

1 **CHARTER AMENDMENT TO ESTABLISH A POLICE COMMISSION**

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

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

6 **Article XVIII. POLICE COMMISSION**

7 **Section 1. Establishment and purpose.**

8 A Police Commission is hereby established in the City of Berkeley. The
9 purpose of the Police Commission is to provide independent, objective,
10 civilian oversight of the Berkeley Police Department and other law
11 enforcement agencies operating in the City of Berkeley, by promoting
12 public trust through police accountability and transparency, by ensuring
13 that police policies and practices reflect the values of the local community,
14 and by helping the Department obtain the resources and training
15 necessary to carry out its duties.

16 **Section 2. Powers and duties.**

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

18 (1) To advise and make recommendations to the public, City
19 Council, and City Manager regarding all aspects of the operation of the
20 Berkeley Police Department, including without limitation all written policies,
21 practices, and procedures in relation to the Berkeley Police Department,
22 and other law enforcement, intelligence, and military agencies operating in
23 the City of Berkeley;

24 (2) To review and approve all Police Department policies, practices
25 and procedures as further described below;

26 (3) To receive, investigate, and hear complaints against all
27 employees of the Police Department, and to recommend discipline when
28 misconduct is found;

29 (4) To review complaints against all employees of the Police
30 Department filed with the Police Department, to select complaints for
31 investigation or monitoring, and recommend discipline;

32 (5) To participate in the hiring of the Chief of Police and other sworn
33 officers as further described below;

34 (6) To participate in the hiring and dismissal of Commission staff as
35 further described below;

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

39 (8) To adopt rules and regulations necessary for the conduct of its
40 business; and

41 (9) Any other powers and duties as the City Council may assign it.

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

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

45 (b) The Commission is authorized to propose a budget to the City
46 Council for its operations, and the Council shall allocate to the Police
47 Commission a budget sufficient for the Commission and its staff to carry
48 out the responsibilities stated herein.

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

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

52 (a) Each member of the Commission must:

53 (1) Be a resident of the City;

54 (2) Be of voting age;

55 (3) Not be an officer of the City, employee of the City, or hold a
56 contract with the City.

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

60 **Section 5. Commissioner selection.**

61 (a) Candidates for the Commission must complete and file with the City
62 Clerk an application form and an affidavit of residency required by
63 Berkeley Municipal Code section 2.04.145. For the initial members of the
64 Commission, the Mayor and each Councilmember will nominate one
65 candidate from an applicant pool at a meeting of the City Council.
66 Nominees must be approved by a majority vote of the Council.

67 (b) Vacancies on the Commission for any unexpired term shall be filled
68 as follows: The appropriate nominating Councilmember shall select a
69 candidate from an existing or new pool of applicants, who must be
70 approved by a majority vote of the Council.

71 (c) The Council shall endeavor to establish a commission that is
72 broadly inclusive and reflective of race, ethnicity, age, sexual orientation,
73 economic status, neighborhoods, and various communities of interest in
74 this City. Toward that end, in soliciting applications for Commissioner
75 positions, the Executive Director of the Commission shall reach out to
76 civic, community, and civil rights organizations, among others.

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

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

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

85 **Section 7. Conflicts of interest.**

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

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

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

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

97 (c) The provisions of Berkeley Municipal Code Section 3.02.020,
98 establishing a termination procedure for absence from meetings, Section
99 3.02.030, leaves of absence, and Section 3.02.035, regarding alternate
100 commissioners, apply to the Police Commission.

101 (d) A Commissioner may be removed only by a majority vote of the
102 Council upon recommendation of the Commission. Such a
103 recommendation must be made by a supermajority vote of seven
104 Commissioners, and the only grounds for recommending removal are:
105 conviction of a felony, substantial neglect of duty, or gross misconduct,
106 while in office; inability to discharge the powers and duties of the office; or
107 absence from six regular meetings in a calendar year except when the
108 absence is excused in accordance with Berkeley Municipal Code Sec.
109 3.02.030.

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

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

117 **Section 10. Commissioner stipends.**

118 Each Commissioner is entitled to receive a stipend of \$50.00 for each
119 regular and special full commission meeting attended, and \$20.00 for
120 each subcommittee meeting and Board of Inquiry (BOI) hearing attended
121 as a member of the subcommittee or the BOI. However, the total stipend
122 paid may not exceed \$500.00 per month per Commissioner.

