

Agenda Item # 10.a.
PRC 3.24.21 meeting

To: D. Williams-Ridley, City Manager
From: Berkeley Police Review Commission
Re: Hiring of new Police Chief
Date: March 24, 2021

Draft for discussion
from Comm. Calavita

Dear Ms. Williams-Ridley:

Thank you for your commitment to an inclusive and collaborative search for a new Chief of Police, as expressed in your March 16 memo to the Mayor and City Council Members. This is a critical moment for transformative policing in Berkeley, and it comes at a time of transition from the Police Review Commission (PRC) to the new Police Accountability Board (PAB), to be seated by July 1, 2021.

The Charter Amendment that passed overwhelmingly by Berkeley voters states that "...upon notice of vacancy of the position of Chief of Police, the City Manager shall consult with the Police Accountability Board...on the job requirements, application process, and evaluations of candidates for the Chief of Police" (Section 22). This provision is no doubt in recognition of the importance of community participation in the hiring of what is one of the most impactful positions in the City and in community/City relations.

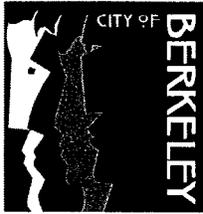
While membership of the PAB will not be fully constituted until July 1, 2021, it is in the spirit of the Charter Amendment that the police oversight body have a meaningful seat at the table when a new Police Chief is hired. Accordingly, we ask that the PRC collaborate with you and with other city staff in the recruitment firm selection, the nomination of candidate finalists, the interview process, and final recommendations.

Community input in this hiring process of a new Chief of Police for Berkeley is key to trust, transparency, and inclusivity. The PRC, as the police oversight body representing the interests of all community stakeholders, must be a central vehicle for community participation in this collaborative process.

The principal purpose of this memo is to urge you to include the PRC in decisions regarding the hiring of the new Police Chief. We would add, however, that a collaborative—and *efficient*--process also would require that City Council be presented not with the final selection to endorse or not (in the latter case, presumably going back to the drawing board), but with several candidates from which to recommend a finalist to you.

Thank you again for your dedication to the City, to fair and impartial policing, and to a collaborative process in hiring the new Police Chief.

Respectfully,



Office of the City Manager

March 16, 2021

To: Honorable Mayor and Members of the City Council

From: *Dee* Dee Williams-Ridley, City Manager

Subject: Chief of Police Recruitment

The City of Berkeley is in the beginning stages of recruiting for a new Chief of Police following the retirement of Chief Andrew Greenwood after 35 years of service to the community. During the recruitment process, Captain Jennifer Louis has enthusiastically agreed to serve as the City's Interim Chief of Police. The purpose of this memorandum is to provide the Mayor, Council and community with an outline of the steps ahead. Feel free to broadly share this memo.

Overview of Recruitment Process

The recruitment process to select the City's next Chief of Police will be a nationwide search that is collaborative, inclusive and considers the needs and priorities of the community, the Police Department, and the City Council.

The process will begin with selecting an executive search firm that has a proven ability to attract a diverse pool of candidates. The recruitment firm will be tasked, at a minimum, with the following:

- Leading a dynamic and robust community engagement process;
- Developing recruitment materials;
- Advertising and promoting the recruitment to the widest possible audience;
- Identifying and evaluating candidates and proactively soliciting interest from potential candidates;
- Performing preliminary assessments and thorough background searches; and
- Coordinating the interview process.

While I am interested in a recruitment firm that has experience in recruiting Chiefs of Police, I am most importantly seeking a firm that embraces Berkeley's values and has a deep appreciation for the City's forward-thinking and commitment to reimagining public safety.

Once a recruitment firm has been identified, the firm will be asked to work collaboratively to develop a profile of the community and the prospective Chief. This will be rooted in engagement that seeks to uncover the issues that the new Chief of Police should address in their first year on the job, what professional experiences and accomplishments the new Chief of Police should bring to the position, and what skills and abilities the new Chief of Police should have to be successful in Berkeley.

The engagement process will be robust and is one that will be approached thoughtfully and strategically.

Once a final candidate has been selected, pursuant to the City's Charter, my recommendation will be presented to City Council in a Closed Session and effective subject to a vote of the City Council at a public meeting.

