



Office of the City Manager

ACTION CALENDAR

April 14, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Farimah Brown, City Attorney
LaTanya Bellow, Director, Human Resources Department
Andrew Greenwood, Chief of Police
David White, Deputy City Manager

Subject: Placing Charter Amendment Measure on the November 3, 2020 Ballot to
Establish a Police Board and Director of Police Accountability

RECOMMENDATION

1. Adopt a Resolution submitting an amendment to the City Charter to add Article XVIII to establish a Police Board and Director of Police Accountability to a vote of the electors at the November 3, 2020 General Municipal Election.
2. Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

SUMMARY

In 1973, a ballot measure was adopted to establish a Police Review Commission for the community to participate in setting Police Department policies, practices, and procedures and to provide a means for investigation of complaints against sworn employees of the Police Department. The existing Police Review Commission consists of nine (9) commissioners that are appointed by the Mayor and City Council.

The proposed Charter Amendment establishes a Police Board to replace the existing Police Review Commission and creates a new position -- Director of Police Accountability. The purpose of the Police Board and Director of Police Accountability 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, practices, and procedures, and to provide a means for prompt, impartial and fair investigation of complaints brought by members of the public against sworn employees of the Berkeley Police Department. The proposed Police Board will consist of nine (9) members selected by the Mayor and City Council and each member must be approved by a majority vote of the City Council. Both the Police Board and Director of Police Accountability are independent of the City Manager, except for administrative purposes, and report to the Mayor and City Council.

With respect to civilian oversight and investigation of complaints filed by members of the public against sworn employees of the Berkeley Police Department, the proposed Charter Amendment provides for the following:

- **Timeframe.** The current time to complete investigations and notify a sworn employee of the Berkeley Police Department of discipline is 120 days; the proposed Charter Amendment extends the timeframe to 240 days.
- **Standard of Proof.** The current standard of proof that is applied in determining whether a sworn employee of the Berkeley Police Department can be charged with committing misconduct is “clear and convincing”; the standard of proof in the proposed Charter Amendment is the less stringent “preponderance of the evidence” standard.
- **Findings and recommendation.** In addition to making findings (i.e., not sustained, sustained, exonerated), in cases where an allegation of misconduct is sustained, the Director of Police Accountability and Police Board will recommend whether or not discipline is warranted, and in certain circumstances, the level of discipline.
- **Access to records.** The proposed Charter Amendment provides the Director of Police Accountability and Police Board broad access to records and the ability to issue subpoenas to compel the production of records and testimony.

FISCAL IMPACTS OF RECOMMENDATION

City staff is in the process of evaluating the financial and organizational impacts of the proposed Charter Amendment and preliminarily estimates that an additional \$300,000 to \$500,000 in General Fund resources per year will be needed if the proposed Charter Amendment is approved by voters and fully implemented. Fiscal impacts will be refined over the next few months to ensure appropriate information is provided to voters.

CURRENT SITUATION AND ITS EFFECTS

In July 2018, the Mayor and City Council directed the City Manager to analyze a proposed Police Review Commission Charter Amendment in order to ensure legal compliance and determine its impacts on the organization and employees. Since that time, City staff has met regularly with the Berkeley Police Association and, as required by state law, bargained in good faith over the impacts of the proposed Charter Amendment. During this time, staff have regularly met with the Council in closed session to obtain direction on issues that have arisen during the negotiations. The meet and confer process has concluded and City staff is now asking City Council to place the proposed Charter Amendment on the November 3, 2020 ballot.

BACKGROUND

Overview

The existing Police Review Commission consists of nine (9) commissioners, appointed by the Mayor and City Council, and is supported by three (3) full-time equivalent employees. The Police Review Commission's FY 20 adopted budget is approximately \$778,000. In 2018, the Police Review Commission received thirteen (13) individual complaints and no policy complaints.¹

Proposed Charter Amendment

The proposed Charter Amendment establishes a Police Board to replace the existing Police Review Commission and creates a new position -- Director of Police Accountability. The existing Police Review Commission will continue until its functions are transferred to the Police Board, which shall be no later than January 3, 2022.

The purpose of the Police Board and Director of Police Accountability 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, practices, and procedures, and to provide a means for prompt, impartial and fair investigation of complaints brought by members of the public against sworn employees of the Berkeley Police Department. Both the Police Board and Director of Police Accountability are independent of the City Manager and report to the Mayor and City Council, except for administrative matters.

Police Board

The proposed Police Board will consist of nine (9) members. The Mayor and City Council shall each nominate one member to the Police Board that must be approved by a majority vote of the City Council. Board members are limited to serving eight consecutive years and may be reappointed following a break in service of at least two (2) years. Board members serve at the pleasure of the City Council and may be removed by six (6) votes of the City Council.

¹ For more information regarding the work of the Police Review Commission, please refer to the 2018 Annual Report, which can be found at the following link:

https://www.cityofberkeley.info/uploadedFiles/Police_Review_Commission/Level_3_-_General/2018%20ANNUAL%20RPT%20rev%20for%20posting%20on%20the%20Web.pdf.

The proposed Charter Amendment outlines the following responsibilities for the Police Board:

- Advising and making recommendations regarding the operation of the Berkeley Police Department, including all written policies, practices, and procedures in relation to the Berkeley Police Department.
- Reviewing and recommending for City Council approval all agreements, letters, or memoranda of understanding, 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.
- With respect to investigations of alleged misconduct, in addition to making findings (i.e., not sustained, sustained, exonerated), in cases where an allegation of misconduct is sustained, the Police Board shall recommend whether or not discipline is warranted, and in certain circumstances, the level of discipline.
- Recommending termination of the Director of Police Accountability. By majority vote, the Police Board may recommend to the City Council the removal (for cause) of the Director of Police Accountability.
- Participating in the hiring of the Chief of Police. The City Manager is required to consult with the Police Board (or subcommittee of the Police Board) on the job requirements, application process, and evaluation of candidates for the Chief of Police.
- Reviewing and making recommendations to the City Council regarding the Police Department budget.
- Working with the Director of Police Accountability, the Board shall develop rules of procedure governing the conduct of its business and regulations for handling complaints.
- Access to records. Subject to confidentiality laws, the Police Board is provided broad access to records including items pertaining to Police Department policies, practices, or procedures; personnel and disciplinary records; and Police Department investigative records. The Police Board also has the ability to issue subpoenas to obtain records and compel testimony.

