



# OAKLAND POLICE COMMISSION

## SPECIAL MEETING AGENDA

March 14, 2019

5:30 PM

City Council Chamber, 3<sup>rd</sup> Floor  
1 Frank H. Ogawa Plaza, Oakland, CA 94612

- I. **Call to Order**  
Regina Jackson
  
- II. **Roll Call and Determination of Quorum**  
Regina Jackson

**THE OAKLAND POLICE COMMISSION WILL ADJOURN TO CLOSED SESSION IN CITY HALL BUILDING BRIDGES ROOM, 3<sup>RD</sup> FLOOR AND WILL REPORT ON ANY FINAL DECISIONS IN THE CITY COUNCIL CHAMBER DURING THE POLICE COMMISSION'S OPEN SESSION MEETING AGENDA.**

- III. **Closed Session**  
PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE  
Gov't Code § 54957(b)
  - a. Action – Report out of Closed Session
  - b. Public Comment
  
- IV. **Welcome, Purpose and Open Forum** (2 minutes per speaker)  
Regina Jackson will welcome and call public speakers. The purpose of the Oakland Police Commission is to oversee the Oakland Police Department's policies, practices, and customs to meet or exceed national standards of constitutional policing and to oversee the Community Police Review Agency that investigates police misconduct and recommends discipline.
  
- V. **Selection of Alternate Commissioner to Fill Commission Vacancy**  
The Commission will select Alternate Police Commissioner Tara Anderson to fill the vacancy created by Commissioner Maureen Benson's resignation.
  - a. Discussion
  - b. Public Comment
  - c. Action, if any
  
- VI. **Reimbursement to former Commissioner Maureen Benson for Cost of Replacement Laptop**  
Commission will vote to use available funds to reimburse former Commissioner Benson for the laptop which was destroyed at an offsite meeting on June 14, 2018. ([Attachment 6](#))
  - a. Discussion
  - b. Public Comment
  - c. Action, if any

**VII. Commissioner Meeting Attendance**

The Commission will discuss, and possibly adopt a policy regarding, the requirements for attendance at meetings. ([Attachment 7](#))

- a. Discussion
- b. Public Comment
- c. Action, if any

**VIII. Election of Oakland Police Commission Vice Chairperson**

The Commission will nominate and vote on the appointment of a Vice Chairperson to serve from March 2019 until the first regular meeting of January 2020.

- a. Discussion
- b. Public Comment
- c. Action, if any

**IX. Meeting Minutes Approval**

The Commission will vote to approve meeting minutes from February 28, 2019. ([Attachments 9a, 9b](#))

- a. Discussion
- b. Public Comment
- c. Action, if any

**X. Oakland Police Department (OPD) Report on Pawlik Investigation**

Chief Anne Kirkpatrick will provide the Executive Force Review Board report, the Compliance Director's report and addendum related to the Joshua Pawlik shooting investigation. ([Attachments 10a, 10b, 10c, 10d](#))

- a. Discussion
- b. Public Comment
- c. Action, if any

**XI. R-02: Searches of Individuals on Probation and Parole**

The Commission will review an updated proposal for R-02: Searches of Individuals on Probation or Parole. ([Attachments 11a, 11b](#))

- a. Discussion
- b. Public Comment
- c. Action, if any

**XII. CPRA Prioritization of OPD Policies to Review**

Karen Tom will provide a list of OPD policies that CPRA will review, in order of prioritization. ([Attachment 12](#))

- a. Discussion
- b. Public Comment
- c. Action, if any

**XIII. Recess (8 minutes)**

**XIV. Quarterly Informational Progress Report**

The Commission will review the Quarterly Informational Progress Report scheduled for the March 19, 2019 Public Safety Committee meeting.

([Attachment 14](#))

- a. Discussion
- b. Public Comment
- c. Action, if any

**XV. Standing and Ad Hoc Committee Assignments**

The Commission will work on assigning Commissioners to serve on at least one standing committee or ad hoc committee. ([Attachment 15](#))

- a. Discussion
- b. Public Comment
- c. Action, if any

**XVI. Budget Ad Hoc Committee Update**

The Budget Ad Hoc Committee will provide an update. ([Attachment 16](#)).

- a. Discussion
- b. Public Comment
- c. Action, if any

**XVII. Chief's Goals Ad Hoc Committee Update**

The Chief's Goals Ad Hoc Committee will provide an update. ([Attachment 17](#))

- a. Discussion
- b. Public Comment
- c. Action, if any

**XVIII. Appeals Plan/New Evidence Discovery on Bey Case Ad Hoc Committee Update**

The Appeals Plan/New Evidence Discovery on Bey Case Ad Hoc Committee will provide an update.

