June 1, 2023

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Oakland Police Commission
Oakland City Hall, 1 Frank Ogawa Plaza
Oakland, CA 94612

Re: Tyfahra Milele as Chair of the Oakland Police Commission

Good Afternoon Commissioners and Alternate Commissioners,

The Coalition is composed of Oakland and Bay Area residents and local nonprofits who support our mission to advocate for accountability of the Oakland Police Department (OPD) to the community. Our goal is to ensure that OPD operates with equitable, just, constitutional, transparent policies and practices that reflect the values and engender the trust of the community.

In that vein, we introduced and wrote most of the legislation for Measure LL (creating the Police Commission and the Community Police Review Agency (CPRA) and Measure S1 (creating the Office of the Inspector General and expanding the independence of the Police Commission with the hiring of their own attorney).

Article VI, Section 604(a)1., Oakland City Charter created an independent body of community residents with the authority to hold the Oakland Police Department accountable for equitable, constitutional policing. The Police Commission was created to have the trust of the community by ensuring it was immune to City interference, influence or pressure. The downside is that its independence requires it must be self-regulatory and self-correcting.
Failing that, in a democratic society, it is up to the people to make its dissatisfaction known and to apply pressure. That's what the Coalition for Police Accountability is attempting to do in order to enable the Commission to fulfill its mission as a trusted overseer of the Oakland Police Department.

As we see in the Supreme Court, the independence of the Court results in the inability to enforce ethical behavior and has resulted in a lack of confidence in the highest Court of the land. The same can be said for the legal system, in general. And, in this instance, the abuse of the authority of the Commission's Chair has resulted in the lack of confidence in her and in the Police Commission.

In this instance, we have a Commission Chair, elected for a second term in January, 2023 who has committed serious breaches of conduct with the acquiescence of some of her allies and has created an atmosphere of friction, disrespect and hostility that has caused the Inspector General to file a complaint with the Ethics Commission and caused the Coalition to act.

We feel that we are left with no choice but to ask Tyfahra Milele to step down as chair of the Police Commission in order to avoid future possible action and to permit the Police Commission to function as one body as envisioned in the Enabling Ordinance and Charter Section 604. As mentioned in the cover email, over the past 18 months, we have reached out to Chair Tyfahra Milele via phone calls, letters, texts, a zoom call, and a face to face meeting during which we expressed our concerns. Nothing has changed and has in fact worsened.

Our ten (10) reasons are stated below for requesting that Tyfahra Milele step down as chair for violating the Enabling Ordinance, Charter Section 604, Measure S1, and the Police Commission’s Code of Conduct. The Code of Conduct provides in part:

“It is a privilege to serve as the Commission’s leader. With that privilege comes the responsibility to treat other Commissioners as equals, and in a manner that demonstrates appreciation and respect for their hard work and commitment…“ Attached is a copy of the Police Commission’s Code of Conduct as “AMENDED 12/16/2021."

1. **2023-2025 Budget Requests- Lack of Transparency**
   Recently the Chair submitted a budget on behalf of the commission to the City without sharing it with commissioners and to date has still not shared what was initially. This despite several commissioners making a request orally and in writing. Her lack of transparency is further documented by scheduling a budget forum for June 3, 2023 which is several days after the official budget presentation was made on May 30, 2023. Transparency is absent when there is no review or feedback provided in advance of the official presentation.

   We understand that Chair Milele contacted the City Attorney’s office directing them not to speak to any Commissioners other than herself. This is not only an abuse of
power but it is inappropriate to direct the City Attorney to refuse service to other Commissioners.

2. Especially shocking and troubling is that there appears to be a lack of understanding about acting with transparency and respect towards fellow Commissioners and the public. Transparency fosters trust. How can the public or fellow Commissioners trust her leadership as Chair.

The optics are terrible, especially given the timing. Chair Milele’s attendance at OPD’ retreat occurred about a week after the Independent Monitor Team (IMT) report that referred to two Internal Affairs Division (IAD) investigations that were 'very troubling' and which were being assigned to an outside investigator, Clarence Dyer & Cohen LLP.

We know from this email exchange that the Federal Court Monitor's report was discussed at the retreat... and, no doubt, the Michael Chung investigations which were referenced in the Monitor’s report for “outside counsel investigation.”

What are we to think when the Chair convened a discipline committee on the Chung/Armstrong matter subsequently and did not recuse herself from serving on the committee.

Her “defense” is that her predecessor, former chair, Regina Jackson also attended an OPD retreat. What Chair Milele fails to state is that former Chair Jackson was invited specifically to answer questions about the role of the Police Commission, she informed her fellow Commissioners and the public, and left the retreat promptly after the close of her presentation and Q&A. Chair Milele stayed for the entire retreat.

3. On December 8, 2022, the Coalition wrote the full Police Commission detailing Chair Milele’s lack of transparency regarding the “December 9, 2022 Police Commission Meeting Closed Session (Evaluation of IG Michele Phillips) and Agenda Item 9 (“Scope of Commission Powers/Duties and Governance Structure (including Executive Director position).”). The Chair never responded to our letter.

The Closed Session item dealt with an evaluation metric for IG Phillips. The public was not informed of what kind of evaluation instrument was being used because there has never been any public discussion of what metrics would be applied.

Members of the public should be able to weigh in on any metrics designed to evaluate the work of the Inspector General. This failure goes to the lack of transparency as no metrics had been agendized nor shared for public input. Clearly a Brown Act violation.

Chair Milele has interfered with the Inspector General’s ability to perform the functions described in Section 604(f). The Chair has inappropriately directed IG Phillips to attend specific meetings, directed her work, and has refused two
requests by IG Phillips for mediation, prompting the IG to file an Ethics Commission complaint against Chair Milele.

