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OFFICE OF THE CITY CLERK
OAKLAND

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AGENDA REPORT

TO: Chair Desley Brooks, other City Councilmembers, and members of the Public

FROM: Noel Gallo and Dan Kalb Councilmembers

SUBJECT: Police Commission Charter Amendment Measure and Companion Ordinance – Supplemental Report

DATE: June 9, 2016

RECOMMENDATION

ADOPT A RESOLUTION ON THE CITY COUNCIL'S OWN MOTION SUBMITTING TO THE VOTERS AT THE NOVEMBER 8, 2016 STATEWIDE GENERAL ELECTION 1) A PROPOSED AMENDMENT TO THE CITY CHARTER TO CREATE THE OAKLAND POLICE COMMISSION, THE COMMUNITY POLICE REVIEW AGENCY, AND A PROCESS FOR POLICE DISCIPLINE AND 2) A PROPOSED ENABLING ORDINANCE RELATING TO THE OAKLAND POLICE COMMISSION AND THE COMMUNITY POLICE REVIEW AGENCY, AND DIRECTING THE CITY CLERK TO TAKE ANY AND ALL ACTIONS NECESSARY UNDER LAW TO PREPARE FOR AND CONDUCT THE ELECTION

REASON FOR SUPPLEMENTAL REPORT

This supplemental report is being provided to give (a) a comparison to another Police Commission proposal filed on June 2nd by other colleagues on the City Council, (b) some examples of components in the alternate proposal that Councilmembers Gallo and Kalb are willing to incorporate into their recommendation to the Council, and (c) an addition to Alternate Adjudication Section (Attachment A of the Resolution) for Charter Section 604 section (g), which was inadvertently omitted from the June 2nd filing by Councilmembers Gallo and Kalb.

COMPARISON CHART REGARDING THE TWO POLICE COMMISSION PROPOSALS

As used below, "CPRB" refers to the Oakland Citizen's Police Review Board and "IG" means "Inspector General." "CPRA" refers to the Oakland Community Police Review Agency proposed by Councilmembers Gallo and Kalb and "PCIB" refers to the Police Commission Investigations Bureau proposed by Councilmembers Campbell-Washington, Guillen, and Reid.

Issue	San Francisco	Los Angeles	Gallo/Kalb proposal	Campbell-Washington/Guillen/Reid proposal
1. Police Commission added to Charter	Yes	Yes (Board of Police Commssioners)	Yes; includes companion enabling ordinance to avoid cluttering	Yes

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Issue	San Francisco	Los Angeles	Gallo/Kalb proposal	Campbell-Washington/Guillen/Reid proposal
			the Charter with issues best reserved for Muni. Code	
2. Police Commission has significant non-advisory policy authority over the Police Department & related agencies	Yes, broad, unrestricted powers over department policy	Yes, broad powers over police department policy	Yes, <i>with checks & balances</i> ; powers over police department policy governing use of force, force review boards, profiling based on protected characteristics, or First Amendment assemblies, provided that Council has 120 days to overrule	No; only responsibilities include making discipline and policy <i>recommendations</i> to the Monitor
3. Who hires Police Chief	Mayor	Mayor, from list of 3 provided by Commissioners	Mayor, from list of 4 provided by Commission	City Administrator (<i>no change from current system</i>)
4. Who fires Police Chief	Mayor or Commission (majority vote)	Commissioners (majority vote), subject to reversal by Mayor, or City Council (supermajority vote)	Mayor or Commission (supermajority vote; only for cause)	City Administrator (<i>no change from current system</i>)
5. Commission oversight of Police Chief	Yes, with Mayor	Yes	Yes, with Mayor	None
6. Commissioner appointing authority	4 by Mayor, subject to confirmation by Board of	Mayor, confirmed by Council	3 by Mayor & 4 by Selection Panel ¹ , subject to Council	Each Councilmember and the Mayor appoints 1 Commissioner (<i>current CPRB Commissioners</i>)

¹ Selection Panel members appointed by Councilmembers (1 each) and Mayor (1).

