

CITY OF OAKLAND
OFFICE OF THE CITY ATTORNEY
PUBLIC LEGAL OPINION

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

FROM: CITY ATTORNEY RYAN RICHARDSON

DATE: DECEMBER 12, 2025

**RE: INTERPRETATION OF CHARTER SECTION 604(c)
REGARDING POLICE COMMISSION AND SELECTION PANEL
APPOINTMENTS AND REPLACEMENTS**

I. INTRODUCTION

The City Attorney has been asked to provide formal guidance on the interpretation of the Oakland City Charter as it relates to appointments to the Police Commission Selection Panel assigned to the Mayor and members of the City Council.

This opinion addresses the following questions related to the Selection Panel appointments: (1) how often the Mayor or a Councilmember may replace their assigned Selection Panel member; (2) whether the Selection Panel is authorized and required to select a replacement if the Mayor's assigned seat remains vacant for more than 120 days; and (3) whether a replacement appointed by the Mayor or a Councilmember must be confirmed by the City Council.

This opinion also addresses whether a member of the Police Commission may remain on the Commission in holdover status after their term expires until a replacement appointment is made.

This is a public opinion because the questions presented require interpretation of the City Charter and the respective powers of the Mayor, City Council, and the Oakland Police Commission Selection Panel. As with all public opinions, 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.

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II. QUESTIONS AND BRIEF ANSWERS

Question No. 1:

How often may the Mayor or a Councilmember replace their assigned Selection Panel member?

Brief Answer:

The Mayor or a Councilmember may replace their assigned Selection Panel member once per calendar year under Charter section 604(c)(3)(d).

Question No. 2:

If the Mayor's assigned seat on the Selection Panel is vacant for more than 120 days, is the Selection Panel required and/or authorized to choose a replacement for the vacancy?

Brief Answer:

No. If the Mayor's assigned Selection Panel member seat remains vacant for more than 120 days, the Selection Panel is not authorized or required to choose a replacement. The 120-day deadline described in Section 604(c)(3)(d) applies only when a Councilmember — the defined "Appointing Authority" — fails to act. Because the Mayor is not defined as an Appointing Authority under that section, that deadline does not apply to a vacancy in the Mayor's seat.

Question No. 3:

When the Mayor or a Councilmember replaces their assigned Selection Panel member, must the replacement be confirmed by the City Council?

Brief Answer:

No. A replacement made directly by the Mayor or a Councilmember to their assigned Selection Panel member does not require confirmation by the City Council. Under City Charter Section 604(c)(3)(d), only replacements chosen by the Selection Panel require City Council confirmation.

Question No. 4:

If a Police Commissioner's term expires and a replacement is not appointed, or they are not yet reappointed, may they remain on the Police Commission in holdover status?

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Brief Answer:

Yes. City Charter section 604(c) does not specifically address whether Police Commissioners can hold over. However, state law provides that public officers whose terms expire continue to discharge the duties of the office until they are reappointed or their successor is appointed. Since this state law articulates a general public policy, and the City Charter does not contain a more specific, contradictory provision, the state law governs.

III. ANALYSIS

A. Authority of the Mayor or a Councilmember to Replace an Assigned Police Commission Selection Panel Member Once Per Calendar Year

The Police Commission Selection Panel is a nine-member body and the Mayor and each of the eight Councilmembers have the authority to appoint one member to the Selection Panel pursuant to Charter section 604(c)(3)(a). Charter section 604(c)(3)(d) provides, in relevant part: “Each year the Mayor and each Councilmember may replace their assigned person on the Selection Panel.” The Charter does not define the term “each year,” nor does any other provision clarify how many times a replacement may be made within that period. As set forth below, the most reasonable interpretation is that the Mayor and Councilmembers may replace their appointees once per calendar year.

We first look at the language of the Charter to determine whether its plain meaning provides guidance. When the meaning is clear and there is no ambiguity, there is ordinarily no need to employ rules of statutory construction. *In re W.B., Jr.*, 55 Cal.4th 30, 52 (2012). However, when the language is unclear, courts may rely on rules of statutory construction to aid interpretation. When interpreting a statute, a court will give significance to every word, phrase, and sentence. Statutory language is construed in the context of the statute as a whole and the overall statutory scheme, and courts give significance to every word, phrase, sentence, and part of an act in pursuing the legislative purpose. *In re D.S.*, 207 Cal.App.4th 1088, 1097 (2012).

