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Title: Proposing an amendment to The Philadelphia Home Rule Charter to establish an independent Police Advisory Commission, and to provide for the Commission's funding, appointment, powers and duties, including, but not limited to, the duty to investigate complaints alleging misconduct by members of the Philadelphia Police Department against members of the public; and providing for the submission of the amendment to the electors of Philadelphia.

Sponsors: Councilmember Jones, Councilmember Goode, Councilmember Quiñones Sánchez, Councilmember Bass

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| 3/15/2012 | 0 | CITY COUNCIL | Introduced and Referred | Pass | |

Proposing an amendment to The Philadelphia Home Rule Charter to establish an independent Police Advisory Commission, and to provide for the Commission’s funding, appointment, powers and duties, including, but not limited to, the duty to investigate complaints alleging misconduct by members of the Philadelphia Police Department against members of the public; and providing for the submission of the amendment to the electors of Philadelphia.

WHEREAS, Under Section 6 of the First Class City Home Rule Act (53 P.S. § 13106), an amendment to The Philadelphia Home Rule Charter may be proposed by a resolution of the Council of the City of Philadelphia adopted with the concurrence of two-thirds of its elected members; now therefore

RESOLVED, BY THE COUNCIL OF THE CITY OF PHILADELPHIA, That the following amendment to The Philadelphia Home Rule Charter is hereby proposed and shall be submitted to the electors of the City on an election date designated by ordinance:

~~Strikethrough~~ indicates matter deleted by these amendments.
Bold italics indicates matter added by these amendments.

ARTICLE II - LEGISLATIVE BRANCH - THE COUNCIL
ITS ELECTION, ORGANIZATION, POWERS AND DUTIES
CHAPTER 3
LEGISLATION

§2-300. The Annual Operating Budget Ordinance.

* * *

(4) In every annual operating budget ordinance:

* * *

(f) For all fiscal years following the effective date of this subsection, an amount adequate to enable the Police Advisory Commission to perform its duties shall be appropriated to the Police Advisory Commission. Should the Council fail to make an adequate appropriation to the Police Advisory Commission, the Commission may petition any Court of Common Pleas of Philadelphia County for a mandamus to the Council to perform its duty under this section.

* * *

ARTICLE III - EXECUTIVE AND ADMINISTRATIVE BRANCH - ORGANIZATION

CHAPTER 1 OFFICERS, DEPARTMENTS, BOARDS, COMMISSIONS AND OTHER AGENCIES

§3-100. Executive and Administrative Officers, Departments, Boards, Commissions and Agencies Designated.

The executive and administrative work of the City shall be performed by:

* * *

(e) The following independent boards and commissions, which, except for the Board of Trustees of the Free Library of Philadelphia, are hereby created:

- City Planning Commission;
- Commission on Human Relations;
- Board of Trustees of the Free Library of Philadelphia;
- Board of Pensions and Retirement;
- Civil Service Commission;
- Philadelphia Tax Reform Commission and its Advisory Committee;
- Board of Ethics;
- Youth Commission;
- Zoning Code Commission; and
- Police Advisory Commission.***

* * *

CHAPTER 8 - INDEPENDENT BOARDS AND COMMISSIONS

* * *

§ 3-809. Police Advisory Commission.

(a) Composition. The Police Advisory Commission shall be an independent Commission consisting of seventeen members, who shall be selected in the following manner.

(1) All initial appointments shall be made within sixty days after the Commission is first created.

(2) *The Commission shall be comprised of the following individuals:*

(i) *One member appointed by each individual District Council member from among recognized leaders in the community;*

(ii) *One member appointed by the District Attorney;*

(iii) *One member appointed by the Public Defender;*

(iv) *The Police Commissioner;*

(v) *A member appointed by the Youth Commission; and*

(vi) *Three appointees of the Mayor. The Mayor shall make the appointments from communities underrepresented by the other appointments, with the goal of ensuring that the Commission reflects the diversity of the City.*

(3) *All members shall be appointed to terms of four years, provided that the following initial appointees shall serve a term of two years: the appointees of the Councilmembers representing the First through the Fifth Councilmanic Districts; the appointee of the Youth Commission; and two of the Mayor's three appointees, as determined by the Mayor.*