Within the first six (6) months of appointment, at a minimum, each Board member shall receive forty (40) hours of training developed by the Director of Police Accountability on the following topics:

- Quasi-judicial duties and obligations of the Board;

- Constitutional rights and civil liberties;
- Fundamentals of procedure, evidence and due process;
- The Public Safety Officers Procedural Bill of Rights;
- Police Department operations, policies, practices, and procedures; and
- Duties, responsibilities, procedures and requirements associated with all ranks and assignments.

The Police Board is required to meet at least eighteen (18) times over the course of the year and Board members are entitled to receive a stipend (\$100.00 per meeting) for each regular and special board meeting attended and \$20.00 per hour for each hour of training attended and each subcommittee meeting attended as a member of a subcommittee. Excluding participation in trainings, the total stipend paid to any Board member may not exceed \$300.00 per month. Board member stipends may be adjusted from time to time by the City Council.

Office of the Director of Police Accountability

The proposed Charter Amendment outlines the responsibilities of the newly created Director of Police Accountability, which includes, but is not limited to the following:

- Carrying out the work of the Police Board that includes the day-to-day operations of the Board office and staff.
- Ensuring a timely, thorough, complete, objective and fair investigation into the complaints from members of the public against sworn employees of the Police Department. The Director of Police Accountability is also responsible for preparing findings and recommendations for Police Board consideration.
- Performing community outreach and soliciting input on the work of the Police Board and Office of the Director of Police Accountability.
- Preparing annual reports to the City Council that shall be presented at a City Council meeting. Annual reports shall consist of a summary of the Police Board's activities over the course of a year, training and/or policy issues that arise during investigations, trends and patterns in vehicle and pedestrian stops of complaints, and trends and patterns regarding use of force and officer-involved shootings.

The Director of Police Accountability is appointed by the City Council. The City Council may also remove the Director of Police Accountability (with or without cause) with six (6) votes either on its own motion or based on the recommendation of the Police Board.

Civilian Oversight and Investigations

Sections 18 and 19 of the proposed Charter Amendment provide a framework as to how complaints filed by members of the public against sworn members of the Berkeley Police Department are handled. Sections 18 and 19 address timing, the standard of proof, and provide for a process to resolve differences between the Chief of Police and Director of Accountability and/or Police Board.

Complaints filed by members of the public with the Director of Accountability/Police Board. Section 18 of the proposed Charter Amendment outlines the process for complaints that are filed by members of the public against sworn employees of the Berkeley Police Department with the Director of Police Accountability and Police Board. The following provides an overview of the investigation process and roles and responsibilities of the Director of Police Accountability and Police Board.

- The Director of Police Accountability is responsible for the investigation of all complaints filed with the Director and Police Board. Upon completion of the investigation, the Director of Police Accountability is responsible for convening the Police Board in a confidential personnel hearing in which the Director of Police Accountability will present all the evidence and documentation obtained or produced during the course of the investigation.
- Upon completion of the confidential personnel hearing, the Police Board shall submit their findings (i.e., sustained, exonerated, not sustained) and recommendations to the Chief of Police, along with a recommendation as to whether or not disciplinary action is warranted. In addition, for those complaints where an allegation of misconduct involves any of the classes of conduct described in Penal Code 832.7 (i.e., discharge of a firearm, use of force against a person that results in death or great bodily injury, sexual assault, dishonesty), the Director of Police Accountability and Police Board shall recommend the level of discipline, if warranted.² This is an expansion of authority in relation to the existing Police Review Commission, which is currently limited to providing the Chief of Police with a recommendation on the findings for a complaint.
- The time limit for investigations and notification of discipline to a sworn employee of the Berkeley Police Department shall be two hundred and forty (240) days.

² SB 1421 that was enacted on January 1, 2019 amended Penal Code 832.7 and generally requires that public records be made available for incidents involving the following classes of misconduct: (i) an incident involving the discharge of a firearm; (ii) an incident in which the use of force against a person resulted in death, or in great bodily injury; (iii) sexual assault, which is defined as “the commission or attempted initiation of a sexual act with a member of the public by means of force, threat, coercion, extortion, offer of leniency or other official favor, or under the color of authority”; and (iv) dishonesty relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence. For the classes of misconduct outlined in Penal Code 832.7, the Director of Police Accountability and Police Board may recommend the level of discipline, if warranted.

Within the two hundred and forty (240) days, the Director of Police Accountability and Police Board have one hundred and ninety five (195) days to submit their findings and recommendation to the Chief of Police. The current time limit for investigations and notification of discipline is one hundred and twenty (120) days, which results in the current Police Review Commission having to complete their investigation and submitting their recommendations to the Chief of Police within approximately one hundred and five (105) days of initiating an investigation.

Subsequent to submitting their findings to the Chief of Police, the Chief of Police has ten (10) days to review the findings and recommendations of the Police Board. If the Chief of Police agrees with the Police Board and Director of Police Accountability, a letter of disposition will be issued to the sworn employee of the Berkeley Police Department. In cases where the Director of Police Accountability and Police Board disagrees with the findings and recommendations of the Chief of Police, the Director of Police Accountability and Police Board have ten (10) days to review the Chief of Police's tentative disposition and appeal the Chief of Police's decision to the City Manager.

- In determining whether a sworn employee of the Berkeley Police Department has committed misconduct, the standard of proof for the Police Board shall be "preponderance of the evidence". The existing standard is "clear and convincing", which is a higher standard of proof.
- In performing its investigations, the Director of Police Accountability and Police Board is provided broad access to documents and records, subject to confidentiality laws, and the Director of Police Accountability and Police Board may issue subpoenas to obtain records and compel testimony.

Complaints filed by members of the public with the Berkeley Police Department.