To give meaning to the phrase “each year” in Charter section 604(c)(3)(d), we interpret the phrase to allow a one-time replacement each year. If the intent was to allow the Mayor and each Councilmember to make replacements more than once within the same year – i.e. as many times as they wanted – the phrase “each year” would have no meaning or impact.

The Mayor and Councilmembers may replace their appointees once per *calendar* year. First, reading “each year” to mean “each calendar year” is consistent with the most common and plain-language use of the word ‘year.’ If the intent behind the Charter was to allow replacements to occur on or after a specific anniversary date, appointment date, or some other 12-month cycle, the Charter’s language would have been much more detailed. Second, the phrase “each year”

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appears elsewhere in Charter section 604(c)(3), where the context also suggest that “year” refers to “calendar year.” A fundamental principle of statutory interpretation is that a statute should be construed consistently, with each provision read in the context of the entire framework. *In re C.H.*, 53 Cal.4th 94, 100 (2011). Specifically, Section 604(c)(3)(c) states that “[e]ach year the Selection Panel shall re-convene, as needed...” (emphasis added). In the context of Selection Panel’s meetings, the phrase “each year” could not reasonably be interpreted to refer to an appointment date or some other anniversary, and the only workable interpretation is calendar year. Since we can give the phrase “each year” a consistent interpretation throughout Section 604(c)(3), we must do so.

To summarize, Section 604(c)(3)(d) permits the Mayor and each Councilmember to replace their assigned Selection Panel member once per calendar year. Reading “each year” in context and consistent with the surrounding provisions of Section 604(c)(3)(c) shows that it is intended to provide one opportunity per year to exercise that authority, and that “year” is most reasonably interpreted to mean calendar year.

B. No Authority or Requirement for the Police Commission Selection Panel to Fill a Mayoral Vacancy Exceeding 120 Days

Charter section 604(c)(3)(d) provides, in relevant part, that “[e]ach year the Mayor and each Councilmember may replace their assigned person on the Selection Panel...Upon a vacancy on the Selection Panel, the Councilmember who appointed the Selection Panel member (hereinafter referred to as the Appointing Authority) shall appoint a replacement. If the Appointing Authority does not appoint the replacement within one hundred and twenty (120) days of the date of resignation, removal or expiration of the Selection Panel member's term, the Selection Panel, by a two-thirds vote of those present but by a vote of no fewer than five (5) Selection Panel members, shall choose a replacement for the vacancy.”

As written, the Mayor is not included in the definition of “Appointing Authority” under Charter section 604(c)(3)(d). Thus, the Charter designates only Councilmembers, and not the Mayor, as “Appointing Authorit[ies].” And only “Appointing Authorit[ies]” – i.e. Councilmembers – are required to appoint a replacement of their previously-appointed Selection Panel member within 120 days of the “date of resignation, removal, or expiration of the Selection Panel member’s term.” If a Councilmember fails to act within that period, the authority to fill the vacancy shifts to the Selection Panel and the Selection must choose a replacement for the Councilmember’s Selection Panel vacancy. Since the Mayor, by contrast, is not included in the definition of “Appointing Authority,” the 120-day deadline does not apply to the Mayor’s Selection Panel vacancy. The Mayor may therefore appoint a replacement at any time at their discretion. Moreover, because the Charter does not provide the Selection Panel with the same authority to choose a replacement for the Mayor’s Selection Panel vacancy, the Selection Panel is

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not required or authorized to choose a replacement for the Mayor's Selection Panel vacancy, even if the Mayor fails to do so.

To summarize, the Charter applies the 120-day deadline within which Selection Panel appointments must be made exclusively to Councilmembers. The Selection Panel assumes authority to fill a vacancy only when a Councilmember fails to act. Because the Mayor is not an "Appointing Authority" within the meaning of Charter section 604(c)(3)(d), the Mayor may appoint a replacement at any time, without being subject to the 120-day deadline and the Selection Panel may not act to fill the Mayor's Selection Panel vacancy.

