



Office of the Mayor

ACTION CALENDAR
July 24, 2018

To: Honorable Members of the City Council

From: Mayor Jesse Arreguín and Councilmember Cheryl Davila

Subject: Placing a Charter Amendment relating to the Police Review Commission on the November 6, 2018 Ballot

RECOMMENDATION

1. Adopt a Resolution submitting a measure on the November 6, 2018 general municipal ballot to amend the City Charter to add Article XVIII, relating to the Police Review Commission, to establish an Independent Police Auditor.
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.

BACKGROUND

Police reform efforts are being undertaken throughout the nation. In Berkeley, our Police Department has always been on the cutting edge of progressive policing policies since 1909 when Chief August Vollmer, as Berkeley's first Chief of Police, demanded a high level of honesty, efficiency, interest, and hard work from his officers. This expectation has continued to this day, serving as the foundation for BPD's reputation in the law enforcement field. Chief Vollmer's progressive thinking and use of new innovations in law enforcement provided a legacy as a department that can be called "First in Policing" in so many areas.

Berkeley prides itself in having one of the most forward thinking and recognized Police Departments in the country. Because of good leadership, policies, training, and staff, we have avoided the type of misconduct that has eroded trust between other law enforcement agencies and the communities they serve. At the same time, many Police Departments throughout the country have improved their oversight procedures, and President Barack Obama's 21st Century Policing Task Force advocated for strengthening civilian review of police. The Berkeley City Council is committed to providing our Police Department with the tools and fair compensation needed for their challenging work, as well as supporting the Chief and City Manager in all efforts to recruit new police officers. In keeping with the Berkeley Police Department's progressive history, and to further enhance oversight to improve public trust, improvements are needed to the current civilian review process.

In 1976 the *Brown v. City of Berkeley* decision invalidated critical elements of the voter-approved Police Review Commission initiative because those sections required changes to the City Charter. The proposed PRC Charter Amendment includes those elements. The revision to the PRC proposal, included herein, strengthens civilian review

of policing, while better fitting our City Manager form of government. It would create an Independent Police Auditor who will be appointed by the City Council and conduct thorough and impartial investigations into complaints filed regarding officers and employees of the Police Department. The findings and recommended action will be brought to the Police Commission and Chief of Police. This modification to the PRC legislation, entrusts investigations to a neutral third party. In the end the recommendation for discipline would be made by the Chief and/or City Manager, consistent with our system of government.

At the July 10, 2018 meeting of the Berkeley City Council, discussion was held to analyze the impacts on the City Government and to ensure compliance with all relevant legal statuses. As this is the last meeting of the City Council before the August 10th deadline to submit a measure to Alameda County for the November 2018 ballot, Council must take action tonight.

FINANCIAL IMPLICATIONS

Staff time plus salary/benefits for the new position of the Independent Police Auditor.

ENVIRONMENTAL SUSTAINABILITY

No environmental impacts.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

1: Resolution

Exhibit A: Text of Charter Amendment

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

SUBMITTING TO THE BERKELEY ELECTORATE THE ADDITION OF ARTICLE XVIII TO THE BERKELEY CITY CHARTER, RELATING TO THE POLICE REVIEW COMMISSION, ON THE NOVEMBER 6, 2018 BALLOT

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 6, 2018 General Municipal Election, a measure to add Article XVIII of the Berkeley Charter related to the Police Review Commission; 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 Statewide General Election to be held November 6, 2018; 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 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 add Section XVIII, to modernize the Police Review Commission and establish an Independent Police Auditor to investigate all complaints filed against sworn employees of the Berkeley Police Department, 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

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 for the Commission and its staff to carry out the responsibilities stated herein.

Section 4. Composition of Police Commission; eligibility

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

(a) 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 serve 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 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 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 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) 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.

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.

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.

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

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

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

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

(g) 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.

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.

The Commission shall prepare an annual report, summarizing 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.

(b) 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 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 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 filed with the Department. The Independent Police Auditor shall decide which complaints staff will conduct parallel investigations of, after receiving recommendations from its staff. If Commission staff conducts an investigation, the Department shall share all evidence the Department collects during its investigation.

(b) For complaints that Commission staff do 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 to the Police Commission for review. If the Independent Police Auditor makes a sustained finding on an allegation against a subject employee, they shall also 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 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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 of Chief of Police.

Notwithstanding Article VII, Section 28 of this Charter, the process for hiring the Chief of Police is as follows:

(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.

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.