

**June 27, 2018      PRC Commissioners**

Commissioner

Appointer

Cooper Price (temp for Matthews through 7/31)

Worthington

Tristan Harper (temp for Calavita 6/27)

Harrison

Gwen Allamby

Bartlett

George Perezvelez

Droste

Andrea Prichett

Davila

Terry Roberts

Wengraf

Dave Ritchie (temp for Sherman through 7/31)

Maio

Ari Yampolsky

Hahn

Izzy Ramsey

Arreguin



1 *PRC Officer (KL) notes re Charter amendment proposals discussion by PRC 6-13-18*

2 Per Acting Chair (GPV): PRC can tell the Council that we stand by our original proposal.  
3 Or, tell them what we like and don't like about the Mayor's revisions and  
4 Councilmember Harrison's. Keep in mind that 5 Council votes are needed for any  
5 proposal to advance.

6 What does the BPA think of these proposals? GPV/KL: BPA was notified (sent  
7 agendas) of all Commission Reform Subcommittee meetings. [KL follow-up note: BPA  
8 was not sent notes and drafts tracking meeting discussions. They were sent a copy of  
9 the Subcommittee's Charter Amendment being recommended to the full Commission,  
10 and receive agenda packets in advance of all PRC meetings.]

#### 11 Community Representatives Hearing Complaints.

12 Seemed to be a consensus that the Harrison proposal, for the Commission to sit, in a  
13 way, as a BOI, is preferable to the Mayor's. Under the Mayor's proposal, the  
14 complainant does not have the chance to address the Commission or the BOI.

15 On the other hand, it seems somewhat redundant to have an IPA make findings of fact  
16 and recommend discipline, only to have all that revisited by the Commission.

17 No consensus as to resolution.

#### 18 Authority Over Budgetary and Hiring Decisions.

19 Per Mayor's proposal, modified by Harrison (Sec. 3((b)), Council allocates funds to  
20 Commission and IPA. But per Sec. 13(e)/(f) (Mayor/Harrison) IPA may hire, with  
21 Commission consent "Chief" Investigator for "large" investigations, and in 13(f)(g) has  
22 sole authority to hire/dismiss other employees.

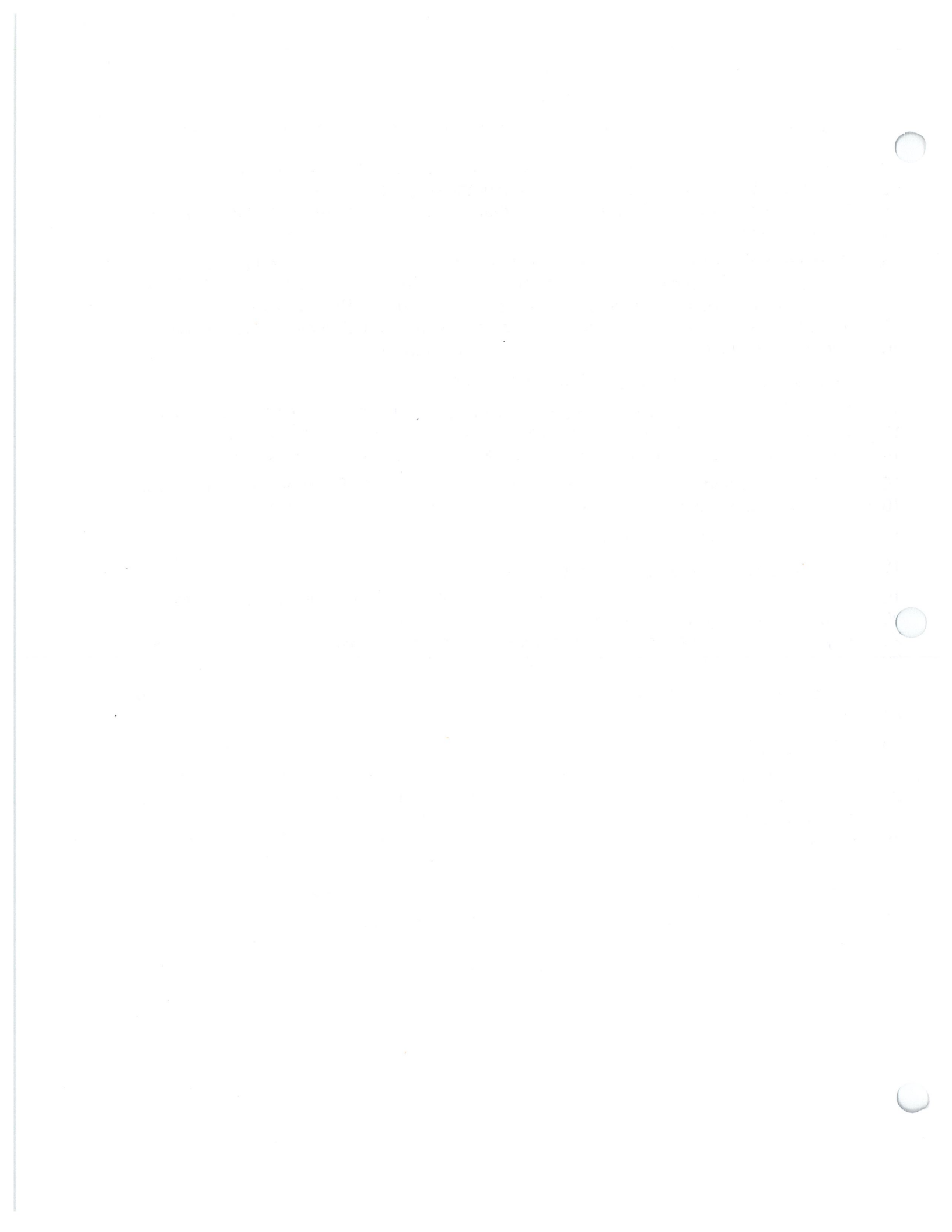
23 Consensus that the various roles are not clearly spelled out; no consensus as to how to  
24 resolve.

