



CITY COUNCIL

Darryl Moore
Councilmember District 2

CONSENT CALENDAR
March 24, 2009

To: Honorable Mayor and Members of the City Council

From: Councilmember Darryl Moore
Councilmember Max Anderson
Councilmember Jesse Arreguin

Subject: Support AB 312 To Establish An Office of Citizen Complaints for the Bay Area Rapid Transit District (BART) Police Department

RECOMMENDATION

Adopt a Resolution in support of AB312, authored by Assemblymember Ammiano and Senator Yee, to establish an Office of Citizen Complaints for the Bay Area Rapid Transit District (BART) police department to ensure adequate oversight.

BACKGROUND

In the wake of the January 1, 2009 shooting death of Oscar Grant by BART police officer Johannes Mehserle, it has become apparent that the multi-county district is in need of additional oversight.

Governance over the BART district is granted to an elected board of directors. While BART's board is primarily charged with making decision on the district's policy and its budget, it has never put into place the proper oversight mechanism for the public to air complaints or an independent body to review grievances and suggest corrective action. Many police departments across the state have civilian oversight bodies, including Berkeley, but BART, which spans three counties, does not. A citizen oversight body would not only function as a venue for the disgruntled public to voice their discontent, but would have secondary effects of being able to exonerate officers from unsubstantiated complaints as well as create trust among the public in the complaint process, which translates into more trust between individual officers and the public.

It is recommended that the Berkeley City Council pass a resolution supporting AB 312, Assemblymember Ammiano and Senator Yee legislation to establish an Office of Citizen Complaints for the Bay Area Rapid Transit District (BART) police department to ensure adequate oversight. The resolution is modeled after a similar resolution, resolution number 33-09, that the San Francisco Board of Supervisors adopted in January.

FISCAL IMPACTS OF RECOMMENDATION

None at this time

CONTACT PERSON

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Attachments

1: Resolution

2: Copy of AB 312

RESOLUTION NO. ##,###-N.S.

RESOLUTION IN SUPPORT OF AB 312 TO ESTABLISH AN OFFICE OF CITIZEN COMPLAINTS FOR THE BAY AREA RAPID TRANSIT DISTRICT POLICE DEPARTMENT

WHEREAS, it is an accepted best practice that police forces that operate in urban areas have independent third-party civilian oversight; and

WHEREAS, in the last few years, the need for independent and impartial third-party oversight has been illustrated by a number of incidents involving the BART police force, including the prior death of Gerald Hall and the most recent tragic death of Oscar Grant; and

WHEREAS, the egregious nature of the circumstances surrounding the death of Oscar Grant and the appallingly slow pace of the incidents' investigation has lead to a complete breakdown in trust and confidence between BART's Peace Officers and BART's ridership; and

WHEREAS, it is in the interest of the rank and file officers of BART's police force to have civilian oversight as an enhanced and impartial review of police conduct which could reveal that BART's officers are operating within the confines of the law the vast majority of the time; and

WHEREAS, no modicum of trust between BART and the communities it serves can be restored until citizens of the Bay Area know that they have meaningful official recourse if they feel they have suffered abuse at the hands of BART's police force; and

WHEREAS, in light of the tragic death of Oscar Grant, Assemblyman tom Ammiano and State Senator Leland Yee have introduced AB 312, which would establish an independent third-party civilian oversight of the BART Police.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley hereby supports AB 312 that would establish an Office of Citizen Complaints for the Bay Area Rapid Transit District (BART) Police Department.

BE IT FURTHER RESOLVED, that the City Clerk shall transmit copies of this resolution to California Assemblyman Ammiano, California Senator Yee, and the BART Board of Directors.

BILL NUMBER: AB 312 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Ammiano
(Principal coauthor: Senator Yee)

FEBRUARY 17, 2009

An act to add Section 28767.7 to the Public Utilities Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 312, as introduced, Ammiano. San Francisco Bay Area Rapid Transit District: Office of Citizen Complaints. Existing law creates the San Francisco Bay Area Rapid Transit District (BART), governed by an elected board of directors, with various duties and responsibilities relative to operation of a rail transit system. Existing law authorizes the district to maintain a police department.

This bill would require the BART board to create an Office of Citizen Complaints to investigate complaints and allegations of police misconduct by the BART police department. The bill would provide for the nomination of the director of that office by the district attorneys of the Counties of Alameda, Contra Costa, and San Francisco, subject to confirmation by the board.

