer; a long-term temporary appointee will take her place. Will need to elect a Vice-Chair, who'll be acting Chair over the summer.

6. PRC OFFICER'S REPORT

- a. -- No new complaints filed since the last meeting.
 - CPE is confirmed to present to the PRC at its May 9 meeting
 - At Council last night, the PRC's "Towards Fairness & Impartiality" report was on the agenda with a companion item from Councilmember Harrison for an action plan to implement Council's and PRC's recommendations. Passed after Councilmember Hahn moved to consent calendar with amendments. A significant recommendation is a task force appointed by the City Manager composed of representatives from BPD, BPA, PRC, interested community groups and academics, guided by a professional facilitator.
 - (following Item #7)*
 - George Lippman, who was just replaced as commissioner, was thanked for his dedicated service to the PRC.
 - Comm. Sherman introduced David Ritchie, former PRC Commissioner, who will be substituting for him during his leave through the end of July.
- b. Prioritizing new agenda items (discussion and action)
(No discussion.)

7. CHIEF OF POLICE'S REPORT

- Crime, budget, staffing, training updates, and other items.
- Setting up systematic way to have commissioners do ride-alongs.
 - Rico Roller promoted to Captain; will head up Professional Standards Div. Sgts. Dave Lindenau and Peter Hong promoted to Lieutenant; Ofcs Jen Coats and Jesse Grant promoted to Sergeant. Promotional ceremony likely May 10.
 - Crime: Russell Street shooting – several dozens of rounds shot; sexual assault of high-school-aged girl. Their sense that a very small number of people committing violence, so focusing on specific areas where crime occurring.

-- Staffing still in crisis. About 157 officers now; 17 – 19 out on injury or light duty. 7 academy 2 FTO, 24 vacancies. Command staff working on emergency staffing for the summer; will require mandatory overtime.

-- Looking forward to CPE conference next week. When receive report will forward in advance of May 9. Would be more delay if did not push for this date.

-- Lolita Cueva, an important member of BPD professional staff, retiring next week.

8. SUBCOMMITTEE REPORTS (discussion & action)

Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:

a. General Orders C-64, etc. Subcommittee

b. Homeless Encampment Subcommittee

(Subcommittee reports postponed.)

9. NEW BUSINESS (discussion & action)

(Heard following item #7)

Recommendation from Commission Reform Subcommittee regarding a proposed Charter amendment to reform the structure for civilian oversight of police in response to the City Council's November 14, 2017 referral: for review, possible revision, and approval for submission to the Council.

Main motion: that the PRC accept the Subcommittee's proposed Charter amendment to establish a Police Commission and recommend its transmittal to the City Council for discussion and action.

Moved/Seconded (Lippman/Allamby)

The following motions were made to amend the main motion:

Motion to insert, "their interactions with any" between "and" and "other" in Section 1, line 10, and in Section 2, line 22.

Moved/Seconded (Perezvelez/Sherman) **Motion Carried**

Ayes: Allamby, Calavita, Matthews, Perezvelez, Sherman, Yampolsky, Legg, and Lippman.

Noes: None

Abstain: None

Absent: Prichett, Roberts

Motion to amend Section 4(a)(3) to read: "Not be a current employee or officer 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."

Moved/Seconded (Matthews/Perezvelez) **Motion Carried**

Ayes: Allamby, Calavita, Matthews, Perezvelez, Sherman, Yampolsky, Legg, and Lippman.

Noes: None

Abstain: None

Absent: Prichett, Roberts

Motion to amend the prior motion by adding, in Section 4(a)(3) approved above, "contractors" after "current employee or officer with the City".

Moved/Seconded (Perezvelez/Sherman) **Motion Carried**

Ayes: Allamby, Calavita, Matthews, Perezvelez, Sherman, Yampolsky, Legg, and Lippman.

Noes: None

Abstain: None

Absent: Prichett, Roberts

Motion to revise Section 5(a) by deleting from the second sentence, "For the initial members of the Commission," and inserting in its place, "Commission vacancies will be widely advertised and publicly posted."; creating another sentence from the existing clause, "The Mayor and each Councilmember will nominate one candidate from the applicant pool at a meeting of the City Council" etc.; and delete Section 5(b).

Moved/Seconded (Calavita/Legg) **Motion Carried**

Ayes: Allamby, Calavita, Matthews, Perezvelez, Sherman, Yampolsky, Legg, and Lippman.

Noes: None

Abstain: None

Absent: Prichett, Roberts

Motion to further revise Section 5(a) by inserting "Each individual nominee" at the beginning of the last sentence of the section.

Moved/Seconded (Yampolsky/Allamby) **Motion Carried**

Ayes: Allamby, Calavita, Matthews, Perezvelez, Sherman, Yampolsky, Legg, and Lippman.

Noes: None

Abstain: None

Absent: Prichett, Roberts

Motion to amend Section 10 by increase the stipend for regular or special meetings to \$100, to \$20 per hour for each subcommittee meeting or BOI hearing, to an amount not to exceed \$1000 per month.

Moved/Seconded (Lippman/Allamby) **Motion Carried**

Ayes: Allamby, Matthews, Perezvelez, Sherman, Legg, and Lippman.

Noes: None

Abstain: Calavita, Yampolsky

Absent: Prichett, Roberts

Motion to reopen the prior motion to change the "not to exceed" amount back to \$500 per month.

Moved/Seconded (Lippman/Sherman) **Motion Carried**

Ayes: Allamby, Calavita, Matthews, Perezvelez, Sherman, Yampolsky, Legg, and Lippman.

Noes: None

Abstain: None

Absent: Prichett, Roberts

Motion to insert a new Section 12(e) as suggested by Commissioner Prichett, with minor revisions, to read as follows:

"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. "

Moved/Seconded (Perezvelez/Sherman) **Motion Carried**

Ayes: Allamby, Calavita, Matthews, Perezvelez, Sherman, Yampolsky, Legg, and Lippman.

Noes: None

Abstain: None

Absent: Prichett, Roberts

Motion to revise Section (13)(e) by replacing “will” with “may” in reference to the use of the Human Resources Department.

Moved/Seconded (Calavita/Yampolsky) **Motion Carried**

Ayes: Allamby, Calavita, Matthews, Perezvelez, Sherman, Yampolsky, Legg, and Lippman.

Noes: None

Abstain: None

Absent: Prichett, Roberts

10. OLD BUSINESS (discussion & action)

a. Outreach:

Consider whether to have a table publicizing the PRC at the Berkeley Juneteenth Festival on Sunday, June 17, 2017.

(Item postponed.)

b. Proposed “Guiding Principles” for PRC adoption and other ideas related to addressing BPD staffing shortage.

(Item postponed.)

c. Assess BPD’s After-Action reporting and response to Public Records Act Request.

(Item postponed.)

11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

A Special Meeting to complete Item #9 was scheduled for Monday, May 7, starting at 6:00 p.m. and possibly lasting until 11:00 p.m.

12. PUBLIC COMMENT

There was 1 speaker.

Closed Session

Pursuant to the Court’s order in *Berkeley Police Association v. City of Berkeley, et al.*, Alameda County Superior Court Case No. 2002 057569, the PRC will recess into closed session to discuss and take action on the following matter(s):

13. STATUS REPORT ON COMPLAINT #2438

14. STATUS REPORT ON COMPLAINT #2439

End of Closed Session

15. ANNOUNCEMENT OF CLOSED SESSION ACTION

No reportable action was taken.

16. ADJOURNMENT

By general consent, the meeting was adjourned at 10:00 p.m.



Action Calendar – New Business

25. **Referral to Police Review Commission to Write a Charter Amendment Ballot Measure** *(Continued from October 31, 2017. Item contains revised materials.)*
From: Councilmembers Worthington and Harrison
Recommendation: Referral to the Police Review Commission to write a charter amendment ballot measure to present to Berkeley voters to reform the Police Review Commission structure.
Financial Implications: Minimal
Contact: Kriss Worthington, Councilmember, District 7, 981-7170

Action: M/S/C (Arreguin/Maio) to call the previous question on Item 25.

Vote: Ayes – Maio, Bartlett, Harrison, Hahn, Wengraf, Droste, Arreguin; Noes – Worthington; Abstain – Davila.

Action: M/S/C (Hahn/Droste) to adopt the following recommendation.

Refer to the City Manager and Police Review Commission (PRC) to review the existing enabling legislation, rules, and regulations for the PRC, and to consider all options, including charter amendments, ballot measures, and any other amendments to strengthen the authority of the PRC to consider and act on citizen complaints, and other possible structural, policy and procedural reforms.

Direct the City Manager (through the City Attorney) to provide a legal analysis of which proposals can be completed legislatively and which require amendments to the City Charter.

Changes the City Manager and PRC should consider, but not be limited to, include the following:

- 1. Use the “preponderance of the evidence” as the standard of proof for all PRC decisions.*
- 2. Extend the current 120-day limit on the imposition of discipline up to one year, consistent with existing California law.*
- 3. Give the PRC full discretion and access to evidence to review complaints as to alleged officer misconduct.*

As part of the review of proposed improvements to the PRC process, the PRC should analyze police review policies and structures in other jurisdictions (e.g. San Francisco, BART, etc.), all PRC models and engage relevant stakeholders, including the Berkeley Police Association and community organizations, in developing proposals.

Full analysis by the PRC and City Manager must be reported to the City Council by May 2018.

Vote: Ayes – Maio, Bartlett, Harrison, Hahn, Wengraf, Droste, Arreguin; Noes – Worthington; Abstain – Davila.



1 **CHARTER AMENDMENT TO ESTABLISH A POLICE COMMISSION**

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

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

6 **Article XVIII. POLICE COMMISSION**

7 **Section 1. Establishment and purpose.**

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

16 **Section 2. Powers and duties.**

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

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

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

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

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

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

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

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

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

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

42 **Section 3. Independent agency; budget authority and allocation**

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

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

49 **Section 4. Composition of Police Commission; eligibility**

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

52 (a) Each member of the Commission must:

53 (1) Be a resident of the City;

54 (2) Be of voting age;

55 (3) Not be an ^{current} officer of the City, employee, of the City, or hold a
56 officer, or contractor with the City; a current sworn police officer from any
57 agency; or a current employee, official, or representative of an employee
58 association representing sworn police officers.

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

62 **Section 5. Commissioner selection.**

63 (a) Candidates for the Commission must complete and file with the City
64 Clerk an application form and an affidavit of residency required by
65 Berkeley Municipal Code section 2.04.145. ~~For the initial members of the~~
66 Commission vacancies will be widely advertised and publicly posted. ~~†~~The
67 Mayor and each Councilmember will nominate one candidate from an
68 applicant pool at a meeting of the City Council. ~~NE~~Each individual nominees
69 must be approved by a majority vote of the Council.

70 ~~(b) Vacancies on the Commission for any unexpired term shall be filled~~
71 ~~as follows: The appropriate nominating Councilmember shall select a~~
72 ~~candidate from an existing or new pool of applicants, who must be~~
73 ~~approved by a majority vote of the Council.~~

74 (c) The Council shall endeavor to establish a commission that is
75 broadly inclusive and reflective of race, ethnicity, age, sexual orientation,
76 economic status, neighborhoods, and various communities of interest in
77 this City. Toward that end, in soliciting applications for Commissioner

78 positions, the Executive Director of the Commission shall reach out to
79 civic, community, and civil rights organizations, among others.