Timeline and Next Steps

The selection process will likely take about six (6) months to identify our next Chief of Police. The immediate next step is to select a recruitment firm that can assist the City. Once that firm is selected, a timeline for stakeholder engagement for the recruitment will be finalized. It is my intent to provide frequent updates to the Mayor, Council, and community to ensure transparency in the process from beginning to end, and it is my commitment to all of Berkeley to remain open and flexible as I work with the recruiter who will help guide the process that will align the needs, priorities and voices from our community.

cc: Paul Buddenhagen, Deputy City Manager
David White, Deputy City Manager
Jennifer Louis, Interim Police Chief
LaTanya Bellow, Director of Human Resources
Farimah Brown, City Attorney
Matthai Chakko, Assistant to the City Manager
Mark Numainville, City Clerk
Jenny Wong, City Auditor

Q A from PRC Special Meeting / Webinar on Community Oversight of Policing in Berkeley, March 13, 2021

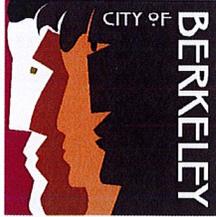
Topic	Webinar ID	# Question
Community	869 0814 7095	43
Question Details		
#	Question	Answer(s)
1	Can you provide information on the time commitment expected and term of service, if any?	live answered
2	Age and experience requirements to apply?	live answered
3	How can we make sure that a city which was once close to 30% african american (and is now 7%) will have a PAB with the diversity that represents those who are truly impacted by the police and the criminal justice system? Will there be any directed community outreach? To unhouesd community members? Those currently being served/ not served by the mental health department, etc... Will board members be paid? Will they be supported in having internet access?	live answered
4	If Council can add duties and powers to the Board, can they also take them away?	The Council can only take away 'additional' powers that it grants to the Board. The Council cannot remove any of the Board's powers granted through the charter amendment that established it.
5	what does "involved in" hiring the police chief mean? From my understanding the reinvisioning community safety task force thought they would be "involved" in the work by consultants (RDA) but that seems to now be in question. They feel very closely entwined	"the City Manager shall consult with the PAB on the job requirements, application process, and evaluation of candidates for the Chief of Police." Section 21 of Measure II.
6	How will citizens be able to communicate with and provide feedback to/oversight of the PAB?	live answered
7	Much each district have a representative on the board?	No, though each district's Councilmember will nominate one member.
8	one must be nominated by the mayor or councilmember??	Yes. They must be nominated
9	Will you open the elibility for community providers that work in the city of Berkeley to join the board?	The voter approved ballot measure says Berkeley residents.
10	Must each (not "much each")	
11	How will this board interact with the school board/school community given there are times when BPD have to be called in compliance with ed code. Thanks!	I assume that relationship would develop after the PAB members are seated. It's not specified in the voter approved measure.

12	Does the new PAB include additional trained investigators to assist the PAB and director ? Will the current staff remain and be supplemented ? Will PAB subcommittees be staffed by PAB staff ?	I will ask about the number of investigators and get back to you. I'm not sure it's been determined. Unknown whether current staff will remain. Yes, I believe subcommittees of the PAB will be staffed, just as PRC subcommittees typically are.
13	In other words, what is the PAB's accountability to the public? I am very interested in the mission and work -- is there a way citizens can have a voice in the work of the PAB?	The primary and most important way for the public to be involved, other than being appointed to the Board itself, is to attend the public meetings of the Board and its subcommittees.
14	How many can each councilmember nominate?	1
15	Also, thank you for this progress!	You're more than welcome.
16	How many can the mayor nominate?	1
17	Do you anticipate avenues for ordinary citizens to participate? Working groups? Focus Groups?	Hi Don. One potential avenue of involvement for citizens not serving on the Board is serving a subcommittee of the Police Accountability board or the city's re-imagining public safety Task Force (Task Force will likely consider subcommittee appointments at the next meeting). If there is a subcommittee covering a topic you are interested in, you can voice your interest at a meeting and potentially be appointed.
18	Does the complainant have the right to sit in the officer's interview (or does the Police Officer's Bill of Rights prohibit that?) Now the officer and their attorney sits in on the complainant's interview but complainant not allowed to hear what officer says -	Moni, I don't think so. Also, officers don't have the right to sit in on comp's interview
19	Sounds like with meetings time to meet, read materials and stay current would be 10 to 20 hours per month would that be close in time commitment?	Yes, in my experience on the PRC, that's about right. In 2020, I would say it has been closer to 20 hours.
20	will those committees be paid? we need unhoused folks in these committees	Yes, members will be paid for subcommittee meetings.
21	do yo have a ongoing path for letting us know of the several committees	Committees will be established after the PAB members are seated late this summer.

