



6114 LaSalle Avenue, Suite 169
Oakland, California 94611

e-mail: Oaklanders@makeoaklandbetternow.org
website: www.makeoaklandbetternow.org
blog: www.oaktalk.com

June 12, 2016

Via E-Mail

Oakland City Council
Public Safety Committee Chairperson
Desley Brooks and Committee Members
Noel Gallo, Abel J. Guillén and Dan Kalb
Oakland City Hall
1 Frank H. Ogawa Plaza
Third Floor
Oakland, CA 94612

Re: June 14, 2016 Public Safety Committee Meeting Agenda Items 3 and 4
Police Commission Charter Amendment Measure and Office Of Independent
Police Oversight And Monitoring

Dear Council Members:

During the past year, many City Council members and the Coalition for Police Accountability researched and worked on potential approaches to police oversight. As an organization with a deep investment in public safety, Make Oakland Better Now! has conducted its own research and carefully followed the public discussions. Now that we have reviewed both proposals before your committee, we would like to share our insights and recommendations.

This afternoon, after much of this letter was drafted, Council Members Campbell-Washington and Guillén publicly announced that they were withdrawing their proposal (Agenda Item 4). While the question of whether or not to adopt that proposal will no longer be before the Public Safety Committee, we believe that both proposals have very positive elements that are worthy of discussion and consideration. Accordingly, we wish to share our analysis of 11 key issues presented by the two measures, how we believe they should be decided and why.

INTRODUCTION

The recent surprising and disturbing change in leadership at the Oakland Police Department together with the sickening stories of misconduct described in local media will likely add another layer to the discussion of police oversight. Both sides of this debate may use Police Chief Sean Whent's abrupt departure and recent news reports as leverage to support their positions. Moreover, some will assail the Department as rogues, as thugs, as murderers and as enemies of the people of Oakland. These approaches are simply unhelpful. Instead, we need to look at what is being done right and what needs to improve.

Notwithstanding the recently disclosed incidents (assuming the reports are true), the Oakland Police Department is at the forefront of 21st century policing. It has been recognized nationally by President Obama and U.S. Attorney General Loretta Lynch. All OPD officers

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Page 2

have been trained in procedural justice, and Oakland is the only department in the country that partners with community members to co-teach the training. Furthermore, OPD is partnering with Stanford University's Dr. Jennifer Eberhardt to have all officers trained on implicit bias. (This is in addition to her analysis of stop data, which will be released Wednesday.) OPD has also been a national leader on body-worn cameras, being one of the first departments to issue these cameras to all officers in the field.

Again, assuming the reports are true, we share the rest of the community's shock and horror about the recently reported incidents. But we should make no mistake: In many ways, Oakland's approach to 21st century policing in recent years has worked. Use of force incidents are down 72% in the past six years. The number of complaints to both IAD and the CPRB has dropped dramatically. Violent crime continues to drop in Oakland while most major cities are seeing an increase. Oakland continues to focus its efforts on serious and violent crime and is not making arrests for petty infractions. As a result, the number of arrests made by OPD has been cut by two-thirds since its high in 1997. Meanwhile, violent crime is down this year by 15% from the average of the same period in the past three years. For firearms assaults the reduction is 27% and for murders more than 45%.

Advances in police oversight should not be seen as an attack on police. Instead, a fair, properly functioning police oversight mechanism should be seen as a just and transparent way of dealing with the terrible kind of allegations we have been hearing recently, as a mechanism for building trust in both directions between community and police, and as part of an exit strategy from the NSA.

We add that the debate is not helped by characterizing proposals as "strong" or "weak." Rather, the goal should be to identify those policies most likely to be fair, transparent and effective and place those policies in one proposed Charter amendment while enacting appropriate enabling legislation. In this regard, we applaud the Coalition for Police Accountability for identifying many provisions from the opposing measure and urging council to include them.

POLICE COMMISSION, INDEPENDENT MONITOR OR BOTH?

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June 12, 2016

Page 3

The proposal by Council Members Guillén, Campbell-Washington and Reid establishes an Office of Independent Monitor and replaces the Citizens' Police Review Board with a Police Commission. The Proposal by Council Members Kalb and Gallo replaces the CPRB with a Police Commission and Inspector General, establishes a Community Police Review Agency with a Director and an Auditor.

