

ORDINANCE NO. 5-16 N.S.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND
AMENDING CHAPTER 3.54 TO THE RICHMOND MUNICIPAL CODE ENTITLED
CITIZENS POLICE REVIEW COMMISSION**

SECTION I

Chapter 3.54 entitled "CITIZENS POLICE REVIEW COMMISSION" of the Richmond Municipal Code is hereby amended as follows:

Sections:

- 3.54.010 Creation and Purpose.**
- 3.54.020 Appointment and qualifications of members.**
- 3.54.030 Compensation.**
- 3.50.040 Terms of office.**
- 3.50.050 Absence from meetings.**
- 3.50.060 Officers.**
- 3.50.070 Police Commission Investigative Officer.**
- 3.50.080 Powers and duties.**
- 3.50.090 Meetings.**
- 3.50.100 Rules and records.**

3.54.010 - Creation and purpose.

There is hereby created the Citizens Police Review Commission (hereinafter referred to as the "Commission"). The purpose of this Commission is to advise the City Council, City Manager and Chief of Police on all matters pertaining to the administration of the Richmond Police Department.

3.54.020 - Appointment and qualifications of members.

The Commission shall consist of nine (9) members who shall not be officers or employees of the City of Richmond and who shall be appointed by the Mayor. The Mayor shall endeavor to appoint individuals representing diverse social, economic and political interests and shall confer with the City Council concerning all appointments. All of the members of the Commission shall be residents of the City. All vacancies on the Commission shall be filled by appointment by the Mayor for the unexpired term of the appointee's predecessor.

3.54.030 - Compensation.

Members of the Commission shall serve without compensation, provided that the City Council may authorize the reimbursement of reasonable expenses incurred by the members in the performance of their duties.

3.54.040 - Terms of office.

The term of each member of the Commission shall be for three years; provided, however, that of the members first appointed after the effective date of this section, three shall be appointed to serve for one year, three shall be appointed to serve for two years, and three shall be appointed to serve for three years as determined by lot by such members at the first regularly scheduled meeting following the adoption of this chapter. No member shall serve for more than three consecutive full terms.

3.54.050 - Absence from meetings.

The absence of any member of the Commission from more than three regularly scheduled meetings of the Commission within any twelve-consecutive- month period shall constitute an automatic resignation from the Commission. Such a resignation shall not, however, disqualify an individual from subsequently being appointed to the same, or any other city committee, board or commission. In the event of any such resignation, the vacancy shall be filled by appointment for

the unexpired portion of the term of the appointee's predecessor in the manner prescribed in Section 3.54.020.

3.54.060 - Officers.

The Commission shall elect from among its members a chairperson and a vice chairperson who shall serve in such capacities for one year, or until the successors are duly elected. In case of a vacancy in either of these positions, the Commission shall elect a successor who shall serve the unexpired balance of the predecessor's term. The City Manager shall designate a staff liaison to the Commission who will provide administrative support including, but not limited to, recording and publishing minutes for Commission meetings.

3.54.070 – Citizens Police Review Commission Investigative Officer.

- (a) The City Council shall appoint an Investigative Officer who shall serve as the Citizens Police Review Commission Investigative Officer (hereinafter referred to as "Investigative Officer"). The Investigative Officer assists the Commission in performing its duties. The Investigative Officer shall, in accordance with this chapter, conduct investigations of citizen complaints alleging use of unreasonable force and/or racially abusive behavior by Richmond Police Officers. The Investigative Officer shall also conduct investigations when death or serious bodily injury results from direct police action, as set forth below. The Investigative Officer shall periodically review "use of force" reports or other pertinent documents maintained by, or available to, the Chief of Police to determine whether death or serious bodily injury has been caused by direct police action. "Serious bodily injury" is defined as requiring immediate hospitalization for a minimum period of 72 consecutive hours. The Investigative Officer shall conduct all such investigations in a fair, objective, impartial and ethical manner, and shall comply with the Public Safety Officers Procedural Bill of Rights (Government Code Sections 3300, *et seq.*) in interviewing police officers.
- (b) Pursuant to California Penal Code Sections 832.5 and 832.7, the investigations conducted by the Investigative Officer shall be confidential and shall not be disclosed except by discovery pursuant to Sections 1043 and 1046 of the California Evidence Code.

3.54.080 - Powers and duties.

To effectuate its purpose, the Commission shall:

- (a) Review and evaluate the policies, practices and procedures contained in the Richmond Police Department Manual and develop programs and strategies to promote positive police-community relations and make appropriate recommendations to the Chief of Police. Within thirty (30) days after receiving such recommendations the Chief of Police shall submit a response to the Commission. If the Commission is dissatisfied with the Chief of Police's response, the Commission may submit its recommendations to the City Manager. Within thirty (30) days after receiving such recommendations, the City Manager shall forward a response to the Commission. If the Commission is dissatisfied with the City Manager's response, the Commission may submit its recommendations directly to the City Council for appropriate action.