123 **Section 11. Commissioner training.**

124 The Commission shall establish mandatory training requirements for
125 Commissioners, with input from the Executive Director and Chief of Police.

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

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

132 (b) A majority of appointed Commissioners constitutes a quorum to
133 conduct business, and a minimum of four affirmative votes is required to
134 take any action.

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

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

145 **Section 13. Commission staff.**

146 (a) The Commission shall hire an Executive Director, who shall serve
147 at the pleasure of the Commission. The Executive Director shall serve as
148 secretary to the Commission and carry out the work of the Commission as
149 described herein, including, without limitation, day-to-day operations of the
150 Commission office and staff, and performance appraisals and discipline of
151 all subordinate employees.

152 (b) The Executive Director shall, with the Commission's consent, hire a
153 Chief Investigator. The Executive Director may dismiss the Chief
154 Investigator at will, with the Commission's consent.

155 (c) The Executive Director has the sole authority to hire and dismiss
156 consultants, additional investigators, and all subordinate employees as
157 needed.

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

160 (e) The Commission and Executive Director will use the City's Human
161 Resources Department for hiring, performance evaluation, discipline, and
162 removal of employees.

163 **Section 14. Legal counsel.**

164 The Commission and its Executive Director shall use the services of
165 the City Attorney's Office for legal advice; except, however, that the
166 Commission may seek the opinion of outside counsel when the
167 Commission determines that a matter is of such import that a second,
168 independent opinion is warranted.

169 **Section 15. Commission reports.**

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

177 (b) The Executive Director shall issue a half-yearly report on the
178 number, type, and disposition of complaints filed with the Commission;
179 and the number, type, and disposition of complaints filed with the Police
180 Department that Commission staff has reviewed.

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

182 (a) The Commission may review police policies, practices, and
183 procedures on its own motion or at the request of a member of the public
184 or the Department. The Executive Director shall carry out any Commission
185 directives required to fulfill this function.

186 (b) Before taking effect, the Chief shall submit all new Departmental
187 policies and revisions to existing policies to the Commission for review
188 and approval. If the Police Department and the Commission are unable to
189 reconcile their differences about a policy, the policy shall be sent to the
190 City Council for a final decision.

191 **Section 17. Complaints filed with the Commission.**

192 (a) The Commission shall adopt regulations for handling complaints
193 filed with the Commission from members of the public alleging misconduct
194 by Police Department employees, and undertake investigations of

195 complaints as it deems warranted. The regulations must include the
196 following:

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

199 (2) What constitutes a complainant;

200 (3) Boards of Inquiry (BOI) to hear and decide findings on
201 allegations of misconduct, at which subject employees must appear to
202 testify and answer questions from the BOI Commissioners;

203 (4) In making findings at a BOI, the standard of proof will be
204 “preponderance of the evidence”;

205 (5) The time limit for investigations shall be one year, unless a
206 Government Code section 3304(d) exception applies.

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

209 (a) The Police Department shall provide the Executive Director with
210 copies of all newly-filed complaints filed with the Department. The
211 Commission, after receiving recommendations from its staff, shall decide
212 which complaints staff will conduct parallel investigations of. If
213 Commission staff conducts an investigation, the Department shall share
214 with the Commission all evidence the Department collects during its
215 investigation.

216 (b) For complaints that Commission staff do not select for investigation,
217 the Executive Director shall have the authority to review and discuss those
218 cases with the Department. If the Executive Director believes that the
219 Commission should open an investigation, it may present the case to the
220 Commission to approve an investigation.

221 (c) Before closing an investigation into a complaint, the Police
222 Department shall inform Commission staff of its planned disposition of the
223 complaint.

224 **Section 19. Involvement in discipline of Department employees**

225 (a) If members of a Board of Inquiry make a sustained finding on an
226 allegation against a subject employee, they shall also recommend
227 disciplinary action to the Chief.

228 (b) After reviewing a Police Department investigation, the Executive
229 Director shall have the authority to advise the Commission of
230 recommended disciplinary action in any sustained finding. The
231 Commission may affirm, modify, or reject the recommendation, and its
232 decision shall be submitted to the Chief.