#### 25 "Majority" votes.

26 This began as a discussion about the role of the Commission in hiring and evaluating  
27 lead staff. The focus turned to the question of what "majority vote" in Sec. 13(b) means,  
28 for the purpose of the Commission recommending removal of the IPA to the Council.  
29 Majority of Commission or majority of those present? Should a specific number, e.g., 5  
30 votes, be specified? Long debate about this with no consensus reached.

#### 31 Removal of Commissioners.

32 No consensus as to whether Council should be able to remove a Commissioner with 7  
33 votes (Harrison) or just 5 (Mayor). Point made that the Commission should be  
34 independent of the police, but should they be independent of the Council?



To: PRC

FROM: Terry Roberts

Date: June 24, 2018

Re: PRC Charter Amendment Comments---- Item 9a on June 27, 2018 Agenda

Here are my thoughts.

1. I prefer the PRC's version to the Mayor's version. Substituting the IPA for the BOI process I think gives too much authority to one person which sees and judges all the facts in each case. While it appears that the commission can override the IPA's findings and recommendations (Sec 19a and b), why put officers and complainants through essentially 2 hearings (one from the IPA and one from the full commission). In addition, my guess is that the Commission will want to review most of the IPA's recommendations in detail which would require a confidential personnel meeting as noted in the Mayors version, involving the full Commission. If there are 20-40 cases a year (direct complaints to the Commission and reviews of BPD cases) that means 20-40 added meetings for the full Commission's calendar. Comparatively, the BOI process splits up and speeds up the workload since only 3 commissioners hear each case, allowing more cases to be processed. Plus, the diversity of views and experiences of a 3-person BOI panel better represents the breadth of the community compared to one IPA.
2. Another option: just substitute the title of IPA for the executive director in the PRC's version and have the IPA selected and recommended by the Commission but confirmed by the Council. The IPA would report to the PRC.
3. Mayor/CM Harrison's Proposal: It's problematic that either of my 2 options above could get Council approval for the ballot. So, below I'm submitting comments to the Mayor/CM Harrison's version. I'm working from CM Harrison's red line narrative of the entire ballot measure and related matrix given to us by Kathy at our last meeting.

Sec. 5a. What is the definition of majority? It should be 5 votes.

Sec. 8d. Removal should be by 5 votes (not 7 votes), the same standard used for appointment.

Sec. 13b. Replace majority commission vote with 5 votes when recommending removal of the IPA.

Sec. 13e. Revise to: The IPA shall present the results of their investigative findings to the Police Commission which will make final recommendations regarding findings and/or disciplinary action to the police chief.

Sec. 13f. Delete the last 5 words of the sentence, i.e. "in instances of large investigations."

Sec. 16c. Add City Manager to 2<sup>nd</sup> sentence, i.e. "If the City Manager, Police Department and Commission are unable to reconcile ....."

Sec. 17a.3. Substitute "make" for "decide".

Sec. 18a. Delete "newly". Also delete from the 2<sup>nd</sup> sentence: "after receiving recommendations from its staff".

Sec. 19a. Delete the narrative in this section and substitute the following: "For complaints received directly by the commission, a confidential personnel meeting shall be held where the Police Auditor shall submit their investigative findings and recommendations, including all relevant evidence obtained or produced during the course of the investigation, to the Police Commission. At said meeting, the officer(s) who is subject to the investigation and the complainant must appear before the commission to testify and answer questions if directed by the Commission. The Commission may also call relevant witnesses to appear. If the Commission makes a sustained finding on the allegations against the subject employee, they shall also recommend disciplinary action to the Police Chief."

Sec. 19b. Delete this section and narrative and include it in Sec. 19a above with the following narrative: "The Police Commission may affirm, modify or reject the recommendations of the Police Auditor. The Commission will forward its findings and recommendations with an explanation of the reasons for said findings and recommendations to the Police Chief."

Sec. 19c. Change to Sec 19b. Revise narrative as follows: "After reviewing a Police Department investigation, the Independent Police Auditor shall advise the Commission of any recommended disciplinary action in a sustained finding. The Commission may affirm, modify or reject the recommendation, and its decision shall be submitted to the Police Chief. The process for reviewing a police department investigation will involve reviewing all the investigative material and evidence developed by the police department as a minimum, but at the Commissions directive can also include using the confidential personnel meeting process set forth in Sec. 19a herein."

Sec. 22a. Add 2 sentences at the end of the section as follows: "The City Manager will appoint the Police Chief. The Police Chief will report to the City Manager."

