CITY OF OAKLAND

OFFICE OF THE CITY ATTORNEY

PUBLIC LEGAL OPINION

TO: **MAYOR BARBARA LEE, PRESIDENT KEVIN JENKINS, MEMBERS OF THE CITY COUNCIL, AND MEMBERS OF THE SELECTION PANEL**

FROM: **CITY ATTORNEY RYAN RICHARDSON**

DATE: **JANUARY 16, 2026**

RE: **ADDITIONAL INTERPRETATION OF CHARTER SECTION 604(c) REGARDING THE SELECTION AND APPOINTMENT OF OAKLAND POLICE COMMISSIONERS**

I. INTRODUCTION

On December 12, 2025, the City Attorney published formal guidance regarding the interpretation of the Oakland City Charter as it relates to the selection and appointment of Oakland Police Commissioners. This opinion provides additional guidance on related issues.

This opinion addresses the following questions: (1) whether background checks are required for nominees each time a slate is submitted to the City Council; (2) whether the background checks are a public record and whether the Selection Panel is required to submit the background checks to the City Council; (3) whether the Charter prohibits the Selection Panel from re-submitting the same slate to the City Council after the slate has previously been rejected; (4) whether the Selection Panel may divide nominees into separate slates; and (5) when the 60-day period begins to run for the City Council to accept or reject the Selection Panel's entire slate before all the nominees are deemed appointed.

This is a public opinion because the questions presented require interpretation of the City Charter and the respective powers of the City Council and the Selection Panel for the Oakland Police Commission. Consistent with the City Attorney's practice, this opinion will be posted on the City Attorney's web site at www.oaklandcityattorney.org and can be accessed by clicking on the "Public Legal Opinions" link on the home page.

II. QUESTIONS AND BRIEF ANSWERS

Question No. 1:

Are background checks required for Police Commission nominees each time a slate is submitted to the City Council?

Brief Answer:

Background checks are required for all Police Commissioners under Charter section 604(c) and Oakland Municipal Code ("OMC") section 2.45.060. Neither the Charter nor the OMC, however, explicitly require a new background check when an incumbent commissioner, who has already undergone a background check, is recommended for reappointment. Therefore, this office does not determine that the Selection Panel or the Mayor are legally required to conduct new background checks when seeking to reappoint sitting Police Commissioners.

That said, nothing prevents either the Selection Panel or City Council from adopting such a requirement. The Selection Panel could update its Oakland Police Commission Selection Procedure Manual ("Selection Panel Manual") to provide clear guidelines on when the Selection Panel wants to require a new background for incumbent nominees. Likewise, the City Council could amend the OMC to provide clarity. Absent such new, clear laws or guidelines, there is no authority to require new background checks when incumbent commissioners are submitted to the City Council for reappointment.

Question No. 2:

Are Police Commission nominees' background-checks public records, and is the Selection Panel required to submit the background checks to the City Council with the slate of nominees?

Brief Answer:

OMC section 2.45.060 provides that Police Commissioner background checks shall be treated as public records; however, there is no requirement that the background checks be submitted to the City Council.

Question No. 3:

Does the Oakland City Charter prohibit the Selection Panel from re-submitting the same slate to the City Council after the slate has previously been rejected?

Brief Answer:

No. The Charter contains no language prohibiting the Selection Panel from re-submitting the same slate to the City Council.

Question No. 4:

When the Selection Panel is filling multiple vacancies because the terms of several Police Commissioners are expiring at the same time, does the Oakland City Charter permit the Selection Panel to submit their nominees to the City Council individually?

Brief Answer:

No. When the Selection Panel submits nominees to fill multiple vacancies due to the concurrent expiration of several Police Commissioners'' terms, the Selection Panel cannot submit each nominee to the Council separately. Pursuant to Charter section 604(c), the Selection Panel must submit a single "slate" to the City Council to fill all of the vacancies due to the expiration of terms, and the City Council must accept or reject the entire slate.

Question No. 5:

When does the sixty-day period begin for the City Council to accept or reject a submitted slate before all designated commissioner replacements submitted by the Selection Panel are deemed appointed?

Brief Answer:

Charter section 604(c)(3)(c) provides that if the Council does not accept or reject the entire slate within sixty days after the completion of the background checks and "submission" by the Selection Panel, all designated replacements shall be deemed appointed. Since this section limits the number of days the Council has to consider the appointments, the date of "submission" must be a date where the Council officially has the ability to begin taking action. The Council is only able to officially take action after the Selection Panel completes the required background checks and has formally presented the item to Council for scheduling, either on the Rules & Legislation Committee scheduling agenda, by requesting a scheduling motion of the full Council during a City Council meeting, or another official scheduling request that complies with Council's Rules of Procedure.