4. Under Measure S1, the Police Commission’s counsel, Garcia Hernandez Sawhney, LLP, was hired to provide “professional legal services.” It appears that Chair Milele exceeded her authority and the scope of the employment contract and unilaterally directed this firm to research and prepare a memorandum containing organizational restructuring recommendations. This is outside the purview of counsel as this is not a legal issue and is in fact project management services. Directing legal counsel to provide project management services is not only impermissible but is a misuse of public funds.

The Enabling Charter provides for two department heads, i.e. the Executive Director of CPRA and the Inspector General. The Chair further exceeded her authority by seeking to hire another Department Head who “tracks, drives, and supports all of the Commission’s Charter and Enabling Ordinance Powers and Duties.”

Further, the Chair also suggested that the “Commission could shift to a Board-of-Directors model…” It appears that the chair is attempting to transfer its duties to someone else not contemplated by Measure LL nor by the public. The public voted by 83.11% to empower Police Commissioners to do this work themselves and not delegate its responsibilities to a body not contemplated in the Charter.

5. On February 14, 2023, the Coalition forwarded another letter to the full Commission citing Oakland City Charter section 604 (g)5 which outlines circumstances under which the Police Commission can convene a Discipline Committee. A Discipline Commission may only be convened after CPRA has conducted an investigation. The Chair never directed CPRA to conduct an investigation of the Michael Chung matters nor an investigation of former Chief LaRonne Armstrong. Yet she agendized the convening of a Discipline Committee and failed to recuse herself. Chair Milele did not respond to this letter.

Under the Charter Section 604(f), the role of investigations falls to CPRA not the Discipline Committee. By convening the Discipline Commission without first directing CPRA to initiate an investigation and waiting for the receipt of their findings, Chair Milele was usurping the role of CPRA. She was also improperly directing the Discipline Committee to act as investigators. Police Commissioners are not investigators and the eligibility requirements to become a Police Commissioner do not require investigative skills or training.

6. The Chair Failed To Subpoena Records Which Would Have Given Rise to an Investigation by CPRA in the Michael Chung matters. The Chair failed to obtain all of the relevant documents that were provided to the Dyer law firm. Had the records been subpoenaed, the Commission would have been in the position to direct CPRA to discharge its duties and conduct its own investigation, and produce findings. Failing to obtain those records does not give the Commission the authority to act as investigators.
One of the greatest responsibilities of the Commission is to relieve a police chief of duty with cause. The Commission never got the chance to discharge its duties, since the Chair failed to subpoena records and direct CPRA to investigate. Had this been done and CPRA's findings differed from the Dyer report, a Discipline Committee would have been properly convened and made a recommendation to the full Commission as to whether or not to fire Chief Armstrong. The Chair’s failure to act forced Mayor Sheng Thao to step in and make the decision.

7. The Chair has failed to conduct the Police Commission meetings in a fair and respectful manner and has allowed a Commissioner to verbally attack other Commissioners which violates their own written Code of Conduct (attached herein). This has occurred on several occasions. We would expect the Chair to speak up and caution Commissioners to follow the Code of Conduct and be respectful towards each other. Each Commissioner signed the Code of Conduct and agreed to abide by all of its terms.

8. Chair Milele has made public statements of fact without providing evidence for her assertions. Specifically, blaming the Federal Monitor for withholding investigative documents with respect to the findings of the Dyer report without subpoenaing them herself, and blaming the City for preventing the Police Commission from obtaining the requested documents.

9. Chair Milele arbitrarily removed two Commissioners Regina Jackson and Marsha Peterson from participating in their assigned ad hoc committees (CPRA search, IG evaluation and NSA Ad Hocs), thereby increasing the burden on the remaining Commissioners, and violating the Commission’s Code of Conduct.

10. Chair Milele has made public statements which supported the segment of the community opposed to the removal of LeRonne Armstrong as OPD Chief, in violation of the Commission’s Code of Conduct under the Guiding Principles section as follows:

"Police Commissioners are responsible to all of the people of the City of Oakland, and not to any particular segment or group.

Police Commissioners must act in the public interest, not their private interests or any special interests.

Police Commissioners must strictly adhere to the legal and ethical requirements of office and avoid all situations where prejudice, bias or conflicts of interest could influence their decisions."

The Chair has made unsupported public statements accusing the Federal Monitor for thwarting the Commission’s efforts to investigate police misconduct, thus possibly compromising the City’s ability to exit the Negotiated Settlement Agreement by incurring a lack of confidence by the Court.
We are not asking that Chair Tyfahra Milele be removed as a Commissioner, only that she resign as Chair. If she is allowed to remain as Chair until the end of her term, October 16, 2023, the damage done to the Commission, CPRA and the OIG will be significant. Losing the credibility and trust of the community, the City and the Federal Court may have the effect of prolonging the NSA sustainability period.

For all of the reasons stated above, the Coalition for Police Accountability requests that Chair Tyfahara Milele resign as chair of the Police Commission by June 8, 2023.

Should Chair Milele refuse to step aside as Chair, the City Council has the option under the City Charter’s provisions (601 and 604) to remove a Commissioner after a hearing by the Public Ethics Commission.

The following documents are attached.
2. Email from Chair Tyfahra Milele to OPD Senior Staff Command Retreat.
3. Re: 11 Tasks: Communication between Chair Milele and former Chief LeRonne Armstrong.

Thank you for your courtesy and cooperation and we look forward to receiving a response.

Very truly yours,

Cathy Leonard
President
Board Chair
Member, Steering Committee
Coalition for Police Accountability
Coalition for Police Accountability

cc via email:

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