Sec. 22b. Delete the full narrative and add the following: The Commission by 6 affirmative votes may recommend dismissal of the Police Chief to the City Manager and City Council along with a detailed list of reasons and the rationale for the recommendation. The City Manager shall respond to the Commission and City Council within 30 days with his/her planned action and the reasons for the action. The City Manager will make the final decision.

Another note: we need to ensure that in the ballot amendment temporary, substitute commissioners will not be allowed. This is important since under the new plan commissioners will be required to complete significant training and orientation regarding police policies, issues, the related laws and rules, disciplinary procedures, etc. Given this, a substitute would not be prepared to vote on the issues. I'm not sure how the subs are authorized now, but we need to discontinue the practice in the new measure.

## **PRICHETT'S COMMENTS ON KATE HARRISONS AMENDMENTS OF JESSE PROPOSAL**

(Comm. Prichett's comments are in BOLD. This list follows the chart we were given June 13, 2018 that included Council Member Harrisons proposed changes to the amendments being proposed by Mayor Arreguin.)

### 1. Community Reps: Section 19:

Add requirement that at the meeting where the Independent Police Auditor submits their finding, the officer subject to the complaint be present to answer questions from Commissioners and that the complainant, should they desire, be given an opportunity to address the Commission. Also add requirement that all data from investigation shall be available to the commission.

**I believe that we need more eyes on these investigations than just those of the investigators. The Police Commission must have access to all evidence considered or collected by the investigator. Allowing the Police Commission access to all materials makes it safer to increase the role of an "independent auditor" in making findings and recommendations. The investigators SHOULD NOT have a role in recommending discipline. Also- IA should not recommend discipline because what if the police Commission disagrees? Are we setting up competing authority?**

### 2. Role of Commission in Hiring: Section 13:

The Commission nominates and the Council approves appointment of the Independent Auditor. By majority vote, the Commission may recommend removal of the Independent Auditor by Council. The council may remove the Independent Auditor by majority vote if recommended by the Commission, or by a 2/3<sup>rd</sup>s vote without a recommendation.

**I don't like the Auditor model. It is too insular. However, if we go with an Independent Auditor it is okay.**

### 3. Removal of Commissioners: Section 8d

Harrison-Section 8-d:

A commissioner may only be removed by a vote of 7 Council members **UNLESS THEIR TERM HAS EXPIRED**

Arreguin-Section 8-d:

A commissioner may either be replaced by the Council if their term has expired or may be removed during their term by 5 votes of the City Council.

**I prefer that the Police Commission itself be required to make a recommendation before the City Council considers the termination of the commissioners term.**

#### 4. Commission Budgeting- Section 3b

The Council shall allocate a budget sufficient to protect the due process rights of complainants and officers and sufficient to carry out the responsibilities stated herein.

**Why add “The Independent Auditor” as being given the budget and having it shared with the commission? Is auditor subordinate to the Police Commission or the City Council? More reason to prefer the BOIs.**

#### 5. Ability for Community Consultation Regarding the Work of the Commission: Section 13-g

Section 13-g:

The Independent Police Auditor shall meet periodically meet with stakeholders, including but not limited to employee organizations representing officers, organizations promoting civil rights and liberties, and organizations representing communities disproportionately impacted by the criminal justice system, and solicit from them input regarding the work  
**I am neutral on this.**

#### 6. City Council’s Role in Setting Policy- Section 16-b

Section 16. 5.b (pg. 7 of Mayors tracked version)

**This is the most crucial part of the document. Police Commission MUST have responsibility to APPROVE policies, not simply to recommend. City Council MUST be the ones to make decision when Commission and Chief don’t agree. This applies to policy only. For personnel issues, City Manager can break the ties. If City Manger has final policy decision then they are not publicly as accountable as City Council.**

#### 7. Removal of the Chief Section 22-b:

The Commission may recommend removal of the Chief to the council. The Council, with or without a recommendation from the Commission, may remove the Chief by a 2/3rds vote.

**Yes, I support this. Council can fire the Chief.**

#### 8. Recommended Discipline- Section 19:

If the Independent Police Auditor makes a sustained finding on an allegation against a subject employee, they shall present such findings to the Commission. The Commission may adopt the Independent Police Auditors recommendation and send it to the police



