



# City of Philadelphia

City Council  
Chief Clerk's Office  
402 City Hall  
Philadelphia, PA 19107

**BILL NO. 110141**

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**Introduced March 3, 2011**

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**Councilmember Miller**

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**Referred to the  
Committee on Law and Government**

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## **AN ORDINANCE**

Repealing Chapter 21-1200 of The Philadelphia Code, entitled "Police Advisory Board," and replacing it with a new Chapter 21-1200 that reconstitutes and renames the board as the "Police Advisory Commission," and, as authorized by the Charter, provides for the Commission's appointment and the manner in which the Commission and other officers, employees, and agencies shall fulfill their respective responsibilities with respect to the Commission, all under certain terms and conditions.

*THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:*

SECTION 1. Chapter 21-1200 of The Philadelphia Code, entitled "Police Advisory Board," is hereby repealed in its entirety, and a new Chapter 21-1200 is added, to read as follows:

### *CHAPTER 21-1200. POLICE ADVISORY COMMISSION.*

*§21-1201. Statement of Intent.*

*(1) As authorized by Sections 3-908 and 5-1203 of the Charter, this Chapter provides for the appointment of the Police Advisory Commission created in the Office of the Managing Director by subsection 3-100(f) of the Charter, and also provides for the manner in which the Commission and other officers, employees, and agencies shall fulfill their respective responsibilities with respect to the Commission.*

*§21-1202. Establishment of Commission.*

*(1) The Commission shall be constituted, its members shall be appointed, and vacancies shall be filled as provided in this Section.*

# City of Philadelphia

BILL NO. 110141 continued

(2) *The Commission shall consist of nine members, five of whom shall be appointed by the Mayor; and four of whom shall be appointed by the Council by resolution. At the same time that Council appoints four members to the Commission, it shall also designate four alternate members to be available in the event that vacancies arise.*

(3) *All members shall be appointed to terms of four years, provided that the first five members appointed by the Mayor and the first four members appointed by the Council shall serve for terms that end four years and six months after the approval by the voters of the amendment to the Charter establishing the Police Advisory Commission as a Charter-created agency. Members shall continue to serve until their successors have been appointed and confirmed.*

(a) *The Mayor and Council shall use their best efforts to complete the first appointments by six months after the approval by the voters of the amendment to the Charter establishing the Police Advisory Commission.*

(b) *Transitional appointments. Until all of the first nine Commissioners have been appointed, the members of the Police Advisory Commission appointed by the Mayor in 2010 pursuant to Executive Order No. 8-93 shall serve as the Police Advisory Commission created by subsection 3-100(f) of the Charter. Their terms shall then expire.*

(4) *Before Council shall make any appointments to a full term, the Council President shall, by public notice, solicit applicants to serve on the Commission.*

(a) *Only those persons who submit an application shall be eligible for appointment by Council to serve on the Commission. This requirement applies to all applicants, including current or former members of the Commission.*

(b) *The public notice shall include, but not be limited to, an announcement on the main page of the City's official website that links to an application form that can be submitted on-line, by mail, by facsimile, and by hand delivery; the distribution of printed copies of the announcement and application to all branches of the Free Library; and the distribution of a press release to citywide and community newspapers.*

(c) *The application period shall be open for at least thirty days. No more than seven days after the close of the application period, Council shall post all applications on the City's website after redacting confidential information in a manner consistent with the requirements of applicable law.*

# City of Philadelphia

BILL NO. 110141 continued

(d) *Council's Committee on Public Safety or, if that Committee does not exist, such other Committee as may be designated by the Council President ("Public Safety Committee"), shall hold a public hearing at which applicants receive an opportunity to speak. Thereafter, the Public Safety Committee shall submit a list of recommended nominees and four alternate nominees for consideration by Council.*

(5) *Any vacancy occurring other than by expiration of a term shall be filled by the Mayor, provided that if the vacancy occurs in one of Council's four appointments, the Mayor shall make the appointment from among the alternates designated by Council. If the list of alternates is exhausted, the Mayor shall so advise Council, and the Public Safety Committee shall submit for Council's consideration a list of four additional recommended alternate nominees selected from among those who submitted applications for the current term. Upon adoption of that list or a different list, Council shall forward the names to the Mayor.*

(a) *A member appointed and confirmed to fill any such vacancy shall serve for the unexpired portion of the term of the member succeeded.*

(6) *No member of the Commission shall serve for more than two consecutive full terms.*

(7) *A member of the Commission may be removed by the appointing authority prior to the expiration of a term only for cause. Before the Commission member is removed, he or she must be provided with a written statement of the reasons for removal, and shall be given the opportunity for a hearing before the appointing authority. For the purposes of this Section, an alternate member who is appointed to the Commission to fill a vacancy shall be considered an appointee of Council.*