22	So you if the council can add on duties and powers, can they also remove them?	I will ask. Please reach out to me via PRC staff.
23	Is this board going to be established soon enough to participate in hiring of new police chief	The city intends to conduct a nationwide search. I assume that search and background checks will take more than 3 months.
24	Can you say whether you expect current PRC members to apply to the PAB?	It is expected that one or more PRC commissioners will apply to the PAB.
25	For the citizens on committees / are they not required to be a Berkeley resident? - and do they qualify for any stipends if low income community members want to participate ? Can 'residence' include prior resident in last 10 years, OR attend a faith community in city OR work in the city (other than city employee?) many in the Black and Brown community meet the expanded definition of resident (but have been displaced by gentrification)	Moni, please email this question to prcmailbox@cityofberkeley.info. Staff will answer next week.
26	Since council can add responsibilities through ordinance can responsibilities be taken away or limited that were given in the new ii charter?	Good question. I will ask and get back to you.
27	It would be nice if more people have an opportunity to speak and not have this be a debate...	Yes. Sorry.
28	Why do we not know who in the community speaking?	Community members have the option of anonymity.
29	Don't know how many are on. If 20 hours is about right maybe that could be said out loud into recording	Kelly, I can't speak during public comment, but you can raise your hand and relay that information.
30	that is unfortunate	
31	Will the PAB be involved in the chief selection process? If so, how many more meetings will be added & at what stipend rate?	To first question, see response to Rebecca Fink above. Don't know how many more meetings it will take. Rate depends on whether meeting of full commission or subcommittee.
32	That certainly eliminates a lot of displaced Black residents.	
33	yes mama ayanna.	
34	how many people are on this call?	Over 40
35	how will the questions in the chat be addressed since they all were not answered?	Answers are being typed now. If your question is not answered today, please reach out to PRC staff next week.
36	Next one: invite the youth of Color from BHS, BcC and cal to next forum - and BTEch and other youth programs and churches etc	Thank you. I think we did reach out to most of those groups for this one.

37	How are we assured police records will no longer be redacted?	Please reach out to PRC staff next week for a detailed answer.
38	<p>Thank you George - in response to being clubbed in the back by Officer no. 60 - my attorney Jim Chanin recommended that I not file a PRC complaint - but I did naively I guess - and it was like a second beating - two of the commissioners on the board of inquiry sled the attorney who verbally attacked me with questions like - if I was injured, why did I not take pictures of my back? One PRC commissioner started to walk out he was so troubled by the aggressive counsel-</p> <p>Then to add insult to injury, I was not allowed to sit in the officer's interview by the BOI, but he sat in my interview a couple of feet from me in uniform that was very triggering - I broke down crying years later when I saw the same officer arresting a Black man</p>	
39	<p>How will the new PAB address police brutality against other marginalized groups (beyond the Black community)?</p> <p>Is it possible to have certain training accessible to the public who would potentially apply in the future?</p> <p>just a note: I don't understand why city employees can live anywhere but not board members?</p> <p>Thank you Councilmember Harrison who helped on passing Measure ii - !! And the community</p>	
40		
41		Any training that is given to more than a majority of the Board will have to take place as a public meeting.
42		
43		

<p>12. The Director can request additional staff. The budget is reviewed and approved by the Council.</p>	
<p>18. I think the point of Moni's question may have been missed. I believe she is not asking about the private interview of the complainant by the investigator, but of the complainant's public testimony. That imbalance is a long-standing grievance by complainants, is humiliating and disrespectful, and a big reason that so few people bother to file complaints.</p>	<p>George you're right; I misunderstood Moni's Q. The answer is, the current practice probably won't change due to POBRA.</p>