Issue	San Francisco	Los Angeles	Gallo/Kalb proposal	Campbell-Washington/Guillen/Reid proposal
	Supervisors; 3 by Supervisors		confirmation	<i>carry over to the Commission if no appointment made)</i>
7. Number of Commissioners	7	5	7	9
8. Commission qualifications	One appointed by Mayor must be retired judge or attorney with trial experience	None	One appointed by Mayor must be retired judge or lawyer with trial experience in criminal law or police misconduct	At least 18 years of age; one (appointed by whom?) must be 18-25 years old
9. Legal support to Commission	City Attorney	City Attorney	City attorney; requires assignment of Deputy City Attorney to CPRA in consultation with Commission Chair	City Attorney, <i>except</i> that non-City Attorney legal advisor must be assigned when Commission receives evidence that could lead to adverse finding or discipline recommendation
10. Provides Alternative Authority to Police Commission	No	No	No	Yes; Establishes Police Monitor position appointed by Mayor. Monitor (i) audits Police Dept., (ii) makes reports to Council, Mayor, & City Admin., & (iii) is involved in police discipline
11. Monitor/IG comparison	n/a	Civilian IG conducts audits of police & reports to Commissioners	Civilian IG conducts audits of police & reports to Commissioners; provided with Police Auditor staff person via Ordinance	Monitor conducts audits of police & managers unspecified staff of Office of Independent Police Monitor; Under certain circumstances, may overrule Police Chief on final discipline
12. Impact on CPRB structure	n/a	n/a	Board disbanded; staffing transferred into new CPRA	Board disbanded (Board members may become Commissioners); unclear regarding staffing, but appears to be transferred

Issue	San Francisco	Los Angeles	Gallo/Kalb proposal	Campbell-Washington/Guillen/Reid proposal to PCIB
13. Impact on CPRB staffing	n/a	n/a	Current CPRB staffing becomes CPRA, except min. investigators shall be 1:100 sworn police (unless Council identifies extreme fiscal necessity)	Investigators, Intake personnel, & admin. staff, <u>as determined by Monitor</u>
14. Impact on CPRB Director	n/a	n/a	Becomes Interim Director of CPRA; Director hired by City Administrator from list of 2-3 provided by Commission; Director fired by 5 Commissioners or 4 Commissioners with City Administrator	Unclear wants happen to current CPRB Director; new PCIB Director reports to Monitor and is hired and fired by both Monitor & City Administrator
15. Limitations on civilian investigation agency staff	No former sworn SF police	n/a	No current or former sworn Oakland police or current official, employee, or rep of an employee association representing sworn police	None
16. Final discipline appeal process	Appeal to Commission – no binding arbitration for discipline	Appeal to Commissioners – no binding arbitration for discipline	Under Alternative Section g: Officer may elect MOU's	<i>No changes to current process (binding arbitration)</i>

Issue	San Francisco	Los Angeles	Gallo/Kalb proposal	Campbell-Washington/Guillen/Reid proposal
			binding arbitration process or appeal to Commission, which may utilize Hearing Officers	
17. Reforms to Binding Arbitration process recommended by Swanson report	n/a	n/a	Pre-hearing exchange of witnesses and exhibits	None (Monitor must annually seek recommendations on improving discipline process)
18. Other reforms to Binding Arbitration process	n/a	n/a	1. Commission selects arbitrators – must have 10 or more years experience; 2. Arbitrator must use preponderance of the evidence burden of proof standard; 3. Requires prompt public disclosure of arbitrator decisions, to extent allowed by law	None, (Monitor must annually seek recommendations on improving discipline process)

Under both Oakland proposals, civilian investigators (CPRA or PCIB) shall be subject to background checks.

EXAMPLES OF COMPONENTS IN CAMPBELL-WASHINGTON/GUILLEN/REID PROPOSAL THAT GALLO AND KALB WILLING TO INCORPORATE

1. Section 2.C.8.: Annual acceptance of suggestions regarding improvements to discipline process. Could be added to Gallo-Kalb proposal as IG duty.
2. Section 5.B.1: "Right to Know Policy."

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Councilmembers Gallo and Kalb are continuing to review the Campbell-Washington/Guillen/Reid proposal and will provide at the June 14th Public Safety Committee a list of provisions in the later proposal that they would be willing to incorporate.

ADDITION TO ALTERNATE ADJUDICATION SECTION (ATTACHMENT A OF THE RESOLUTION) FOR CHARTER SECTION 604 SECTION (G)

Added to the end of (g)(6):

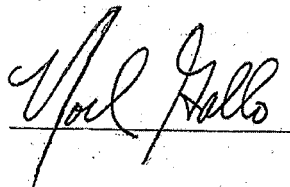
To the extent permitted by law, the arbitrator's or the Civil Service Board's disposition of the case shall be made public.

ACTION REQUESTED BY COMMITTEE

Councilmembers Gallo and Kalb recommend that the Public Safety Committee approve the Resolution incorporating the Alternate Adjudication Section (Attachment A of the Resolution) as section (g) of the Charter Amendment, which would *not* eliminate binding arbitration for police discipline. Approval of the Resolution by the Committee would allow the proposal to proceed to meet and confer with the affected labor unions.

For questions regarding this report, please contact Oliver Luby, Policy Manager, at 510-238-7013.

Respectfully submitted,



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Councilmember, District 5



Dan Kalb
Councilmember, District 1

Prepared by:
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