Our Recommendation:

Make Oakland Better Now! believes that whether referred to as an "inspector general" or an "independent monitor," police discipline and policy oversight should be guided by a trusted expert professional who should work with, but ultimately be directed by an independent commission. To put it simply, on the organization chart, the Commission should be at the top, with the Independent Monitor or Inspector General directly below the Commission

**SELECTION, QUALIFICATIONS AND TRAINING OF COMMISSION
MEMBERS AND / OR MONITOR**

Selection:

The Guillén, Campbell-Washington, Reid proposal provides for three Independent Monitor candidates to be selected by a selection panel from at least eight candidates provided by the Mayor. The Mayor will then select an Independent Monitor from the three. The selection panel is appointed by the Rules Committee and Mayor, with panelists ranging from police accountability advocates, NCPC representatives, faith based leaders and members of the Community Policing Advisory Board and Safety and Services Oversight Committee.

Under this proposal, eight Police Commission members are nominated by Council members, one by the Mayor, and all are appointed by the Mayor.

The Kalb and Gallo proposal establishes that to appoint Commission members, there is a nine-member selection panel, with one member chosen by each Council member and one by the Mayor. The selection panel submits a slate of Four Commission members and an alternate to Council for an up or down vote. The Mayor appoints three members and an alternate.

Our Recommendation:

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June 12, 2016

Page 4

We continue to believe in the democratic process. A “selection panel” was not elected by Oakland voters, and should not be involved in the process. We believe Commission members should be nominated by the Council and/or Mayor, appointed by the Mayor and confirmed by the Council as with other Oakland boards and commissions.

Similarly, there should not be a “selection panel” for the Monitor or Inspector General. The idea that the Mayor must nominate eight qualified candidates for this position is completely untenable. Oakland’s inability to fill high-level positions makes us uncertain that the Mayor, or anyone else, could promptly and effectively fill these nominations.

We want to keep the elected Mayor involved in the process and acknowledge that the Monitor or Inspector General reports to the commission. So we suggest that the Mayor and the Commission may nominate candidates for this position, that the Mayor may submit one of the candidates to the Commission and that the Commission then confirms or rejects the nominee.

The auditor should be selected by the Monitor or Inspector General.

Qualifications:

The Kalb-Gallo proposal establishes qualifications for commission members but not for any of the other positions created. Commission members must be Oakland residents at least 18 years of age, and “to the extent practicable,” appointments shall be broadly representative of Oakland’s diversity. At least one of the Mayor’s appointees shall be a retired judge or lawyer with trial experience in criminal law or police misconduct. Specifically excluded from serving are current or former employees, officials or representatives of an employee association representing sworn police officers, former Department sworn employees, current City employees or current sworn police officers.

The Guillén, Campbell-Washington, Reid proposal establishes requirements for both Commission members and the Independent Monitor. The Monitor must have background, education and experience in two or more of the following fields: law, police practices and management, civilian police oversight, community policing, department management and leadership, and human resources.

For the commission, no categories are excluded. At least one member must be between the ages of 18 and 25. Otherwise, there are no specific requirements, but appointments should

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June 12, 2016

Page 5

be reflective of the City's diversity, and "the City shall strive to appoint Commissioners with backgrounds and/or knowledge in the fields of human resources practices, management, policy development, auditing, law, investigations, law enforcement, youth representation, as well as representation from communities experiencing the most frequent contact with the Police Department."

The Guillén, Campbell-Washington, Reid proposal requires POST screening for commissioners, and the Kalb and Gallo proposal does not.

Our Recommendation:

We oppose provisions that will exclude candidates for the Commission, particularly based on past employment. We strongly support having a youth member, and agree that the City should strive to include Commission members with backgrounds and/or knowledge in the fields of human resources practices, management, policy development, auditing, law, investigations, and law enforcement. We would add that the City should also strive to include one or more Commission members who have become familiar with the Department as subjects of its investigative or enforcement actions (although we recognize that placing felons on the Commission would violate State law).

Because Commission members will be involved in critical public safety and personnel issues, we believe they should be subject to POST investigations and screening. If there is a concern that this will unduly slow down the implementation of the new measure, then the investigation and screening should be deferred.

THE ROLE OF A CHARTER AMENDMENT AND THE ROLE OF AN ORDINANCE

The Guillén, Campbell-Washington, Reid proposal is exclusively a Charter amendment. The Kalb-Gallo proposal is largely set out in a Charter amendment with some enabling legislation.