III. ANALYSIS

A. Background Checks Are Required for All Oakland Police Commissioners but There Is No Explicit Requirement for Incumbent Nominees to Undergo a New Check When Seeking Re-Appointment

Charter section 604(c)(1) provides, in relevant part, that "background checks shall be required for all Commissioners." OMC section 2.45.060 provides that "[i]n accordance with federal and state law, a background check shall be performed on the Mayor's and the Selection Panel's final candidates for the position of Commissioner and alternate before their names are submitted to the City Council for confirmation. The City Administrator's Office shall retain an independent contractor to perform these background checks…" However, neither the Charter, the OMC, nor the Selection Panel Manual expressly addresses whether incumbent Police Commissioners, who were subject to a previous background check, must undergo another background check when they are resubmitted to the City Council for consideration.

Pursuant to Charter Sections 604(c)(4), the default term for a Police Commissioner is three years. Pursuant to Charter Sections 604(c)(5), Commissioners are limited to serving two consecutive terms, except that a Commissioner serving a term of less than one year shall be allowed to serve two additional consecutive terms. Therefore, at the time of a reappointment of an incumbent Commissioner, a background check:

- might be less than one year old (if the person was originally appointed as Alternate to finish the end of a three-year term);
- would typically be three years old (if the person was originally appointed at the beginning of a three-year term); and
- would always be less than four years old (because a person who had already served for four years or more would have reached the two-term limit).

We are not aware of any relevant guidance regarding the validity of a background check over time. However, relying on a background check that is less than four years old does not seem inherently unreasonable.[1]

[1] The term limits for Police Commisioners only apply to consecutive terms. In other words, a Police Commissioner could serve two consecutive terms, take a break from the Commission, and then later reapply to become a Police Commissioner again. If this were to happen, it could become unreasonable to rely on the original background check, because it could be quite old and no longer reasonably further the intent of the Charter's background-check requirement.

In summary, the Charter and OMC make it clear that all Police Commissioners must have a background check before their names are submitted to the City Council. The Charter does not, however, expressly require a new background check for incumbent nominees submitted to the Council for reappointment. The Selection Panel could consider updating the Selection Panel's Manual to define the process for background checks so it is clear and applied consistently going forward. Likewise, the City Council could amend the OMC to provide such clarity.

B. Police Commission Nominee Background Checks Are a Public Record

The OMC explicitly provides that background checks shall include information verified through a public records search and that the final background check shall be treated as a public record. Specifically, OMC section 2.45.060 provides:

> "In accordance with federal and state law, a background check shall be performed on the Mayor's and the Selection Panel's final candidates for the position of Commissioner and alternate before their names are submitted to the City Council for confirmation. The City Administrator's Office shall retain an independent contractor to perform these background checks, which shall include:
> A. Verification of educational and employment background, and any other information that may be verified by a public records search.
> The results of the background check identified in subsection A., above, shall be treated as public records, and shall be considered by the appropriate Appointing Authority prior to submitting the names of the final candidates to the City Council for confirmation."

Although the background checks are public records, neither the Charter nor the OMC requires that they be included in the agenda materials when a slate is submitted to the City Council. The OMC requires that the Appointing Authorities (defined in the OMC as the Selection Panel and Mayor) consider the background checks before submitting the names for Council confirmation, but there is no corresponding requirement for the City Council to consider them.

The Council Rules of Procedure specifically address which materials must be included in an agenda packet for board and commission confirmations, and do not require the inclusion of background checks. Rule 19 of the Council's Rules of Procedure provides that, for any appointment to a board or commission requiring Council confirmation, the City official making the appointment recommendation shall submit for inclusion in the agenda materials "the person's name, resume, and any application and other material the person submitted." Accordingly, while background checks are public records and must be considered by the Appointing Authorities, there is no legal requirement for the City Council to receive or review them as part of the agenda materials.

C. Oakland City Charter Does Not Prohibit the Selection Panel from Re-Submitting the Same Slate to the City Council

Neither the City Charter nor the Oakland Municipal Code contains language prohibiting the Selection Panel from re-submitting the same slate of nominees to the City Council after a prior rejection. Charter section 604(c)(3)(c) governs the submission of a slate and the City Council's authority to accept or reject it, but it does not address or limit the Selection Panel's ability to submit the same slate again following Council action.

In the absence of an express prohibition, the Selection Panel retains the authority to re-submit a previously rejected slate. The Charter does not state that a rejected slate is final or that the Selection Panel must submit different nominees after a rejection. If a limitation was intended, it would presumably be expressly stated in the Charter, and it would presumably provide clarity about whether the Selection Panel would be required to submit all new names or just a single new name.[2] The absence of any such language supports the conclusion that re-submission is permitted.

