

Memorandum

To: City of Oakland Public Safety Committee
From: Jacob Goldenberg and Magaly Chavez
Re: Public Comment on the Police Commission Enabling Ordinance
Date: March 7, 2017

INTRODUCTION

We submit these comments to the Public Safety Committee regarding the City of Oakland's Police Commission Enabling Ordinance. On behalf of the Coalition for Police Accountability (CPA), we have researched various aspects of Measure LL and the proposed enabling ordinance. In preparing these comments, we have carefully reviewed existing state law, Oakland's current practices, and police accountability practices in other California cities.

We summarize our research findings related to several key aspects of CPA's revised draft of the Police Commission Enabling Ordinance, including: (1) disclosure to complainants of the disposition of their cases, (2) the filing of on-line complaints, (3) the Police Commission's oversight of the Agency Director, (4) the role of Alternate Commissioners, and (5) re-appointment of Commissioners at the end of their terms. These items will directly affect the access, transparency and accountability of Oakland's new police review system.

1. Disclosure to Complainants of Case Disposition

Section 2.45.120, Subsection F of the CPA's draft ordinance requires that the Commission "provide written notification to the complaining party of the disposition of his or her complaint and any discipline ordered against the subject officer within 30 days of disposition."

The proposed language requires that Oakland comply with California law. California Penal Code § 832.7(e) requires that a department or agency charged with the adjudication of allegations of police misconduct "provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition."¹ The code provides an exception to the general rules requiring that the dispositions of individual complaints alleging police misconduct remain confidential,² and explicitly requires that the complainant themselves be informed of the "disposition" of their specific case.³

In addition to ensuring compliance with state law, the proposed provision will increase community trust and police accountability.

2. Filing On-line Complaints

Section 2.26.030, Subsection B of the CPA's draft ordinance would require the Agency to "provide the means for filing complaints on-line via the Commission/Agency's website."

The chart below summarizes the various methods for filing police misconduct complaints in Oakland and ten other California cities.⁴



City	Methods for Filing Police Misconduct Complaints							
	Phone	Mail	In-Person (>1 location)	In-Person (1 location)	Fax	On-line	Email	Hotline
<i>Oakland</i>	X	X	X		X			X
Anaheim		X				X		
Berkeley	X	X	X		X		X	
Fremont	X			X			X	
Fresno		X				X		
Long Beach	X	X	X				X	
Los Angeles	X	X	X		X		X	
Sacramento	X			X		X		
San Diego	X	X	X				X	X
San Francisco	X	X	X					
San Jose	X	X	X		X		X	

With the exception of Oakland and San Francisco, all other cities allow residents to submit complaints through either an official form on the city’s website or by email. Oakland’s current methods of filing complaints can be inconvenient for people who have to take time off of work to file complaints during business hours. Allowing residents to file complaints on-line or by email allows access at all hours and from any location.

Providing Oakland residents with the opportunity to file police misconduct complaints on-line will increase access and bring Oakland in line with most other California cities.

3. Police Commission Oversight of the Agency Director

Numerous sections of the CPA’s draft ordinance increase the Police Commission’s oversight of the Agency’s Director.⁵

Other California cities empower Civilian Police Commissions to oversee directly and hold accountable the work of civilian investigative department heads. For example, the Los Angeles Civilian Inspector General (charged with auditing Police Department investigatory practices and overseeing disciplinary investigations) reports directly to the Los Angeles Civilian Police Commission. The Commission is empowered to remove the Civilian Inspector General at will.⁶

Similarly, the San Francisco Office of Citizen Complaints is required by charter to “prepare in accordance with rules of the Commission monthly summaries of the complaints received and shall prepare recommendations quarterly concerning policies or practices of the department which could be changed or amended to avoid unnecessary tension with the public or a definable segment of the public while insuring effective police services.”⁷ The City of San Francisco recognizes that by holding oversight bodies accountable, the city can “avoid unnecessary tension with the public [...] while insuring effective police services.”⁸

Oakland can take similar steps toward achieving these outcomes by clarifying the Agency Director’s chain of command, including accountability mechanisms, and ensuring adequate oversight of the Agency charged with investigating allegations of police misconduct.