80 **Section 6. Terms; term limits.**

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

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

88 **Section 7. Conflicts of interest.**

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

91 **Section 8. Expiration of term; termination; leaves of absence;
92 removal.**

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

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

100 (c) The provisions of Berkeley Municipal Code Section 3.02.020,
101 establishing a termination procedure for absence from meetings, Section
102 3.02.030, leaves of absence, and Section 3.02.035, regarding alternate
103 commissioners, apply to the Police Commission.

104 (d) A Commissioner may be removed only by a majority vote of the
105 Council upon recommendation of the Commission. Such a
106 recommendation must be made by a supermajority vote of seven
107 Commissioners, and the only grounds for recommending removal are:
108 conviction of a felony, substantial neglect of duty, or gross misconduct,
109 while in office; inability to discharge the powers and duties of the office; or
110 absence from six regular meetings in a calendar year except when the
111 absence is excused in accordance with Berkeley Municipal Code Sec.
112 3.02.030.

113 **Section 9. Commission Chairperson and Vice-Chairperson.**

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

118 chairperson and vice-chairperson, the Commission shall elect subsequent
119 officers each January.

120 **Section 10. Commissioner stipends.**

121 Each Commissioner is entitled to receive a stipend of ~~\$50.00~~100.00 for
122 each regular and special full commission meeting attended, and \$20.00
123 per hour for each subcommittee meeting and Board of Inquiry (BOI)
124 hearing attended as a member of the subcommittee or the BOI. However,
125 the total stipend paid may not exceed \$500.00 per month per
126 Commissioner.

127 **Section 11. Commissioner training.**

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

130 **Section 12. Commission meetings; quorum; rules of procedure;
131 subcommittees.**

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

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

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

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

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

159 **Section 13. Commission staff.**

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

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

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

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

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

177 **Section 14. Legal counsel.**

178 The Commission and its Executive Director shall use the services of
179 the City Attorney's Office for legal advice; except, however, that the
180 Commission may seek the opinion of outside counsel when the
181 Commission determines that a matter is of such import that a second,
182 independent opinion is warranted.

183 **Section 15. Commission reports.**

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

191 (b) The Executive Director shall issue a half-yearly report on the
192 number, type, and disposition of complaints filed with the Commission;
193 and the number, type, and disposition of complaints filed with the Police
194 Department that Commission staff has reviewed.

195 **Section 16. Policy review and approval.**

196 (a) The Commission may review police policies, practices, and
197 procedures on its own motion or at the request of a member of the public

198 or the Department. The Executive Director shall carry out any Commission
199 directives required to fulfill this function.

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

205 **Section 17. Complaints filed with the Commission.**

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

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

213 (2) What constitutes a complainant;

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

217 (4) In making findings at a BOI, the standard of proof will be
218 "preponderance of the evidence";

219 (5) The time limit for investigations shall be one year, unless a
220 Government Code section 3304(d) exception applies.

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

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

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

235 (c) Before closing an investigation into a complaint, the Police
236 Department shall inform Commission staff of its planned disposition of the
237 complaint.

238 **Section 19. Involvement in discipline of Department employees**

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

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

247 (c) If the Chief proposes to impose a disciplinary action that differs
248 from the recommendation of the BOI or the Commission, the Commission
249 shall have the opportunity to appeal the Chief's proposal to the City
250 Manager. The City Manager shall make the final determination and
251 explain his or her decision in writing to the Commission.

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

259 (e) The City Manager and Chief of Police may impose disciplinary
260 action up to one year after the date of the incident giving rise to the
261 disciplinary action, or within one year of the date the City has knowledge
262 of the incident giving rise to the disciplinary action. This Section nullifies
263 and supersedes any agreements to the contrary.

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

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

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

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

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

287 **Section 21. Advice regarding Police Department budget.**

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

296 **Section 22. Hiring and removal of Chief of Police.**

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

299 (a) Upon the notice of vacancy of the position of Chief of Police, the
300 Human Resources Department shall cooperate with the Commission to
301 prepare a job announcement, describe requirements, and establish an
302 application process. The Commission shall approve the application
303 process, culminating in the Commission's selection of two candidates and
304 transmittal of their names to the City Manager, Mayor, and Council. The
305 Mayor shall appoint one of the candidates with the approval of the City
306 Council.

307 (b) The Chief of Police may be removed by the Mayor with the
308 Council's approval, upon the recommendation of seven members of the
309 Commission.

310 **Section 23. Hiring of subordinate Departmental staff.**

311 (a) The Chief of Police shall include a member of the Commission on
312 all oral boards for all command staff positions, and allow that Commission
313 member a vote.

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

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

318 The Chief of Police shall attend at least one regular Commission
319 meeting per month for each month a regular meeting is held, and attend a

320 minimum of 12 meetings per year. The Chief shall send a member of his
321 or her command staff to any regular Commission meeting that the Chief
322 does not attend.

323 **Section 25. Berkeley Police Department reports to the Commission.**

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

330 **Section 26. Contract negotiations.**

331 The Commission chairperson and vice-chairperson, or the
332 chairperson's designee for either; and the Executive Director are allowed
333 to attend and participate in contract negotiations between the Berkeley
334 Police Association and the City of Berkeley.

335 **Section 27. Commendation program.**

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

339 **Section 28. Transition from Police Review Commission to Police**
340 **Commission.**

341 (a) The Police Review Commission established by Ordinance No.
342 4,644-N.S., as amended, will continue in existence until its functions are
343 transferred to the Police Commission, but no later than June 30, 2019.

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

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

352 **Section 29. Repeal of Ordinance No. 4,644-N.S., as amended.**

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

356 **Section 30. Severability.**

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

Handout p.1
(Roberts)

Lee, Katherine

From: Terry Roberts <eterryr@msn.com>
Sent: Monday, April 23, 2018 12:20 PM
To: Lee, Katherine
Cc: VQlegg@gmail.com
Subject: Re: Proposed Charter amendment

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Kathy
I punched send prematurely last night and didn't quite finish the email. So pls forward this to the subcom too.

Subcom members
I just wanted to send you my thoughts on the full narrative after seeing the complete version. Please consider my comments below for your Wed night discussion.

Thanks for your consideration
Terry

Sent from my iPhone

On Apr 23, 2018, at 8:46 PM, Lee, Katherine <KLee@cityofberkeley.info> wrote:

Dear Commission Reform Subcommittee Members,

Please see below from Comm. Roberts.

(Terry, thanks for checking in from abroad.)

-Kathy

Katherine J. Lee
Police Review Commission Officer
City of Berkeley
510.981.4960

From: Terry Roberts [<mailto:eterryr@msn.com>]
Sent: Sunday, April 22, 2018 11:36 AM
To: Lee, Katherine <KLee@cityofberkeley.info>
Subject: Re: Proposed Charter amendment

Hi Kathy,
Please send this to the subcom members. Sorry for the typos and brevity— I'm out of town and am writing this on my phone.

Great job to all the subcom, Kathy, and Byron for putting this measure together in such a short time. I think it should be passed on to the council asap to maximize its chances to be placed on the ballot.

Sorry I had to miss the last meeting of the subcom but wanted to bring up a couple items after seeing the final narrative.

Section 13e. Says prc 'shall use' the city's HR process..... for hiring staff. Should be clearer that the prc would manage the process using HR, not just 'use' the current process.

Sections 22a and 22b. I believe having the chief appointed by the mayor with council approval is inadvisable and will both further politicize the chief and department and create potential reporting conflicts within the city organization. For clear accountability an employee should report to the person that appoints them. Under the current narrative the chief would be appointed by the mayor/council but report to the CM (intent, but not explicitly stated). Who should the chief take direction from? What if the direction conflicts? Can he circumvent one by going to the other? If he doesn't like the CMs call can he search for another answer from the mayor/council? Who evaluates the chief? I don't see what is gained by having the mayor/council appoint the chief.

Currently if the Chief isn't doing a good job the CM can fire the chief any day as an 'at will' employee. And if the CM is not doing a good job in Getting BPD to perform the council can fire the CM with 5 votes at any council meeting.

The proposed arrangement presents lots of possible problems that can be avoided if the CM appoints the chief and the chief clearly reports to the CM. Under the measure the new prc would participate in the hiring and firing of the chief by advancing two names to the mayor, council and CM-- presumably both would be great candidates from a prc standpoint-- and with a vote of 7 request that the chief be fired. To me that goes a long way towards getting more accountability from the chief and involving the prc in the hiring/firing process.

Also, for clarity, either way, it should be stated somewhere in the measure that the chief reports to the CM.

Section 26. It should be clarified that any designation by the chair or VC shall be to another prc commissioner not just anyone.

Handout p. 3
(Perezvelez)

Lee, Katherine

From: George Perezvelez <georgeperezvelez@gmail.com>
Sent: Tuesday, April 24, 2018 5:36 PM
To: Lee, Katherine
Subject: Initiative language change for subcommittee and commission

Mrs. Lee

As discussed,

A. Under Establishment and purpose. line 8 to 15 but specifically line 10

add after " Berkeley Police department and " the line "and their interactions with any other law enforcement agencies"

B. Under Power and duties. Line 18 to 23 but specifically to line 22

add after " Berkeley Police department, and" the line "and their interaction with anyother law enforcement....."

Best,

George D. Perezvelez

AD15 Associate Delegate, Alameda County Democratic Party Central Committee
Senior Member Berkeley Police Review Commission
Chair, BART Police Oversight Citizen Review Board
Executive Board Member, East Bay Stonewall Democratic Club

Handout p. 4
(Prichett)

April 24, 2018

Dear Fellow Commissioners,

I am sorry that I am unable to join you tonight for the very important discussion of the Police Commission proposal. Due to family obligations, I can not attend but I wanted to contribute these few thoughts to your discussion.

First of all, I am genuinely impressed by the work of the subcommittee and I especially like the way that you resolved the issues around shared powers. Thank you for all of the hard work you have done. It represents a qualitative leap in the ability of civilians to influence police functioning.

There are three areas where I would ask that you consider revisions. For various reasons, I feel very strongly that the independence and credibility of a new Police Commission is related to the implementation of these reforms. I appreciate your consideration of each of these proposals.

Thanks in advance,

Commissioner Prichett

Regarding the PRC Police Commission Proposal

1. **Special Hearings:** (Please retain this language from the current ordinance)
 - a. On the petition of (50) or more citizens 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 (5) working days following the date that the petition is filed.
2. **Independent Counsel:** (Please include this revision of Section 14)
 - a. In addition to the ability to access Independent Legal Counsel to gain outside legal advice, the Police Commission shall be empowered to hire Independent Legal Counsel as needed to represent the Police Commission in legal challenges to its authority and mission as stated in Section 1.
3. **Participation of Sworn Officers:**
 - a. Prohibit current and former sworn BPD employees from serving as Commissioners. Also prohibit the following people from serving as Commissioners: (a) current City employees; (b) current sworn police officers from any agency; and (c) current or former employees, officials or representatives of an employee association representing sworn police officers.

355 **Section 16. Policy review and approval.**

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

360 (b) The Commission shall establish an Inspector General function
361 under the Executive Director. The Inspector General function shall include
362 conducting any audit or review of the Department necessary to assess the
363 Department's performance and adherence to constitutional policing
364 practices, and shall also include conducting any audit or review of the
365 Department's policies and procedures, including any pattern of
366 noncompliance with the foregoing, as necessary or helpful for the
367 Commission to fulfill its duties.