Section 19 of the proposed Charter Amendment provides an alternative process for members of the public that want to file a complaint against a sworn employee of the Police Department. This section allows a member of the public to file a complaint directly with the Berkeley Police Department, with the opportunity to contest the Chief of Police's decision to the Director of Police Accountability and Police Board. The following provides an overview of the investigation process outlined in Section 19:

- For complaints filed by members of the public with the Berkeley Police Department (not the Director of Police Accountability and Police Board), the Berkeley Police Department is responsible for the investigation.
- Upon completion of the investigation, the Chief of Police is required to issue a letter of disposition to the sworn employee of the Police Department, as well as the Director of Police Accountability and complainant.
- In total, the time limit for investigations and notification of discipline shall be two hundred and forty (240) days. The Chief of Police has one hundred and twenty

(120) days for the Berkeley Police Department to complete its investigation and issue a letter of disposition. The remaining one hundred twenty (120) days is to provide time for the complainant to contest the findings issued by the Chief of Police and for the Director of Police Accountability and Police Board to conduct a review of the investigation.

- After completing its review of the investigation (based on the administrative record), if the Director of Police Accountability and Police Board disagree with the Chief of Police's letter of disposition then the Director of Police Accountability and Police Board may submit a report to the City Manager and ask the City Manager to review the complaint and make a final determination.

Requirements of the Berkeley Police Department

The proposed Charter Amendment imposes certain requirements on the Berkeley Department such as:

- Submitting the Berkeley Police Department's proposed budget to the Police Board for review.
- Submitting newly adopted policies to the Police Board for review.
- Attending regular Police Board meetings. The Chief of Police is required to attend a minimum of twelve (12) meetings per year and will send a member of the Police Department's command staff to any regular Board meeting that the Chief of Police cannot attend.
- Submitting reports to the Police Board, as requested by the Police Board. At least one report submitted to the Police Board shall consist of use of force statistics, and the number of complaints filed with the Internal Affairs Division in the Berkeley Police Department. Information on complaints filed with the Berkeley Police Department shall include the allegation(s) in each complaint, the disposition of closed complaints, and any discipline imposed.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

At the direction of the City Council, City staff has met regularly with the Berkeley Police Association and, as required by state law, bargained in good faith over the impacts of the proposed Charter Amendment. During this time, staff have regularly met with the Council in closed session to obtain direction on issues that have arisen during the negotiations. The meet and confer process has concluded and City staff is now asking City Council to place the proposed Charter Amendment on the November 3, 2020 ballot.

ALTERNATIVE ACTIONS CONSIDERED

The City Council could decide not to place the proposed Charter Amendment on the November 3, 2020 ballot.

CONTACT PERSON

David White, Deputy City Manager, 510 981-7000

Attachments:

- 1: Resolution
 Exhibit A: Text of Charter Amendment
- 2: Timeline for Investigations

RESOLUTION NO. -N.S.

SUBMITTING TO THE BERKELEY ELECTORATE AN AMENDMENT TO THE BERKELEY CITY CHARTER ON THE NOVEMBER 3, 2020 BALLOT TO ADD ARTICLE XVIII TO ESTABLISH A POLICE BOARD AND DIRECTOR OF POLICE ACCOUNTABILITY

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 3, 2020 General Municipal Election, a measure to add Article XVIII to the Berkeley Charter to establish a Police Board and Director Of Police Accountability; and

WHEREAS, in accordance with the provisions of Section 10002 and 10403 of the Elections Code of the State of California, the Alameda County Board of Supervisors is requested to consolidate the City of Berkeley General Municipal Election with the Presidential General Election to be held November 3, 2020; and

WHEREAS, the City of Berkeley hereby requests that the Alameda County Board of Supervisors permit the Registrar of Voters of Alameda County to perform services in connection with said election at the request of the City Clerk. These services to include all necessary services related to official ballot creation, sample ballot and voter information pamphlet preparation, vote-by-mail, polling places, poll workers, voter registration, voting machines, canvass operations, and any and all other services necessary for the conduct of the consolidated election; and

WHEREAS, the Council desires to submit this measure to be placed upon the ballot at said consolidated election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED that the full text of the measure shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the above enumerated measure requires a majority vote threshold for passage.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code and the Elections Code of the State of California.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to obtain printing, supplies and services as required.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to enter into any contracts necessary for election consulting services, temporary employment services, printing services, and any such other supplies and services as may be required by the statutes of the State of California and the Charter of the City of Berkeley for the conduct of the November General Municipal Election.

BE IT FURTHER RESOLVED that the City of Berkeley agrees to reimburse the County of Alameda in full for the cost of election services performed.

BE IT FURTHER RESOLVED that Pursuant to Elections Code Section 9285 (b), the City Council hereby adopts the provisions of Elections Code Section 9285 (a) providing for the filing of rebuttal arguments for city ballot measures.

BE IT FURTHER RESOLVED that said proposed Charter Amendment measure shall appear and be printed upon the ballots to be used at said election as follows:

CITY OF BERKELEY CHARTER AMENDMENT	
Shall the measure amending the Berkeley City Charter to create an independent Berkeley Police Board and Director of Police Accountability to provide oversight of the Berkeley Police Department (Department) policies, practices, and procedures; obtain access to records; investigate complaints filed by members of the public against sworn employees of the Department; and recommend discipline of sworn employees of the Department based upon a preponderance of the evidence be adopted?	YES
	NO

BE IT FURTHER RESOLVED that the text of the Charter Amendment be shown as Exhibit A, attached hereto and made a part hereof.

Exhibits

A: Text of Charter Amendment

EXHIBIT A

**CHARTER AMENDMENT TO ESTABLISH A POLICE BOARD AND
DIRECTOR OF POLICE ACCOUNTABILITY**

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 BOARD AND DIRECTOR OF POLICE ACCOUNTABILITY

Section 1. Establishment and purpose.

A Police Board is hereby established in the City of Berkeley. The purpose of the Police Board 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, practices, and procedures, and to provide a means for prompt, impartial and fair investigation of complaints brought by members of the public against sworn employees of the Berkeley Police Department.