**What about if the Auditor doesn't sustain? No oversight of these?**

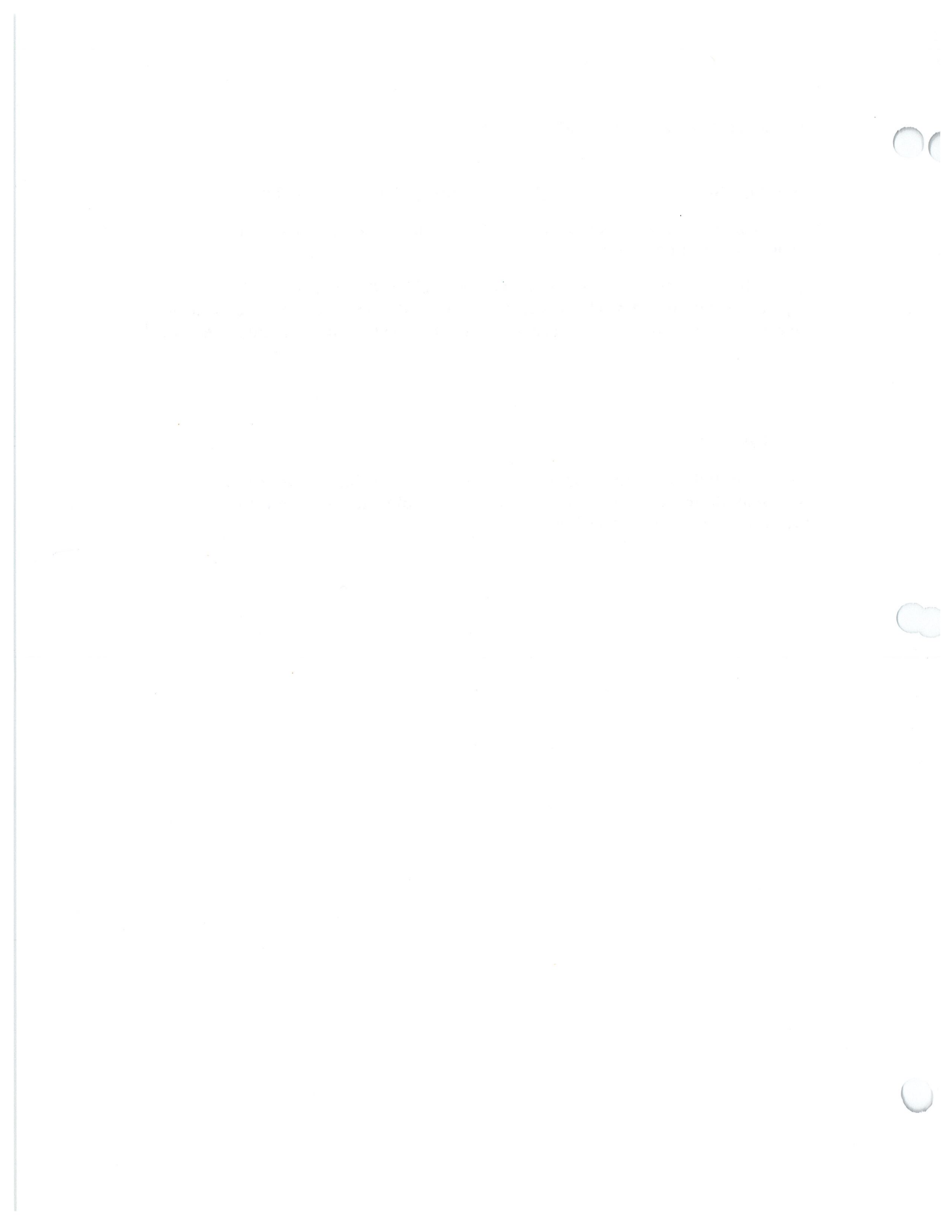
**9. Who Decides Which Complaints to Be Investigated- Section 18:**

The Commission decides which complaints staff will investigate after receiving recommendations from its staff.

**I agree with this and hope that the Commission will be allowed to see ALL complaints received and be able to accept recommendations but retain the authority to decide to have additional or alternative cases become the subject of investigation.**

**ADDITIONALLY**

**\* I propose that we restore the original Section (e) 13 that began "On the petition of 50 or more residents...". The mayor's plan simply deletes this provision. I propose that we keep it.**



from Councilmember Harrison  
with notes by PRC officer

Objectives of Amendment	Citizen Initiative	Police Review Commission	Mayor's Revision	Councilmember Harrison's Suggestions
<p><b>1. Community Representatives Hearing Complaints</b></p>	<p><b>Section h-66:</b> Executive Director convenes a separate Police Commission Board of Inquiry (BOI) composed of 3 Commissioners to make a judgment on each complaint before the Commission. The BOI reviews the recommendations from the Investigations Section and hold evidentiary hearings.</p>	<p><b>Section 17-a-3:</b> Boards of Inquiry hear and decide findings on allegations of misconduct, at which subject employees must appear to testify and answer questions from the BOI Commissioners.</p>	<p><b>Section 17:</b> Removal of Board of Inquiry in favor of Independent Police Auditor appointed by City Council. Limits employees subject to the Commission to sworn officers. Subject employees must appear to testify and answer questions.</p>	<p><b>Section 19:</b> Add requirement that when the Independent Police Auditor submits their findings, the officer subject to the complaint be present to answer questions from Commissioners and that the complainant, should they desire, be given an opportunity to address the Commission. Also add requirement that all data from investigations shall be available to the Commission.</p>
<p><b>2. Role of Commission in Hiring and Evaluating Lead Staff</b></p>	<p><b>Section g:</b> The Commission shall periodically conduct a performance review of the Executive Director, Investigations Director, and Policy Director. The Policy Director and the Investigations Director report to the Executive Director of the Commission.</p>	<p><b>Section 13-a/b:</b> The Commission hires an Executive Director, who serves at the pleasure of the Commission and also serves as a secretary to the Commission. The Executive Director hires and dismisses the Chief Investigator, with the Commission's consent.</p>	<p><b>Section 13:</b> Replacement of Executive Director with Independent Auditor. City Council appoints the Independent Police Auditor and the Auditor serves at the pleasure of the Council.</p>	<p><b>Section 13:</b> The Commission nominates and the Council approves appointment of the Independent Auditor. The Commission may recommend removal of the Independent Auditor to the Council. The Council may remove the Independent Auditor by 5 votes if recommended by the Commission, or by 7 votes without this recommendation.</p>