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

- 370 1. The Department's and the Commission's processes and procedures
371 for investigating alleged misconduct, and for determining the
372 appropriate level of discipline for sustained findings of misconduct;
- 373 2. Trends and patterns regarding Department training and education,
374 and the Department's use of any early warning system;
- 375 3. Training and/or policy issues that arise during the investigations of
376 complaints;
- 377 4. Trends and patterns regarding racial disparities or issues of racial
378 discrimination in civilian stops or other encounters; and
- 379 5. Trends and patterns regarding use of force and officer-involved
380 shootings

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

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

Lee, Katherine

From: george@igc.org
Sent: Wednesday, April 25, 2018 4:09 PM
To: Lee, Katherine
Cc: geolippman.pjc
Subject: RE: FW: Replying to your text re F&IP items; Charter amendment
Attachments: New Police Commission (2) Oakland 2018.pdf

Please forward to Commissioners:

*

For your reference, my text was adapted from the current draft of the enabling ordinance for the Oakland police commission charter amendment.

* See Sections 2.45.100 on pages 13-14, and 2.45.120 on pages 15-16

George Lippman

- From George Lippman: Excerpt from draft enabling ordinance for Oakland Police Commission, as background for his proposed section 16(b) of PRC proposed Charter amendment, to establish an Inspector General function.**
- B.

Article II of Chapter 2.20 of the Oakland Municipal Code, and shall include an agenda item titled "Community Roundtable," or something similar. The purpose of the Community Roundtable agenda item shall be to solicit community testimony and other input in discussions regarding community policing, building trust between the community and the Department, and other similar and relevant subjects as determined by the Commission. The Commission shall consider inviting to each Roundtable individuals and groups familiar with the issues involved in building and maintaining trust between the Department and the community, including but not limited to representatives from the Department, members of faith-based groups, youth groups, advocacy groups, residents of neighborhoods that experience the most frequent contact with the Department and, to the extent practicable, formerly incarcerated members of the community.

- C. "Final actions," as defined by state and local open meeting laws, taken by the Commission in closed session shall be publicly reported with the vote or abstention on that action of every member present.

*** 2.45.100 - Office of Inspector General.**

Within one hundred and eighty (180) days after the effective date of this Chapter 2.45, there shall be established, under the purview of the Commission, a civilian Office of Inspector General for the Department (hereinafter referred to as "OIG"). Within one (1) year after the City Council's confirmation of the first group of Commissioners and alternates, the Department's internal Office of Inspector General shall be renamed. The OIG shall serve the Commission full time, shall be responsible for oversight of the OIG.

- A. The powers, functions and duties of the OIG shall be those assigned, or authorized and directed by the Commission, and shall include conducting any audit or review of the Department necessary to assess the Department's performance and adherence to constitutional policing practices, and shall also include conducting any audit or review of the Department's policies and procedures, including any pattern of non-compliance with the foregoing, as necessary or helpful for the Commission to fulfill its duties under City Charter section 604(b)(4), (5) and (6).
- A.B. The Chief may assign a sworn Department employee to act as a liaison from the Department to the OIG.
- B. ~~The Chief shall assign a sworn Department employee to act as a liaison from the Department to the OIG.~~

- C. The City shall allocate a sufficient budget for the OIG to perform its functions and duties as set forth in section 2.45.120 below, including budgeting one (1) full-time staff position comparable to the position of Police Program and Audit Supervisor. All OIG staff, including the Inspector General, shall be civil service employees in accordance with Article IX of the City Charter. All OIG staff shall report to the Inspector General. Except for the Inspector General, the Commission shall not have any authority to hire, supervise, evaluate or fire OIG staff.
- D. Within thirty (30) days after the first Inspector General is hired, the Policy Analyst position and funding then assigned-budgeted to the Agency shall be transferred-reallocated to the OIG.

2.45.110 -- Civilian Inspector General.

- A. Within one (1) year of the City Council's confirmation of the first group of Commissioners and alternates, the Commission, with the assistance of the Human Resources Management Department and in accordance with the City's Civil Service Rules, shall prepare a job description and list of required qualifications for the position of civilian Inspector General. After all required approvals have been obtained for adding this position to the City's Classification Plan (as defined by the City's Civil Service Rules), the Commission, with the assistance of the City Administrator, shall be responsible for hiring the first and all subsequent civilian Inspectors General. The Inspector General shall be subject to a background check as described in section 2.45.060 above before hiring except that the results of the background check shall be submitted only to the Commission.
- B. Within ninety (90) days of his or her appointment, the Inspector General shall, at a minimum, receive the training described in City Charter section 604(c)(9) and in section 2.45.190(A) through (F) of this Chapter 2.45. The Commission may require any additional training it deems necessary for the Inspector General to perform the functions and duties of the OIG.
- C. The Inspector General shall report to the Commission, and may only be removed according to the City's Civil Service Rules and any applicable memorandum of understanding between the City and a union, after an affirmative vote of five (5) members of the Commission. The City Administrator shall not have the authority to independently remove the Inspector General.
- D. The Inspector General shall be responsible for the day-to-day operations of the OIG, including but not limited to the supervision and direction of all OIG staff.
- E. The Inspector General shall be permitted to attend, as an observer, Executive Force Review Board, Force Review Board, and, to the extent

permitted by law, *Skelly* hearings if he or she chooses to do so. The Inspector General shall not have any decision-making authority regarding the specific cases being heard, and shall maintain the confidentiality of the hearings as required by law. The Inspector General shall not be permitted to attend any Executive Force Review Board, Force Review Board, or *Skelly* hearing until he or she has completed the training identified in section 2.45.190(C).

*** 2.45.120 – Functions and Duties of the Office of Inspector General.**

The Commission shall have the authority to prioritize the functions and duties of the Office of Inspector General, which shall include, without limitation:

- A. Preparing an annual report, summarizing the results of the annual reviews of:
1. The Department's processes and procedures for investigating alleged Misconduct;
 2. The Department's processes and procedures for determining the appropriate level of discipline for sustained findings of Misconduct;
 3. The Agency's processes and procedures for investigating alleged Misconduct;
 4. The Agency's processes and procedures for determining the appropriate level of discipline for sustained findings of Misconduct;
 5. Trends and patterns regarding Department training and education, and the Department's use of any early warning system(s);
 6. Training and/or policy issues that arise during the investigations of complaints; and
 7. Trends and patterns regarding use of force and Department sworn employee-involved shootings.

This annual report shall be presented to the Commission, the Mayor, the City Council's Public Safety Committee, the City Council and to the Chief and shall include, where appropriate, recommendations for changes in the processes and procedures that were reviewed.

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

- C. Developing and presenting a plan to the Commission to measure the performance of each element of the Department's discipline process for sworn Department employees.
- D. Completing all audits or reviews requested by the Mayor, the City Administrator, and/or the City Council by an affirmative majority vote. The Inspector General shall report all findings to the office that requested the audit or review.
- E. Monitoring, evaluating, and making recommendations regarding the Department's recruitment and hiring practices for sworn personnel.
- F. Monitoring, evaluating, and making recommendations regarding the Department's policies and procedures as requested by the Commission in furtherance of its duties under City Charter section 604(b)(4), (5) and (6).
- G. Monitoring, evaluating, and making recommendations regarding the Department's risk management practices.
- H. Any reports, plans, audits, reviews and recommendations generated by the OIG shall not disclose information in violation of state and local law regarding the confidentiality of personnel records, including but not limited to California Penal Code section 832.7.

2.45.130– Establishment of the Discipline Committee.

A separate Discipline Committee will be established for each Department sworn employee discipline or termination case. The Chairperson of the Commission shall appoint three (3) Commission members to serve on a Discipline Committee, and shall designate one of these three (3) Commission members as the Chairperson. The Discipline Committees shall decide any dispute between the Agency and the Chief regarding the proposed or final findings or proposed or final level of discipline to be imposed on a Subject Officer.

- A. No Discipline Committee established by the Commission shall decide any dispute between the Chief and the Agency, as directed by section 604(g) of the City Charter, until each member of the Discipline Committee has completed: (1) orientation regarding Department operations, policies and procedures, including but not limited to discipline procedures for Misconduct, and (2) the training described in section 2.45.190(A) through (F).
- B. Membership in the Discipline Committees shall rotate for each Department sworn employee discipline or termination case, as determined by the Chairperson of the Commission.

2.45.140 – Discipline.

Getting It Right: Building Effective Civilian Review Boards to Oversee Police

*Udi Ofer**

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I. INTRODUCTION

Americans' scrutiny of policing practices peaks whenever high profile cases of police brutality capture the national attention. In the 1990s it was the beating of Rodney King and the killing of Amadou Diallo, and in the 2000s the shooting deaths of Sean Bell and Oscar Grant. Today, the police shooting of Michael Brown in Ferguson, Missouri, and subsequent shootings of unarmed Black men have sparked yet another reevaluation of police use of force and of police practices in communities of color.¹

* Executive Director of the American Civil Liberties Union (ACLU) of New Jersey. This Article is dedicated to all of the people who have worked to build police accountability across our nation. In particular, I would like to thank the staff and

The regimes currently in place to hold police officers accountable for wrongdoing have faced particular scrutiny, as frustrations have grown over their failures to hold police officers accountable for wrongdoing.² While there are many governmental agencies with the jurisdiction to oversee police departments—including local prosecutors, internal affairs bureaus, civilian review boards, and state attorneys general—there is a growing feeling that these institutions have too often failed when it comes to overseeing police departments.

An August 2014 poll conducted by *USA Today* and the Pew Research Center found that 65% of Americans believe that police departments nationwide do a poor or fair job of holding police officers accountable when misconduct occurs, compared with 30% who say they do an excellent or good job.³ A separate 2014 poll found that while a large majority of Americans (78%) have a favorable view of the

members of the ACLU of New Jersey, New York Civil Liberties Union, Newark Communities for Accountable Policing, Communities United for Police Reform, and all of the activists and community members who have worked tirelessly to build police accountability in Newark, New York City, and beyond. Working with community partners to create the New York City Police Department (NYPD) Inspector General's Office and the Civilian Complaint Review Board in Newark helped me form my vision of police accountability. A special thank you to my ACLU of New Jersey and Gibbons PC colleagues who worked to create Newark's Civilian Complaint Review Board, including Ari Rosmarin, Ed Barocas, Jasmine Crenshaw, Larry Lustberg, Ana Munoz, Alex Shalom, Allison Peltzman, and Rashawn Davis, as well as the movement's grassroots leaders, including Ingrid Hill, Rick Robinson, Emily Turonis, John Smith, Laquan Thomas, Milly Silva and Mary Cruz. I also want to thank Seton Hall Law Professor Linda Fisher and the students in her Civil Litigation Clinic—Natasha Beckford, Jessica Maxwell, Brian McDonough, and Dennise Mejia—who provided valuable research for this Article.

¹ While shootings of unarmed Black men are at the forefront of this current conversation, the spectrum of practices under review run the gamut of policing practices—from a reevaluation of all use of excessive force to stop-and-frisk practices and civil asset forfeiture. The current conversations also come in the context of a much broader one on mass incarceration and bipartisan momentum to fix the nation's broken criminal justice system.