4. Role of Alternate Commissioners

Section 2.45.70, Subsection B of the CPA’s draft ordinance outlines the duties and responsibilities of Alternate Commissioners.⁹

Measure LL requires that both “Regular” and “Alternate” Commissioners be nominated to the Police Commission, but it does not distinguish between the responsibilities of Regular and Alternate Commissioners.¹⁰ It is important to define the roles of Alternate Commissioners both to protect the power of the seven Regular Commissioners and to ensure that the two Alternate Commissioners are prepared and available to serve if necessary.

In 2016, the Oakland Civilian Police Review Board (CPRB) held lengthy public discussions about what responsibilities and powers should be assigned to Alternate Members.¹¹ Some CPRB members suggested that Alternate Members be afforded full voting powers to ensure that a quorum would be obtained when Regular Members were absent.¹²

Affording full voting powers to Alternate Commissioners under Measure LL would contradict the plain language of the charter, which states that they may vote *only* when needed to ensure a quorum.¹³ Moreover, because Measure LL allows for the removal of Commissioners with extensive absences¹⁴—and the replacement of such Commissioners with alternates¹⁵—it is unnecessary to afford such powers to Alternate Commissioners under circumstances when a quorum of Regular Commissioners is present.

San Diego’s Civilian Review Board (“CRB”) has specially designated Alternate Members, and the CRB’s governing bylaws make explicit the precise roles and duties of alternates. In San Diego, Alternate Members may be called into full service on the CRB only under three specific circumstances: (1) when an Appointed Member is placed on leave, (2) during periods of case review backlog, and (3) when an Appointed Member resigns prior to completion of her full term.¹⁶ Once Alternate Members have fulfilled the duties required in these capacities, they return to their prior status.¹⁷

CPA’s proposed provisions strike the appropriate balance between having prepared and qualified Alternate Commissioners ready and preserving the power of Regular Commissioners.

5. Re-Appointment of Commissioners

Section 2.45.055 of the CPA’s draft ordinance would establish that “former Commissioners shall not be automatically re-appointed but shall be subject to the ordinary selection process for Commissioners specified in sections 604(c)(2) or (3) of the City Charter.”

Other California cities also require Commissioners up for renewal to undergo a full confirmation at the end of their term. For example, San Francisco requires that “the Mayor transmit a *nomination or renomination* to the Clerk of the Board of Supervisors no later than 60 days prior to the expiration of the term of a member nominated by the Mayor.”¹⁸ Similarly, Los Angeles, Long Beach, and Berkeley do not allow for an automatic rollover of commissioners.¹⁹ They require renomination for vacancies resulting from expired terms even when commissioners are eligible for renomination.²⁰

Requiring Commissioners eligible for renewed terms to submit to the ordinary selection process will increase public trust in the Commission, hold Commissioners accountable to the public for their actions, and fulfill the duties of the Mayor, City Council, and Selection Panel.

CONCLUSION

We hope these comments provide context for the Public Safety Committee about the CPA’s draft enabling ordinance. The CPA is the community expert on these issues, and its draft ordinance is consistent with state law and best practices.

¹ CAL. PENAL CODE § 832.7(e) (Westlaw 2016).

² CAL. PENAL CODE §.832.7(a) (Westlaw 2016). *See also* Copley Press Inc. v. Superior Court, 39 Cal. 4th 1272 (2006).

³ CAL. PENAL CODE § 832.7(e) (Westlaw 2016).