(8) *Composition of Commission.*

(a) *In making appointments and in considering those appointments, the Mayor and Council shall use their best efforts to create and maintain a Commission reflecting the diversity in the City's population.*

(b) *All members of the Commission shall be residents of the City of Philadelphia.*

(c) *The Mayor and Council shall also use their best efforts to include as Commission members two persons who are experienced as law enforcement professionals, but who are not sworn, currently employed Police Department officers.*

# City of Philadelphia

BILL NO. 110141 continued

(i) *For the purposes of this subsection, experience as a law enforcement professional shall include experience as a police officer, criminal investigator, special agent, or a managerial or supervisory employee who exercised substantial policy discretion on law enforcement matters, in a federal, state, or local law enforcement agency, other than experience as an attorney in a prosecutorial agency.*

(d) *Others selected shall have skills and experience in areas relevant to the work of the Commission. At least some appointees should have experience in civil rights work and litigation; as community and business leaders; and/or should possess relevant academic expertise.*

(e) *No member of the Commission shall hold any other City office or employment.*

(f) *The chair of the Commission established shall be elected by the Commission from among its members. At the first meeting of the Commission, and from time to time thereafter, it shall, by majority vote of all of its members, adopt rules governing the conduct of its meetings, proceedings, and other procedural matters.*

## *§21-1203. Compensation of Commission Members.*

(1) *No compensation shall be paid to Commission members except reimbursement for expenses actually incurred pursuant to performance of Commission business.*

## *§21-1204. Staffing.*

(1) *The Commission shall, subject to the availability of appropriations, appoint and fix the compensation of an executive director and such other staff or consultants as may be required for the proper conduct of its work. The number and compensation of such employees and consultants shall not be subject to the approval of any other officer.*

(a) *The appointment of an executive director shall require a vote of two-thirds of all the members of the Commission.*

(b) *Upon request of the Commission, additional staff support shall, to the extent possible, be provided by the Office of the Managing Director, the Inspector General, the Chief Integrity Officer, the District Attorney, and the Police Department.*

## *§21-1205. Powers and Duties of Commission.*

# City of Philadelphia

BILL NO. 110141 continued

(1) *The Police Advisory Commission shall serve as the civilian oversight agency for the Philadelphia Police Department. To fulfill that role, it shall advise the Managing Director and Police Commissioner on policies and actions of the Police Department with the purpose of improving the ability of police personnel to carry out their duties and improving the relationship between the Police Department and the community.*

(2) *The Commission shall have the power to recommend that the Managing Director and Police Commissioner implement general reforms or take specific actions directed at individual officers; provided, however that the Managing Director and Police Commissioner shall retain full authority, discretion, and responsibility to set disciplinary policies or take other actions they deem appropriate under the provisions of this charter and any applicable law, regulation, or collective bargaining agreement.*

(a) *The Commission shall have full discretion to select appropriate individual incidents to investigate and broader issues to study which may be of concern to the community, the Police Department or the Police Commissioner; provided, however, that the Commission shall, to the extent possible, minimize any duplication of effort between the Commission and any other existing agencies which have jurisdiction over the same matter. The Commission may initiate such studies or investigations at its own discretion or upon request or complaint to the Commission by any member of the public or the Police Department, provided, however, that the Commission shall not investigate specific complaints of verbal abuse, except those involving language related to race, ethnicity, religion, gender, sexual orientation or disability.*

(3) *To accomplish its goals, the Commission shall, subject to the limitations of subsection 21-1207(1)(a) and §§ 21-1210 and 21-1211 herein, have full power to direct the Police Department to produce appropriate personnel for interviews, and to produce relevant documents for review, including, but not limited to, all completed internal investigative files; police paperwork relating to crimes, suspects, incidents and complaints; information relating to past personnel assignments and disciplinary action; Police Directives and training materials; and all general summaries, statistical compilations and other internal reports on shootings, injuries, complaints of abuse, training and any other issues related to the work of the Commission. It shall be the duty of the Police Department to provide such assistance as the Commission may reasonably request, to cooperate fully with studies undertaken by the Commission, and to provide to the Commission upon request records and other materials which are necessary to the Commission's work.*

(a) *No document obtained through this or any other process, or created by the Commission or any member of its staff, shall be released to the public at*

# City of Philadelphia

BILL NO. 110141 continued

*any time unless such document is deemed by the Commission, after consultation with the City Solicitor, to be a public record under applicable law.*

*(4) The Commission shall respond to all complaints filed by individuals alleging police misconduct within seven days of receiving any such complaint. Such response shall indicate whether, in the exercise of its discretion, the Commission will investigate the allegations made, not investigate them, or request additional information to enable it to make a decision on its options.*

*(5) The Commission shall establish a mediation program pursuant to which a complainant may voluntarily choose to resolve a complaint by means of informal conciliation.*