² See, e.g., Ross Jones, *Many Civilian Review Groups Have Limited Power to Resolve Allegations of Police Misconduct*, SCRIPPS NEWS (Nov. 16, 2015), <http://www.wptv.com/news/national/many-civilian-review-groups-lack-the-power-to-resolve-allegations-of-police-misconduct> (reporting how strained police-community relations have put a new spotlight on ineffective civilian oversight of police); Matt Pearce, *Ferguson Plan for Police Oversight Board is Derided as 'Insulting'*, L.A. TIMES (Sept. 11, 2014, 6:17 PM), <http://www.latimes.com/nation/la-na-0911-ferguson-review-board-20140912-story.html> (citing residents and policing experts criticizing Ferguson citizens' review board as "weak" and "insulting").

³ Susan Page, *Poll: Whites and Blacks Question Police Accountability*, USA TODAY (Aug. 26, 2014, 4:42 AM), <http://www.usatoday.com/story/news/nation/2014/08/25/usa-today-pew-poll-police-tactics-military-equipment/14561633/> (discussing poll taken soon after the death of Michael Brown, which found that Americans, by a 2-1 margin, believe that police departments do not treat racial groups equally).

2016]

GETTING IT RIGHT

1035

police, only 46% believe that police officers are held accountable for wrongdoing.⁴

How can it be that with so many accountability regimes in place, Americans still believe that the police oversight system is broken? The answer is that these institutions, which range tremendously in scope and power, have often times failed to adequately oversee local law enforcement agencies, and that many of these regimes were rigged to fail in the first place given their limited mandates and authorities. For example, my research has found that of the top fifty largest police departments in the nation, only six have civilian review boards with some form of disciplinary authority.⁵

There are at least three gaps that exist when it comes to holding police officers and their departments accountable for wrongdoing. First, and most importantly, there is a need to hold police officers accountable for the unjustified use of deadly force against civilians. Police officers are afforded extraordinary powers not only to deprive individuals of their liberties, but, in extreme circumstances, to deprive them of their lives. When these powers are abused, they lead to tragic consequences. Unfortunately, there are inconsistent and often times inadequate mechanisms in place to hold police officers accountable for these actions.

Second, there is the need to hold police officers accountable for day-to-day transgressions that normally go unaccounted for and lead to resentments growing in communities most impacted by such practices, mainly low-income communities of color. These police behaviors, which may include discourtesy, an illegal stop and/or search, or an offensive slur, may appear minor when compared to cases involving police shootings or use of force. But when these behaviors are compounded thousands of times a year, the impact can be severe.

⁴ Reason-Rupe Poll: April 2014 National Telephone Survey, REASON.COM (Apr. 3, 2014, 9:00 AM), <https://reason.com/poll/2014/04/03/april-2014-national-telephone-survey>. The same poll also found a split in Americans' views on whether police misconduct cases are increasing (41%) or have stayed about the same (48%).

⁵ See *infra* app.

Take, for example, stop-and-frisk practices,⁶ which in certain communities can take place thousands, if not tens of thousands of times a year, as have been documented in cities such as New York City,⁷ Newark,⁸ and Philadelphia.⁹ In these cities, innocent people have been

⁶ For an example of the impact of stop-and-frisk practices on individuals, see this description by Nicholas Peart about his numerous encounters with the NYPD: "These experiences changed the way I felt about the police. After the third incident I worried when police cars drove by; I was afraid I would be stopped and searched or that something worse would happen. I dress better if I go downtown. I don't hang out with friends outside my neighborhood in Harlem as much as I used to. Essentially, I incorporated into my daily life the sense that I might find myself up against a wall or on the ground with an officer's gun at my head. For a black man in his 20s like me, it's just a fact of life in New York." Nicholas K. Peart, *Why is the N.Y.P.D. After Me?*, N.Y. TIMES (Dec. 17, 2011), <http://www.nytimes.com/2011/12/18/opinion/sunday/young-black-and-frisked-by-the-nypd.html>.

⁷ See *Stop-and-Frisk Data*, N.Y. CIV. LIBERTIES UNION, <http://www.nyclu.org/content/stop-and-frisk-data> (last visited Apr. 14, 2016) (documenting stop-and-frisk practices from 2002–2015, including millions of stops of innocent people); Editorial, *Racial Discrimination in Stop-and-Frisk*, N.Y. TIMES (Aug. 12, 2013), <http://www.nytimes.com/2013/08/13/opinion/racial-discrimination-in-stop-and-frisk.html> (noting that of the 4.4 million stops between January 2004 and June 2012, "only 6% resulted in arrests and 6% resulted in summonses," meaning that the vast majority of those stopped were not engaged in criminal behavior).

⁸ See Udi Ofer & Ari Rosmarin, *Stop-and-Frisk: A First Look, Six Months of Data on Stop-and-Frisk Practices in Newark*, AM. CIV. LIBERTIES UNION N.J. (Feb. 2014), https://www.aclu-nj.org/files/8113/9333/6064/2014_02_25_nwksnf.pdf (providing first-ever documentation of stop-and-frisk practices in Newark, which found that Newark Police officers use stop-and-frisk with great frequency, in a manner that leads to racial disparities, and that the vast majority of people stopped were not engaged in criminal behavior). From July to December 2013, police officers made ninety-one stops per 1000 Newark residents—nearly one person stopped for every ten residents—exceeding the rate in New York City of eight stops per 1000 residents over the same period in 2013. *Id.* at 5. Black Newarkers make up 52% of the population, but they represented 75% of all stops. *Id.* at 8. The analysis also found that of those stopped in Newark, 75% were innocent and walked away without receiving a summons or being arrested. *Id.* at 10. See also Dan Ivers, *Newark Stop-and-Frisks Fall Under Baraka, Though Blacks, 'Innocents' Still More Likely to be Targeted*, NJ.COM (Jan. 28, 2015, 2:43 PM), http://www.nj.com/essex/index.ssf/2015/01/newark_stop-and-frisks_fall_under_baraka_though_bl.html (including latest data available on stop-and-frisk in Newark, showing that in 2014, of the 17,726 stops the police department recorded, 11,903, or 67%, were African-American, 79% of people stopped were not arrested or ticketed for wrongdoing, and that Newark police were making more than seventy stops per 100,000 people, a rate more than thirty times higher than New York City's rate); Monique O. Madan, *U.S. Inquiry Reports Bias by the Police in Newark*, N.Y. TIMES (July 22, 2014), <http://www.nytimes.com/2014/07/23/nyregion/inquiry-of-newark-police-cites-a-pattern-of-bias.html> (citing a three-year federal investigation finding that the Newark Police Department engaged in a pattern of unconstitutional stop-and-frisk practices, including that the vast majority of pedestrian stops were unjustified, and that Newark police officers stopped Blacks at a considerably higher rate than Whites and underreported the use of force by officers).

⁹ See *Philadelphia Police Continue to Stop Tens of Thousands Illegally*, AM. CIV.

stopped-and-frisked, and few have had the ability to seek redress. Most attorneys have little incentive to take an individual stop-and-frisk case, as there is little available in money damages. Prosecutors will not get involved unless the stop rises to a criminal violation of rights. A victim can file a complaint with a police department's internal affairs office, but few do so since they lack confidence in filing a complaint against the police with the police. And while some municipalities have a civilian review board to adjudicate these complaints, the vast majority serve only in an advisory role¹⁰ or are not even equipped to independently investigate complaints, as this Article explains in further detail. There is a clear need to hold police officers accountable for these behaviors before the problem becomes so widespread that it triggers a class action lawsuit or a United States Department of Justice investigation.

Third, there is a need for the establishment of agencies, or units within existing entities, charged with reviewing patterns in policing practices that may reveal broader problems. This responsibility often falls on an inspector general, a position that is part of good government practices overseeing large government entities, including law enforcement agencies such as the Federal Bureau of Investigations and the Department of Homeland Security. Yet relatively few police departments are monitored through an inspector general dedicated solely to them.¹¹ Large police departments should be overseen by an inspector general to review whether the problem of police misconduct

LIBERTIES UNION PA. (Feb. 25, 2015), <http://www.aclupa.org/news/2015/02/24/philadelphia-police-continue-stop-tens-thousands-illegally> (finding that "despite having almost four years to improve its stop and frisk practices, the [Philadelphia Police Department] continued to illegally stop and frisk tens of thousands of individuals").

¹⁰ Take, for example, New York City's civilian review board. While it has wide authority to accept complaints and possesses subpoena authority to investigate allegations of wrongdoing, final disciplinary authority still lies with the Police Commissioner. New York City CCRB Rules, §§ 1-02(c), 1-45(a) (2013), http://www.nyc.gov/html/ccrb/downloads/pdf/ccrb_rules.pdf ("The findings and recommendations of the Board, and the basis thereof, regarding case investigations and administrative prosecutions shall be submitted to the Police Commissioner The Police Commissioner shall retain in all respects the authority and discretion to make final disciplinary determinations.").

¹¹ There are exceptions. For example, New York City recently established an inspector general dedicated solely to reviewing NYPD practices (I helped draft the legislation creating the agency and helped shepherd it through the New York City Council). J. David Goodman, *City Council Votes to Increase Oversight of New York Police*, N.Y. TIMES (June 27, 2013), <http://www.nytimes.com/2013/06/27/nyregion/new-york-city-council-votes-to-increase-oversight-of-police-dept.html>. Numerous review boards have the authority to make recommendations regarding policy and practices, but do not appear to use that authority with regularity.

is an isolated one or part of a larger policy or set of practices emanating from police headquarters.

This Article focuses on creating a model of police accountability that fulfills the second and third gaps identified above.¹² This model is a variation of an old one, a civilian complaint review board,¹³ but avoids the pitfalls of previous review boards by bestowing it with the powers necessary to aggressively investigate police misconduct, to ensure that discipline sticks when wrongdoing is found to have occurred, and to keep an eye out for systemic problems within policing. The model that this Article proposes would be independent not only from the police department, but also from politics by having a fixed budget and a board membership that is majority nominated by civic and community organizations. Such a structure also ensures community voice and perspective in discipline and in reviewing police policies and practices. A variation of this proposed model is currently being attempted in Newark, New Jersey.¹⁴

Given the growing momentum to rein in police abuses, now is the time to think creatively on all three of the needs previously identified.

¹² As stated earlier, the need to hold police officers accountable for the unjustified use of deadly force is the most pressing priority.

¹³ This Article uses the terms "oversight board" and "review board" interchangeably.

¹⁴ On March 16, 2016, the Newark Municipal Council passed legislation creating one of the nation's strongest police civilian review boards. David Porter, *Newark OKs Strong Police Review Board; Union Vows Fight*, AP (Mar. 16, 2016, 8:43 PM), <http://bigstory.ap.org/article/a4867d7361a24653ab5a3bc13e727d2a/newark-ok-strong-police-review-board-union-vows-fight>. This review board will have the power to investigate complaints of misconduct lodged by civilians against Newark police officers. It will be comprised of eleven civilian members: one will be appointed by the mayor, three by the Municipal Council, and seven nominated by community and civil rights organizations. The board will have subpoena authority to compel the production of documents and the testimony of witnesses and have the authority to make discipline stick when wrongdoing is found to have occurred. A pre-negotiated disciplinary matrix will decide the discipline doled out. In addition, the board will have inspector general powers to audit policies and practices. And it will have vast and unprecedented public reporting requirements, not only on its operations but also on policing practices in Newark, including arrests, summonses, stop-and-frisk, use of force, etc. The legislation creating the Newark civilian review board, however, does not guarantee a fixed income source, which weakens its independence and may prove to be a fatal flaw if future mayoral administrations decide to defund it. Advocates and community members fought for the inclusion of this provision but failed. See generally City of Newark, N.J., Ordinance Amending Title II, Chapter 2, Office of the Mayor and Agencies of the Revised General Ordinances of the City of Newark, New Jersey 2000, as Amended and Supplemented, by Creating and Establishing a Civilian Complaint Review Board 16-0276 (Mar. 16, 2016), <https://newark.legistar.com/LegislationDetail.aspx?ID=2573481&GUID=13232B4A-53F9-4E99-8440-8FE11FB761B2&Options=&Search=&FullText=1> [hereinafter Newark Ordinance].