Our Recommendation:

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June 12, 2016

Page 6

We strongly urge the Committee and the Council to not rely solely on a Charter amendment. Charter amendments lock in change. Police oversight is a subject that has been a struggle for even the most well-intentioned progressive municipalities, and we don't yet know exactly what works. The City has to have the flexibility to make changes as needed, and to the extent the first round of change is affected by Charter amendments, this flexibility may not exist. The City should be wary of the "law of unintended consequences."

We propose that the City carefully evaluate what major structural changes are needed – establishment of a Commission, Monitor or Inspector General, movement of responsibilities from City Administrator to other persons, etc. – and incorporate these into a Charter amendment. Everything else should be in enabling legislation.

MINIMUM STAFFING REQUIREMENTS

The Kalb and Gallo proposal requires one line investigator for each 100 sworn officers. The Guillén, Campbell-Washington, Reid proposal requires the Independent Monitor to report to the City Council concerning resource needs for investigating complaints, but has no requirement that the Council respond positively to those needs.

Our Recommendation:

We believe that a staffing metric is essential, but do not believe that the number of officers is the appropriate metric. The goal of this measure is to improve trust between the community and police. This will, we hope, reduce complaints, which should also reduce the need for investigators, regardless of the number of officers. So if the number of officers increases by 100 and the number of complaints falls, it makes little sense to require an increase in the number of line investigators.

We urge Council to take a hard look at the appropriate metrics that will adequately determine the need for investigators and adopt a measure that recognizes those metrics. Should the number of investigators be reduced because the number of complaints has fallen? Council should consider this.

MANDATORY INVESTIGATIONS OF COMPLAINTS

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June 12, 2016

Page 7

The Guillén, Campbell-Washington, Reid proposal provides that the Commission may decide what it wishes to review, but allows it to investigate any “serious incident” at its discretion. A serious incident is defined as an officer-involved shooting, death or serious bodily harm caused by officer action and/or inaction and/or criminal activity by an OPD employee. Also, the Commission will review any complaint which the Executive Director of the bureau deems appropriate, any case the commission deems appropriate, any case referred to the Commission by the Monitor, and any case in which the OPD has made a disciplinary recommendation of five days’ suspension or more.

The Kalb and Gallo proposal does not have any required Commission review, but requires that the Community Police Review Agency investigate public complaints involving uses of force, in-custody deaths, profiling based on protected characteristics and First Amendment assemblies.

Our Recommendations:

Inasmuch as the goal of these measures is to increase trust between police and community, we believe that investigation of the most volatile allegations of misconduct should be mandatory. Accordingly, we believe that investigators of the agency should investigate, and the Commission should review, complaints or incidents of officer-involved shootings, death or serious bodily harm caused by officer action and/or inaction, criminal activity by any OPD employee, and complaints involving potentially protected First Amendment protected activity.

Allegations of racially biased policing are obviously serious. However, these allegations involve multiple cases and statistics, and should be investigated by the Monitor, the Inspector General or the Auditor.

DISCIPLINARY AUTHORITY

The Kalb and Gallo proposal is as follows: The Community Police Review Agency investigates allegations of misconduct, makes findings and makes a recommendation for discipline. If the Chief agrees, that is the disposition. If the Chief disagrees, a discipline committee of the Commission reviews the record and decides.

Under the Guillén, Campbell-Washington, Reid proposal, the Commission reviews cases, delivers a summary report and recommended disposition to the Monitor, and the Monitor

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June 12, 2016

Page 8

communicates the discipline recommendation to the Chief of Police. If the Chief and Commission disagree on the disposition, the Monitor, City Administrator and Chief hold a joint conference to discuss the case. If there is no need for a conference, or if the conference is held and the Chief and Commission disagree, the Monitor makes the final decision.

Our Recommendation:

We believe that final discipline decisions should lie with the Chief of Police. The Chief is responsible for overall operations of the Department, and accomplishment of its goals, not the least of which is crime reduction. With this responsibility should come authority. We realize that in the environment presented by recent events and allegations, some may have difficulty giving more power to the Chief. But we are making long-term decisions here, and as discussed below, the Chief should also be held accountable to the Commission.

