

OAKLAND POLICE COMMISSION PROCLAMATION

RESOLUTION NO. 22-04

RESOLUTION CALLING FOR REFORM OF GOVERNMENT CODE SECTION 3304, A CALIFORNIA STATE LAW LIMITING THE CITY OF OAKLAND'S AUTHORITY TO DISCIPLINE POLICE OFFICERS

WHEREAS, in 2016 and again in 2020, the residents of Oakland voted by overwhelming majorities to vest new oversight authorities in the Oakland Police Commission by revising the City's founding document, the City's Charter, to fundamentally reconstitute Department decision-making about Department policies and officer discipline;

WHEREAS, the Police Commission oversees its own, independent investigatory entity the Community Police Review Agency ("CPRA"), which serves as a vital reform entity to render independent investigatory findings and recommend levels of discipline with respect to alleged violations of the law and/or Department policy by sworn officers of the Department;

WHEREAS, the Police Commission is vested with independent policymaking authority to create new Department policies and approve, modify, or reject policies the Department proposes to adopt, all of which directly influence the on-duty conduct of sworn officers out in the field;

WHEREAS, the Police Commission directly oversees the work of the Oakland Police Department Chief, the Director of the CPRA, and the independent Inspector General who helms the Office of the Inspector General, and along with them continues to support and work alongside the Oakland Police Department to reform several aspects of the discipline of sworn officers;

WHEREAS, the Police Department remains under a Court enforced monitoring program, whose monitoring team reiterates that a core criterion of final resolution is the transformation of Department culture, of which reformed police discipline constitutes a major factor;

WHEREAS, in exercising its powers and duties under the Charter, the Police Commission has closed session access to individual cases of sworn officer discipline, the individual details of which it cannot publicly disclose or describe, per California State Penal Code Section 832.7 and 832.8, as codified into the City's own municipal code at OMC § 2.45.045;

WHEREAS, based upon on the Police Commission's closed session access to several cases going through the investigatory and disciplinary process, in the aggregate, sworn officer disciplinary outcomes would improve and better reflect the needs of the Department and the residents of the City of Oakland if the State of California revisited and reformed the current constraints on officer discipline codified in Section 3304 of the Government Code;

WHEREAS, Section 3304 of the Government Code is known as the “Public Safety Officers Procedural Bill of Rights Act” abbreviated as “POBRA” or “POBAR.” Section 3304(d) requires that any discipline of a sworn officer be finalized “within one year of the public agency’s discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct,” unless one of a handful of narrowly construed exceptions applies;

WHEREAS, state courts that have interpreted Section 3304 have ruled on a number of occasions that the fundamental purpose of the law is “to ensure that an officer will not be faced with the uncertainty of a lingering investigation,” despite several other important policy considerations that are at stake when a city is limited from disciplining its own officers;

WHEREAS, this state law requirement imposes an arbitrary one-year *shot clock* that has an unnecessary effect on every California city’s capacity to carry out wide ranging complex investigations into alleged police officer misconduct. The effect of this rule is more profound where a City like Oakland vests power in a civilian oversight entity with additional authority to deliberate on the proper findings and levels of discipline;

WHEREAS, the enforcement mechanism for any Department violation of 3304(d)’s requirement mandates that a City in California must entirely forego any police discipline arising from an investigation that takes more than a calendar year and does not fit into one of the narrow exemptions to the one year rule codified in Section 3304 of the Government Code;

WHEREAS, the introduction of robust civilian oversight reforms to the police department disciplinary process add new investigatory and disciplinary checks that further render this one-year rule impractical for effective administration of police discipline, but these very reforms ultimately bolster the integrity of police investigations and enhance the legitimacy and community trust in our cities’ police departments if the state law is updated to accommodate them;

WHEREAS, the current exemptions to the one-year rule fails to adequately reflect all of the reasons for which a sworn officer investigation and all follow up discipline may take longer than a calendar year from the date a person authorized to initiate an investigation discovers the alleged misconduct;

WHEREAS, Section 3304(g), which constrains Cities in California from reopening closed cases, also requires reconsideration. By its plain language, this subsection of the Government Code mandates that new evidence must materialize and be “discovered,” all without an investigation, before a closed police officer disciplinary case can be reopened. Any evidence that “could [] have been reasonably discovered” during the investigation cannot serve as the basis to reopen a closed case. Moreover, before an investigation can be lawfully reopened, the new evidence must be “significant” and “likely to affect the outcome of the investigation.”

WHEREAS, state law that mandates a City of California must forego police discipline if an investigation and final decision about discipline cannot be completed after one year is inappropriate;

WHEREAS, none of the current exemptions in Government Code Section 3304 afford civilian oversight entities like Oakland’s extra time to convene a discipline committee and make appropriately deliberative decisions if there is a dispute that requires resolution;

WHEREAS, the State of California owes its residents a far more nuanced and balanced approach to transforming police discipline both in the City of Oakland and more broadly across every City in the State;

RESOLVED: that the Police Commission adopts and endorses the foregoing recitals as true and correct and hereby incorporates them into this resolution; and be it

FURTHER RESOLVED: that the Police Commission calls for the Legislature of the State of California to consider a one year extension of the current timeline codified in Section 3304(d), from one year to two years; and be it;

FURTHER RESOLVED: that the Police Commission calls for the Legislature of the State of California to consider a one year tolling provision after an investigation is initially completed for a civilian oversight entity to deliberate about findings and levels of discipline, for example where the Oakland Police Commission must convene a discipline committee to resolve any disagreements between the CPRA and the Chief of Police (Oakland City Charter Section 604(g)(2)); and be it:

FURTHER RESOLVED: that the Police Commission calls for the Legislature of the State of California to reconsider all of the current exemptions in Section 3304(d), as well as the current limitation on reopening closed cases codified in Section 3304(g), to ensure this law reflects the modern realities of civilian oversight of city police departments across the state.

ON MARCH 31, 2022, AT A MEETING OF THE OAKLAND POLICE COMMISSION IN OAKLAND, CALIFORNIA

PASSED BY THE FOLLOWING VOTE:

AYES –

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____

RANIA ADWAN
Chief of Staff
Oakland Police Commission
City of Oakland, California