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The model proposed in this Article is just one solution towards the goal of providing an avenue to hold police officers accountable for wrongdoing that normally would go unaccounted for. Implementing this proposal will lead to a significant reshaping of policing practices while also giving civilians a meaningful voice in decisions over officer discipline. Such a rethinking of the disciplinary process will lead to changes in the relationships between community members and their police departments.

Some who read this proposal may have already lost faith in civilian complaint review boards, particularly as they have proliferated across the nation yet have failed in many circumstances to hold police officers accountable for wrongdoing. I share this frustration. It is important, however, to separate frustration over the current models from rejecting the idea of independent civilian oversight altogether. Many civilian review boards have failed across the nation because they were rigged to fail—they lacked adequate authority and resources to achieve their missions. What this Article proposes has been largely untried and is meant to remedy those very inadequacies that have led to a loss of faith in civilian review boards.

II. OVERVIEW OF CIVILIAN REVIEW BOARDS

The concept behind a civilian review board is a simple one: civilians and not police personnel should have the power to investigate and make findings on police officer wrongdoing. Having police officers police themselves presents obvious conflicts of interest, while having civilians conduct these investigations provides an external check on the police. The hope is that if civilians handle the investigatory process, it will be a fairer and more effective one than if the police were charged with policing themselves.¹⁵ Civilian oversight also furthers democratic principles by allowing civilians to have more control over their police departments.¹⁶

For purposes of this Article, I use the following definition of a civilian review board, a variation of a definition used by police accountability expert professor Sam Walker¹⁷: an agency staffed with

¹⁵ Joel Miller, *Civilian Oversight of Policing: Lessons from the Literature*, VERA INST. JUST. 2 (May 5–8, 2002), http://vera.org/sites/default/files/resources/downloads/Civilian_oversight.pdf [hereinafter Vera Institute].

¹⁶ *Id.* at 3.

¹⁷ Professor Walker's definition is: "an agency or procedure that involves participation by persons who are not sworn officers (citizens) in the review of citizen complaints against the police and/or other allegations of misconduct by police officers." Samuel Walker, *The History of the Citizen Oversight*, in *CITIZEN OVERSIGHT OF LAW ENFORCEMENT AGENCIES* 1, 2 (Justina Cintron Perino ed., 2006),

civilians, and not sworn officers, charged with investigating civilian complaints of misconduct by police officers.¹⁸ In my definition, I emphasize the investigative component of a civilian review board and therefore disqualify those boards that review the findings of internal police investigations.

A. *History of Civilian Review Board*

Civilian complaint review boards have existed since the 1940s. The first one, Washington D.C.'s Complaint Review Board, was established in 1948 in response to concerns about police brutality and followed lobbying by the Urban League and National Conference of Christians and Jews.¹⁹ The board was largely ineffective and disbanded in 1973, only to be reestablished in 1982 and further strengthened in 2001.²⁰ New York City established its first Civilian Complaint Review Board in 1953 in response to a United States Department of Justice investigation that found police brutality and a broken system unable to hold police officers accountable for misconduct; this board was dismantled in 1966 following intense lobbying by the police union.²¹

In the 1960s, the concept of civilian review of the police began to take hold as the civil rights movement challenged police brutality and

http://apps.americanbar.org/abastore/products/books/abstracts/5330089samplech_abs.pdf

¹⁸ This Article has a narrower definition of civilian review than used historically by others. I do so purposefully. When the public calls for independent investigations of police misconduct, I believe they are calling for investigations to be conducted by civilians and in an agency that is independent from the police department. In contrast, some review boards, while separate from the police department, do not conduct their own investigations but rather review those internal investigations conducted by the police. For example, Boston's Community Ombudsman Oversight Panel is empowered to review Boston Police Department internal investigation cases appealed by complainants. Yet it has no subpoena authority, and is explicitly prohibited from interviewing witnesses or conducting its own independent investigations. See City of Bos., Mass., Exec. Order, Mayor Thomas M. Menino, Establishing a Community Ombudsman Oversight Panel and Complaint Mediation Program, City of Boston (Mar. 14, 2007), https://www.cityofboston.gov/images_documents/exec_order_tcm3-9873.pdf. Other boards, like the Citizens Advisory Board in Phoenix, do not even review internal police investigations but are only charged with helping to "[c]reate a climate of trust between the community and the Phoenix Police Department" and to "[p]rovide a forum where the Phoenix Police Department can actively listen actively" to the public." See City of Phoenix, *Citizen Advisory Boards*, CITY PHX., <https://www.phoenix.gov/police/neighborhood-resources/citizen-advisory-boards> (last visited Apr. 15, 2016). When the public calls for independent investigation of police misconduct, I do not believe they have either one of these options in mind.

¹⁹ Vera Institute, *supra* note 15, at 10.

²⁰ *Id.*

²¹ *Id.* at 14.

began to call for civilian oversight of the police. But, it was not until the 1970s, when public attitudes towards the police began to change,²² that civilian review boards began to be adopted across the nation. In 1973, Berkeley, California became the first city to establish a Police Review Commission with the independent authority to investigate complaints of police misconduct.²³ Since then, more than 100 civilian review boards have been established throughout the nation.²⁴

Today, there are four kinds of civilian oversight entities. The most active ones, which are the focus of this Article, investigate civilian allegations of police misconduct and either recommend discipline to the police chief or have some variation of authority to independently discipline police officers. A second type reviews the findings of internal investigations conducted by the police and make recommendations to the police chief on whether or not to follow the recommendations of those reviews. A third type allows civilians to appeal the findings of internal police investigations, with the review board reviewing the internal police process and making recommendations of its own findings to the police chief based on the internal police investigation. Finally, some civilian boards serve a limited auditor function, investigating the process by which police departments accept and investigate civilian complaints of misconduct.²⁵

B. *Civilian Review in the Nation's Top Fifty Police Departments*²⁶

A review of the nation's top fifty police departments²⁷ and their civilian review board structures demonstrates some of the deficiencies in these oversight systems, as well as the lack of any review boards to oversee many police departments. Collectively, these departments

²² Walker, *supra* note 17, at 7-8.

²³ *Id.* at 4.

²⁴ *Id.*

²⁵ See PETER FINN, U.S. DEP'T JUST., CITIZEN REVIEW OF POLICE: APPROACHES AND IMPLEMENTATION vii (Mar. 2001), <https://www.ncjrs.gov/pdffiles1/nij/184430.pdf>.

²⁶ Working with Seton Hall Law students at Professor Linda Fisher's Civil Litigation Clinic, we reviewed the composition of the civilian oversight agencies of the top fifty police departments in the nation. This included review of the civilian oversight agencies' legal authority, membership, scope of jurisdiction, investigatory and disciplinary powers, and budget. The students who worked on the project were Natasha Beckford, Jessica Maxwell, Brian McDonough, and Dennise Mejia. Research is on file with the author.

²⁷ The top fifty police departments were chosen according to the number of full-time sworn personnel in 2013 according to the Justice Department. Brian A. Reeves, *Local Police Departments, 2013: Personnel, Policies, and Practices*, U.S. DEP'T JUST. 14 tbl.2 (May 2015), <http://www.bjs.gov/content/pub/pdf/lpd13ppp.pdf>.

represent civilian populations of close to fifty-two million residents and police departments with close to 147,000 officers.

Of the top fifty largest police departments, twenty-six have no civilian review board as defined by this Article.²⁸ While some do include a form of civilian oversight, such as in Los Angeles,²⁹ most of these departments have no civilian oversight beyond the normal structure of city government. The departments without a civilian review board represent more than twenty-three million residents who do not have an avenue to file complaints against the police that will be adjudicated independently by civilians (outside of traditional avenues, such as civil litigation).

Of the remaining twenty-four departments, all but nine are overseen by a review board that is majority nominated and majority appointed by the mayor (or in combination with the head of the police), thus minimizing the independence of such boards.³⁰ For example, New York City's Civilian Complaint Review Board is comprised of thirteen members, but the mayor and police commissioner appoint eight of the thirteen members.³¹ The nine civilian review boards that are led by a majority of non-mayoral nominees are Dallas, Miami-Dade, Las Vegas, Detroit, Atlanta, Indianapolis, Miami, Newark, and Albuquerque. Detroit has a Police Commission led by eleven members, seven of whom are elected by the people of Detroit, a model that exists in no other review board among the top fifty police departments.³²

Subpoena authority appears to have become more common among the civilian review boards overseeing the nation's largest departments, with nineteen boards being empowered with subpoena authority, including the boards overseeing the nation's two largest

²⁸ See *infra* app.

²⁹ Los Angeles has a complicated civilian oversight model, but has no independent entity charged with investigating civilian complaints of police officer misconduct. The Police Commission is technically the head of the Los Angeles Police Department. The Commission hires and fires the police chief and can make final decisions on all departmental policies. But it cannot impose discipline. *The Function and Role of the Board of Police Commissioners, L.A. POLICE DEP'T*, http://www.lapdonline.org/police_commission/content_basic_view/900 (last visited Apr. 15, 2016). Then there is Los Angeles Inspector General who is empowered to conduct investigations, such as audit of internal affairs. It can accept civilian complaints, but will turn those over to the Police Department to investigate. See *Office of the Inspector General, L.A. POLICE DEP'T*, http://www.lapdonline.org/police_commission/content_basic_view/1076 (last visited Apr. 15, 2016).

³⁰ See *infra* app.

³¹ *Id.*

³² *Id.*

police departments, New York City and Chicago.³³ But there are some glaring exceptions. Houston, the fifth largest police department in the nation, has a police oversight board with no subpoena authority.³⁴ Baltimore's civilian review board also has no subpoena authority, despite overseeing the ninth largest police department in the nation.³⁵

On the other hand, some form of disciplinary authority remains relatively rare, with only six civilian review boards having it—Chicago; Washington, D.C.; Detroit; Milwaukee; San Francisco; and Newark.³⁶ This is the most revealing finding of this analysis and at the core of the frustrations felt by the public on the deficiencies of current oversight models. For all of the structures and supposed independence of the review boards, eighteen of the twenty-four are subject to the whim of the police department when it comes to final decision-making on discipline.

Finally, nineteen review boards are explicitly authorized to review and make recommendations related to departmental policies and practices, although it is unclear how many of these boards actually exercise these authorities.³⁷ In the nation's largest police department, the New York City Police Department (NYPD), a newly formed Inspector General focuses solely on auditing NYPD policies and practices.³⁸ It is unclear, however, how many of the boards with explicit policy review authority actually utilize it.