Office of the City Manager

CONSENT CALENDAR

March 30, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Mark Numainville, City Clerk

Subject: Police Accountability Board – Ordinance Amendment for Leaves of Absence and Alternate Commissioner; Amending BMC Chapter 3.02

RECOMMENDATION

Adopt first reading of an Ordinance amending Berkeley Municipal Code Section 3.02.030 to provide for leaves of absence for members of the Police Accountability Board and Berkeley Municipal Code Section 3.02.035 to provide for a designated council-approved alternate to serve when a regular member is on a leave of absence.

FISCAL IMPACTS OF RECOMMENDATION

A direct cost to the General Fund \$800 to pay the stipend to the alternate commissioner for the time spent on the required 40 hours of training.

CURRENT SITUATION AND ITS EFFECTS

Measure II was adopted on November 3, 2020 by the voters of Berkeley to create a new Police Accountability Board (hereafter “Board”). The members of the Board are approved by vote of the full Council. The Charter amendment also provided for termination for lack of attendance, leaves of absence, and alternate commissioners pursuant to Berkeley Municipal Code Section 3.02.020, Section 3.02.030, and Section 3.02.035 respectively.

Leaves of absence are an important tool for commissioners to be able to miss a meeting due to illness, unavoidable travel, or other significant conflicting obligations without the absence counting against their attendance record. For commissions appointed by the Council as a whole, Section 3.02.030 requires that the leave of absence be granted by the full Council. This requires an item to be placed on the Council agenda at least four weeks prior to the date of absence (or much longer depending on Council recess periods). This process makes it very difficult to obtain a leave of absence and may lead to commissioners being terminated for attendance due to unforeseen circumstances.

The current process for alternate commissioners involves the Mayor and each Councilmember having up to five alternates that can serve on certain designated commissions. The alternate process provides an efficient method to fill a vacancy due

to a leave of absence without requiring the temporary commissioner to take the oath of office and file a Form 700 for every instance of service as an alternate on a commission. This process is complicated by the Charter requirement that all appointees to the Board be approved by the full Council. The same long lead times and onerous requirement of submitting a council item for the leave of absence would apply to designating an alternate commissioner to serve.

In order to remedy these issues and maintain the integrity of the Charter requirements for approval by the full Council for any member serving on the Board, staff is proposing code amendments to create specific provisions enabling leaves of absence to be granted without approval of the full Council and the use of a single alternate commissioner who will be pre-approved by the full council to serve when another Board member is on a leave of absence. Should City Council adopt the proposed Ordinance, at the time that City Council appoints the initial nine (9) commissioners to the Board, City Council will also be asked to approve an alternate commissioner. This alternate will be required to undergo the same 40-hour training requirement as the regular Board members.

BACKGROUND

The Berkeley Municipal Code provides for leaves of absence for city commissioners and for the use of alternate commissioners on certain commissions. There are additional layers of complexity for boards and commissions that are appointed by the Council as a whole due to the requirement that the leave be granted by the entity that made the appointment.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable effects on sustainability or the environment associated with the recommendation in this report.

RATIONALE FOR RECOMMENDATION

These amendments will allow the Board to have greater continuity in its membership by reducing the number of members that could be terminated for attendance due to the difficulty of obtaining leaves of absence in advance of board meetings. In addition, vacancies on a commission reduce the effectiveness of the body to deliberate and conduct business. Finally, the work of the Board will be enhanced by an alternate Board member who will receive the extensive training provided to the regular Board members.

ALTERNATIVE ACTIONS CONSIDERED

The Council may wish to not adopt the proposed Ordinance and adhere to the current wording of the Berkeley Municipal Code that requires all leaves of absence to be granted by submitting an agenda item to be approved by the full Council for each leave of absence requested by a board member. The Council may also wish to make changes to the proposed Ordinance such as designating who may nominate an alternate commissioner for City Council approval.

CONTACT PERSON

Mark Numainville, City Clerk, (510) 981-6900

Dave White, Deputy City Manager, (510) 981-7000

Attachments:

1: Ordinance

ORDINANCE NO. -N.S.

