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July 14, 2016

Via e-mail

Oakland City Council President Lynette Gibson McElhaney  
and Members of the Oakland City Council

Re: July 19 City Council Meeting Agenda Item 11,  
Police Commission Charter Amendment Measure

Dear President Gibson McElhaney and City Council Members:

Make Oakland Better Now! is a citizens' advocacy group supporting public safety, public works, transparency and accountability in government and budget reform in the City of Oakland.

We believe that lack of trust between police and community members has long been an impediment to public safety. While the historic dysfunctional relationship between police and residents has seen much improvement in recent years, there is a need for much more improvement. We also believe that strengthening that relationship is a two-way street, requiring improved trust on the part of both community members and police officers. We believe the necessary improvements can best be achieved, and community safety can best be improved, with a combination of oversight measures, improved hiring practices, training and education, increased transparency and community engagement.

Based on these beliefs, and on much study of best practices in police oversight, training and police/community relationships, we generally support nearly all elements of the proposals by Council Members Kalb and Guillen and many of the supplemental proposals by Council Members Campbell-Washington, Guillen and Reid. We offer this support with only a few caveats and concerns, which we will discuss below.

There has been a great deal of information in the press and elsewhere concerning other versions and iterations of this measure, as well as demands being made by interest groups. As the only measures disclosed to the public to date are the reports on Legistar, we limit our comments for now to those measures.

We begin with a general observation concerning the distinction between the use of Charter Amendments for this purpose and enactment of ordinances. We believe it is critical to enact a Charter Amendment to set a structure for the new Police Commission, Agency and its component parts and staffing so as to minimize the risk of dilution or other tampering with the new system in the future. However, Oakland is entering largely uncharted waters here, and needs to protect itself against unintended consequences. For that reason, we urge Council to create the overall structure, requirements and responsibilities of the Commission, Agency and staffing through the Charter process, but also to submit amendable ordinances to the voters for those elements of the new program where flexibility is appropriate.

Our other recommendations concerning additions, deletions and changes to the proposals before you are as follows:

Minimum Staffing Requirements (Proposed Section 604, subpart (e)(4)):

We understand the need to protect staffing levels from being gutted in the budget process in the future. But we are concerned that the arbitrary standard of one investigator for each one hundred officers may result in either more investigators than are needed, if we see a steep long-term decline in misconduct complaints, or not enough if there is a significant increase. Accordingly, we propose that every five years, the ratio be reviewed and analyzed by the Inspector General and Commission based on average complaint rates for the five year period, and that the Council may adjust the ratio upward or downward based on review and analysis of the Inspector General and Commission.

Mandatory Investigations (Proposed Section 604, subpart (f)(1)):

The proposal by Council Members Kalb and Gallo requires the Agency to investigate any public complaints of use of force, in-custody deaths, profiling or First Amendment assembly rights. The Campbell-Washington /Guillen / Reid proposal requires investigations of officer involved shootings, death or serious bodily harm caused by police actions or inactions, and both on-duty and off-duty criminal activities by both sworn and unsworn police employees.

We propose three steps: First, the proposals should be combined – all of these are appropriate for mandatory investigations. Second, investigations should be mandatory for any complaints of First Amendment violations (e.g., assembly, speech, association, etc.). Finally, rather than set these in stone forever, we recommend that after five years, the Inspector General and Commission may recommend, and Council may adopt, a

changed list of mandatory investigations. This allows the City to respond to needs as they appear and make sure that resources are deployed appropriately.

Pre-Investigation Agency Acceptance of Chief's Findings and Recommendations (Proposed Section 604, subpart (g)(3):

There appears to be a drafting error. The measure provides that the Agency can forego or cease its investigation of a mandatorily investigated complaint and accept the Chief's Findings and Recommendation if the Commission approves. And the Agency must notify the Chief of its "decision regarding how it will proceed" within five business days of the Chief's notification of findings and recommendation.

This would require the Commission to convene a meeting and act on the proposed investigation closure on less than five days' notice, which seems unlikely, if not unlawful. We propose that the word "recommendation" supplant the word "decision," which eliminates the problem.