The Chief of Police and the City Manager may extend for an additional thirty (30) days the time periods in which they are required to submit their responses to the Commission by giving the Commission written notice of such extension.

- (b) Receive, investigate and hear complaints against Richmond Police Officers alleging the use of unreasonable force and/or racially abusive behavior as well as receive reports from the Investigative Officer on all incidents of "death or serious bodily injury." After an investigation is complete, the Commission shall submit recommendations to the City Manager and Chief of Police in accordance with the following guidelines:
 - (1) All complaints filed with the Commission must be in writing on forms supplied by the Commission and shall be signed by the complainant.
 - (2) A copy of each complaint filed with the Commission shall immediately be forwarded to the members of the Commission, the Investigative Officer and the Chief of Police.
 - (3) No complaint shall be accepted, investigated, or heard if it is not filed with the Commission within one hundred and twenty (120) days of the alleged misconduct by the Richmond Police Officer unless the complainant establishes to the

Commission's satisfaction that the failure to file the complaint within the required time limit was due to mistake or excusable neglect.

- (4) The Investigative Officer shall investigate timely complaints as soon as possible. At the conclusion of the investigation, the Investigative Officer shall submit findings and recommendations, either orally or in writing, to the Commission.
- (5) Upon receipt of the Investigative Officer's report, the Commission may:
 - (a) Direct the Investigative Officer to investigate the complaint further;
 - (b) Forward the Commission's findings and recommendations concerning the complaint to the Chief of Police based upon the Investigative Officer's report; or
 - (c) Conduct a hearing on the complaint.
- (6) Pursuant to California Penal Code Sections 832.5 and 832.7, the complaints filed with the Commission and the investigations and investigative reports of the Investigative Officer and the Police Commission shall be confidential and shall not be disclosed except by discovery pursuant to Sections 1043 and 1046 of the California Evidence Code.
- (7) All hearings concerning police officer misconduct shall be held in closed session. At least ten (10) days' advance written notice of the date of the hearing shall be given to the complainant and the police officer involved.
- (8) To the extent permissible by the Richmond City Charter or any other laws, the Commission shall have the authority to subpoena witnesses to testify at the hearing concerning the complaint.
- (9) The complainant, police officers and all other witnesses shall be questioned by the Commission only, without cross-examination by police officers, citizen witnesses, the complainant, or their respective counsel.
- (10) Within thirty (30) days after the conclusion of the hearing, the Commission shall submit written findings and recommendations to the Police Chief.
- (11) Within thirty (30) days after the submission of the Commission's findings and recommendations to the Police Chief, the Commission shall notify the complainant of the disposition (sustained, not sustained, exonerated, or unfounded) of the complaint.
- (12) The Commission shall not sustain any complaint unless the complainant establishes by clear and convincing evidence the allegations of the complaint. "Clear and convincing" evidence is more than a preponderance of the evidence, but less than the "beyond a reasonable doubt" standard.
- (13) If the Commission sustains a complaint, and if the Chief of Police agrees with the findings and recommendations of the Commission, the Chief of Police shall take appropriate action on the complaint consistent with the Commission's report and so inform the Commission. Within 30 days after receiving such findings and recommendations, the Chief of Police shall submit a written response to the Commission. Within 30 days after receiving such findings and recommendations, the Chief of Police shall also notify the complainant of the disposition (sustained, not sustained, exonerated, or unfounded) of the complaint.
- (14) If the Commission sustains a complaint, and if the Chief of Police agrees with the Commission's findings and recommendations, the Chief of Police shall submit the Commission's determinations concerning the complaint and any other pertinent information to the City Manager within 30 days after receiving the Commission's findings and recommendations.
- (15) The City Manager shall review the findings and recommendations of the Commission along with the other information submitted by the Chief of Police. After said review, the City Manager shall prepare written conclusions concerning the documentation presented. The City Manager's written conclusions regarding the complaint shall be transmitted to the Commission, the Chief of Police, and the involved police officer within 30 days after receiving the information from the Chief of Police. The City Manager shall also notify the Complainant of the

disposition (sustained, not sustained, exonerated or unfounded) of the complaint within 30 days after receiving the information from the Chief of Police.