The Office of the Director of Police Accountability is hereby established. The purpose of the Director of Police Accountability is to investigate 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 Director of Police Accountability may also serve as the Secretary to the Police Board and assist the Board in carrying out the duties prescribed herein.

Section 2. Definitions.

The following definitions apply to this Article:

(a) "Commissioners' Manual" refers to the most current manual adopted by the City Council that consists of the policies and procedures regarding the service of board members and commissioners, board and commission procedures, and conduct of meetings.

(b) "Complainant" shall refer to a member of the public that files a complaint with either the Director of Police Accountability, Police Board, or the Police Department.

(c) "Director of Police Accountability" or "DPA" refers to an individual fulfilling the police oversight role established pursuant to section 1 of Article XVIII.

(d) "Effective Date" shall be the date that the Secretary of State accepts and files this Article.

(e) "Police Board" or "Board" refers to the Police Board established in Section 1 of Article XVIII, which shall be the successor agency to the Berkeley Police Review

EXHIBIT A

Commission in accordance with Section 27.

Section 3. Police Board powers and duties.

(a) The Police Board 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 all written policies, practices, and procedures in relation to the Berkeley Police Department;

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

(3) To receive and consider the findings and recommendations of the Director of Police Accountability regarding complaints filed by members of the public against sworn employees of the Police Department, and, to recommend if discipline is warranted when misconduct is found and, pursuant to Section 18, the level of discipline for sustained findings of misconduct;

(4) To participate in the hiring of the Chief of Police as set forth in Section 22;

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

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

(7) Any other powers and duties as the City Council may assign it by Ordinance.

(b) Nothing in this chapter granting powers and duties to the Police Board shall limit the City Council's, Chief of Police's or City Manager's authority derived from other provisions of this Charter to act on policing matters, unless explicitly stated.

(c) The Police Board, Director of Police Accountability and their respective agents, assigns, employees and representatives shall have no authority to restrict, modify, supersede, negate, supplant or contravene the authority granted to the City Manager and/or Chief of Police by way of the City Charter or operation of state or federal law to engage in collective bargaining activities or enter into agreements or understandings with the designated bargaining unit representative or representatives of the sworn employees of the Police Department unless such agreements or understandings contravene this Article.

(d) The Police Board, Director of Police Accountability and their respective agents, assigns, employees and representatives shall not undertake nor sanction any actions which would:

EXHIBIT A

(1) Restrict, violate, or abridge the collective bargaining rights of the designated bargaining unit representative of the sworn employees of the Police Department or their individual members;

(2) Restrict, violate or abridge the terms and conditions of a collective bargaining agreement, understanding or practice with the designated bargaining unit representative of the sworn employees of the Police Department, except for those provisions provided for in this Article; and

(3) Restrict, violate or abridge any legal rights of individual sworn employees of the Police Department, including but not limited to those set forth in the Public Safety Officers' Procedural Bill of Rights Act ("POBRA"), Government Code section 3300 et seq., and sworn employees' right to maintain the confidentiality of their personnel file information (including, but not limited to Penal Code §§ 832.7, 832.8.), except as required under Section 20 of Article XVIII of the City Charter.

Section 4. Independent agency; budget authority and allocation.

(a) Notwithstanding Article VII of the Charter, and except as provided in section 14(b), 14(i) or 14(k), the Police Board, its staff and the Director of Police Accountability shall be independent of the City Manager.

(b) The Board is authorized to propose a budget to the City Council for its operations, and the City Council may allocate to the Police Board and Director of Police Accountability, as the City Council determines resources allow, a budget sufficient to provide for a process that protects the rights of complainants and sworn employees of the Police Department, for the Board and its staff to carry out the investigative and policy responsibilities stated herein, and to ensure the independence of the Board.

Section 5. Composition of Police Board; eligibility.

(a) The Police Board shall be composed of nine (9) Board members selected by the Mayor and City Council. Each member of the Board must:

(1) Be a resident of the City;

(2) Be at least 18 years old;

(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; and

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

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

(c) All appointees to the Board shall be subject to background checks before final appointment.

EXHIBIT A

Section 6. Board member selection.

(a) Candidates for the Board 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. Board vacancies shall be widely advertised and publicly posted. The Mayor and each City Councilmember shall 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 City Council.

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

Section 7. Terms; term limits.

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

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

Section 8. Conflicts of interest and Avoiding Bias.

(a) Board members shall be subject to the requirements of the California Political Reform Act and other state and local conflict of interest codes.

(b) Board members shall maintain basic standards of fair play, impartiality, and avoid bias and the appearance of bias. In instances where the Board acts in a quasi-judicial capacity, as in a confidential personnel hearing, as described below, Board members have the responsibility to hear all viewpoints. To ensure that all parties are afforded an opportunity to be heard, Board members shall observe the following:

(1) Board members recused for a conflict of interest must do so immediately when an item is taken up.

(2) Board members shall verbally disclose all ex parte contacts concerning the subject of the hearing. Board members shall also submit a report of such contacts in writing prior to the commencement of the hearing. Ex parte contacts include, but are not limited to, any contact between a Board member and any party involved in the complaint prior to the public hearing.

EXHIBIT A

(3) Board members shall be recused from taking any action on or participating in a matter before the Police Board if they are related to a party to, advocate for, or represent a member of the public who has a pending or anticipated claim of any kind arising out of alleged misconduct of a sworn employee of the Police Department. For the purpose of this subsection, "related to" shall include a spouse, child, sibling, parent or other person related to the complainant or the complainant's spouse within the third degree of relationship.

Section 9. Expiration of term; termination; leaves of absence; removal.

(a) A Board member whose term has expired may continue to serve until a successor Board member is appointed, unless the sitting Board member's term expires due to term limits, as provided in Section 7.

(b) The term of a Board member who fails to remain eligible to serve on the Board (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 Board members, apply to the Police Board.

(d) A Board member may either be replaced by the City Council if their term has expired or may be removed during their term as provided in Section 12.

Section 10. Board Chairperson and Vice-Chairperson.