Of the nation's fifty largest police departments, the only review board that has a leadership structure that is not majority nominated by the mayor and that is empowered with subpoena, disciplinary, and policy review authorities, is Detroit's. Newark's review board will also have these features once it is built.

III. KEY COMPONENTS OF EFFECTIVE CIVILIAN REVIEW

Based on my review of the existing civilian review board models as well as conversations with colleagues, advocates, and community members from across the nation who have all experienced these various models in their respective cities, I propose the following features as necessary to create an effective civilian review board. The proposed features are meant to address the weaknesses in current

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *See infra* app.

³⁷ *Id.*

³⁸ As mentioned earlier, I helped draft the legislation creating the NYPD Inspector General and pass it through the New York City Council.

models, including the lack of direct community input in the leadership structure, inadequate investigatory and discipline authorities, the lack of authority to audit and make recommendations for overall police policies and practices, the lack of stable and robust financial support, and the lack of transparency in policing practices.

A. Board Majority Nominated by Civic Organizations

The make-up of the leadership of the review board sets the tone for the entire operation of the board. While professional staff trained in investigative and fact-finding techniques will conduct most of the work of the board, board members are the ones who will make decisions to move forward with investigations and discipline.

This Article proposes a board composition model where the majority of the board is nominated by civic organizations that have an interest in the safety of the city and in the civil rights of community members, with the rest nominated by the mayor and lawmakers. This will ensure the independence of the board and its legitimacy in the eyes of city residents. Nominees to the board should have expertise in a relevant field in order to be appointed, such as a legal, civil rights, or law enforcement background.⁹⁹ The nominees should have a demonstrated commitment to the well-being of the city where they live, and a strong understanding of the importance of upholding civil rights and civil liberties in policing. They should also believe in a police department that operates in a transparent and accountable manner. No member of the board should be a current or former employee of the police department that the board oversees, and a majority of board members should not have a law enforcement background.

In Newark, the newly established civilian review board will be composed of eleven members, seven of whom will be nominated by civil rights, immigrants' rights, and community-based organizations.

⁹⁹ In my review of the civilian review models, I came across several that disqualified those with a criminal record from being appointed to the board. For example, in Austin, the Citizen Review Panel requires that panel members have no felony convictions or indictments. *Citizen Review Panel*, AUSTINTEXAS.GOV, <http://www.austintexas.gov/department/citizen-review-panel> (last visited Apr. 15, 2016). In Miami, the Civilian Investigative Panel disqualifies individuals with a felony conviction record. *Members*, CITY OF MIAMI CIVILIAN INVESTIGATIVE PANEL, <http://www.miamigov.com/cip/pages/Members/cipmembers.asp> (last visited Apr. 15, 2016). I strongly recommend against such prohibitions. A person's past convictions should not be the sole determinative factor of his or her ability to responsibly review complaints of officer misconduct; it should not be an automatic disqualification. Moreover, given the racial disparities associated with arrest and incarceration rates, disqualifying people based solely on their criminal records will have a disproportionate and unfair impact on communities of color.

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The nominees are presented to the mayor, who then appoints the board members subject to the advice and consent of the Municipal Council. The following organizations and entities have nominating authority: American Civil Liberties Union of New Jersey; National Association for the Advancement of Colored People (NAACP) of New Jersey; People's Organization for Progress; La Casa de Don Pedro; Ironbound Community Corporation; Newark Anti-Violence Coalition; and a representative of the clergy community.⁴⁰ The mayor is obligated to appoint Newark's Inspector General to the board, and the Municipal Council nominates three members to the board.⁴¹

In my review of the boards for the top fifty largest police departments, I could only find one example, in addition to the review board recently created in Newark, of a review board that empowers a civic organization with the authority to nominate civilian review board members. The Atlanta Citizen Review Board is led by eleven members. Four are appointed by civic organizations: Gate City Bar Association, Atlanta Bar Association, League of Women Voters, and Atlanta Business League.⁴² While not giving them direct authority, Baltimore has non-voting members on the Civilian Review Board, including representatives from the ACLU, NAACP, and the Fraternal Order of Police.⁴³

B. Broad Scope to Review Complaints

Since the very purpose of the civilian review board is to provide an avenue for individuals to seek redress for misconduct that would otherwise go unaddressed, the scope of complaints that the review board adjudicates must be broad. The range, at the very least, should include adjudication of cases involving excessive use of force, abuse of authority, unlawful arrest, unlawful stop, unlawful searches, discourtesy or disrespectful behavior, use of offensive language, theft, and discriminatory behavior.

Many of the misbehaviors that would fall under the jurisdiction of the board would otherwise go unaddressed if not for the review board. Years of such unaddressed misconduct have been a significant factor in the deterioration of police-community relations. While a wrongful

⁴⁰ Newark Ordinance, *supra* note 14, at Part I.2 (a).

⁴¹ *Id.*

⁴² *About Us*, ATLANTIC CITIZEN REVIEW BD., <http://acrbgov.org/about-us/> (last visited Apr. 15, 2016).

⁴³ *See Baltimore City Office of Civil Rights and Wage Enforcement: Board Members*, CITY OF BALT., <http://civilrights.baltimorecity.gov/civilian-review-board/commission> (last visited Apr. 15, 2016).

stop-and-frisk is nowhere as egregious as a police shooting, the fact is that the former offense is committed with much more frequency—in some cities tens of thousands of times a year—and with fewer people paying attention. A civilian review board that is performing its functions correctly will provide community members with the opportunity to seek redress for each and every one of these illegal stops.

C. Independent Investigatory Authority

A civilian complaint review board will be only as strong as its authority to conduct independent investigations, and at the heart of such authority must be the ability to subpoena witnesses and documents, including internal police disciplinary documents, medical records, surveillance footage, and other materials relevant to an investigation. Subpoena authority will also allow the board to order a person to testify before it.

Subpoena authority has become more common in the civilian review boards that oversee large police departments, but is still not standard practice even among large cities. The review of the civilian oversight systems of the top fifty police departments revealed that only nineteen have civilian review boards with subpoena authority.⁴⁴

Independent subpoena authority is particularly important given the historic difficulties of compelling police officers who have witnessed wrongdoing to testify against their fellow officers.⁴⁵ The unwritten rule, the “blue wall of silence,” sometimes even encourages police officers to refuse to cooperate in investigations.⁴⁶

⁴⁴ See *infra* app.

⁴⁵ See Radley Balko, *Why Cops Aren't Whistleblowers*, REASON.COM, <http://reason.com/archives/2011/01/25/why-cops-arent-whistleblowers> (last visited Apr. 15, 2016) (documenting examples of retaliation against police officers who try to expose or testify against police misconduct) (“It may be true that abusive cops are few and far between, as police organizations typically claim. The problem is that other cops rarely hold them accountable For all the concern about the ‘Stop Snitchin’ message within the hip-hop community, police have engaged in a far more impactful and pernicious Stop Snitchin’ campaign of their own. It’s called the Blue Wall of Silence.”).

⁴⁶ In 1970, New York City’s Commission to Investigate Alleged Police Corruption, also known as the Knapp Commission, documented this practice extensively. Police officer Frank Serpico testified about the so-called “Blue Curtain” where reporting on a fellow officer was considered betrayal. See *Report Says Police Corruption in 1971 Involved Well Over Half on the Force*, N.Y. TIMES, Dec. 28, 1972, at 22.

D. Ensure Discipline Sticks

An independent investigation will be meaningful only if its findings then form the basis for deciding whether and to what extent to discipline an officer. Yet it is at this phase of the review process where even strong civilian review boards fail, such as New York City's, where the police commissioner has full discretion to ignore the board's fact-finding or to impose no discipline even when the board has found that wrongdoing occurred.⁴⁷ In 2012, for example, the NYPD imposed no discipline in more than 40% of cases recommended by the CCRB and followed the CCRB's recommendation in only 9.7% of cases.⁴⁸

Under this proposed model, once the civilian review board's professional staff completes its thorough investigation and the board substantiates an allegation of misconduct, the board's findings of fact will be binding on the head of the police department, who will then determine discipline based on those facts and guided by a pre-negotiated disciplinary matrix.⁴⁹ Such a matrix will determine the range of discipline options for the misbehavior and will ensure that

⁴⁷ In 2012, the NYPD followed the New York City Civilian Complaint Review Board's (CCRB's) recommendation in only 25 of 258 cases (9.7%). Officers received no discipline in 104 cases (40.3%). Specifically, the New York City CCRB received 5741 complaints, and 258 complaints against NYPD officers were substantiated. The CCRB recommended charges in 175 cases, command discipline in 70 cases, and instructions in 12 cases. Of the 175 cases in which the CCRB recommended an officer be charged, the NYPD sought charges only in seven. Officers received no discipline in seventy-six of these cases. Of the seventy cases that the CCRB recommended command discipline, in thirty-five cases the officer was only given instructions. Officers received no discipline in twenty-four such cases. Kathleen Horan & Noah Veltman, *Police Officers Rarely Disciplined by NYPD for Misconduct*, WNYC (Aug. 27, 2014), <http://www.wnyc.org/story/nypds-poor-track-record-meting-out-discipline-officer-misconduct/>.

Under the new city and CCRB leadership, the percentage of cases where the NYPD adopts the CCRB's recommendation has grown significantly. During the first half of 2015, the discipline rate increased to 91% for cases substantiated by the CCRB involving a penalty recommendation of command discipline or instructions. This was the highest rate since the creation of the present-day CCRB in 1993. Press Release, Civilian Complaint Rev. Board, NYC Civilian Complaint Rev. Board Issues 2015 Mid-Year Report: Complaints are Down, Substantiation are Increasing and Video Evidence is Increasingly Paramount to Investigations (Sept. 7, 2015), <http://www.nyc.gov/html/ccrb/downloads/pdf/news-2015-midyear-report-released.pdf>.

⁴⁸ In 2012, the New York City CCRB made recommendations in 258 cases, and the NYPD followed those recommendations in only 25 of the cases. Police officers received no discipline in 104 of the 258 cases, representing 40.3% of all cases where the CCRB made a recommendation. Horan & Veltman, *supra* note 47.

⁴⁹ A disciplinary matrix is a chart that lists all of the various offenses for which a police officer may be disciplined and then lists potential punishments for each offense, taking into consideration the police officer's past disciplinary record.

discipline will always take place.

The head of the police department makes the final decision on discipline but is bound by the independent factual investigation of the civilian review board and the range of punishment included in the pre-negotiated disciplinary matrix. This formula not only ensures discipline when the civilian review board finds that wrongdoing has occurred, but it also creates transparency and predictability in the process, allowing the public to know ahead of time what type of discipline will be faced for which type of misbehavior.

Narrow exceptions can be made for when the head of the police department may depart from the factual findings of the review board, but such exceptions must be carefully drawn and should only capture those situations where an obvious error had been made in the board's factual investigation. For example, the board established in Newark creates an exception for when a "clear error" was made in the civilian review board's investigation and defines clear error as: "[W]hen the CCRB's [Civilian Complaint Review Board's] findings of fact are based upon obvious and indisputable errors and cannot be supported by any reasonable interpretation of the evidence."⁵⁰ Therefore, under Newark's model, the police director will make the final decision on whether or not there is a clear error in the CCRB's findings of fact. If there is no clear error, then the board's findings of fact will determine the police director's punishment of the officer based on a disciplinary matrix.