<p><b>3. Removal of Commissioners</b></p>	<p><b>Section d-31:</b> Members of the Commission may be removed by a majority vote of the Commission. Certain grounds for removal apply</p>	<p><b>Section 8-d:</b> A commissioner may be removed only by a majority vote of the Council upon recommendation of the Commission. Such a recommendation must be made by a supermajority vote of 7 commissioners. Certain grounds for removal apply.</p>	<p><b>Section 8-d:</b> A commissioner may either be replaced by the Council if their term has expired <del>of</del> may be removed during their term by 5 votes of the City Council.</p>	<p><b>Section 8-d:</b> A commissioner may only be removed by a vote of 7 Councilmembers.</p>
<p><b>4. Commission Budgeting</b></p>	<p><b>Section g-50:</b> The Commission shall employ such staff as may be necessary to perform its functions efficiently.</p>	<p><b>Section 3b:</b> The Commission is authorized to propose a budget to the City Council for its operations, and the Council shall allocate to the Police Commission a budget sufficient for the Commission and its staff to carry out the responsibilities stated herein.</p> <p><b>Section 13:</b> The Commission appoints and Executive Director, who hires a Chief Investigator</p>	<p><b>Section 13-a:</b> The <u>City Council</u> shall appoint an <u>Independent Police Auditor</u>, who shall serve at the pleasure of the council. Independent Police Auditor shall serve as secretary to the Commission.</p> <p>Section 13-b in Commission removed.</p> <p><b>Section 13-c:</b> Independent Auditor may, with budgetary authority from the Council and the Commission's consent, hire a Chief Investigator in instances of large investigations.</p>	<p><b>Section 3b</b> The Council shall allocate a budget sufficient to protect the due process rights of complainants and officers and sufficient to carry out the investigative and policy responsibilities stated herein.</p>

<p><b>5. Ability for Community Consulting Regarding the Work of the Commission</b></p>	<p><b>Section c-25:</b> Solicit and consider input from members of the public regarding the quality of their interactions with the Commission and its Staff.</p>	<p>No reference to the Executive Director meeting periodically and seek input from any stakeholders</p>	<p><b>Section 13-g:</b> The Independent Police Auditor shall meet periodically with and seek input from the Berkeley Police Association regarding the work of the Office of the Independent Police Auditor.  -No similar provision given for consultation with community organizations.</p>	<p><b>Section 13-g:</b> The Independent Police Auditor shall meet periodically with stakeholders, including but not limited to employee organizations representing officers, organizations promoting civil rights and liberties, and organizations representing communities of color, and solicit from them input regarding the work</p>
<p><b>6. City Council's Role in Setting Policy</b></p>	<p><b>Section c-9:</b> All policies and procedures of the Police Department shall be subject to the approval of the Commission. The Commission shall have the power to review and modify all written and unwritten policies, practices, and procedures of whatever kind and without limitation in relation to the B.P.D.</p>	<p><b>Section 16-b: C:</b> Chief shall submit all new Departmental policies and revisions to existing policies to the Commission for review and approval. If Police Department and Commission are unable to reconcile differences, the policy shall be sent to <u>City Council</u> for final decision.</p>	<p><b>Section 16-b:</b> Chief shall submit all new Departmental policies and revisions to existing policies to the Commission for review and <u>recommendation</u>. If Police Department and Commission are unable to reconcile differences, the policy shall be sent to the <u>City Manager</u> for final decision.</p>	<p><b>Section 16-b:</b> Restore City Council as final decision maker on departmental policy.</p>