Mediation (Proposed Section 604, subpart (g)(11):

It is our understanding that in recent months, the CPRA's Executive Director has been working with the local mediation agency SEEDS to develop a robust mediation process. In a police disciplinary process aimed at increasing police / community trust, voluntary mediation – which offers the complaining party and the officer and opportunity to reach a voluntary resolution – has an important part to play, particularly when it comes to lower level complaints (e.g., officer rudeness). The voluntary mediation process has been used successfully by other agencies, including the Berkeley Police Department.

The proposed charter amendment all but eliminates the mediation option. All that remains is the potential for mediation if an officer appeals the Chief's findings and discipline to the Commission. And in this instance, the only parties to the mediation are the officer and the Chief – not the complaining party!

We believe that voluntary mediation, conciliation or restorative justice mechanisms should be made available to the officer and the complaining party as an option for all lower-level complaints. The mechanisms should be overseen by trained, independent neutrals (i.e., not city employees). Safeguards should be in place to ensure informed consent by all participants. All participants should understand that the process is voluntary and there is nothing binding until agreed to by the parties. One or two sentences in the charter amendment could leave room for the agency to make this option available.

Transparency (Campbell-Washington, Guillen, Reid Proposed "ADDS" 5 and 10 (pages 2, 3-4) and "Additional Amendments ADD" 1 (page 8), ):

Again, the goal of a robust police oversight mechanism is to increase police/community levels of trust. All of these proposals should be part of the reform. Furthermore, the Agency should be required to report to the public on an annual basis concerning its standards for closing complaints without an investigation, and the number of complaints so closed based on each such standard.

Increased Authority for Inspector General (Campbell-Washington, Guillen, Reid Proposed “ADDS” 6, 7 and 8 (pages 2-3) and “Additional Amendments ADD” 2, 3 and 4 (pages 8-9), ):

These proposals bring the Inspector General’s role into conformance with the “independent auditor/monitor” model favored by Professor Samuel Walker and other police oversight authorities, and without in any way diminishing the authority of the Commission. The Inspector General is authorized to investigate, audit and report on trends, which are critical to long-term reform.

Greater Involvement of Commission and Inspector General in Training, Education and Recruitment General (Campbell-Washington, Guillen, Reid Proposed “Add Amended Section 6 (pages 4-6)):

We believe the Commission and Inspector General should be fully involved in overseeing the kinds of critical training referred to in these sections. We particularly urge that the City go forward with the Police Leadership Institute, which appears to be an enormous opportunity to develop the OPD leaders of the future.

But training requirements should not be static. While skills and education in problem-solving, diplomacy, de-escalation, stress management, procedural justice and implicit bias are certain to be essential for the foreseeable future, the “state of the art” in police training is evolving. The Inspector General and Commission should be tasked with following training and education best practices as they evolve, and taking steps to ensure that Oakland continues to lead the way in advanced, progressive training and coaching.

Community Engagement (Campbell-Washington, Guillen, Reid Proposed “Add Amended Section 7 (pages 6-8)):

Recognizing once again that the goal here is positive police / community relations, we believe all of these measures should be adopted.

But there is one glaring omission: none of the proposals include any measure of whether or not efforts to improve police / community policing are succeeding or failing. As OPD states in its strategic plan, “The primary performance measure for strengthening community trust and relationships are community surveys.”

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Reform measures should provide that on an annual basis, the community will be surveyed about OPD and OPD members will be surveyed about the community. Such surveys should be professionally designed and administered, and the results should be published.

Conclusion:

Make Oakland Better Now! addresses these measures from a strongly pro-police point of view. We live in a city – indeed, in a nation -- with a long history of strained community / police relations, and during a period when some of the greatest weaknesses in oversight have been repeatedly and painfully revealed. Nonetheless, it is imperative that the oversight, training, education and improvement mechanisms addressed in these proposals be adopted in a spirit of collaboration, so that working together, OPD and the community can work together to give us the safe city Oaklanders deserve.

We look forward to addressing you at the July 19 meeting.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bruce Nye".

Bruce Nye  
For Make Oakland Better Now!