E. Audit Policies and Practices

The authority of the oversight board must not be limited to investigating individual allegations of misconduct. It should also have the ability to review the underlying policies that may lead to individual rights violations. This will ensure that the review board will be able to expose potential problems that are bigger than any one individual act of misconduct and prevent future wrongdoing.

The board's auditing authority should be broad and include all civil rights and public safety concerns. For example, if the review board begins to receive a high number of stop-and-frisk complaints, it could be indicative of a policy or practice to set quotas on police officers to perform a certain number of stops per shift.⁵¹ Therefore, when the

⁵⁰ Newark Ordinance, *supra* note 14, at Part V.E. § 1-17(b).

⁵¹ See, e.g., Joseph Goldstein, *Stop-and-Frisk Trial Turns to Claim of Arrest Quotas*, N.Y. TIMES (Mar. 20, 2013), <http://www.nytimes.com/2013/03/21/nyregion/stop-and-frisk-trial-focuses-on-claim-of-arrest-quotas.html> (reporting on the testimony delivered by NYPD officer Adhyl Polanco on the "20 and 1" rule, where the NYPD leadership

civilian review board notices a pattern of many complaints, or a rise in the number of complaints involving a pedestrian or vehicular stop, it should charge its auditing unit with investigating whether there was a broader policy decision or unwritten practice that led to these actions by individual police officers.

Other examples of potential reviews include an audit of the impact of a "broken windows" policing philosophy⁵² on civil rights and civil liberties, racial disparities in the enforcement of low-level offenses, or problems with 911 call response times in certain neighborhoods.

By including an inspector general authority within a review board charged with accepting complaints of individual misconduct, the board will have a firm grasp of any developing trends.

Once the auditing unit of the board completes its investigation, it should have the authority to make formal recommendations of policy reforms to the mayor, head of the police department, and city council.⁵³ The findings and recommendations of the auditing unit

and police unions expected each officer to make twenty summonses and one arrest a month).

⁵² Broken windows policing was first introduced in a 1982 Atlantic article. George L. Kelling & James Q. Wilson, *Broken Windows: The Police and Neighborhood Safety*, ATLANTIC, <http://www.theatlantic.com/magazine/archive/1982/03/broken-windows/4465/> (last visited Apr. 15, 2016). The article argued that because community members care deeply about public order, the appearance of disorder breaks down community controls and leads to community members feeling less committed to their neighborhoods, thus allowing for the introduction of criminal elements into the community. Therefore, according to the theory, law enforcement agencies should focus on responding aggressively to any public offense that may appear disorderly, no matter how minor. Kelling and Wilson recognized that police officers responding aggressively to the appearance of public disorder and minor offenses (even those that are not criminal) raises Fourth Amendment and racial profiling concerns. They recognized that Black and Latino residents may be disproportionately targeted by these policies and practices, but ultimately they largely ignored these concerns. Broken windows policing has been widely criticized. See e.g., Benjamin Bowling, *The Rise and Fall of New York Murder: Zero Tolerance or Crack's Decline?*, 39 BRIT. J. CRIMINOLOGY 531, 531 (1999) (attributing the decrease in homicide rates in the 1990s to the decrease of the crack cocaine epidemic, which had begun before the implementation of broken windows policing); Bernard E. Harcourt, *Policing Disorder: Can We Reduce Serious Crime by Punishing Petty Offenses?*, BOS. REV., <http://bostonreview.net/archives/BR27.2/harcourt.html> (last visited Apr. 15, 2016) (originally published in Apr./May 2002 issue of Boston Review) (criticizing the lack of an adequate definition of disorder—suggesting that what proponents of broken windows policing might call disorder may be perceived entirely differently by another segment of the population and may actually mean strong community bonds (graffiti is one example)—and presenting alternative theories for the decline in crime in New York City).

⁵³ While the policy recommendations of the board will not be binding, they are an important mechanism to highlight deficiencies within the department and to drive a public conversation that would otherwise be ignored. A recommendation by the board can also legitimize concerns that had previously been raised by community

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should always be published as a report to the public.

F. Secure Funding

For the oversight board to be free from political manipulation that could weaken it, its funding must be both secure and sufficiently robust. Otherwise, a hostile administration could deprive the board of its ability to perform its duties by simply cutting its funding.

To insulate the oversight board from cuts to funding due to politically unpopular decisions, the board's budget should be tied to a fixed percentage of the police department's non-capital budget. Thus, if the police department's operating budget increases due to the hiring of additional police officers, so will the review board's budget and staff, and the opposite will happen if the police department lays off officers.

The percentage of a police department's budget committed to the review board should be fixed by law. That percentage must be enough to cover the hiring of professional staff to run the board, including an executive director, investigators, attorneys to prosecute the complaints, and analysts to audit departmental policies and practices. The budget should also be enough to fund accessible office locations and hours, outreach, and public education materials.

In Newark's newly created Civilian Complaint Review Board, the board's budget is not fixed to the police department's budget, thus weakening its independence.

G. Due Process Protections for Police Officers

Police officers who are accused of wrongdoing must be fully protected from false accusations and must enjoy the full range of due process protections in all stages of the investigatory and disciplinary process, including the right to counsel and a hearing.

Prior to any discipline being imposed, a police officer must be able to contest the civilian allegations and the findings of investigators. Police officers must be allowed to access the evidence being used against them, provide testimony, and offer responses and defenses to the allegations of misconduct. If the review board substantiates a civilian's complaint, the police officer should have the right to appeal the substantiation or the discipline. Throughout the process, police officers should retain their rights as civil servants.

members and advocates but not taken seriously by the administration.

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H. Public Access/Reporting

For the review board to adequately serve the community, residents should be able to easily file complaints. This should include the filing of complaints online through the board's website, but also in-person and by e-mail, phone, or fax. Moreover, to allow for the in-person filing of complaints, the board's office should be located in a central location and remain open during hours that are accessible to people who work or study full-time. Thus the review board should be open during evening hours at least once a week and on a weekend at least once a month. The board should also hold monthly public meetings to report to community members on its activities, summarize its findings, and have an open session to allow residents to ask questions and raise concerns.

Finally, the board should publish quarterly reports on its website summarizing its activities. The reporting should include the number of complaints the board received, the types of complaints it received, the basic facts of the complaints (without releasing personally identifiable information), the disposition of those complaints, and any discipline issued. The board should also issue an annual report summarizing its work for the year and identifying any trends. Further, the board should work collaboratively with the police department to report basic data on policing practices, such as stop-and-frisk practices, searches, use of force, arrests, and summonses. This will further strengthen transparency and accountability.

Newark's board has broad, even unprecedented, reporting obligations. These obligations include quarterly reporting the following information on its website: (1) the number of complaints received, disaggregated by demographic information on the complainant; (2) the basic facts and the disposition of the complaints; (3) the number of stops made by police officers during the previous quarter, including data disaggregated by date, time, location, demographics of the person stopped, and reason and disposition of the stop; (4) the number of use of force incidents by the police, including data disaggregated by the demographics of the civilian, description of the force used, reason for the force, and whether any injuries resulted; (5) the number of arrests made by the police, including data disaggregated by date, time, location, demographics of the arrestee, the offense charged, and how the arrest came about; and finally, (6) the amount of money Newark expended in settlements or judgments to resolve claims filed against the police department and

the basic facts associated with those claims.⁵⁴ The board is also mandated to publish an annual report, compiling statistics and including any trends or areas of concern.⁵⁵

IV. CONCLUSION

Building an effective civilian review board is no easy task. It requires a groundswell of community support and a sophisticated understanding of the nuances of civilian oversight. It helps to have a willing mayor, city council (or at least a majority of the council), and police chief. And it takes money and time to get it right.

As a consequence, all too often even well-meaning policymakers and activists settle for less—a review board that has subpoena authority but no power to make discipline stick, or a board that has access to review internal police investigations but cannot conduct any of its own independent ones. Arguably, a weak civilian review board is worse than no civilian review board because it gives the illusion of independent accountability but actually provides little to no accountability. A weak civilian review board can lead to an increase in community resentment, as residents go to the board to seek redress yet end up with little.

It is my hope that this Article will provide a clearer roadmap for how to achieve an effective review board. Spending several years, even decades as with Newark, to get it right is more important than moving quickly and getting it wrong.

⁵⁴ Newark Ordinance, *supra* note 14, at Part V.F. § 1-21 (a)–(b).

⁵⁵ *Id.* at Part V.F. § 1-21 (c).

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APPENDIX OF CIVILIAN REVIEW BOARDS⁵⁶ IN FIFTY LARGEST POLICE DEPARTMENTS⁵⁷

Name of Department	Board Name and Composition	Subpoena Authority?	Discipline Authority?	Policy Review Authority?
New York City Police	Civilian Complaint Review Board: 13 Members (5 appointed by Mayor; 5 by City Council; 3 by Police Commissioner)	Yes	No	NYPD Inspector General
Chicago Police	Independent Police Review Authority: Mayor appoints chief civilian administrator with Council approval Police Review Board: 9 members appointed by Mayor with Council consent	Yes (IPRA)	Yes (PRB 3 person panel may overturn Police Superintendent's decision to not follow IPRA discipline recommendation)	Yes
Los Angeles Police	No Civilian Review Board*			
Philadelphia Police	Police Advisory Commission: 15 members appointed by Mayor	Yes	No	Yes

⁵⁶ A civilian review board is defined as an agency that is staffed by civilians, and not sworn officers, charged with investigating civilian complaints against the police.

⁵⁷ The police departments are listed in size order according to the number of full-time sworn personnel, with the largest police department listed first and the smallest police department (of the top fifty departments studied) listed last.

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Houston Police	Independent Police Oversight Board: 21 members appointed by Mayor and approved by Council	No	No	No
Washington D.C. Metropolitan Police	Office of Police Complaints: 5 nominated by Mayor (1 from police department) and confirmed by Council	Yes	Yes (if police chief rejects recommendation, OPC may overturn chief)	Yes
Dallas Police	Citizens Police Review Board: 15 members, 1 appointed by each Council Member	Yes	No	No
Phoenix Police	No Civilian Review Board*			
Baltimore Police	Civilian Review Board: 9 voting members from each police precinct (nominated by Mayor and confirmed by Council). Also 5 nonvoting members (Fraternal Order of Police, Vanguard Justice Society, Baltimore Police, ACLU of Maryland, and	No	No	No

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	NAACP of Baltimore)			
Miami-Dade Police	Civilian Investigative Panel: 13 members (9 appointed by City Commission; 3 by Mayor; 1 by Police)	Yes	No	Yes
Las Vegas Metropolitan Police	Citizen Review Board: 25 members (13 members appointed by Clark County Board of Commissioners; 12 by Las Vegas City Council Fiscal Affairs Committee)	Yes	No	Yes
Detroit Police	Detroit Police Commission: 11 members (7 elected by residents from each Police District; 4 appointed by Mayor and approved by Council)	Yes	Yes	Yes
Memphis Police	Citizen Law Enforcement Review Board: 9 members (8 appointed by Mayor and approved by Council; 1 Council Member)	No	No	No