*commission may propose Chief's removal to City manager.*

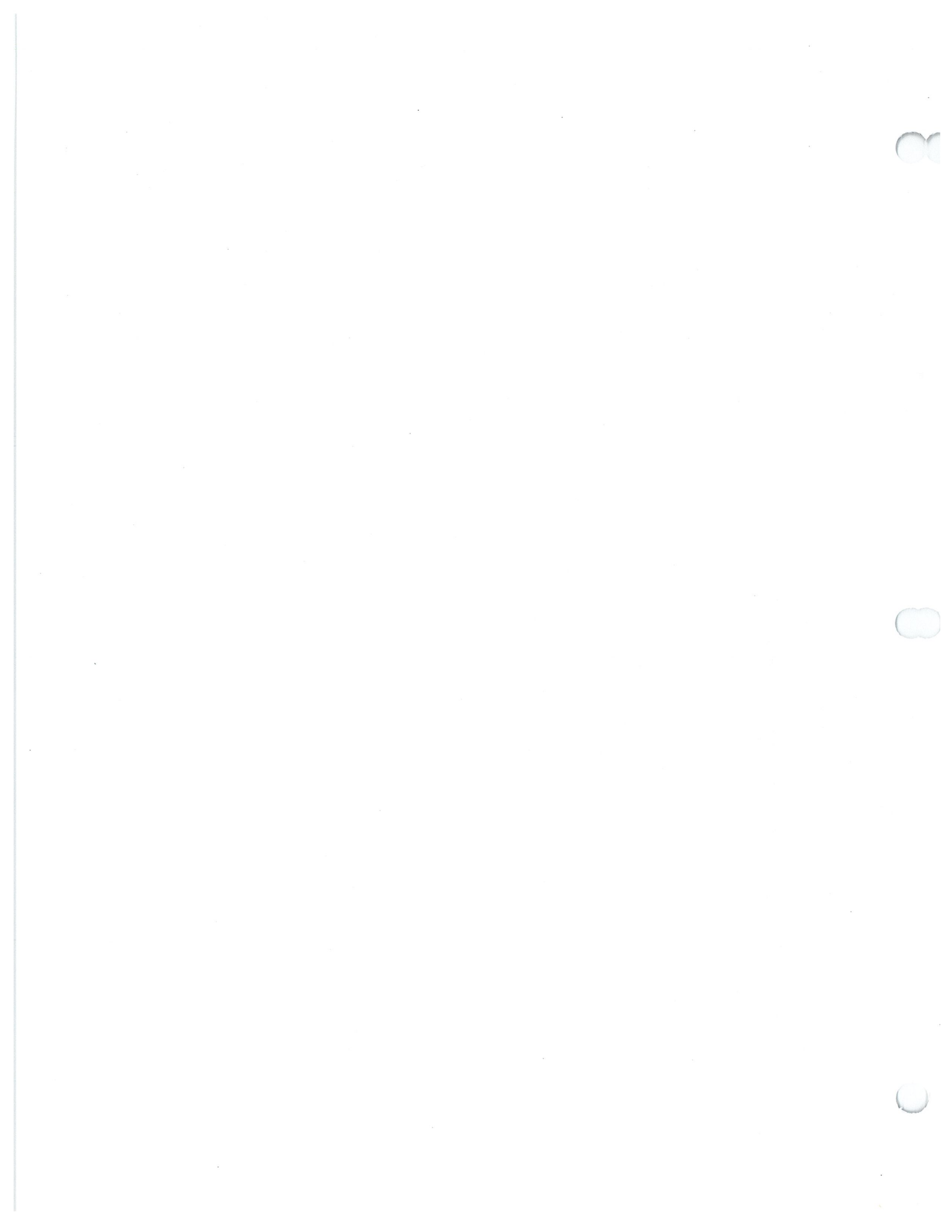
<p><b>7. Propose Removal of Chief</b></p>	<p><b>Section c-14:</b> The Chief of Police may be removed by the Mayor with approval of a majority of the Council. A request to the Council, approved by a majority of the Commission, to remove the Chief shall be considered by the Council within 45 days.</p>	<p><b>Section 22-b:</b> Essentially the same as Citizen Initiative. Chief of police may be removed by the Mayor with the Council's approval, upon the recommendation of 7 members of the Commission.</p>	<p>Removal of Section 22-b in PRC. No ability to propose removal of the Chief upon recommendation of the Commission.</p>	<p><b>Section 22-b:</b> The Commission may recommend removal of the Chief to the council. The Council, with or without a recommendation from the Commission, may remove the Chief by a 2/3rds vote.</p>
<p><b>8. Recommended Discipline</b></p>	<p><b>Section i:</b> Upon notification by the Commission of a sustained complaint, Chief of Police shall notify the police officer of his or her rights to an administrative appeal. Subsequent appeal, if requested, and Skelly hearings, the Chief of Police will recommend a final discipline.</p>	<p><b>Section 19-a-b:</b> If members of a Board of Inquiry make a sustained finding on an allegation against a subject employee, they shall also recommend disciplinary action to the Chief. <i>b: After Exec. Dir. reviews I.A. investigation, recommendation discipline to Commission, who may accept, reject or modify. Send to Chief.</i></p>	<p><b>Section 19-a:</b> If the Independent Police Auditor makes a sustained finding on an allegation against a subject employee, they shall recommend disciplinary action to the Chief of Police. Should the Police Commission agree with the findings and recommendations, the report will be submitted to the Chief for appropriate action.</p>	<p><b>Section 19:</b> If the Independent Police Auditor makes a sustained finding on an allegation against a subject employee, they shall present such findings to the Commission. The Commission may adopt the Independent Police Auditors recommendation and send it to the Chief.</p>
<p><b>9. Who Decides Which Complaints to Be Investigated</b></p>	<p><b>Section h-59:</b> With recommendation, the Commission shall direct the Investigations Section on which public or department-generated complaints to investigate.</p>	<p><b>Section 18-a:</b> The Commission, after receiving recommendations from its staff, shall decide which complaints staff will conduct parallel investigations of.</p>	<p><b>Section 18-a:</b> The Independent Auditor shall decide which I.A. complaints staff will conduct parallel investigations of, after receiving recommendations from it staff.</p>	<p><b>Section 18:</b> The Commission decides which complaints staff will investigate after receiving recommendations from its staff.</p>

Aspect shared by all versions:

- Use of "preponderance of the evidence" standard when investigating misconduct
- Expands statute of limitations from 120 days to 1 year
- Independent Investigator given unimpeded access to all records necessary to conduct investigations

Good things about Mayor Arreguin's version

- Commission will hear all complaints
- Only sworn employees, not clerical, are covered
- Bars interfering with the work of the IPA
- Adds appointment requirements for commissioners





## CHARTER AMENDMENT TO ESTABLISH A POLICE COMMISSION

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

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

### Article XVIII. POLICE COMMISSION AND INDEPENDENT POLICE AUDITOR

#### Section 1. Establishment and purpose.

A Police Commission is hereby established in the City of Berkeley. The purpose of the Police Commission is to promote public trust through independent, objective, civilian oversight of the Berkeley Police Department, provide community participation in setting and reviewing Police Department policies and procedures, and to provide a means for prompt, impartial and fair investigation of complaints brought by individuals against the Berkeley Police Department.