C. Selection Panel Replacements by the Mayor or a Councilmember Do Not Require City Council Confirmation

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

Each year the Mayor and each Councilmember may replace their assigned person on the Selection Panel. Selection Panel members may serve up to five (5) years. Upon a vacancy on the Selection Panel, the Councilmember who appointed the Selection Panel member (hereinafter referred to as the Appointing Authority) shall appoint a replacement. If the Appointing Authority does not appoint the replacement within one hundred and twenty (120) days of the date of resignation, removal or expiration of the Selection Panel member's term, the Selection Panel, by a two-thirds vote of those present but by a vote of no fewer than five (5) Selection Panel members, shall choose a replacement for the vacancy. **All such replacements must be confirmed by the City Council.** (emphasis added)

As discussed above, Charter section 604(c)(3)(d) authorizes the Mayor and each Councilmember to replace their assigned Selection Panel member once per calendar year. If a Councilmember's Selection Panel seat becomes vacant and a Councilmember does not appoint a replacement to fill the Selection Panel vacancy within 120 days, the authority shifts to the Selection Panel, which must choose a replacement.

The interpretive question concerns the last sentence: "All such replacements must be confirmed by the City Council." The phrase "such replacements" is not clear unless interpreted in context. To give meaning and significance to the word "such," it must refer back to the type of replacements described in the preceding sentence immediately before the phrase—specifically, **replacements made by the Selection Panel** when the Appointing Authority fails to act. If the Charter intended to require City Council confirmation for *every* replacement, including those directly appointed by the Mayor or by a Councilmember, the Charter would have stated "all replacements," not "all *such* replacements." The word "such" limits the confirmation requirement to the class of replacements specifically referenced in the preceding sentence.

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This interpretation is further supported by the structure and history of the provision. Under Charter Section 604(c)(3)(a), the initial appointments to the Selection Panel made directly by the Mayor and each Councilmember did not require City Council approval. It would be inconsistent for the Charter to allow those inaugural appointments to be made without City Council confirmation yet later require City Council confirmation for all replacement appointments.

To summarize, the Charter does not require City Council confirmation when the Mayor or a Councilmember replaces their own assigned Selection Panel member. The confirmation requirement in Section 604(c)(3)(d) applies only to those replacements made by the Selection Panel when a Councilmember fails to act within 120 days and the Charter requires the Selection Panel to appoint a replacement instead. The Mayor's and Councilmembers' direct replacement appointments do not require City Council approval.

D. A Member of the Police Commission May Choose to Remain on the Police Commission as a Holdover if Their Term Expires Before They Are Reappointed or Replaced

Neither the Oakland City Charter nor the Oakland Municipal Code specifically address whether Police Commissioners may hold over. In the absence of an applicable Charter provision, we look to California state law. California Government Code section 1302 states:

“Every officer whose term has expired shall continue to discharge the duties of his office until his successor has qualified.”

In *Hartford Acc. etc. Co. v. City of Tulare*, 30 Cal.2d 832 (1947), the California Supreme Court applied Government Code Section 1302 to a charter city. The Court found that a city official who no longer qualified for their office was nevertheless “held over” until their successor was selected and qualified. *Id.* Since California state law articulates a general public policy to avoid interruptions and vacancies in public offices, and the City Charter does not contain a more specific, contradictory provision, the state law governs. Accordingly, a member of the Police Commission may choose to holdover if their term expires before they are reappointed or their replacement is appointed. The decision to holdover is a voluntary one and no member that has completed their term of service is expected or obligated to serve in holdover status beyond the expiration of their term.

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IV. CONCLUSION

The Charter specifies the scope of authority governing the appointment and replacement of Selection Panel members and terms of Police Commissioners. The Mayor and each Councilmember may replace their assigned Selection Panel member once per calendar year. A vacancy in the Mayor's assigned seat does not trigger the 120-day deadline in Charter section 604(c)(3)(d), because that provision applies only to Councilmembers (the "Appointing Authority"). Accordingly, the Selection Panel is neither authorized nor required to fill a vacancy in the Mayor's seat, regardless of the duration of the vacancy. Further, a replacement made directly by the Mayor or a Councilmember does not require City Council confirmation; confirmation is needed only when the Selection Panel selects a replacement under Charter section 604(c)(3)(d) when a Councilmember fails to appoint within the 120-day deadline. When a Police Commissioner's term expires and they have not yet been reappointed or replaced, California state law provides that the Commissioner may – but is not required to – hold over until a reappointment or replacement occurs.

Very truly yours,



Ryan Richardson
City Attorney

Attorney Assigned:
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