- a. Discussion
- b. Public Comment
- c. Action, if any

**XIX. Creation of Racial Equity Statement Ad Hoc Committee**

Tara Anderson will discuss the creation of a Racial Equity Statement Ad Hoc Committee. ([Attachment 19](#))

- a. Discussion
- b. Public Comment
- c. Action, if any

**XX. Agenda Setting and Prioritization of Upcoming Agenda Items**

The Commission will engage in a working session to discuss and determine agenda items for the upcoming Commission meeting and to agree on a list of agenda items to be discussed on future agendas. ([Attachment 20](#))

- a. Discussion
- b. Public Comment
- c. Action, if any

## XXI. Adjournment



This meeting location is wheelchair accessible. To request disability-related accommodations or to request an ASL, Cantonese, Mandarin, or Spanish interpreter, please e-mail [ktom@oaklandca.gov](mailto:ktom@oaklandca.gov) or call 510-238-7342 or TDD/TTY 510-238-2007 at least five working days before the meeting. Please refrain from wearing scented products to this meeting as a courtesy to attendees with chemical sensitivities.

Esta reunión es accesible para sillas de ruedas. Si desea solicitar adaptaciones relacionadas con discapacidades, o para pedir un intérprete de en español, Cantones, Mandarín, o de lenguaje de señas (ASL) por favor envíe un correo electrónico a [ktom@oaklandca.gov](mailto:ktom@oaklandca.gov) o llame al 510-238-7342 o 510-238-2007 por lo menos cinco días hábiles antes de la reunión. Se le pide de favor que no use perfumes a esta reunión como cortesía para los que tienen sensibilidad a los productos químicos. Gracias.

會場有適合輪椅出入設施。需要殘障輔助設施, 手語, 西班牙語, 粵語或國語翻譯服務, 請在會議前五個工作天電郵 [ktom@oaklandca.gov](mailto:ktom@oaklandca.gov) 或致電 510-238-7401 或 510-238-2007 TDD/TTY。請避免塗搽香氛產品, 參加者可能對化學成分敏感。

**Because some persons are sensitive to certain chemicals, persons attending this meeting are requested to refrain from wearing scented products.**



# OAKLAND POLICE COMMISSION

## Agenda Report

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<b>Subject:</b>	<b>Reimbursement for Cost of Laptop Replacement</b>
Date:	March 5, 2019
Requested by:	Commissioner Harris
Prepared by:	Chrissie Love, Administrative Analyst II
Approved by:	Karen Tom, Interim Executive Director, CPRA

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### Action Requested:

To approve use of Police Commission budgeted funds to reimburse former Police Commissioner Maureen Benson \$1,303.33 for the purchase of a new laptop due to water damage that destroyed her personal laptop at a Police Commission meeting on June 14, 2018.

### Background:

The Police Commission held a special meeting on June 14, 2018 at 6:00 pm at the East Oakland Youth Development Center, at which guest speaker John L. Burris, Attorney at Law, was invited to present on the topic of Legal Rights of Civilians When Dealing with Police. During a presentation, a bottle of water was accidentally spilled onto Ms. Benson's laptop at no fault of her own. There were several witnesses to the occurrence. Ms. Benson reported that the cost to repair the damaged laptop exceeded the cost to replace it.

In late June, the City Administration and the Community Police Review Agency (CPRA) communicated to Ms. Benson that the best course of action is to seek reimbursement under the authority of the Police Commission given that there is no administrative policy governing such reimbursement for personal property. The City Administration had also consulted with the City Attorney's Office and learned that the request would not fall under the California Tort Claims process.

### Attachment (6a):

The following documentation is provided to support the request for reimbursement of \$1,303.33:

- Receipt for new laptop



Apple Walnut Creek
1129 S. Main Street
Walnut Creek, CA 94596
walnutcreek@apple.com
925-210-2020
www.apple.com/retail/walnutcreek

June 17, 2018 05:34 PM

MB AIR 13.3/1.8GHZ/8GB/256GB \$ 1,199.00

Part Number: MQD42LL/A
Serial Number: FVFWJ9JPJ1WL
Return Date: Jul. 01, 2018
For Support, Visit: www.apple.com/support

Cost to replace laptop plus recycling fee

Recycling Fee \$ 5.00 N

AppleCare+ for MacBook and MacBook Air \$ 249.00 N

Part Number: S6200LL/A
Agreement Number: 970014118017285
Plan End Date: Jun. 16, 2021
Sales Associate ID: 301192532
Serial Number: FVFWJ9JPJ1WL

This plan is registered automatically.
Verify your coverage at
apple.com/support/applecare/www/

I am not asking for reimbursement of AppleCare
or the cord below

Terms & Conditions:
You may cancel at any time (restrictions apply). By purchasing,
you agree to receive the contract terms electronically by
visiting http://www.apple.com/legal/sales-support/applecare/
applecareplus/docs/applecareplusmacus.html

For Support, Visit: support.apple.com

USB TO LIGHTNING CABLE (1 M)-AME \$ 19.00

Part Number: MQUE2AM/A
Return Date: Jul. 01, 2018
For Support, Visit: www.apple.com/support

Sub-Total \$ 1,472.00
Tax@8.25% \$ 100.49
Total \$ 1,572.49

Calculated 8.25%
of the \$1199.00
and \$5 above

Payment Method

Amount Paid Via CHASE VISA (Chip) \$ 1,572.49
\*\*\*\* 0975
00088D

Text



\* R 0 1 4 6 0 8 1 1 7 8 \*

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Please debit my account \*\*\*\* 0975 by \$ 1,572.49 (Sale)