The Office of the Independent Police Auditor is hereby established. The purpose of the Independent Police Auditor is to investigate all complaints filed against sworn employees of the Berkeley Police Department, to reach an independent finding as to the facts and recommend corrective action where warranted. The Independent Police Auditor shall also serve as the Secretary to the Police Commission and assist the Commission in carrying out duties prescribed herein.

#### Section 2. Police Commission powers and duties.

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

(1) To advise and make recommendations to the public, City Council, and City Manager regarding the operation of the Berkeley Police Department, including without limitation all written policies, practices, and procedures in relation to the Berkeley Police Department;

(2) Review and recommend to City Council all agreements, letters, or memoranda of understanding, of policies which express terms and conditions of mutual aid, information sharing, cooperation and assistance between the City of Berkeley Police Department and all other local state and federal law enforcement, intelligence, and military agencies or private security organizations operating in the City of Berkeley;

(3) To review and make recommendations on Police Department policies, practices and procedures as further described below;

(4) To receive and consider the findings and recommendations of the Independent Police Auditor regarding complaints against sworn employees of the Police Department, and to recommend discipline when misconduct is found;

(5) To participate in the hiring of the Chief of Police and command staff as further described below;

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

- (7) To adopt rules and regulations necessary for the conduct of its business; and
- (8) Any other powers and duties as the City Council may assign it.

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

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

(b) The Commission is authorized to propose a budget to the City Council for its operations, and the Council shall allocate to the Police Commission and Independent Police Auditor a budget sufficient to protect the due process rights of complainants and officers, for the Commission and its staff to carry out the investigative and policy responsibilities stated herein, and to ensure the independence of the Commission.

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

(a) The Police Commission shall be composed of nine Commissioners selected by the City Council. Each member of the Commission must:

(1) Be a resident of the City;

(2) Be of voting age;

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

(4) Be fair minded and objective with a demonstrated commitment to community service;

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

(c) All appointees to the Commission shall be subject to background checks before final appointment. No person convicted of a felony shall may serve as a bar to appointment on the Police Commission.

### **Section 5. Commissioner selection.**

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

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

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

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

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

#### **Section 7. Conflicts of interest.**

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

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

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

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

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

(d) A Commissioner may either be replaced by the Council if their term has expired or may be removed during their term by five-seven votes of the City Council.

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

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

#### **Section 10. Commissioner stipends.**

Each Commissioner is entitled to receive a stipend of \$100.00 for each regular and special full commission meeting attended, and \$20.00 per hour for each subcommittee meeting attended as a member of the subcommittee. However, the total stipend paid may not exceed \$300.00 per month per Commissioner.

#### **Section 11. Commissioner training.**

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

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

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

(b) A majority of appointed Commissioners constitutes a quorum to conduct business and take any action.

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

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

### **Section 13. Office of the Independent Police Auditor.**

(a) The Police Commission shall appoint an Independent Police Auditor subject to confirmation by the City Council. ~~shall appoint an Independent Police Auditor, who shall serve at the pleasure of the Council.~~

The Independent Police Auditor shall serve as secretary to the Police Commission and carry out the work of the Commission as described herein, including, without limitation, day-to-day operations of the Commission office and staff, and performance appraisals and discipline of all subordinate employees.

(b) By majority vote, the Police Commission may recommend removal of the Independent Police Auditor to the Council. The council may remove the Independent Auditor by five votes upon the recommendation of the Police Commission, or by seven votes without such a recommendation.

(b)(c) In addition to the duties prescribed, upon receipt of a complaint, the Independent Police Auditor shall ensure a timely, thorough, complete, objective and fair investigation into the complaint.

(e)(d) The Independent Police Auditor shall provide timely updates on the progress of all investigations conducted by the Office of the Independent Police Auditor to the complainant and the Police Department employee who is the subject of the investigation, unless specific facts of the investigation would prohibit such notification.

~~Based on the facts of the investigation, reach an independent finding as to the facts.~~

The Independent Police Auditor shall assess the conduct of the Police Department employee in light of the facts discovered through the investigation, the law, and the policies and procedures of the Berkeley Police Department.

(e)(e) The Independent Police Auditor shall present the results of their investigative findings and recommendations to the Police Commission who will make a recommendation to the Chief of Police regarding the specific complaint.

(e)(f) The Independent Auditor may, with budgetary authority from the Council and the Commission's consent, hire a Chief Investigator in instances of large investigations.

~~(f)~~(g) The Independent Police Auditor has the sole authority to hire and dismiss consultants, additional investigators, and all subordinate employees as needed.

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

~~(h)~~(i) The Commission and Independent Police Auditor may use the City's Human Resources Department for hiring, performance evaluation, discipline, and removal of employees.

~~(i)~~(j) The Independent Police Auditor shall meet periodically with stakeholders, including but not limited to employee organizations representing officers, organizations promoting civil rights and liberties, and organizations representing communities of color, with and seek input from the Berkeley Police Association and solicit from them input regarding the work of the Office of the Independent Police Auditor.

#### **Section 14. Legal counsel.**

The Commission and the Independent Police Auditor may use the services of the City Attorney's Office for legal advice: the Commission may also seek the services of outside counsel when it deems necessary.