(b) *Qualifications.*

(1) *Appointments to the Commission shall reflect the diversity in the population of the City.*

(2) *Commission members shall have skills and experience in areas relevant to the work of the Commission, including, but not limited to, civil rights work and litigation, community and business leadership, and relevant academic expertise. At least one member of the Commission shall have experience in law enforcement.*

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

(c) *Vacancies.*

(1) *Within seven days of the occurrence of a vacancy occurring prior to the end of an appointee's term, and no later than thirty days prior to the expiration of a member's term, the Commission shall notify the appointing authority responsible for originally filling the position that a vacancy is pending. Such appointing authority shall appoint a successor appointee no later than thirty days thereafter.*

(2) *A person appointed to fill a vacancy occurring prior to the end of an appointee's term shall serve for the balance of the term for which his or her predecessor was appointed.*

(c) *Qualifications.*

(1) *Commission members shall have skills and experience in areas relevant to the work of the Commission, including, but not limited to, civil rights work and litigation, community and business*

leadership, and relevant academic expertise.

(2) No member of the Commission shall hold any other public office or employment.

(d) Vacancies and Expired Terms.

(1) Within seven (7) days of the date of a vacancy on the Commission, and no later than thirty days prior to the expiration of a member's term, the official responsible for originally filling the position shall be notified by the Commission that a vacancy is forthcoming. A successor appointment shall be made in the same manner as the original appointment.

(2) All vacancies and expired terms shall be filled no later than thirty (30) days after the appointing authority first learns of the vacancy.

(3) Persons appointed to fill vacancies shall serve for the balance of the terms for which their predecessors were appointed.

(e) Organization of the Commission.

(1) At the first meeting of the Commission, it shall adopt rules governing the conduct of its meetings, proceedings, and other procedural matters, including rules that prescribe the manner in which investigations are to be conducted, recommendations made and the manner by which a member of the public is to be informed of the status of his or her complaint. Such rules may provide for the establishment of panels, which shall consist of not less than three members of the Commission, which shall be empowered to supervise the investigation of complaints, and to hear, make findings and recommend action on such complaints.

(2) The Chair of the Commission shall be one of the members of the Commission and shall be selected by a panel consisting of the Mayor, City Council President, District Attorney and a representative of the American Civil Liberties Union.

(3) Election of remaining Commission officers shall be held every two years after the election of the Commission's initial officers, and at such other times as the Commission may determine by its rules.

(4) A quorum required to conduct all business shall consist of 10 members.

(f) Powers and Duties of the Commission.

(1) The Commission shall advise the 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 to improve the relationship between the Police Department and the community.

(2) The Commission shall have the power to receive, investigate, hear, make findings, and recommend action upon complaints by any member of the public, the Police Department, or at the Commission's own discretion, including broader issues which may be of concern to the community; 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 review specific complaints or incidents of misconduct against individual police officers; provided, however, that the Commission shall not investigate specific complaints of verbal abuse, except those complaints involving language related to race, ethnicity, religion, gender, sexual orientation or disability, or failure to provide the public safety service.

(3) In order to accomplish its goals as set forth above, the Commission shall have full access to relevant Police Department personnel for interviews, and to direct the Police Department to produce relevant documents, including, but not limited to, the following:

(i) Internal Affairs files, citizen complaints, and determinations made pursuant thereto; Management Review Board files, Ethics and Accountability files, and the files of any other internal investigative agency charged with investigating police misconduct incidents;

(ii) Police documentation (including, for example, police 75-49s, police 75-48s, and other paperwork produced by the Police Department for the purpose of investigating suspects, to aid in their prosecution, or other internal documents);

(iii) Information related to past assignments and disciplinary action;

(iv) Personnel files of officers;

(v) Police Directives, training manuals, and other police documents that are distributed to Department personnel; and

(vi) 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.

(4) Pursuant to the provisions of this Charter, the Commission shall have the power to conduct investigations and public hearings. All employees within the Executive and Administrative branch of City government shall cooperate fully with the Commission by promptly producing documents, records, files, and any other information that the Commission may request.