ACCOUNTABILITY OF CHIEF OF POLICE

The Guillén, Campbell-Washington, Reid proposal does not address authority of the Commission over the Chief of Police. The Kalb and Gallo proposal provides that the Chief may be terminated by a vote of five members of the Commission for cause. Kalb and Gallo's enabling ordinance defines "cause" as gross neglect of duties or violation of policy after a written warning, conviction of a felony, or of a misdemeanor involving moral turpitude, failure or refusal to cooperate with an investigation, obstruction of justice, failure or refusal to administer or enforce Department policies, or a material act of dishonesty, fraud or other act of moral turpitude.

The Kalb and Gallo proposal also requires Commission involvement in hiring a new Chief, specifically requiring that the Mayor hire a new Chief from a list of at least four candidates provided and vetted by the Commission.

Our Recommendation:

We agree that the Commission should have the authority to terminate the Chief for the reasons set forth in the proposed ordinance. To our view, this goes hand-in-hand with the idea that the Chief should have final disciplinary authority – if the Chief abuses this authority the Commission should be empowered to act in response.

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June 12, 2016

Page 9

We do not believe the Commission should be the sole source of candidates for Chief, with the Mayor being required to select a Chief from candidates provided by the Commission. We believe that the Mayor, elected by all Oakland voters, should receive input from the Commission but should be empowered to select the Chief.

ARBITRATION AND MEDIATION

The Kalb and Gallo proposal proposes elimination of arbitration of grievances related to discipline. However, they have submitted an alternate proposal that retains arbitration if it is included in a collective bargaining agreement (instead of requiring it by charter, as is now the case). The Guillén, Campbell-Washington, Reid proposal does not address arbitration. It does, however, have a mediation provision that “Upon the consent of the complainant and the officer against whom a complaint is filed, a civilian investigator and/or outside mediators contracted for this purpose are authorized to mediate a final and binding resolution of any complaint.”

From what we have heard informally, it does not appear Council will be considering elimination of arbitration. More likely, this Committee will be asked to consider the Kalb and Gallo alternate proposal to change the way arbitrators are selected. They have proposed a mechanism that includes the required meet-and-confer process, but ultimately allows the Commission to decide who shall be on a panel of arbitrators for the grievance of discipline matters.

Our Recommendation:

We are concerned about the Kalb and Gallo alternate proposal concerning arbitration. We believe arbitration should be governed by principals of neutrality. The Kalb and Gallo proposal suggests that the Commission should be allowed to select all members of the arbitration panel. This is not neutrality. It also violates the OPOA contract provision approved by Council in November and in effect until June 30, 2019. So no change can be effected for the time being.

The City and OPD can, however, increase their use of mediation. We strongly suggest commitment to a City-funded mediation process as described in the Guillén, Campbell-Washington, Reid proposal, but using trained, experienced, neutral mediators, not investigators or other city employees.

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June 12, 2016

Page 10

RIGHT TO KNOW POLICY, TRAINING AND EDUCATION AND COMMUNITY ENGAGEMENT

The Guillén, Campbell-Washington, Reid proposal contains sections on sharing of information with the public, evaluation and monitoring of hiring, training, policy and education policies, and on community outreach (Sections 5b 6 and 7 of the proposed Charter Amendment). While these generally seem more suitable for an ordinance than a Charter amendment – with the possible exception of the “Right to Know” provisions, which should probably be in the Charter amendment – we strongly support them. Among other very positive elements here, we are very pleased with the Police Leadership Institute, a possible partnership between the City and local educational institutions designed to develop the next generation of Police Department leadership.

We are similarly enthusiastic about the Community Roundtable provisions as part of the community engagement and outreach mechanisms in the Guillén, Campbell-Washington, Reid reforms.

We strongly encourage Council to incorporate these provisions into the array of measures to be enacted or placed before the voters.

CONCLUSION

Nothing about this task is easy. Cities all over the United States have struggled with how to increase trust between police and the community while at the same time reducing crime. We recognize the connection between these issues: we are most apt to have a safer community when the community trusts police and when the police trust the community.

While we have a long way to go, and despite the news of the past few days, we still believe that no city is better positioned to succeed in this regard than Oakland. With thought, care, and deliberation, we can make it happen. We will be represented at your meeting on Tuesday, and at future Committee and Council meetings where these critical issues are addressed. We wish you the best in your efforts to set these all-important policies.

Best regards,

From the Make Oakland Better Now! board

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Page 11