

## MINORITY REPORT

File No. 23-0187-S1

PUBLIC SAFETY COMMITTEE REPORT relative to recommendations and implementation plans to modify Charter Section 1070 in connection with the Los Angeles Police Department Board of Rights.

Recommendations for Council action:

1. REQUEST the City Attorney to prepare and present the required Resolution(s) to place a measure on the November 5, 2024 General Election Ballot to amend Charter Section 1070 to:
  - a. Allow the composition of the three-member Board of Rights Panel to be established through Ordinance with any combination of sworn officers of the rank of Captain or above and civilian Hearing Examiners.
  - b. Grant the Chief of Police the power to terminate a peace officer for cause, including but not limited to the types of misconduct described in SB 2, prior to a Board of Rights proceeding.
  - c. Terminated officers must still be afforded an appeal process after termination.
  - d. Remove the all-civilian alternative composition option for the Board of Rights.
  - e. Approval by the voters would result in the repealing of Ordinance No. 186100.
2. INSTRUCT the City Administrative Officer (CAO) to initiate discussions with City's Labor partners upon action by the Council.

Fiscal Impact Statement: None submitted by the Chief Legislative Analyst (CLA). The CAO has not completed a financial analysis of this report.

Community Impact Statement: None submitted.

### Summary:

On May 28, 2024, your Committee considered a May 22, 2024 CLA report relative to recommendations and implementation plans to modify Charter Section 1070 in connection with the Los Angeles Police Department Board of Rights. According to the CLA, on March 20, 2024, Council adopted the Public Safety Committee Report relative to a Motion (McOskey - Soto-Martinez - Krekorian), which among other actions instructed the CLA, with the assistance of the City Attorney, City Clerk, Los Angeles Police Department (LAPD), the Civil, Human Rights and Equity Department (CHRED) and any

other department, to report with recommendations and implementation plans to modify Charter Section 1070. The Motion directs this office to provide various options, subject to their compliance with all applicable labor and employee relations laws, which should include, but not be limited to the following options:

- A. Alternative models for the Board of Rights (BOR), including a modified composition of civilian and sworn personnel serving on a BOR.
- B. Authorizing the Chief of Police to terminate officers immediately (prior to a BOR or other due process proceeding) in appropriate cases, as to be determined by the severity of the misconduct.
- C. Incorporating binding arbitration as a component of the discipline process in termination cases, where appropriate

Charter Section 1070 outlines the Disciplinary Procedures for the LAPD, which includes the BOR Process for the LAPD. Specifically, Charter Section 1070(h) establishes the composition of the BOR. Currently, a BOR shall be comprised of two officers with the rank of Captain or above and an individual who is not a member of the LAPD (a "civilian member" or civilian Hearing Examiner). However, as a result of the adoption of Charter Amendment C by the voters in 2017, the Council may adopt an ordinance allowing for all-civilian Board of Rights panels.

On May 10, 2019, Council adopted Ordinance No. 186100 to implement the provisions of Charter Amendment C and allow for a sworn officer accused of misconduct to choose to have a BOR consisting of three civilians. This Ordinance included the provision, adopted by the voters, that the Ordinance would be in effect for a minimum of two years and at that the end of that two-year period the LAPD would submit a report to Council evaluating the effectiveness of the Ordinance. In November 2022, the Board of Police Commissioners submitted its report which found that all-civilian BOR panels were more lenient than those comprised of two sworn and one civilian hearing examiner (see Council Fille No. 22-1590).

There are two types of BOR hearings. The first is a "Directed Board," where the Chief of Police (Chief) has concluded that an officer has committed serious misconduct and should be terminated from employment. The Chief must "direct" the officer to a BOR hearing, with a recommendation that the officer be removed from employment. The accused officer remains an employee of the LAPD until the hearing is concluded. If the BOR finds that an accused officer is guilty of misconduct, they then enter a penalty phase, where they determine what penalty is appropriate. The Chief may remove an officer only if the BOR has found an individual officer guilty and recommends termination of their employment. In this case, the Chief is able to impose a lesser penalty than the BOR recommends, but not a harsher one.

