

**CITY OF ALBANY
CITY COUNCIL AGENDA
STAFF REPORT**

Agenda Date: May 2, 2022

SUBJECT: Amendment of the Resolution Establishing Policing Commission

REPORT BY: Nicole Almaguer, City Manager

SUMMARY

This report provides an updated resolution establishing the Policing Commission following the results of a meet and confer process with the Albany Peace Officers Association, and the additional edit proposed during the Council meeting on April 4, 2022 with regard to the procedure for the Commission to receive legally public complaints and the process for referring such complaints to an outside consultant for investigation.

STAFF RECOMMENDATION

That the Council:

1. Adopt Resolution No. 2022-31, amending Resolution No. 2021-100 establishing the Albany Policing Commission; and
2. Direct staff to initiate the call for applications for the Policing Commission with all appointments made by the City Council and the Board of Education subject to ratification by the City Council

BACKGROUND/DISCUSSION

On November 16, 2020, the City Council adopted Resolution No. 2020-107, establishing a Community Task Force on Policing (CTFP). On September 7, 2021, the Council considered a request from the CTFP for the creation of a public safety accountability commission.

On October 4, 2021, the Council adopted Resolution No. 2021-100 establishing an Albany Policing Commission. As included in the adopted resolution, aspects were held in abeyance subject to meet and confer with the Albany Peace Officers Association (APOA) until agreement was reached.

City representatives conducted a meet and confer process with the APOA to review the resolution and identify any necessary changes. Under the Meyers-Milius-Brown Act (Gov. Code section 3500 *et seq.*) (“MMBA”), the City must meet and confer with its recognized employee organizations in good faith on matters that are within the scope of representation. The requirement that parties meet and confer in good faith has been interpreted

by the courts to mean a subjective attitude that requires a genuine desire to reach agreement. If despite good faith meeting and conferring, the parties reach an impasse, the City and the employee organization may agree to mediate disputed issues with a mutually acceptable mediator. The employee organization may request that disputed issues be submitted to a three-member fact-finding panel. If the dispute is not settled within 30 days after the appointment of the fact-finding panel or, on agreement by both parties, within a longer period, the panel must make findings of fact and recommend terms of settlement, which are advisory only.

After any applicable mediation and fact-finding procedures have been exhausted, after holding a public hearing regarding the impasse, the City may implement its last, best, and final offer. The unilateral implementation of a last, best, and final offer must not deprive a recognized employee organization of the right each year to meet and confer on matters within the scope of representation, regardless of whether those matters are included in the unilateral implementation, before the adoption by the City of its annual budget, or as otherwise required by law.

The City Council met in closed session regarding this matter on March 21, 2022, and an updated resolution was included as part of the next regular meeting of the City Council on April 4, 2022. As part of the discussion on the matter during the April 4, 2022 meeting, the Council considered an additional edit to resolution as copied below (including tracked changes as presented):

BE IT FURTHER RESOLVED, that the Commission shall receive all legally public complaints from the Albany Police Department (“the Department”) in a timely manner, generally not to exceed 30 days, review such material, request additional, legally public associated data, and determine whether to recommend that ~~the Chief of Police refer~~ such complaints be referred to an outside consultant for investigation consistent with California law and independent of Albany Police Internal Affairs; such recommendation will be ~~considered-reviewed~~ by the City Manager, in consultation with the Chief of Police and City Attorney, and put before the City Council for determination as to whether the City Manager should hire an outside consultant for an investigation; and

The Council ultimately agreed to return the matter to the CTFP for consideration. Staff has attempted to identify an additional meeting date for the CTFP, however a quorum was not met for any of the four proposed meeting date options.

On April 18, 2022, during the Council’s discussion of future agenda items, it was suggested that this matter be returned to the Council for reconsideration with an interest to move the establishment of the Policing Commission forward.

The additional change to the Resolution as included above has been included within Resolution No. 2022-31 for consideration by the Council (Attachment 1). The City's legal counsel serving as lead negotiator is coordinating with the APOA regarding the additional proposed change to the Resolution.

FINANCIAL CONSIDERATION

The establishment of a Policing Commission will require the time of a staff person to serve as a staff liaison for the advisory body. In addition, staff time from members of the Police Department and potentially other departments will be required to present information to the Commission.

NEXT STEPS

Pending Council adoption of Resolution No. 2022-31, staff will conduct the following next steps:

1. Announce the application period for the Policing Commission and conduct outreach regarding this new opportunity to serve on an advisory body to the City Council
2. Collect applications received and submit to the City Council for review and appointment, as well as to the Albany Unified School District Board of Education (all applications are subject to ratification by the Council as part of a regular City Council meeting)
3. Coordinate with newly appointed Commission Members to establish a monthly meeting schedule. It should be noted that due to the number of other advisory body meetings in any given month the options for meeting days for the Commission will be limited, and likely to fall on the 3rd Tuesday of each month (replacing the previous meeting time of the Community Task Force on Policing)

Attachments

1. Resolution No. 2022-31
2. Resolution No. 2021-100 (original resolution establishing Policing Commission)