(a) The Board 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.

(b) Following election of the initial chairperson and vice-chairperson, the Board shall elect subsequent officers each January.

Section 11. Board member stipends.

(a) Each Board member is entitled to receive a stipend of \$100.00 for each regular and special Board meeting attended, and \$20.00 per hour for each hour of training attended as provided in Section 12 and each subcommittee meeting attended as a member of a subcommittee. Excluding participation in trainings, the total stipend paid may not exceed \$300.00 per month per Board member.

(b) Board member stipends and the total monthly stipend paid may be adjusted from time to time by the City Council. Adjustments to Board member stipends shall occur no more than once in a fiscal year and in no event shall an increase in Board member stipends exceed the change in the cost of living for the San Francisco Bay Area as measured by official United States economic reports.

EXHIBIT A

Section 12. Board member training; At will Status; Oath of Maintaining Confidentiality.

(a) The Director of Police Accountability shall establish mandatory training requirements for Board members. Within the first six (6) months of appointment, at a minimum, each Board member shall receive forty (40) hours of training on the following:

- (1) Quasi-judicial duties and obligations of the Board;
 - (2) Constitutional rights and civil liberties;
 - (3) Fundamentals of procedure, evidence and due process;
 - (4) The Public Safety Officers Procedural Bill of Rights Act;
 - (5) Police Department operations, policies, practices, and procedures;
- and
- (6) Duties, responsibilities, procedures and requirements associated with all ranks and assignments.

The Director of Police Accountability shall develop training provided to Board members. The Chief of Police and a representative from the Berkeley Police Association shall have input on training provided to Board members and shall have the opportunity to attend all training provided.

(b) All Board members shall serve at the pleasure of the City Council and may be removed by six (6) votes of the City Council for any reason, including but not limited to misconduct or violations of state and federal confidentiality laws.

(c) Board members shall, upon appointment, take an oath to abide by and maintain the confidentiality of the personnel files of sworn employees of the Police Department and all other matters that are confidential pursuant to state and federal law.

Section 13. Board meetings; quorum; rules of procedure; subcommittees.

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

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

(c) The Board shall establish rules of procedure governing the conduct of its business, which shall be subject to ratification by the City Council.

(d) The Board may establish policy subcommittees that it deems necessary to carry out its functions. The Chairperson shall appoint policy subcommittee members at a Board meeting. Policy subcommittees may include non-voting members of the public who express an interest in the business of the

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subcommittee. Members of the public that are appointed to a policy subcommittee shall serve in an advisory capacity without compensation. The Board may establish further rules and procedures for the appointment of members of the public to policy subcommittees. Policy subcommittee members shall not have access to confidential personnel file information or any other confidential information.

(e) Unless otherwise specified in this Article, rules of procedure governing the conduct of the Board, or Ordinance, the Board shall comply with the Commissioners' Manual.

Section 14. Office of the Director of Police Accountability.

(a) To the extent possible, the City Manager shall recommend three (3) candidates for consideration by the City Council. The City Council shall appoint the Director of Police Accountability at a noticed public meeting.

(b) The Director of Police Accountability shall carry out the work of the Board as described herein, which may include the day-to-day operations of the Board office and staff, and performance appraisals and discipline of all subordinate employees of the Board. All such individuals, to the extent that they are employees of the City of Berkeley, shall be subject to the personnel rules governing Berkeley City employees.

(c) Within the first six (6) months of appointment, the Director of Police Accountability shall receive training on the following:

- (1) Quasi-judicial duties and obligations of the Board;
 - (2) Constitutional rights and civil liberties;
 - (3) Fundamentals of procedure, evidence and due process;
 - (4) The Public Safety Officers Procedural Bill of Rights;
 - (5) Police Department operations, policies, practices, and procedures;
- and
- (6) Duties, responsibilities, procedures and requirements associated with all ranks and assignments.

(d) By majority vote, the Police Board may recommend removal for cause of the Director of Police Accountability to the City Council.

(e) The City Council may remove the Director of Police Accountability by six (6) votes either on its own motion or based on the recommendation of the Police Board.

(f) In addition to the duties prescribed, upon receipt of a complaint by the Police Board, the Director of Police Accountability shall ensure a timely, thorough, complete, objective and fair investigation into the complaint.

(g) The Director of Police Accountability shall assess the conduct of the sworn employee of the Police Department in light of the facts discovered through the investigation, state and federal law, and the policies, practices, procedures,

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personnel rules of the City and Berkeley Police Department.

(h) The Director of Police Accountability shall present the results of their investigative findings and recommendations to the Police Board who shall make a recommendation to the Chief of Police regarding the specific complaint.

(i) The Director of Police Accountability may hire a Chief Investigator and, when there is a conflict of interest pursuant to Section 15, outside legal counsel, subject to receiving budgetary authority from the City Council.

(j) Subject to the budgetary authority of the City Council, the provisions of the City's charter related to personnel, the City's personnel rules, state and federal law, the Director of Police Accountability shall have the authority to hire and dismiss consultants and additional investigators. Subject to City Council approval, the Director of Police Accountability may also enter into contracts for investigative services, provided, however, that with respect to the procurement of supplies and services, the Director of Police Accountability shall comply with the Charter and City purchasing policies and procedures

(k) The powers in this Section 14 are conferred notwithstanding Article VII, Sections 28(b) and (c) and Article XVI, Section 119 of this Charter.

(l) The Board and Director of Police Accountability shall use the City's Human Resources Department for all human resource matters including, but not limited to hiring, performance evaluation, discipline, and removal of employees.

(m) The Director of Police Accountability 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 of the Police Board and the Office of the Director of Police Accountability.

Section 15. Legal counsel.

(a) The Board and the Director of Police Accountability shall use the services of the City Attorney's Office for legal advice.

(b) In the event the City Attorney has a prohibited conflict of interest under the California Rules of Professional Conduct with regard to a specified matter, the City Attorney shall provide the Director of Police Accountability with separate legal counsel. Pursuant to Section 14, when the City Attorney has determined that a conflict of interest exists, the Director of Police Accountability may engage legal counsel other than the City Attorney for legal advice regarding a specific case or matter.