The second type of BOR hearing is an "Opted Board." Charter Section 1070(b) allows for the Chief to demote an individual or impose a suspension of up to 22 days, but also allows

for an officer who has been notified of such a forthcoming demotion or suspension to request a hearing before a BOR to contest the charges. Opted hearings are conducted in the same manner as a directed hearing, with the BOR panel having the authority to determine the appropriate punishment, if any. Historically, the LAPD has used sworn officers as Advocates, who argue the case for discipline or dismissal in front of the BOR.

Accused officers are often represented by attorneys provided by their labor union. However, the City provided funding and position authorities in the 2023-24 Adopted Budget for City Attorneys to represent the LAPD in BOR hearings alongside the sworn Advocate. This change has recently been implemented.

As noted above, Charter Section 1070(h) establishes the composition of BOR panels with two sworn and one civilian member. However, Council has adopted an Ordinance which allows accused officers facing a BOR hearing to choose a panel with three civilians. If Council wishes to change the composition of BOR panels, it may rescind Ordinance No. 186100 and revert to panels consisting of two sworn and one civilian member.

Council could also choose to change the composition of BOR panels by placing a Charter Amendment on the ballot. In that case, Council could choose to create panels consisting of one sworn and two civilians, or increase the overall number of panel members. The CLA has not evaluated the potential outcomes of such a change, but a major complaint of the LAPD is the lack of policing experts on the panels. Increasing sworn representation while maintaining a majority of civilians on the panel may resolve some of those issues.

However, it has been noted that civilians in general are more lenient on sworn personnel than other sworn officers, and changing the overall composition of panels while maintaining a civilian majority may result in the same decisions with more split votes. If Council wishes to amend the composition of BOR panels to change the number of members on a panel or the overall composition of panels, it may wish to include language in the Charter Amendment to allow the Council to amend the composition of BOR panels in the future via Ordinance. This would ensure that the City has flexibility to change the makeup of panels in the future without requiring another ballot measure.

Also, instead of maintaining the existing disciplinary process, the Council may wish to consider changing the model of the BOR to mirror that of a Civil Service Commission, where decisions that have been enacted can be appealed *post-termination*. This would allow the Chief to implement any discipline that he or she feels is justified, while retaining the BOR as an appeals body. This would bring the BOR process more into line with the disciplinary processes in the majority of jurisdictions in California, almost all of which allow a Chief or Sheriff to discipline sworn personnel while maintaining an appeals process, as required by the Peace Officers Procedural Bill of Rights, through arbitration or the civil service model.

Alternatively, Council could seek to abolish the entire Board of Rights process, and enact a new process where the Chief could discipline or fire an officer, while providing appeals process through some sort of arbitration model. There would be a number of potential

benefits to amending the BOR process in this manner. First, it would give the Chief of Police the same powers as any other General Manager in the City, all of which (except for the Fire Chief) are able to terminate employees for cause. Second, it would ensure that problem officers can be removed quickly from the LAPD, reducing legal risk and increasing public accountability. Finally, it would ensure that sworn officers subject to termination are provided a fair appeal process in a manner similar to nearly every other police department in the state. While there may be concerns that giving a Chief the power to terminate employees will result in abuses, it should be noted that even in departments where this is the norm it is not a simple process, and employees are provided ample notice of discipline and access to an appeals process. If the Council wishes to pursue any of these options, a Charter Amendment will need to be placed before the voters. After consideration and having provided an opportunity for public comment, the Committee moved to recommend approval of the recommendations as detailed above. This matter is now submitted to Council for its consideration.

Respectfully Submitted,

Public Safety Committee

<b>COUNCILMEMBER</b>	<b>VOTE</b>
RODRIGUEZ:	NO
LEE:	NO
PRICE:	YES
PARK:	NO
SOTO-MARTINEZ:	YES

ARL  
5/28/24

**-NOT OFFICIAL UNTIL COUNCIL ACTS-**