- (16) The Chief of Police and the City Manager may extend for an additional thirty (30) days the time periods in which they are required to submit their responses to the Commission (or their notification to the complainant) by giving the Commission written notice of such extension.
 - (17) All recommendations concerning proposed discipline of police officers made by the Commission or the Investigative Officer shall be kept confidential until after the City's disciplinary administrative process has been concluded.
- (c) Review appeals from the disposition by the Richmond Police Department of complaints against Richmond Police Officers not involving allegations of the use of unreasonable force or racially abusive behavior and submit recommendations to the City Manager and Chief of Police in accordance with the following guidelines:
- (1) All appeals filed with the Commission shall be in writing signed by the appellant, shall state the specific grounds of the appeal, and must be filed with the Commission within ten (10) days of the date contained on the letter from the Chief of Police notifying the complainant of the disposition of the complaint.
 - (2) A copy of each appeal filed with the Commission shall immediately be forwarded to the Chief of Police.
 - (3) The Investigative Officer shall investigate timely appeals and transmit findings and recommendations, either orally or in writing, to the Commission.
 - (4) Upon receipt of the Investigative Officer's report, the Commission may either direct the Investigative Officer to investigate further or forward its findings and recommendations to the Chief of Police based solely upon the Investigative Officer's report.
 - (5) Pursuant to California Penal Code Sections 832.5 and 832.7, the appeals filed with the Commission and the investigations and investigative reports of the Investigative Officer and the Commission shall be confidential and shall not be disclosed except by discovery pursuant to Sections 1043 and 1046 of the California Evidence Code.
 - (6) Within thirty (30) days after the submission of the commission's findings and recommendations to the Police chief, the Commission shall notify the complainant of the disposition (sustained, not sustained, exonerated, or unfounded) of the complaint.
 - (7) The Commission shall not sustain any appeal unless the appellant establishes by clear and convincing evidence the allegations of the appeal. "Clear and convincing" evidence is more than a preponderance of the evidence, but less than the "beyond a reasonable doubt" standard.
 - (8) If the Commission sustains an appeal, and if the Chief of Police agrees with the findings and recommendations by the Commission, the Chief of Police shall take appropriate action on the appeal consistent with the Commission's report and so inform the Commission. Within 30 days after receiving such findings and recommendations, the Chief of Police shall submit a written response to the Commission. Within 30 days after receiving such findings and recommendations, the Chief of Police shall also notify the complainant of the disposition (sustained, not sustained, exonerated, or unfounded) of the complaint and the appeal.
 - (9) If the Commission sustains an appeal, and if the Chief of Police disagrees with the Commission's findings and recommendations, the Chief of Police shall forward the Commission's determinations and any other pertinent information to the City Manager within 30 days after receiving the Commission's findings and recommendations.
 - (10) The City Manager shall review the findings and recommendations of the Commission along with the other information submitted by the Chief of Police. After said review, the City Manager shall prepare written conclusions concerning the documentation presented. The City Manager's conclusions concerning the appeal shall be transmitted to the Commission, the Chief of Police, the appellant and the involved police officer within 30 days after receiving the information from

the Chief of Police. The City Manager shall also notify the Complainant of the disposition (sustained, not sustained, exonerated or unfounded) of the complaint and the appeal within 30 days after receiving the information from the Chief of Police.

- (11) The Chief of Police and the City Manager may extend for an additional thirty (30) days the time periods in which they are required to submit their responses to the Commission (or their notification to the complainant) by giving the Commission written notice of such extension.
 - (12) All recommendations concerning proposed discipline of police officers made by the Commission or the Investigative Officer shall be kept confidential until after the City's disciplinary administrative process has been concluded.
- (d) Perform such other duties as requested by the City Council.

3.54.090 - Meetings.

The Commission shall hold its first meeting within thirty days after all of its members have been appointed. At such meeting, the Commission shall fix the time and place of regularly scheduled meetings which shall not be less than once each month. All meetings of said Commission shall be open to the public. The Police Chief or his representative nominated by him shall attend all regular and special meetings of the Commission and shall advise the Commission on any matter before it, but shall not vote on any such matter.

3.54.100 - Rules and records.

The Commission shall, in consultation with the City Manager and with the approval of the City Council, adopt rules for the transaction of business of the Commission, which rules shall, among other things, include the manner of calling and giving notice of special meetings and hearings and the appointment and powers of standing subcommittees. Said standing subcommittees may be formed to work on various topics within the scope of police activities. The Commission shall keep records of its resolutions, rules, transactions, motions, orders, findings, recommendations and determinations. Except for those items made confidential by California Penal Code Sections 832.5 and 832.7, the records of the Commission shall be open to the public.

SECTION 2

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 3

This Ordinance shall be effective 30 days after passage and adoption.

First read at a regular meeting of the Council of the City of Richmond held April 19, 2016, and finally passed and adopted at a regular meeting thereof held May 3, 2016, by the following vote:

AYES: Councilmembers Bates, Beckles, McLaughlin, Myrick, Pimplé,
Vice Mayor Martinez, and Mayor Butt.
NOES: None.
ABSTENTIONS: None.
ABSENT: None,

PAMELA CHRISTIAN
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:

TOM BUTT

Mayor

Approved as to form:

BRUCE GOODMILLER

City Attorney

State of California }
County of Contra Costa } : ss.
City of Richmond }

I certify that the foregoing is a true copy of **Ordinance No. 5-16 N.S.**, passed and adopted by the City Council of the City of Richmond at a regular meeting held on May 3, 2016.



Pamela Christian, City Clerk of the City of Richmond