

Legislation Text

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Amending Chapter 21-1200 of the Philadelphia Code, entitled "Citizens Police Oversight Commission," to modify the procedure by which members of the Citizens Police Oversight Commission may be removed, providing a procedure to suspend members, and clarifying terms in that Chapter, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Title 21 of The Philadelphia Code is hereby amended to read as follows:

TITLE 21. MISCELLANEOUS

\* \* \*

CHAPTER 21-1200. CITIZENS POLICE OVERSIGHT COMMISSION

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§ 21-1202. Definitions.

In this Chapter, the following definitions apply:

\* \* \*

(5) *Board of Commissioners.* The group of individuals appointed pursuant to Section 21-1203 who are responsible for providing guidance and policy direction to the work of the Commission and carrying out such other responsibilities as set forth in this Chapter.

(6) *Department.* The Philadelphia Police Department.

§ 21-1203. Appointments to the Board of Citizens Police Oversight Commission.

\* \* \*

(1) *Composition.* The Board of Commissioners [Commission] shall consist of nine members selected by a Selection Panel, subject to Council confirmation.

(2) *Qualifications.* Members of the [Commission] Board of Commissioners shall meet the following requirements.

\* \* \*

(d) [Commission members] *Members* may not be, within the five years prior to appointment: (.1) a sworn employee of the Department; or (.2) a member of a union that represents a municipal or state police department.

\* \* \*

(4) *Selection Panel.* Upon adoption of this Chapter into law, and as provided in subsection (6) ("Expiration of Terms and Vacancies"), two members of a Selection Panel shall be appointed by the Mayor and three members shall be appointed by the Council.

\* \* \*

(b) Upon appointment of a quorum of panel members, the panel shall solicit applications from individuals seeking to serve on the [Commission] *Board of Commissioners*. The Panel shall receive administrative support for its work from such agency as may be designated by the Mayor.

(c) The Selection Panel shall interview applicants of its choosing who, based on a threshold review, best meet the qualifications to serve on the [Commission] *Board of Commissioners*. The Panel shall also conduct a proceeding in a public setting that will allow for public comment with respect to proposed nominees.

(d) The Panel shall solicit and obtain such background checks and reviews of candidates as it deems appropriate.

(e) Within 90 days of establishment of a quorum of the Panel, the Panel shall select a proposed slate of members of the [Commission] *Board of Commissioners* to fill any unfilled seats or vacancies on the [Commission] *Board of Commissioners* and shall forward the proposed names to City Council.

\* \* \*

(6) Expiration of Terms and Vacancies. No less than ninety days before the expiration of a term of a member, or upon a vacancy on the [Commission] *Board of Commissioners*, the Commission shall notify the Mayor and the Chief Clerk of Council of the need to appoint a Selection Panel for the purpose of filling the seat on the [Commission] *Board of Commissioners*. Members of the [Commission] *Board of Commissioners* shall serve as holdovers until the member's successor is confirmed.

(7) Removal. Members of the *Board of Commissioners* shall be disqualified from service based on non-residency; or a determination by the Philadelphia Commission on Human Relations, or a similar body, of a violation of the City's Fair Practices Ordinance, or a similar law. Members may [only] be removed for cause: (a) by Council resolution, at the suggestion of Council, the Mayor, or the [Commission,] *Board of Commissioners*; or (b) by resolution of the *Board of Commissioners* that sets forth the grounds for removal and is provided promptly to the Clerk of Council and the member who is the subject of the resolution, unless Council shall vote to supersede such resolution at or before Council's first regularly scheduled meeting occurring no less than twenty days after the resolution is adopted. Cause for removal [shall include,] includes, but is not [be] limited to, misconduct, inability or failure to perform required duties or obligations, post-appointment conviction for a felony, or a substantial violation of City or Commonwealth ethics laws. The member shall have the opportunity to be heard [at a hearing] on any such resolution, notice of which shall be provided to the member.

(7.1) *Suspension. The Board of Commissioners may by resolution suspend a member from all regular business of the Board of Commissioners, including prohibiting the member from participating at meetings and receiving information otherwise shared with members: (a) during the pendency of an internal investigation where there are reasonable grounds to believe there may be cause for removal pursuant to Subsection 21-1203 (7), for a period of up to 90 days; or (b) if the Board of Commissioners adopts a resolution to remove the member pursuant to Subsection 21-1203(7)(b), until such time as Council may act to supersede the resolution.*

(8) Election of Officers. Upon establishment of an initial quorum, the [Commission] members of the *Board of Commissioners* shall select a Chair, Vice-Chair and such other officers as determined by the [Commission] *Board of Commissioners* and shall reselect such officers every four years thereafter.