To summarize, because neither the Charter nor the Municipal Code restricts the Selection Panel from re-submitting the same slate, the Selection Panel may do so, subject to the City Council's ongoing authority to accept or reject the slate in accordance with the Charter.

D. Oakland City Charter Does Not Permit the Selection Panel to Submit Police Commission Nominees in Separate Slates

Charter section 604(c)(3)(c) provides:

> "Each year the Selection Panel shall re-convene, as needed, to designate replacements for the five (5) Commissioner (four (4) regular members and one (1) alternate) vacancies initially filled by the Selection Panel. The Selection Panel shall, by a two-thirds (2/3) vote of the members present but by a vote of no fewer than five (5) members, **submit a slate of names** of such designated persons to the City Council for acceptance or rejection. If the City Council does not accept or reject **the entire slate** within sixty (60) days after the completion of the background checks and submission by the Selection Panel, all designated replacements shall be deemed appointed." (emphasis added)

[2] It is likewise apparent that the City Council, in rejecting a slate, could not direct the Selection Panel to omit a specific candidate from any future slate. As further discussed below, the Charter requires the City Council to accept or reject slates in their entirety. If the City Council were allowed to prevent a specific person from being resubmitted, it would be tantamount to the Council partially rejecting a slate, which the Chater intends to prevent.

It is important to note that there may be instances where it is impossible for the Selection Panel to submit a slate with more than one name, for example when the term of only one Selection Panel appointee is coming to an end, or when the Selection Panel is backfilling for an Alternate Commissioner who became a Regular Commissioner mid-term pursuant to Charter section 604(c)(8). In those instances, the Selection Panel would have no choice but to submit a "slate" of a single name. But where (as is currently the case and is often the case) the terms of several Selection Panel appointees are expiring at the same time, it is clear that Charter section 604(c)(3)(c) intends for the Selection Panel to submit the nominees together as a single "slate of names" and intends for the City Council consider those nominees as a single slate. If the Selection Panel were permitted to divide nominees and submit them as separate slates under these circumstances, it would contravene the Charter's clear intent.

E. The Sixty-Day Council Review Period Begins Upon Completion of Background Checks and Submission of the Slate by the Selection Panel

Charter section 604(c)(3)(c) provides, in relevant part, that "[i]f the City Council does not accept or reject the entire slate within sixty (60) days after the completion of the background checks and submission by the Selection Panel, all designated replacements shall be deemed appointed."

While the Charter does not define when a slate is considered formally "submitted" to the Council, the Charter is clear that the City Council only has sixty days after the date of submission (and after completion of the background checks) to accept or reject a slate of nominees. And if the Council fails to act in that timeframe, the slate is deemed appointed and the Council loses its authority to act. To effectuate this intent, the sixty-day period could not start until the Council has knowledge of the slate and the ability to schedule it for Council consideration.

There are three ways to formally present an item to the City Council for scheduling.[3] Pursuant to the City Council's Rules of Procedure, the Selection Panel may: (1) request a scheduling motion of the full Council during a City Council meeting, (2) place the request on a Rules & Legislation Committee agenda as a scheduling request, or (3) if there is no intervening Rules & Legislation Committee, seek the approval of the Chair of the Rules & Legislation Committee, the President of the Council, and either the Mayor or the City Administrator (i.e. make a "Rule 28 Request"). See Rules 23, 24, and 28 (Resolution No. 91010 C.M.S.).

[3] Like most City boards and commissions, the Selection Panel has been assigned a staff liaison from the City Administrator's office. When the Selection Panel wants to submit a slate of nominees to the City Council, they have historically asked this liaison to submit the slate on their behalf, which is an acceptable and appropriate practice. But, for purposes of determining when the 60-day clock begins to run, the relevant date is the date that the nominees are submitted to the Council, and not the date that nominees are communicated to City staff.

In light of the Council's rules for scheduling, the most reasonable interpretation is that the sixty-day time period starts after the completion of a background check and after the Council first has the ability to schedule the item, either as an item on the Rules & Legislation Committee's scheduling agenda, as a Rule 28 Request, or by Council motion to schedule the item.

IV. CONCLUSION

The Charter and OMC require that all Police Commissioners undergo background checks before their names are submitted to the City Council for confirmation. Neither the Charter nor the OMC explicitly require a background check for incumbent nominees who have already undergone a prior background check; however, nothing prevents the Selection Panel or the Council from adopting such a requirement. The Charter does not prohibit the Selection Panel from re-submitting a previously rejected slate, but it does require that all nominees be submitted together in a single slate rather than separately. Finally, the City Council's sixty-day period to accept or reject a slate begins only after the Selection Panel has completed the required background checks and has formally submitted the slate to the City Council for action by making a scheduling request in compliance with the Council's Rules of Procedure.

Very truly yours,

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