233 (c) If the Chief proposes to impose a disciplinary action that differs
234 from the recommendation of the BOI or the Commission, the Commission

235 shall have the opportunity to appeal the Chief's proposal to the City
236 Manager. The City Manager shall make the final determination and
237 explain his or her decision in writing to the Commission.

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

245 (e) The City Manager and Chief of Police may impose disciplinary
246 action up to one year after the date of the incident giving rise to the
247 disciplinary action, or within one year of the date the City has knowledge
248 of the incident giving rise to the disciplinary action. This Section nullifies
249 and supersedes any agreements to the contrary.

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

252 (a) Notwithstanding Article VII, Section 28 of this Charter, all
253 departments, officers, and employees of the City shall cooperate with and
254 assist the Commission and its staff and, unless prohibited by state or
255 federal law, produce all records and information the Commission or its
256 staff requests for the purpose of carrying out its duties and functions. The
257 records and information include without redaction or limitation: (1) records
258 relevant to Police Department policies or practices, (2) personnel and
259 disciplinary records of Police Department employees, and (3) Police
260 Department investigative records. Responding departments, officers, or
261 employees of the City shall comply promptly, but in no event later than 10
262 business days from the date of request.

263 (b) The Commission and its staff shall maintain the confidentiality of
264 any records and information it receives to the extent required by state or
265 federal law governing such records or information.

266 (c) The Commission may require the testimony or attendance of any
267 member of the Police Department to carry out the Commission's
268 responsibilities.

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

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

274 The Commission is empowered to review and make recommendations
275 to the Chief of Police regarding the Police Department budget, before and
276 during development of his or her budget proposal to the City Manager.

277 The Chief must submit his or her final budget proposal to the Commission
278 for review and recommendations at least 30 days before submitting it to
279 the City Manager, but the Commission's failure to complete that review
280 and make recommendations in a timely manner shall not delay the budget
281 process.

282 **Section 22. Hiring and removal of Chief of Police.**

283 Notwithstanding Article VII, Section 28 of this Charter, the processes
284 for hiring and removing the Chief of Police are as follows:

285 (a) Upon the notice of vacancy of the position of Chief of Police, the
286 Human Resources Department shall cooperate with the Commission to
287 prepare a job announcement, describe requirements, and establish an
288 application process. The Commission shall approve the application
289 process, culminating in the Commission's selection of two candidates and
290 transmittal of their names to the City Manager, Mayor, and Council. The
291 Mayor shall appoint one of the candidates with the approval of the City
292 Council.

293 (b) The Chief of Police may be removed by the Mayor with the
294 Council's approval, upon the recommendation of seven members of the
295 Commission.

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

297 (a) The Chief of Police shall include a member of the Commission on
298 all oral boards for all command staff positions, and allow that Commission
299 member a vote.

300 (b) The Chief shall provide the Commission with an opportunity to
301 participate in oral boards or interviews for all non-command, sworn officer
302 positions.

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

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

309 **Section 25. Berkeley Police Department reports to the Commission.**

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

316 **Section 26. Contract negotiations.**

317 The Commission chairperson and vice-chairperson, or the
318 chairperson's designee for either; and the Executive Director are allowed
319 to attend and participate in contract negotiations between the Berkeley
320 Police Association and the City of Berkeley.

321 **Section 27. Commendation program.**

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

325 **Section 28. Transition from Police Review Commission to Police**
326 **Commission.**

327 (a) The Police Review Commission established by Ordinance No.
328 4,644-N.S., as amended, will continue in existence until its functions are
329 transferred to the Police Commission, but no later than June 30, 2019.

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

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

338 **Section 29. Repeal of Ordinance No. 4,644-N.S., as amended.**

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

342 **Section 30. Severability.**

343 If any word, phrase, sentence, part, section, subsection, or other
344 portion of this Article, or any application thereof to any person or
345 circumstance is declared void, unconstitutional, or invalid for any reason,
346 then such word, phrase, sentence, part, section, subsection, or other
347 portion, or the prescribed application thereof, shall be severable, and the
348 remaining provisions of this Article, and all applications thereof, not having
349 been declared void, unconstitutional or invalid, shall remain in full force
350 and effect. The People of the City of Berkeley declare that it would have
351 passed this title, and each section, subsection, sentence, clause and
352 phrase of this Article, irrespective of the fact that any one or more
353 sections, subsections, sentences, clauses or phrases is declared invalid or
354 unconstitutional.