(9) Training. The Commission will develop and implement a training program for [commissioners] *members of the Board of Commissioners* with input from other criminal justice partners, such as the

Department, the District Attorney's Office, the Law Department, the Defender Association and community and civil rights organizations. The curriculum will include, but not be limited to, federal and state constitutional law; Philadelphia Police Department directives, policies, and procedures; contemporary best practices and evidence-based training for police and for civilian oversight of law enforcement; the Commission's policies and procedures; and other areas the Commission determines relevant.

(10) Prohibited Activities. Members of the [Commission] *Board of Commissioners* may not seek or hold a position as an appointed or elected public official within the Commonwealth. In addition to all other applicable ethics provisions of the Home Rule Charter and The Philadelphia Code, no member of the [Commission] *Board of Commissioners* shall make any financial contribution to any candidate for, or incumbent of, a political office of the City.

(11) The [Commission] *Board of Commissioners* shall hold meetings twice a month and shall maintain video recordings of all open sessions on its website. The [Commission] *Board of Commissioners* shall also conduct public hearings on the Department's policies, practices and procedures related to officer conduct and discipline, and the budget of the Department as it relates to such issues, at such times as deemed necessary, and shall forward to the Council any budgetary recommendations.

(12) The Commission may enter into agreements with City and other governmental agencies regarding implementation of this Chapter.

§ 21-1204. Executive Director, Counsel and Staff.

(1) The [Commission] *Board of Commissioners* shall appoint and determine the compensation of an Executive Director, *who shall be responsible for the direction and management of day-to-day operations of the Commission and who shall satisfy* [with] the following minimum qualifications:

\* \* \*

(4) Chief Counsel. The [Commission] *Board of Commissioners* shall appoint and set the compensation of a Chief Counsel to act on its behalf in connection with the Commission carrying out all investigatory, advisory and other matters consistent with the duties set forth in this Chapter, and may consult or retain additional counsel for such purposes.

§ 21-1205. Investigation of Complaints.

\* \* \*

(3) The Commission shall not investigate:

(a) Complaints involving violations of the City's internal EEO policies, including claims of harassment, intimidation, retaliation or abuse of City employees or applicants for City employment because of race, ethnicity, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age, disability, marital status, source of income, familial status, genetic information, [or] domestic or sexual violence victim status, *or other legally protected status*. In all instances such complaints shall be referred to the Employee Relations Unit of the Department of Labor.

\* \* \*

§ 21-1207. Access to Information.

\* \* \*

(3) No [Commissioner] *member of the Board of Commissioners* or Commission employee shall have access to files, records and other investigative materials in which [the Commissioner or employee] *such person* is a complaining party.

\* \* \*

§ 21-1208. Disciplinary Recommendations.

\* \* \*

(2) The *Police* Commissioner shall respond, in writing, within thirty (30) days of receiving such a finding and recommendation, explaining whether the *Police* Commissioner:

- (a) has imposed or intends to impose the recommended discipline;
- (b) has imposed or intends to impose a higher or lower level of discipline; and
- (c) requires the Commission to complete further investigation, the reasons for further investigation, and what that investigation entails before making a decision.

§ 21-1209. Participation in Police Board of Inquiry Hearings.

\* \* \*

(2) Within one hundred twenty (120) days of the appointment of a quorum of the [Commission] *Board of Commissioners*, the Commission and Department shall develop a Memorandum of Understanding regarding the joint exercise of powers before the PBI, which shall include a process for jointly determining the specific violations of the Philadelphia Police Disciplinary Code for which the accused is to be charged, any guilty plea offers or withdrawal of charges and a process for the questioning of witnesses, introduction of exhibits and evidence, and presentation of disciplinary recommendations.

\* \* \*

§ 21-1210. Audits and Policy Recommendations.

\* \* \*

(5) The [Commission] *Board of Commissioners* shall conduct an annual performance review of the Executive Director and an annual review of the performance of the Police Commissioner with respect to the manner in which the *Police* Commissioner publicly addresses matters related to the mission of the Commission. The [Commission] *Board of Commissioners* shall determine the criteria for evaluating the Executive Director's and the Police Commissioner's job performance and communicate those performance criteria, in addition to any other job performance expectations, to the Executive Director and the Police Commissioner. Such review may include solicitation of voluntary input from individuals and officials who are familiar with the Executive Director's or the Police Commissioner's job performance. The written annual performance review of the Police Commissioner will be posted publicly by the Commission annually on its website.