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Suffolk County Police	No Civilian Review Board*			
Milwaukee Police	Fire and Police Commission: 7 members appointed by Mayor and confirmed by Council	Yes	Yes	Yes
San Antonio Police	No Civilian Review Board*			
Nassau County Police	No Civilian Review Board*			
San Francisco Police	Office of Citizen Complaints: Director appointed by Police Commission with approval by Mayor and Board of Supervisors Police Commission: 7 civilian members (4 nominated by Mayor (subject to Board of Supervisors approval) and 3 by Board of Supervisors)	Yes	Yes (Police Commission has right to hear appeals from Police Chief's disciplinary decisions and to issue discipline that is longer than a 10-day suspension)	Yes

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<p>Boston Police</p>	<p>No Civilian Review Board*</p>			
<p>Honolulu Police</p>	<p>Honolulu Police Commission: 7 Members appointed by Mayor and confirmed by Council</p>	<p>No</p>	<p>No</p>	<p>Limited – May make recommendations on PD strategic plan</p>
<p>Atlanta Police</p>	<p>Atlanta Citizen Review Board: 11 members (1 appointed by Mayor; 1 by Council; 1 by Council President; 1 by each of the 4 Neighborhood Planning Units; 1 by Gate City Bar Association; 1 by Atlanta Bar Association; 1 by League of Women Voters; 1 by Atlanta Business League)</p>	<p>Yes</p>	<p>No</p>	<p>Yes</p>
<p>Columbus Police</p>	<p>No Civilian Review Board*</p>			
<p>Baltimore County Police</p>	<p>No Civilian Review Board*</p>			
<p>San Diego Police</p>	<p>No Civilian Review Board*</p>			

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Charlotte-Mecklenburg Police	No Civilian Review Board*			
Austin Police	No Civilian Review Board*			
Prince George's County Police	County Citizen Complaint Oversight Panel: 7 members appointed by County Executive and confirmed by Council	Yes	No	Yes
Jacksonville Sheriff's Office	No Civilian Review Board*			
Indianapolis Metropolitan Police	Citizens Police Complaint Board: 12 members (9 civilian voting members (6 appointed by Council and 3 by Mayor); 3 non-voting police officers (1 appointed by Fraternal Order of Police, 1 by Mayor, and 1 by Council)	Yes	No	No
Fort Worth Police	No Civilian Review Board*			
	Civilian Police Review Board:	Yes	No	No

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Cleveland Police	7 members appointed by Mayor and approved by Council			
Denver Police	No Civilian Review Board*			
Kansas City Police	No Civilian Review Board*			
Fairfax County Police	No Civilian Review Board*			
Metropolitan Nashville Police	No Civilian Review Board*			
St. Louis Police	Civilian Oversight Board: 7 members nominated by Mayor from each city district and confirmed by Board of Aldermen	No	No	Yes
Seattle Police	No Civilian Review Board*			
New Orleans Police	No Civilian Review Board*			

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Louisville Police	No Civilian Review Board*			
Montgomery County Police	No Civilian Review Board*			
El Paso Police	No Civilian Review Board*			
Miami Police	Civilian Investigative Panel: 13 Members (9 appointed by City Commission; 3 by Mayor; 1 by Police Chief)	Yes	No	Yes
San Jose Police	No Civilian Review Board*			
Newark Police	Civilian Complaint Review Board: 11 Members (1 appointed by Mayor; 3 appointed by Municipal Council; 1 nominated by ACLU of New Jersey; 1 by NAACP NJ; 1 by People's Organization for Progress; 1 by La Casa de Don Pedro; 1 by Ironbound	Yes	Yes	Yes

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	Community Corporation; 1 by Newark Anti-Violence Coalition; 1 representative of clergy. All subject to Council approval)			
Cincinnati Police	Citizen Complaint Authority: 7 members appointed by Mayor and approved by Council	Yes	No	Yes
Albuquerque Police	Civilian Police Oversight Agency: 9 members appointed by Council	Yes	No	Yes
Dekalb County Police	No Civilian Review Board*			
Tampa Police	No Civilian Review Board*			
Portland Police	Independent Police Review and Citizen Review Committee: IPR Director appointed by Portland City Auditor, advised by 9-member Citizen Review Committee	Yes	No	Yes

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Tucson Police	No Civilian Review Board*
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* No civilian review board as defined by this Article: an agency staffed with civilians, and not sworn officers, charged with investigating civilian complaints of misconduct by police officers.

Police Review Commission reform is vital for Berkeley

BY KATE HARRISON | SPECIAL TO THE DAILY CAL

Strengthening community oversight of our police department is vital for ensuring more equitable policing outcomes and increasing trust between the Berkeley community and our police. The proposed “Berkeley Community United for Police Oversight Ballot Measure” presented to City Council on March 27 was not perfect. I had concerns and suggestions. I’m sure many of my colleagues did as well. However, we do the community a disservice by not taking the time to discuss and debate this pressing issue.

That said, I am pleased to hear that a Police Review Commission, or PRC, subcommittee is working on a revised ballot measure for City Council consideration. Moving forward, I want to clearly lay out what I consider to be the most vital aspects of a PRC reform ballot measure.

Independence from city manager

For our PRC to be truly effective it must be independent. The PRC is currently under the city manager, who also oversees the Berkeley Police Department. The same office cannot oversee both our law enforcement officers and the commission tasked with monitoring them. PRC staff should report directly to the executive director hired by the PRC, not the city manager.

Guaranteed funding

The continued funding of the PRC must not be fully subject to the whims of the council. While the council must have some discretion as to the exact size of the PRC budget, the charter should require that the council allocate sufficient funds for the continued and full operation of the PRC.

Increased professionalism

Currently, councilmembers and the mayor each appoint one member of the PRC. While I deeply appreciate the excellent job that our current commissioners have done, this process leaves the PRC too dependent on the council, and too subject to the influence of political pressure. Instead, the majority of the nominations for commissioners should come from civic organizations such as the NAACP and the ACLU. The PRC should also be able to send applications to the council itself. Council members should not be able to unilaterally remove PRC commissioners.

Disciplinary authority

Currently, the PRC cannot make recommendations to the chief of police regarding disciplinary measures that should be taken at the culmination of its investigations. While we recognize the need to give the chief deference when imposing discipline, the PRC should at a minimum be able

to recommend to the chief what it finds to be the appropriate response to misconduct, based on its investigation.

Inspector general function

The scope of the PRC's purview is currently limited to investigating individual complaints against specific officers, rather than systemic problems within the department. We know that individual racial biases are only one part of our national policing crisis. Systemic, programmatic issues are a huge factor, and are going unaddressed in our current system. The PRC must be empowered to review patterns of the use of force, compliance with laws, discrimination and other systemic issues within the department.

Changing standard of evidence to ensure community trust

The PRC currently uses the "clear and convincing" standard of evidence in its investigations of officer misconduct. The standard most frequently used by other police review commissions is the "preponderance of the evidence" standard. Changing this standard will make it easier for our residents to get access to justice, and give them more trust that their concerns are being addressed. We must remember that the PRC is not engaging in criminal investigations, but rather employment matters.

Expanding the time window to impose discipline

Currently, an officer can only be disciplined for misconduct within 120 days of the city becoming aware of the officer's actions. Achieving justice can be a long process, and must be thorough and complete in order to ensure that all parties have their rights and needs addressed. The PRC needs to take careful action; we must allow the commission enough time to take that care. That's why the timeframe should be expanded to 360 days from 120.

None of this is to suggest that we have anything other than a great police department in Berkeley. We must recognize, however, that our PRC has remained unchanged since it was created in 1973. In the meantime, new innovations and standards for police oversight have come to the fore, including from nearby oversight bodies like BART's. These changes are part of a national trend toward greater accountability and transparency from our law enforcement officers. While Berkeley is a deeply progressive community, we are not immune from the racial disparities that lie at the root of our nation's history. Strengthening our Police Review Commission is something we must do to ensure that every resident of Berkeley can feel that their city is serving them.

Kate Harrison is a city council member and a representative for District 4.

Lee, Katherine

From: Mansour Id-Deen <middeen@hotmail.com> on behalf of Mansour Id-Deen <middeen@berkeleynaacp.com>
Sent: Tuesday, May 01, 2018 2:23 PM
To: Lee, Katherine
Cc: Bartlett, Ben; monilaw7@gmail.com; Moni Law; Winston Burton
Subject: Re: add an additional revision related to full implementation of General Order B-

Thank you for contacting me back regarding this issue (Charter amendment). Yes, we are asking the PRC to add our suggested revisions, regarding the implementation of General Order B-4, to the proposed Charter amendment the PRC is considering.

The Berkeley NAACP would like to support the PRC's efforts related to the development of the PRC's Charter amendment. I am sure that we all can agree that General Order B-4 has not been fully implemented as designed. Data collection and analysis, the key components required for Police accountability, has lagged and show no signs of improvement.

The Berkeley NAACP believe that the suggested addition of placing an independent body (the Commission) in charge of Data collection and analysis will give confident to the community that real accountability will take place. Thank you for your consideration

From: Lee, Katherine <KLee@cityofberkeley.info>
Sent: Tuesday, May 1, 2018 12:24 PM
To: 'middeen@hotmail.com'
Subject: FW: add an additional revision related to full implementation of General Order B-

Hi Mansour,

Thank you for writing to the PRC. I'd like some clarification before forwarding your email to the Commissioners. Are you asking that your suggested revisions regarding the implementation of General Order B-4 be added to the proposed Charter amendment the PRC is considering?

-Kathy

Katherine J. Lee
Police Review Commission Officer
City of Berkeley
510.981.4960

From: Martinez, Maritza
Sent: Monday, April 30, 2018 8:12 AM
To: Lee, Katherine <KLee@cityofberkeley.info>
Cc: Norris, Byron <BNorris@cityofberkeley.info>
Subject: add an additional revision related to full implementation of General Order B-

From: Mansour Id-Deen [mailto:middeen@hotmail.com]

Sent: Friday, April 27, 2018 7:37 PM

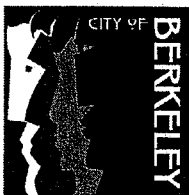
To: Martinez, Maritza <MMartinez@cityofberkeley.info>

Subject: Re: add an additional revision related to full implementation of General Order B-

1 - The Berkeley NAACP would like you to add an additional revision related to full implementation of General Order B-4, Fair and Impartial Policing Policy. We would like the commission to monitor the implementation of this policy. We want to ensure that data collection and analysis is implemented basic policy of fair and impartial policing with respect to race, gender, national origin, or sexual orientation.


2 - Under: General Order B-4: Responsibility to report and take corrective investigation action. The Commission will monitor and enforce section 4.5.6

Please share with full Commission.



Police Review Commission (PRC)

May 2, 2018

To: Police Review Commissioners
From: Kathy Lee, Police Review Commission Officer 
Re: Editorial revisions to proposed Charter amendment

Staff suggests the following revisions to the proposed Charter amendment draft dated April 25, 2018.

1. In Sections 1 and 2, where the phrase "their interactions with any" has been inserted, "their" should be changed to "its."
2. The language you approved to appear as Section 12(e) was taken almost verbatim from the PRC enabling ordinance. Staff proposes this language:

Fifty or more residents of the City of Berkeley may sign a petition for the Commission to hold a special meeting regarding specified areas of concern relating to any subject within the Commission's jurisdiction. Within ten business days of the date such a petition is filed in the Commission offices, the Commission shall hold a special meeting to hear and inquire into the matters raised in the petition, and take any such action the Commission deems appropriate. Commission staff shall forward copies of the petition to the City Clerk and the City Council.