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Section 16. Board reports.

(a) All Board reports shall maintain the confidentiality of personnel file information and other confidential information as required by state and federal law.

(b) The Director of Police Accountability shall prepare an annual report to the public, including but not limited to the following:

(1) A description of the Board's activities during the year, including:

- i. A summary of the number, type, and disposition of complaints filed with the Board;
- ii. A summary of the number, type, and disposition of complaints filed with the Police Department by members of the public;
- iii. Policy complaints undertaken; and
- iv. Other such information that the Board or City Council has requested.

(2) The Department's and the Board's processes and procedures for investigating alleged misconduct, and for determining whether or not discipline is warranted and / or the level of discipline, for sustained findings of misconduct.

(3) Training and education, and any early warning system utilized by the Department.

(4) Training and/or policy issues that arise during the investigations of complaints by the Department, Director of Police Accountability, or Police Board.

(5) Trends and patterns in vehicle and pedestrian stops, citations, arrests, searches and seizures or other patterns by the Berkeley Police Department. Statistical data shall include the demographics of the complainant, reason for the stop, purpose of the stop and disposition, and location of stop, in compliance with policies, practices, and procedures of the City and Police Department.

(6) Trends and patterns regarding use of force and officer-involved shootings.

(c) This annual report shall be presented to the Board for approval. Upon adoption by the Board, it shall be presented to the Mayor and City Council, City Manager, and the Chief of Police at a City Council meeting, and shall include, where appropriate, recommendations for changes in the processes and procedures that were reviewed.

(d) Prior to being made available to any member of the public, all Board reports shall be subject to the review of the City Attorney to ensure compliance with all applicable state and federal confidentiality laws.

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Section 17. Policy review and approval.

(a) The Chief of Police shall submit all newly adopted Departmental policies and revisions to the Board within thirty (30) days of implementation. The Board may review policies, practices, and procedures of the Police Department in its discretion or at the request of a member of the public, due to a policy complaint, or due to a complaint from a member of the public against an officer.

(b) If the Police Department and the Board are unable to reconcile their differences about a policy within sixty (60) days from the date that the Chief of Police submits a policy to the Director of Police Accountability, the policy shall be sent to the City Manager for a final decision which shall be reported to the City Council. Nothing in this section shall limit the authority of the City Council under this Charter to enact legislation within its Charter authority or direct the City Manager to implement adopted City Council policy.

Section 18. Complaints filed with the Director of Police Accountability.

(a) The Director of Police Accountability and Board shall adopt regulations for handling complaints filed with the Director of Police Accountability by any member of the public alleging misconduct by sworn employees of the Police Department and undertake investigations of complaints as they deem warranted. The regulations shall include the following:

- (1) What constitutes a complaint; and
- (2) A provision for voluntary mediation of complaints in lieu of an investigation.

(b) The Police Board shall hear and decide findings on allegations of misconduct, at which subject sworn employees of the Police Department must appear to testify and answer questions consistent with their rights pursuant to state and federal law.

(c) In determining whether a sworn employee of the Police Department has committed misconduct, the standard of proof for the Board shall be "preponderance of the evidence". The investigation and decision on findings shall be fair, unbiased, and evidence based.

(d) The time limit for investigations and notification of discipline shall be two hundred and forty (240) days from the date of the City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct, unless a Government Code section 3304(d) exception applies.

(e) Investigation of all complaints filed with the Director of Police Accountability shall begin immediately and proceed as expeditiously as possible. The time limit for completion of an investigation shall be one hundred and twenty (120) days of the City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct, unless a Government Code section 3304(d) exception applies.

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(f) No City employee, officer, official or member of the Police Board shall attempt to interfere or undermine the work of the Director of Police Accountability or any employee of the Office of the Director of Police Accountability in the performance of the duties and responsibilities set forth in this Charter or by Ordinance.

(g) Complaints accepted by the Director of Police Accountability shall be sent in hard copy or electronically to the Chief of Police and Police Department Internal Affairs, members of the Police Board, and to each identified sworn employee of the Police Department.

(h) For complaints being investigated by the Police Department, the Director of Police Accountability shall not participate in the Police Department's Board of Review or any subsequent internal process established by the Police Department to review a complaint filed by any member of the public.

(i) Within sixty (60) days of completing the investigation into allegations of misconduct by sworn employees of the Police Department, the Director of Police Accountability shall submit and present investigative findings to the Police Board and, if warranted, the Board may agree to hold a personnel hearing which shall be confidential. The Director of Police Accountability shall provide the Board with all evidence and documentation obtained or produced during the course of the investigation to enable its review of the complaint. At said meeting, both the sworn employee of the Police Department who is the subject of the investigation and the complainant shall be present to answer questions from Board members, subject to applicable state and federal law. In addition to submitting and presenting investigative findings to the Police Board in a confidential personnel hearing, the Director of Police Accountability shall include a recommendation of whether disciplinary action is warranted. For only those cases where an allegation of misconduct, if sustained, would involve any of the classes of conduct described in Penal Code 832.7, as enacted pursuant to Senate Bill 1421 on January 1, 2019, and any other classes of police conduct added in any subsequent amendment to, or successor provision, the Director of Police Accountability shall recommend the level of discipline, if warranted.

(j) Within fifteen (15) days of the confidential personnel hearing, the Board may affirm, modify or reject the findings and recommendation of the Director of Police Accountability.

(1) Should the Police Board agree with the findings and recommendation of the Director of Police Accountability, the Director of Police Accountability's findings and recommendations shall be submitted to the Chief of Police.

(2) If the Board modifies or rejects the findings and recommendations of the Director of Police Accountability, it shall issue a written explanation for its decision and shall forward it to the Chief of Police.