\* \* \*

§ 21-1212. Required Reporting.

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(2) Reporting by Commission.

(a) The Commission shall submit its first annual, written report to the Mayor, City Council and the public within eighteen (18) months of the City Council's confirmation of the first [group of Commissioners] *Board of Commissioners*. The Commission's subsequent reports shall be submitted annually on or near the anniversary of that date. The [Commission's] *Commission* shall also present [their] *its* annual report to the Committee on Public Safety annually, at a date of the Chair's choosing.

(b) The Commission shall issue an annual report to the Mayor, the City Council, and to the public to the extent permissible by law. The annual report shall include a detailed summary of the Commission's activities during the year, detailed summaries of the Police Commissioner's, the City Solicitor's, and Department of Labor's reports to the Commission, the Police Commissioner's annual performance review, and shall include the following information:

\* \* \*

(.3) A detailed annual statistical analysis designed to explain to the public the Commission's work. Wherever possible, the Commission must aggregate the data by investigative category and the demographics of the involved citizen and Department members. The analysis shall include, but is not limited to, data related to the following:

(a) Total number of complaints against police, that have been received by the [commission] *Commission* broken down as follows: (i) citizen complaints against police, (ii) department employee complaints, (iii) combined complaints against police;

\* \* \*

(4) Public Database. The Commission shall maintain full administrative rights to an additional public electronic database that is independent from databases used by the Department. It shall maintain the data in a format that allows efficient exporting of data to the Commission's website in delimited machine-ready format for public inspection. The Commission shall redact the data sets in the public database to remove names and other identifying information of civilians; complainants, including Department employee complainants; and other information as the Commission deems appropriate. The database shall include the below information, if appropriate after the Commission's review, which shall be posted within thirty (30) days of its availability and updated every thirty (30) days, unless the Commission determines the posting of such information would threaten or compromise the integrity of an investigation:

\* \* \*

(c) Subject to subsection (c)(.1) ("Department Objection") below, within thirty (30) days of the close of the Department's investigation, including, but not limited to, internal investigations related to police misconduct and discipline; citizen complaints against police; use of force reviews; police shooting investigations; all deaths of or serious bodily injuries to people that occur while they are detained or in the custody of the Department; and any other incidents where an officer is involved in the death of another person, whether the officer is on or off duty, the Commission shall post on its website all information identified under subsections (3)(a) and 3(b), above, for each investigation conducted by the Department.

(.1) Department Objection. If the Department objects to the posting of any information regarding its investigation being posted to the Commission's website, the Department will note its objection with the Commission in writing within fifteen (15) days of the close of its investigation with the reasons for the objection and the information it objects to appearing on the Commission's website. The Commission shall review the objection and *the Board of Commissioners shall* vote on the objection at its next regular meeting. The [Commission] *Board of Commissioners* may reject the objection, accept the objection, or accept or reject the objection in part. The Commission will not post any information to its website regarding the investigation until the objection is resolved.

(5) Reports from Other Agencies. The Commission shall require the Police Commissioner, City Solicitor, and Department of Labor to submit an annual report to the Commission regarding such matters as the Commission shall require. Initial reports will be required within two hundred forty (240) days of the City Council's confirmation of the first [group of Commissioners] *Board of Commissioners* and on the anniversary of that date thereafter, and updates will be required on a monthly basis, as applicable.

(a) The Commission shall notify the Police Commissioner regarding what information will be required in the Police Commissioner's reports to the Commission, which shall include, at a minimum, the following:

\* \* \*

(.2) Monthly Updates. The Police Commissioner shall provide monthly, unredacted updates to the Commission on IAD investigations, use of force reviews, police shootings, and any criminal charges brought against police officers related to misconduct or discipline. Each update will include at minimum:

\* \* \*

(.e) For an IAD investigation, the *Police* Commissioner's memo, if the investigation is completed, and a memo has been produced;

\* \* \*

(b) The [Commissioners] *Commission* shall notify the City Solicitor regarding what information will be required in the Solicitor's public reports to the Commission which shall include, at a minimum, the following, provided that nothing in this provision shall require the City Solicitor to disclose confidential attorney-client communication or privileged information:

\* \* \*

(c) The [Commissioners] *Commission* shall notify the head of the Department of Labor regarding what information will be required in the Department of Labor's public reports to the Commission, which shall include, at a minimum, the following:

\* \* \*

SECTION 2. This Ordinance shall take effect immediately.