#### **Section 15. Commission reports.**

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

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

(a) The Commission may review police policies, practices, and procedures on its own motion, at the request of a member of the public as a result of a policy complaint or an individual complaint against an officer, or the Police Department. Commission staff shall carry out any Commission directives required to fulfill this function.

(b) The Commission shall prepare an annual report, summarizing including but not limited to the following:

1. The Department's and the Commission's processes and procedures for investigating alleged misconduct, and for determining the appropriate level of discipline for sustained findings of misconduct;
2. Trends and patterns regarding Department training and education, and the Department's use of any early warning system;
3. Training and/or policy issues that arise during the investigations of complaints;
4. Trends and patterns in vehicle and pedestrian stops, citations, arrests, searches and seizures or other patterns by the Berkeley Police Department by race or ethnicity, purpose of the stop and disposition, and location of stop, in compliance with General Order B-4, Fair and Impartial Policing, and any disparate outcomes.

5. Trends and patterns regarding use of force and officer-involved shootings.

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

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

**Section 17. Complaints filed with the Independent Police Auditor.**

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

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

(2) What constitutes a complainant;

(3) The Independent Police Auditor will hear and decide findings on allegations of misconduct, at which subject employees must appear to testify and answer questions;

(4) In making findings, the standard of proof will be "preponderance of the evidence";

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

(b) Investigation of all complaints filled with the Independent Police Auditor and Commission shall begin immediately after complaints are filed and proceed as expeditiously as possible.

(c) Complaints filed with other offices, boards, bureaus and departments of the City, including the Police Department, shall be referred to the ~~Independent Police Auditor~~ Commission for investigation.

(d) No City employee, officer, official or member of the Police Commission shall attempt to unduly interfere or undermine the work of the Independent Police Auditor or any employee of the Office of the Independent Police Auditor in the performance of the duties and responsibilities set forth in this Charter.

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

(a) The Police Department shall provide the Independent Police Auditor with copies of all ~~newly filed~~ complaints newly filed with the Department, both those filed from outside the department and within the department. The Independent Police Auditor shall present each case to the Commission to decide which complaints staff will ~~conduct parallel~~ investigations ~~of~~, after receiving recommendations from its staff. If the Commission ~~staff~~ elects to conducts an investigation, the Department shall share all evidence the Department collects during its investigation.

(b) For complaints that the Commission ~~staff~~ does not select for investigation, the

Independent Police Auditor shall have the authority to review and discuss those cases with the Department. If the Independent Police Auditor believes that the Commission should open an investigation, s/he may present the case to the Commission to approve an investigation.

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

### **Section 19. Involvement in discipline of sworn department employees**

(a) In a confidential personnel meeting, the Independent Police Auditor shall submit their investigative findings and recommendations, including all documentation obtained or produced during the course of the investigation, to the Police Commission for review. At said meeting, the officer who is subject to the investigation must be present to answer questions from Commissioners. The complainant shall also be given an opportunity at the meeting, should they chose, to testify before the Commission. If the ~~Independent Police Auditor~~ Commission makes a sustained finding on an allegation against a subject employee, they shall also recommend disciplinary action to the Chief of Police.

(b) Should the Police Commission agree with the findings and recommendations, the report will be submitted to the Chief of Police for appropriate action. The Commission may affirm, modify or reject the recommendations. If the Commission modifies or rejects the recommendations of the Independent Police Auditor, it shall issue findings explaining its decision.

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

(d) If the Chief proposes to impose a disciplinary action that differs from the recommendation of the Independent Police Auditor or the Commission, the Commission shall have the opportunity to appeal the Chief's proposal to the City Manager. The City Manager shall make the final determination and explain his or her decision in writing to the Commission within 15 business days of the appeal.

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

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

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

(a) Notwithstanding Article VII, Section 28 of this Charter, all departments, officers, and employees of the City shall cooperate with and assist the Independent Police Auditor, Police Commission and its staff and, unless prohibited by state or federal law, produce all

records and information the Commission or its staff requests for the purpose of carrying out its duties and functions. The records and information include without redaction or limitation: (1) records relevant to Police Department policies or practices, (2) personnel and disciplinary records of sworn Police Department employees, and (3) Police Department investigative records. Responding departments, officers, or employees of the City shall comply promptly, but in no event later than 10 business days from the date of request.

(b) The Independent Police Auditor, Police Commission and its staff shall maintain the confidentiality of any records and information it receives consistent with state or federal law governing such records or information.

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

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

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

The Commission is empowered to review and make recommendations to the City Council regarding the Police Department budget. The Chief shall submit his or her final budget proposal to the Commission for review and recommendations, but the Commission's failure to complete that review and make recommendations in a timely manner shall not delay the budget process.

#### **Section 22. Hiring and dismissal of Chief of Police.**

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

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

(a)(b) The Council may, by a 2/3rds vote, dismiss the Chief of Police. The Commission may recommend dismissal of the Chief to the Council.

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

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

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

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



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

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

### **Section 26. Contract negotiations.**

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

### **Section 27. Commendation program.**

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

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

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

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

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

### **Section 29. Review of processes.**

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

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

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

### **Section 31. Severability.**

If any word, phrase, sentence, part, section, subsection, or other portion of this Article, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part,

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