(k) Within ten (10) days of receiving the findings and recommendation of the Director of Police Accountability or Police Board, if the Chief of Police and Director of Police Accountability or Police Board are in accord, the Chief of

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Police shall issue a final decision. If the Chief of Police disagrees with the findings and/or recommendation of the Director of Police Accountability or the Police Board, the Chief of Police shall issue a tentative decision, which shall be forwarded to the Director of Police Accountability and Police Board. Within ten (10) days of receipt of that tentative determination, the Director of Police Accountability may request that the Chief of Police submit the decision to the City Manager or City Manager's Designee who shall make the final determination along with a written explanation to the Director of Police Accountability, Police Board, and Chief of Police within twenty-five (25) days.

(l) In any conflict between the provisions of this Article and the disciplinary appeal process in an applicable collective bargaining agreement, the collective bargaining agreement shall prevail; provided, however, that no City official is authorized to enter into a collective bargaining agreement or an extension of a collective bargaining agreement that contains provisions contrary to this Article after its Effective Date. Except as expressly provided herein, nothing shall limit the authority of the Chief of Police or City Manager to conduct investigations, make findings, and impose discipline or corrective action, or of an arbitrator charged with adjudicating disciplinary appeals, based upon such standards as each may apply consistent with and subject to the Charter, Ordinance, and personnel rules, the collective bargaining agreement, due process requirements, state labor laws, and Police Department policies and procedures.

(m) Except for the time limit set forth in Section 18(d), the timelines set forth in this section are advisory, and may be adjusted by the Director of Police Accountability after consulting with the City Manager and Chief of Police, to ensure that all investigations and notifications are completed in accordance with the limits of Section 18(d). In the event that the timeline set forth in Section 18(e) is extended, it shall not exceed 195 days.

Section 19. Review of complaints filed with the Berkeley Police Department.

(a) The Police Department shall ensure that any member of the public that files a complaint with the Police Department shall be provided written information and instructions on how to file a complaint with the Director of Police Accountability and Board.

(b) For all complaints filed with the Police Department by any member of the public, the time limit for investigations and notification of discipline shall be two hundred and forty (240) days from the date of the City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct, unless a Government Code section 3304(d) exception applies.

(c) Investigation of all complaints filed with the Police Department shall begin immediately and proceed as expeditiously as possible. The time limit for completion of the initial investigation shall be one hundred and twenty (120) days of the City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct, unless a Government Code section 3304(d) exception applies.

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(d) Upon completion of the Chief of Police's investigation, the Chief of Police shall issue a letter of disposition to the sworn employee of the Police Department. On all complaints initiated by a member of the public, at the conclusion of the Department's internal affairs investigation, the Chief of Police shall also notify the Director of Police Accountability in writing of the disposition. In addition, the Chief of Police shall notify the complainant of the disposition of the complaint in accordance with the Penal Code.

(e) In cases where the finding is not sustained, unfounded or exonerated, within twenty (20) days after notification to the complainant is mailed or provided by other reasonable means as specified by complainant, the complainant shall have the option to contest the Chief of Police's determination to the Director of Police Accountability.

(1) If a complainant contests the Chief of Police's determination, the Director of Police Accountability, if appropriate, may request to review all files, transcripts and records related to the complaint. Within fifteen (15) days of either receiving an objection from a complainant or notice from the Chief of Police that a complainant has filed an objection, the Director of Police Accountability may, in the exercise of the Director of Police Accountability's discretion:

i. Notify the complainant that the objection has been accepted and that the Police Board will convene to conduct a review based upon the investigative record provided by the Department; or

ii. Notify the complainant that the objection has been dismissed. If the Director of Police Accountability dismisses an objection filed by a complainant, the Director of Police Accountability must provide written notice to the Board within thirty (30) days following the Director of Police Accountability's notification to complainant that the objection was dismissed.

(f) Within forty five (45) days of when the Director of Police Accountability notifies the complainant that the objection has been accepted, the Board may dismiss the complainant's objection, issue a report agreeing with the Chief of Police's determination or issue a report disagreeing with the Chief of Police's determination if (1) the Department failed to proceed in a manner required by state and federal law, or (2) the Chief of Police's decision is not supported by the evidence in the record.

(g) If the Police Board disagrees with the Chief of Police's determination, it shall submit its report to the Chief of Police and the City Manager. The Chief of Police may prepare a report for the City Manager within fifteen (15) days of receiving the Police Board's recommendation addressing any concerns or objections. Within twenty five (25) days of receiving the report from the Chief of Police, the City Manager or City Manager's Designee, considering the reports of both the Board and Chief of Police, shall make a final determination along with a written explanation to the Director of Police Accountability, Police Board, and Chief of Police.

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(h) The Chief of Police's determination shall not become final, and no discipline shall be administered in any case in which the complainant has contested the Chief of Police's determination until the objection is dismissed or otherwise concluded; provided, however, that a final determination in all cases shall be rendered by the Chief of Police or City Manager not later than two hundred and forty days (240) days, unless a Government Code section 3304(d) exception applies.

(i) Except for the time limit set forth in Sections 19(b) and 19(c), the timelines set forth in this section are advisory, and may be adjusted to ensure that all investigations are completed in accordance with the limits of Section 19(b) and 19(c), and by mutual agreement between the City Manager, Director of Police Accountability, and the Chief of Police, as applicable.

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 Director of Police Accountability, Police Board and its staff and, unless prohibited by state or federal law, produce all records and written and unwritten information, documents, materials and evidence the Board or its staff requests for the purpose of carrying out its duties and functions. Unless otherwise required by state and federal law, the records and information include without redaction or limitation:

- (1) Records relevant to Police Department policies, practices, or procedures;
- (2) Personnel and disciplinary records of sworn employees of the Police Department; and
- (3) Police Department investigative records.

Responding departments or employees of the City shall maintain the confidentiality of any records and information provided consistent with state or federal law governing such records or information and comply promptly, but in no event later than ten (10) business days from the date of request, unless additional time is needed to locate or review records. If additional time is needed to comply, the responding departments, officers or employees shall specify how much time up to thirty (30) additional business days is needed and explain the reasons for delay in producing the necessary records and information.

(b) The Director of Police Accountability, Police Board and its staff, and their agents and representatives shall maintain the confidentiality of any records and information it receives consistent with state or federal law governing such records or information.

