



# Proposed Police Comm'n Amendments re: PEC

**PEC Meeting, January 17, 2024**

**Simon Russell, Enforcement Chief**

# CURRENT LAW

1. The PEC can investigate and prosecute the alleged failure of City departments (e.g. OPD) to **provide files or records** requested by the Police Commission or the OIG in order to carry out their legal functions (OMC 2.45.210); and
2. The PEC can investigate alleged **misconduct by a Police Commissioner** and refer its findings to the City Council for their decision as to an appropriate resolution, up to and including dismissal of that Commissioner (Oakland City Charter section 604(c)(10)).

# PROPOSED CHANGES:

1. Move PEC authority to investigate and prosecute failure to provide files or records requested by the OIG to new OMC Chapter 2.47 (non-substantive).
2. Require the Police Commission to provide an annual report to the PEC regarding Police Commissioners' **completion of workplace retaliation training**. (Proposed OMC 2.45.190(D)).
3. Gives concurrent jurisdiction over allegations of Police Commissioner misconduct to **other independent investigators besides the PEC**. (Proposed OMC 2.45.040(D)).

# Proposed OMC 2.45.040(D)

Commissioners shall act in accordance with all applicable laws and policies, including the Commission's policies and all rules of procedure. Complaints that a Commissioner has failed to abide any of the same will be assessed and investigated as appropriate by an independent investigator such as the City's Office of Employment Investigations and Civil Rights Compliance (EICRC) or the Public Ethics Commission. A finding that a Commissioner has violated an applicable law, rule, or policy may result in reprimand, suspension or removal by the City Council.

# Proposed PEC amendment re: selection of investigator

Complaints that a Commissioner has failed to abide any of the same will be assessed and investigated as appropriate by an independent investigator **who shall be selected based upon their subject matter jurisdiction and expertise over the alleged type of violation**, such as the City's office of Employment Investigations and Civil Rights Compliance (EICRC) or the Public Ethics Commission.

# Proposed PEC amendment re: procedure

Version #1 (bypassing PEC vote):

The procedure for assessing and investigating a complaint under this section shall be the same as that normally followed by the independent investigator in the course of assessing and investigating similar complaints under their jurisdiction, except that the City Council shall be the only body empowered to make final findings of fact and determine an appropriate resolution. A finding that a Commissioner has violated an applicable law, rule, or policy may result in reprimand, suspension or removal by the City Council.

# Proposed PEC amendment re: procedure

Version #2 (incorporating PEC vote):

The procedure for assessing and investigating a complaint under this section shall be the same as that normally followed by the independent investigator in the course of assessing and investigating similar complaints under their jurisdiction, including the procedure for making final findings of fact and determining whether any violation of this section occurred. All findings and conclusions made under this section shall be referred to the City Council for determination of an appropriate resolution. A finding that a Commissioner has violated an applicable law, rule, or policy may result in reprimand, suspension or removal by the City Council.



# Proposed PEC amendment re: who can file a complaint

Anyone may make a complaint against a Commissioner under this section, including any public servant or member of the public.



# Proposed PEC amendment re: fast-track procedure

Where the allegations made in a complaint are deemed to be serious, and the investigation and resolution of that complaint is deemed to be time-sensitive, the independent investigator may refer the investigation of the complaint to an outside contractor if the independent investigator is unable to expedite the matter due to reasons of caseload, staffing, or similar constraints. The determination to make such a referral shall be made by the independent investigator, and its reasoning for making the referral shall be provided in writing to both the complainant and the respondent at the time the referral is made, unless the independent investigator determines that doing so would negatively impact the integrity of the investigation. The costs incurred in hiring an outside contractor shall be borne by the Police Commission.

# Legal issue flagged: City Charter 604(c)(1)

The Public Ethics Commission shall have the authority to investigate all allegations which, if true, could be cause for removal of a Commissioner under Section 601 of the Charter and to refer the findings to the City Council.

# Staff recommendation:

- ▶ Adopt proposed OMC sections 2.45.190(D), 2.45.210 and 2.47.060 as-written.
- ▶ Adopt proposed OMC section 2.45.040(D) with the suggested amendments.
- ▶ Attach staff memo as background.
- ▶ Urge the City Attorney to produce a written opinion regarding whether City Charter section 604(c)(10) precludes any agency besides the PEC from investigating allegations that could result in the City Council removing a Police Commissioner for cause.