⁴ Sources for the jurisdiction-specific details in the chart include: *Anaheim Police Department*, CITY OF ANAHEIM, <http://www.anaheim.net/2495/Custom-Service> (last visited Feb. 26, 2017); *Filing an Individual Complaint with the Police Review Commission*, CITY OF BERKELEY, http://www.ci.berkeley.ca.us/Police_Review_Commission/Home/Complaints.aspx (last visited Feb. 26, 2017); *Fremont Police*, CITY OF FREMONT, <http://www.fremontpolice.org/FAQ.aspx?QID=88> (last visited Feb. 25, 2017); *Fresno Police Department*, CITY OF FRESNO, <http://www.fresno.gov/Government/DepartmentDirectory/Police/default.htm> (last visited Feb. 28, 2017); *Long Beach Police-Citizen Complaint Procedure*, CITY OF LONG BEACH, <http://www.longbeach.gov/police/contact-us/citizen-complaint-procedure/> (last visited Feb. 24, 2017); *Los Angeles Police Department-Commend an Employee or Report Employee Misconduct*, CITY OF L.A., http://www.lapdonline.org/our_communities/content_basic_view/9217 (last visited Feb. 24, 2017); *Office of Public Safety & Accountability-Complaint Process*, CITY OF SACRAMENTO, <http://www.cityofsacramento.org/City-Manager/Public-Safety-and-Accountability/complaint-process> (last visited Feb. 24, 2017); *San Diego Police Department-Commendations and Complaints*, CITY OF SAN DIEGO, <https://www.sandiego.gov/police/services/officercomments> (last visited Feb. 24, 2017); *Office of Citizen Complaints*, CITY & COUNTY OF SAN FRANCISCO, <http://sfgov.org/occ/complaint-process> (last visited Feb. 27, 2017); *Internal Affairs Unit*, COUNTY OF SAN JOSE, <http://www.sjpd.org/COP/IA.html> (last visited Feb. 24, 2017).

⁵ *E.g.* CPA Proposed Police Commission Ordinance §§ 2.45.50, Subsection E, 2.46.040 (Feb. 22, 2017).

⁶ L.A., CAL., CITY CHARTER §§ 571(b)(4), 573.

⁷ S.F., CAL., CITY CHARTER art. IV, § 4.127.

⁸ *Id.*

⁹ The provisions drafted by CPA are based on language from the San Diego’s CRB on Police Practices bylaws as well as original language drafted by the outgoing Oakland CPRB to address some concerns regarding the roles of alternates relative to full board members. *See* SAN DIEGO, CAL., CRB BYLAWS art. 3, § 2 (2014), <https://www.sandiego.gov/sites/default/files/legacy/citizensreviewboard/pdf/crbbylaws>; OAKLAND CPRB, MINUTES OF MAY 26, 2016 5-6, (June 9, 2016), <http://www2.oaklandnet.com/oakcal/groups/ceda/documents/agenda/oak059042.pdf>.

¹⁰ OAKLAND, CAL., CITY CHARTER §604(c)(1).

¹¹ *Id.* Different bodies use the titles “Commissioner” or “Member” for those serving on civilian police oversight bodies.

¹² *Id.*

¹³ OAKLAND, CAL., CITY CHARTER §604(d)(3).

¹⁴ OAKLAND, CAL., CITY CHARTER §604(c)(8).

¹⁵ OAKLAND, CAL., CITY CHARTER §604(c)(10).

¹⁶ SAN DIEGO, CAL., CRB BYLAWS art. 3, § 2 (2014), <https://www.sandiego.gov/sites/default/files/legacy/citizensreviewboard/pdf/crbbylaws>.

¹⁷ *Id.*

¹⁸ S.F., CAL., CITY CHARTER § 4.109 (emphasis added).

¹⁹ L.A., CAL., CITY CHARTER § 502; LONG BEACH, CAL., CITY CHARTER § 1151; LONG BEACH, CAL., CITIZEN POLICE COMPLAINT COMMISSION BYLAWS art. III (2016), <http://www.longbeach.gov/citymanager/cpcc/supporting-information/#charter>; BERKELEY, CAL., ORDINANCE 4644-N.S. (1973) (amended 1982), http://www.ci.berkeley.ca.us/Police_Review_Commission/Home/Ordinance_4644.aspx.

²⁰ In Los Angeles and Long Beach, the Mayor appoints Commissioners, contingent on City Council confirmation. In Berkeley, Commissioners are appointed by individual Councilmembers.