The bill would require the staff of the office to consist of no fewer than one line investigator for every 150 sworn members of the police department. The bill would require the office to investigate complaints of police misconduct or allegations that a member of the police department has not properly performed a duty and would require the office to recommend disciplinary action to the chief of police. The bill would authorize the director of the office to file charges with the board against members of the police department under specified circumstances. The bill would require the office to prepare monthly summaries of the complaints received and quarterly recommendations concerning policies or practices of the police department that could be changed, along with a quarterly report to the board. The bill would require all departments, officers, and employees of the district to promptly produce all records required by the office and to otherwise cooperate with the office, except as specified. The bill would require the district to implement these and other related provisions utilizing existing funds available to the district.

Because the bill would impose new responsibilities on the district, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 28767.7 is added to the Public Utilities Code, to read:

28767.7. (a) The president of the board shall appoint a person nominated by the district attorneys from the Counties of Alameda, Contra Costa, and San Francisco as the Director of the Office of Citizen Complaints, subject to confirmation by the board. The director shall serve at the pleasure of the board. If the board fails to act on the appointment within 30 days, the appointment shall be deemed approved. If the office is vacant, until the president of the board makes an appointment and that appointment is confirmed by the board, the district attorneys from the Counties of Alameda, Contra Costa, and San Francisco shall collectively appoint an interim director who shall serve at the pleasure of the board. The director shall never have been a member of the police department of the district or another employee of the police department.

(b) The board shall organize, reorganize, and manage the Office of Citizen Complaints. The Office of Citizen Complaints shall include investigators and hearing officers. The staff of the Office of Citizen Complaints shall consist of no fewer than one line investigator for every 150 sworn members of the police department. Whenever the ratio of investigators to police officers specified by this subdivision is not met for more than 30 consecutive days, the director may hire temporary investigators to meet those staffing requirements. No full-time or part-time employee of the Office of Citizen Complaints shall have previously served as a uniformed member of the police department. The Director of the Office of Citizen Complaints may appoint part-time hearing officers.

(c) Complaints of police misconduct or allegations that a member of the police department has not properly performed a duty shall be promptly, fairly, and impartially investigated by staff of the Office of Citizen Complaints. The Office of Citizen Complaints shall investigate all complaints of police misconduct or allegations that a member of the police department has not properly performed a duty, except those complaints which on their face clearly indicate that the acts complained of were proper, and except those complaints lodged by members of the police department. The Office of Citizen Complaints shall use its best efforts to conclude investigations of those complaints and, if sustained, transmit the sustained complaint to the police department within nine months of receipt thereof by the Office of Citizen Complaints. If the Office of Citizen Complaints is unable to conclude its investigation within the nine-month period, the Director of the Office of Citizen Complaints, within the nine-month period, shall inform the chief of the police department of the reasons therefor and transmit information and evidence from the investigation to facilitate the chief's timely consideration of the matter. The Office of Citizen Complaints shall recommend disciplinary action to the chief of police on those complaints that are sustained. The Director of the Office of Citizen Complaints, after meeting and conferring with the chief of police or his or her designee, may verify and file charges with the board against members of the police department arising out of sustained complaints, provided that the director may not verify and file those charges for a period of 60 days following the transmittal of the sustained complaint to the police department, unless the director issues a written determination that the limitations period within which the member or members may be disciplined may expire within that 60-day period and either (1) the chief of police fails or refuses to file charges with

the board arising out of the sustained complaint, (2) the chief of police or his or her designee fails or refuses to meet and confer with the director on the matter, or (3) other exigent circumstances necessitate that the director verify and file charges to preserve the ability of the board to impose punishment. The Director of the Office of Citizen Complaints shall schedule a hearing before a hearing officer when a hearing is requested by the complainant or a member of the department and when, in accordance with rules of the office, the hearing will facilitate the factfinding process.

(d) Nothing in this section shall prohibit the chief of police or a commanding officer from investigating the conduct of a member of the department under his or her command, or taking disciplinary or corrective action when it is warranted.

(e) The Office of Citizen Complaints shall prepare, in accordance with rules of the office, monthly summaries of the complaints received and shall prepare recommendations quarterly concerning policies or practices of the police department that could be changed or amended to avoid unnecessary tension with the public or a definable segment of the public while ensuring effective police services. The Office of Citizen Complaints shall prepare a report for the board each quarter. This report shall include, but not be limited to, the number and type of complaints filed, the outcome of the complaints, and a review of the disciplinary action taken.

(f) In carrying out its objectives, the Office of Citizen Complaints shall receive prompt and full cooperation and assistance from all departments, officers, and employees of the district, which shall promptly produce all records requested by the Office of Citizen Complaints, except for records the disclosure of which to the Office of Citizen Complaints is prohibited by law. The director may also request, and the chief of police shall require, the testimony or attendance of any member of the police department to carry out the responsibilities of the Office of Citizen Complaints.

(g) The district shall implement this section utilizing existing funds available to the district.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.