(5) The Commission shall have the authority pursuant to Section 8-409 to compel the attendance, interview, and/or testimony of any witness and require the production of documents and other evidence relating to any and all matters properly before it and, for that purpose, it may issue subpoenas requiring the attendance, interview, and/or testimony of persons and the production of documents and other evidence and cause them to be served in any part of the City.

(6) Pursuant to Section 3-809(f)(5), and subject to Section 3-809(h)(2), individuals under investigation by the Commission are required to attend Commission hearings regarding their alleged misconduct, provided they receive at least fourteen days notice of their compelled attendance.

(7) The Commission shall have the power to recommend that the Police Commissioner take certain actions. The Commission may recommend general reforms of the Police Department (such as changes in training, changes in the preservation of records, changes in counseling available to officers, changes in shift assignments) or specific actions directed at individual officers (including, but not limited to, hiring, firing, promotion, demotion, punishment, or commendation); provided, however, that the Police Commissioner shall retain full and ultimate authority, power, discretion, management prerogatives, and

responsibility to set disciplinary policies or take other lawful actions they deem appropriate relative to the Police Department under the provisions of this Charter; provided, further, that nothing in this section shall be construed to limit the rights of 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 or otherwise.

(8) Within thirty days of the submission of a recommendation for action by the Commission to the Police Commissioner, the Police Commissioner shall respond in writing detailing which recommendations are accepted, rejected, or will be implemented with modifications, and what those modifications, if any, are.

(g) Responsibilities of the Commission.

(1) The Commission shall issue to the Mayor, City Council, and the Police Commissioner a report at least once a year, which shall describe its activities and summarize its actions. Copies of the report shall at a minimum be made available to the public on the City's official website, and at the Free Library of Philadelphia.

(2) The annual report shall, at a minimum, provide the following information: the number of complaints received for the period covered by the report; a breakdown of the complainants by race, gender, sexual orientation, and age, if known; the disposition of all complaints, including any complaints that were still active at the close of the previous reporting period; a breakdown of complaints by Council and Police Districts; and the number of complainants who had a pending charge against them.

(3) 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.

(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 shall study the allegations made, not study them, or request additional information to enable it to make a decision on its options.

(5) Subject to the provisions of Section 3-809(f), the Commission shall reach its final resolution with respect to each such complaint within ninety days of its receipt, unless the complainant agrees to extend the deadline to a date specified in a written agreement signed by the complainant and an authorized representative of the Commission.

(6) The Commission shall establish a mediation program pursuant to which a complainant may voluntarily choose to resolve a complaint by means of informal conciliation. Subject to the provisions of Section 3-809(f), any such mediation shall reach its final resolution within ninety days of the receipt of the complaint, unless the complainant agrees to extend the deadline to a date specified in a written agreement signed by the complainant and an authorized representative of the Commission.

(7) The Commission shall have the responsibility of informing the public about the Commission and its duties, and shall develop and administer an ongoing program for the education of the public regarding the provisions of this Chapter.

(h) Hearings.

(1) To aid its fact-gathering function, the Commission shall have the power to conduct public hearings.

(2) Police personnel who are designated the subject of a related criminal investigation by a local law enforcement agency may elect not to appear until the conclusion of that investigation.

(3) 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, which is material to the complaint.

(4) A stenographic record shall be kept and shall be made available, upon payment of costs, to any person requesting one.

(5) The Commission may authorize the recording of testimony by video or audio.

(6) All hearings shall be open to the public, except when, in the opinion of the Commission, executive sessions are required.

(i) Compensation of Commission Members. No compensation shall be paid to Commission members, except reimbursement for expenses actually incurred pursuant to performance of Commission business.

(j) Staffing.

(1) The Commission shall hire its own Executive Director and appropriate investigative and clerical staff. Such staff members shall report directly to the Executive Director, who shall be supervised by the Commission.

(k) Findings of Necessity.

(1) It shall be the duty of the Police Department to provide such assistance as the Commission may reasonably request, to cooperate fully with studies by the Commission, and to provide to the Commission upon request records, personnel, and other materials necessary for the work of the Commission.

(2) The Commission and its members shall not make public any confidential police document, or information derived from any such confidential police document. The findings of the Commission as they may relate to conclusions drawn from interviews, study, and review of documents, and related materials, shall remain confidential until the Commission officially releases such findings.