*(6) The Commission shall have the responsibility to inform the public about the Board and its duties, and shall develop and administer an on-going program for the education of the public regarding the provisions of this Chapter.*

## *§21-1206. Hearings and Investigations.*

*(1) To aid its fact-gathering function, the Commission shall have the power to hold hearings and conduct investigations. As authorized by subsection 5-1200(c) of the Charter, the Commission shall have the power pursuant to Section 8-409 of the Charter to issue subpoenas to compel the attendance of persons and the production of documents.*

*(2) Hearings shall be informal and strict rules of evidence shall not be applied. Testimony under oath shall be received from all persons who appear and purport to have information that is material to the complaint. A stenographic record shall be kept and shall be made available, upon payment of costs, to any person requesting it. All hearings shall be open to the public, except when, in the opinion of the Commission, executive sessions are required.*

## *§21-1207. Duties of Police Commissioner, other Officers, and Employees.*

*(1) It shall be the duty of the Police Commissioner, Police Department, and all other officers and employees subject to the Charter to provide such assistance as the Commission may reasonably request, to cooperate fully with studies, hearings, and investigations undertaken by the Commission, and to promptly provide to the Commission upon request records and other materials which are necessary to the Commission's work. Except as provided in subsection (a) or as may otherwise be required by law, regulation, or collective bargaining agreement, any such officers and employees, on request by the Commission, must agree to meet with and be interviewed by, the Commission or its representatives, and to testify before the Commission.*

# City of Philadelphia

BILL NO. 110141 continued

(a) Any person who is designated the subject of a related criminal investigation by a local law enforcement agency may elect not to appear before the Commission until the conclusion of that investigation.

§21-1208. *Form of Advice Provided by the Commission; Required Procedures.*

(1) The Commission shall have the power to recommend that the Managing Director and Police Commissioner implement general reforms (such as changes in training, changes in the preservation of records, changes in counseling available to officers, changes in shift assignments) or take specific actions directed at individual officers (including, but not limited to, hiring, firing, promotion, demotion, punishment, or commendation); provided, however, that the Managing Director and Police Commissioner shall retain full authority, discretion, and responsibility to set disciplinary policies or take other actions they deem appropriate under the provisions of the Charter and any applicable law, regulation, or collective bargaining agreement.

(2) No Commission finding or recommendation shall be based solely upon an unsworn complaint or statement, nor shall prior unsubstantiated, unfounded or withdrawn complaints be the sole basis for any such finding or recommendation.

(3) All proposed findings, recommendations, and related reports of the Commission shall remain confidential and shall not be publicly released until the following steps have been completed:

(a) The Commission shall provide a written copy of its proposed findings or recommendations, and any related report, to the Mayor, the Managing Director, and the Police Commissioner;

(b) Pursuant to subsection 5-1201(b) of the Charter, which requires that the Police Commissioner respond within a reasonable period of time to proposed findings or recommendations submitted by the Commission, the Police Commissioner shall, within thirty days after receiving the Commission's document, respond in writing regarding which findings or recommendations it accepts, rejects, or will implement with modification;

(c) The Commission shall append the Police Commissioner's response to its final document and may in its discretion revise its findings or recommendations to take into account the Police Commissioner's response; and

(d) The Commission shall allow at least three days to elapse following the date of the Police Commissioner's response.

# City of Philadelphia

BILL NO. 110141 continued

(e) *If the Police Commissioner fails to respond within the allotted thirty days, the Commission may publish its findings or recommendations at any time thereafter.*

(4) *The Commission and its members shall not make public any confidential police document, or information derived from any such confidential police document.*

## §21-1209. *Public Reports.*

(1) *The Commission shall issue a public report summarizing its activities and prior published recommendations not less than once a year to the Mayor and members of Council, and shall make copies of the report available to the public at all branches of the Free Library, on the City's official website, and at other locations at the Commission's discretion.*

## §21-1210. *Protection of Rights.*

(1) *Nothing in this Chapter shall be construed to limit the rights of officers or members of the Police Department with respect to disciplinary action, including but not limited to the right to notice and a hearing, which may be established by any provision of law, by any collective bargaining agreement, or otherwise.*

## §21-1211. *Related Investigations.*

(1) *Nothing in this Chapter shall be construed or applied to prevent or hinder the investigation or prosecution of any individual or any member of the Police Department for violations of law by any court of competent jurisdiction, a federal or state grand jury, the United States Attorney for the Eastern District of Pennsylvania, the Philadelphia County District Attorney, or other authorized officer, agency, or body. The Commission shall develop procedures consistent with this requirement.*

SECTION 2. Effective date. This Ordinance shall take effect upon approval by the voters of an amendment to The Philadelphia Home Rule Charter providing for the creation, appointment, powers and duties of a Police Advisory Commission.

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### **Explanation:**

[Brackets] indicate matter deleted.  
*Italics* indicate new matter added.