

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE II

Current Law

In 1973, Berkeley voters approved an ordinance establishing the Police Review Commission ("PRC"). That ordinance authorizes the PRC to investigate complaints, conduct hearings, and issue findings regarding police misconduct claims. The Police Chief and City Manager may consider these findings when determining whether to discipline a City police officer.

The Proposed Charter Amendment

This proposed Charter Amendment would establish the Police Accountability Board ("Board") to replace the existing PRC and create new procedures for reviewing police misconduct claims. The Board would consist of nine (9) members selected by the Mayor and City Council. The Charter Amendment would also create the office of Director of Police Accountability ("Director"), who would be appointed by the City Council to serve as the Board secretary and be responsible for investigating complaints against sworn members of the Berkeley Police Department. The Charter Amendment would allow the City Council to vote to remove any Board member or the Director.

The Board would have the following powers and duties:

- Make recommendations regarding the operation of the Police Department, including review of the Department budget,
- Review complaints against sworn members of the Berkeley Police Department and recommend disciplinary actions,
- Access records, compel testimony and issue subpoenas as needed to carry out its functions, subject to applicable state confidentiality laws,
- Review agreements between the Police Department and other law enforcement, military or private security organizations,
- Participate in the hiring of the Chief of Police,
- Adopt rules and regulations necessary to conduct its business,
- Any other powers or duties the Council may assign.

The Charter Amendment would establish two separate processes by which a member of the public could submit a police misconduct complaint:

1. Complaints filed with the Police Accountability Board

A member of the public could submit a complaint to the Board by filing the complaint with the Director. The complaint would be investigated by the Director and decided on by the

Board following a confidential hearing in which the Board would determine whether misconduct had occurred based upon a “preponderance of the evidence.” The Board would then recommend whether disciplinary action is appropriate, and in certain cases, the level of discipline. In most cases, the Chief of Police would decide the nature and extent of discipline imposed following a finding that misconduct has occurred.

2. Complaints filed with the Berkeley Police Department

Alternatively, a member of the public could file a complaint with the Police Department, after which the Chief of Police would make a decision as to the need for disciplinary action. A complainant could contest the Chief of Police’s decision by requesting review by the Director and Board.

Under both procedures, a final determination would be required within 240 days of the complaint. In the event of disagreement between the Board and the Chief of Police, the City Manager would make a final determination.

This Charter Amendment was placed on the ballot by the City Council.

The above statement is an impartial analysis of Measure II.

s/FARIMAH BROWN
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