(c) The Director of Police Accountability and Police Board may 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. The testimony of any sworn employee of the Police Department is subject to the due process and confidentiality provisions of applicable state and federal law.

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Section 21. Advice regarding Police Department budget.

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

Section 22. Hiring of Chief of Police.

Notwithstanding Article VII, Section 28 of this Charter, upon the notice of vacancy of the position of Chief of Police, the City Manager shall consult with the Police Board (or subcommittee of the Board) on the job requirements, application process, and evaluation of candidates for the Chief of Police.

Section 23. Chief of Police or command staff to attend Board meetings.

To the maximum extent possible, the Chief of Police shall attend at least one regular Board meeting per month, for each month a regular meeting is held and attend a minimum of twelve (12) meetings per year. The Chief of Police shall send a member of the Police Department's command staff to any regular Board meeting that the Chief of Police does not attend.

Section 24. Berkeley Police Department written reports to the Board.

The Chief of Police shall submit reports to the Board on such subjects and at such intervals as the Board, in consultation with the Chief of Police, 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 25. Contract negotiations.

The City Manager shall inform the Police Board of any changes agreed in contract negotiations and adopted by City Council that may directly affect the work, duties, or responsibilities of the Board.

Section 26. Commendation program.

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

Section 27. Transition from Police Review Commission to Police Board.

(a) The Police Review Commission established by Ordinance No. 4,644-N.S., as amended, shall continue in existence until its functions are transferred to the Police Board, but no later than January 3, 2022.

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(b) To assist in an orderly transition between the Police Review Commission and the Police Board established by this Article, Police Review Commission staff shall serve as interim Police Board staff until the City hires a Director of Police Accountability.

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

Section 28. Review of processes.

The Board shall conduct a review of its processes every two years after the Effective Date in order to ascertain the efficacy of its processes.

Section 29. Enabling Legislation.

The Board may make recommendations to the City Council for enacting legislation or regulations that will further the goals and purposes of Article XVIII of this Charter. The City Council may, based on such recommendations or on its own initiative, enact ordinances that will further the goals and purpose of this Article.

The Board shall have forty-five (45) business days to submit its comments to the City Council, such time to be extended only by agreement of the City Council.

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

Ordinance No. 4,644-N.S., all amendments thereto, and all rules and regulations promulgated pursuant thereto, shall cease to be operative and are repealed as of the date of the first meeting of the Police Board 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.

Section 18. Review of Complaints Filed with the Director of Police Accountability and/or Board

Milestone		Timing¹
Director of Police Accountability investigates complaint	Berkeley Police Department Internal Affairs investigates complaint	Within 120 days of the City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct
Director of Police Accountability convenes Police Board in Confidential Personnel Hearing	Internal Affairs convenes Board of Review	Within 60 days of completing the investigation
Director of Police Accountability submits Findings to Chief of Police	Internal Affairs submits findings to Chief of Police	Recommendations submitted to Chief within 15 days of the confidential personnel hearing
Chief of Police reviews findings from Director of Police Accountability / Police Board and Police Department Board of Review: (a) If Chief of Police agrees with the Director of Police Accountability / Police Board, Chief of Police issues letter of disposition to officer (b) If Chief of Police disagrees with the Director of Police Accountability / Police Board, Chief of Police issues tentative decision to the Director of Police Accountability / Police Board		Within 10 days of receiving recommendation from Director of Police Accountability / Police Board and Internal Affairs
Director of Police Accountability reviews tentative decision and either: (a) If agree with Chief of Police, no action, investigation is complete (b) If disagree with Chief of Police, request City Manager to review case		Within 10 days of receiving tentative decision from Chief of Police
City Manager or City Manager's Designee reviews case and makes final determination		Within 25 days of receiving request from Director of Police Accountability
Total Number of Days		240

¹ Timelines set forth are advisory. However, the timeline to complete the investigation and notification of discipline cannot exceed 240 days and the timeline to complete the investigation by the Director of Police Accountability cannot exceed 195 days.

Section 19. Review of Complaints Filed with the Berkeley Police Department

Milestone	Timing ²
Berkeley Police Department Internal Affairs investigates complaint	
Internal Affairs convenes Board of Review	
Internal Affairs submits findings to Chief of Police	
Chief of Police reviews findings from Internal Affairs and issues letter of disposition to officer and notifies complainant of disposition	Letter of Disposition issued within 120 days of the City's discovery by a person authorized to initiate an investigation of an alleged act, omission, or other misconduct
Complainant receives disposition: (a) If Complainant agrees with Chief of Police, no further action, investigation is complete. (b) If Complainant disagrees with Chief of Police, files an objection with Director of Police Accountability/ Police Board	Complainant has 20 days of receiving notification from Chief of Police to contest findings
If complainant objects to findings, Director of Police Accountability evaluates. Director of Police Accountability may either: (a) Reject Complainant's request, no further action, investigation is complete. (b) Accept Complainant's request and convenes Police Board for a confidential hearing.	Director of Police Accountability has 15 days to accept or reject Complainant's request
Director of Police Accountability convenes Police Board and holds confidential hearing based on investigative record. Police Board may either: (a) Dismiss the complainant's objection, no further action, investigation is complete. (b) Issue a report agreeing with Chief of Police, no further action, investigation is complete.	Within 45 days of the date that the Director of Police Accountability notifies the Complainant that the objection has been accepted

² Timelines set forth are advisory. However, the timeline to complete the initial investigation by the Chief of Police cannot exceed 120 days and the timeline to complete the investigation and notification of discipline cannot exceed 240 days.

Milestone	Timing ²
(c) Issue a report disagreeing with Chief of Police. Report submitted to Chief of Police and City Manager	
If Director of Police Accountability/ Police Board disagrees with Chief of Police, upon receipt of the report from Director of Police Accountability, Chief of Police may submit a report to the City Manager	Chief of Police has 15 days to submit report to the City Manager
City Manager or City Manager's Designee reviews case and makes final determination	City Manager has 25 days of receiving report from Chief of Police to make a final determination
Total Number of Days	240

Note: All days are calendar days.