LEAVES OF ABSENCE AND ALTERNATE COMMISSIONER FOR THE POLICE ACCOUNTABILITY BOARD; AMENDING BERKELEY MUNICIPAL CODE CHAPTER 3.02

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 3.02.030 is amended to read as follows:

3.02.030 Leaves of absence.

The following circumstances shall not count as absences for the purposes of Section 3.02.020:

A. A member of a board, commission or committee may be granted a leave of absence not to exceed three months by the appointing Councilmember, the appointing Commission, or the Council, when the appointment is made by the Council as a whole, and a temporary vacancy shall thereupon exist for the period of such leave of absence. Notice of the leave of absence must be filed with the City Clerk prior to the absence.

1. During the period of such temporary vacancy, the appointing Councilmember, the appointing Commission, or the Council, when the appointment is made by the Council as a whole, may fill such vacancy by a temporary appointment to said commission; provided, however, that the period of such temporary appointment shall not exceed the period of the temporary vacancy. At the expiration of a leave of absence so granted, the member shall automatically resume full membership on the board, commission or committee.

2. Alternatively, the appointing Councilmember or Mayor may select one of their Alternate Commissioners to serve temporarily as provided for in Section 3.02.030.A.1 when a leave of absence is granted for one of their appointees.

B. Commissioners may request that an absence be excused due to a conflict between the date of a scheduled commission meeting on which the commissioner sits and a religious or cultural holiday. Such a request shall be made in writing on a form provided by the City and submitted to the secretary prior to the meeting for which the commissioner's absence is to be excused. The request shall not be subject to the approval of the commission but shall be accepted upon request. The secretary shall then excuse that absence and exclude it from the attendance report sent semi-annually to the City Clerk.

The definition of a religious or cultural holiday shall be left to the individual commissioner. However, the following list may be considered illustrative of the religious and cultural holidays for which a commissioner may seek an excused absence: Al Hijrah New Year, Ash Wednesday, Chinese New Year, Diwali, Easter Sunday, Eid Al Fitr, Eid Al Adha,

Good Friday, Hanukkah, Holi, Kwanzaa, Palm Sunday, Passover, Rosh Hashanah, St. Patrick's Day and Yom Kippur.

C. Members of the Police Accountability Board may be granted a leave of absence upon the filing of a notice for leave of absence with the City Clerk by the nominating Councilmember or the Mayor for their nominee. All other conditions and regulations for leaves of absence in this Code and adopted by resolution, that are not inconsistent with the City Charter, shall apply.

Section 2. That Berkeley Municipal Code Section 3.02.035 is amended to read as follows:

3.02.035 Additional provisions pertaining to Alternate Commissioners.

A. Each Councilmember and the Mayor may select up to five individuals to serve as their Alternate Commissioners. Alternate Commissioners shall be qualified and appointed as provided for in the Municipal Code and supplemental regulations adopted by resolution.

B. Alternate Commissioners shall be eligible to serve in such capacity only when a vacancy on a designated commission is the result of an approved leave of absence and the Councilmember or Mayor has delivered written notification to the City Clerk Department for temporary appointment of the selected Alternate Commissioner.

C. A Councilmember or the Mayor may, but is not required to, appoint an Alternate Commissioner to fill a temporary vacancy.

D. Appointment as an Alternate Commissioner does not prevent a Councilmember or the Mayor from appointing that Alternate Commissioner to sit as a Commissioner on any commission as provided for in Article 2 of Chapter 2.04.

E. All regulations and requirements of the BMC that apply to a Commissioner as defined in 3.02.010.A. also apply to Alternate Commissioners except Section 3.02.040.

F. Councilmembers or the Mayor may dismiss an Alternate Commissioner without appointing a replacement provided that the Alternate Commissioner has served the term minimum described in Section 2.04.075. Dismissal of an Alternate Commissioner must be submitted by the appointing Councilmember in writing to the City Clerk Department.

G. The Police Accountability Board shall have one alternate commissioner, approved by the full council by majority vote, and subject to all membership, service, and training requirements of the City Charter for regular members of the Board. All other conditions and regulations for alternate commissioners in this Code and adopted by resolution, that are not inconsistent with the City Charter, shall apply.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.