Card Number: \*\*\*\* 0975

Date/Time: 2018/06/17 17:33:28

Application ID: A0000000031010

Terminal ID: xxxx0151

Application PAN Sequence Number: 0

Device Id: 0151

Card Type: Credit

Preferred Name: CHASE VISA

Verified by Signature

TVR: 0080008000

TSI: F800

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<http://apple.com/legal/sales-support/sales-policies/retail.html>

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# OAKLAND POLICE COMMISSION

## Agenda Report

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<b>Subject:</b>	<b>Commissioner Meeting Attendance</b>
Date:	March 6, 2019
Requested by:	Commissioner Harris
Prepared by:	Chrissie Love, Administrative Analyst II
Approved by:	Karen Tom, Interim Executive Director, CPRA

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### Action Requested:

To review the excerpt from Measure LL 604(c)(10) and discuss the establishment of a formal policy regarding meeting attendance.

### Background:

At the February 28, 2019 meeting, Commissioner Harris requested adding an agenda item to review and discuss meeting attendance, and develop a formal policy, if necessary. Commissioner attendance is referenced in Measure LL Section 604(c)(10), which states:

“The City Council may remove members of the Commission for cause as provided in Section 601 of the Charter, or members of the Commission may be removed by a majority vote of the Commission only for conviction of a felony, conviction of a misdemeanor involving moral turpitude, a material act of dishonesty, fraud, or other act of moral turpitude, substantial neglect of duty, gross misconduct in office, inability to discharge the powers and duties of office, absence from three consecutive regular Commission meetings or five regular meetings in a calendar year except on account of illness or when absent by permission.”

**Table 1** shows attendance records for current Commissioners in calendar year 2018 as reflected in the approved meeting minutes.

**Table 1: Commissioner Attendance Calendar Year 2018**

Commissioner	2018 Meeting(s) Missed	Absences Noted as Excused on Meeting Minutes
Ahmad	1.24, 2.28, 5.10, 5.24, 7.12, 8.23, 10.11, 12.13	5.24, 7.12, 8.23
Dorado		
Harris	8.23, 12.13	8.23
Jackson	1.24, 2.14, 3.8, 4.26, 5.10, 10.11	
Prather	6.28, 9.13	6.28, 9.13
Smith	10.11	10.11



**CITY OF OAKLAND  
OAKLAND POLICE COMMISSION**

**Meeting Minutes**

**Thursday, February 28, 2019**

6:30 PM

City Hall, 1 Frank H. Ogawa Plaza, Council Chamber  
Oakland, CA 94612

**I. Call to Order**  
Regina Jackson

She announced that there is a delay in starting the meeting due to M. Ahmad late; needed for quorum.

An update - advised that since we have a recently sworn in new Commissioner, we can identify her as moving from Alternate Commissioner to sitting Commissioner for now to establish quorum.

The meeting started at 6:38 p.m.

**II. Roll Call and Determination of Quorum**  
Regina Jackson

Commissioners Present: Tara Anderson, José Dorado, Ginale Harris, Regina Jackson, and Thomas Smith. Quorum was met.

Commissioner Excused: Edwin Prather.

Commissioner Absent: Mubarak Ahmad.

Counsel for this meeting: Sergio Rudin

**III. Welcome, Purpose and Open Forum (2 minutes per speaker)**  
Regina Jackson will welcome Alternate Commissioner Tara Anderson (subject to the approval of the City Council at their February 26 meeting) and call public speakers.

She welcomed and introduced Alternate Commissioner Tara Anderson. She was recently approved by the City Council. She gave Ms. Anderson an Impact Binder relating to study and the Commission.

Comments were provided by the following public speakers:

- Bruce Schmiechen
- Oscar Fuentes
- Celeste Guap
- Rashidah Grinage
- Jesse Smith
- Hilary Davis
- Miles Cooper
- Elise Bernstein
- Paula Hawthorn
- Cathy Leonard
- Lorelei Bosserman

John Jones III  
Mary Vail  
Saleem Bey

**IV. Election of Alternate Commissioner to Fill Commission Vacancy**

The Commission will elect Alternate Police Commissioner Tara Anderson to fill the vacancy created by Commissioner Benson's resignation. This action is pending the City Council's confirmation of Tara Anderson's appointment to the position of Alternate Commissioner at the Council's February 26th meeting.

Chair Jackson asked Tara Anderson to introduce herself. She thanked the Selection Committee. She looks forward to continue to be challenged by the community, continue to learn what it truly means to be of service to all of Oakland. She thanked everyone for the opportunity to do so.

Comments were provided by the following public speaker:  
Saleem Bey

A motion was made by Thomas Smith, seconded by Regina Jackson, that we approve Alternate Commissioner Tara Anderson to fill the vacancy on our Oakland Police Commission as a Commissioner.

Regina Jackson asked Counsel Rudin about Tara Anderson's recusal from the vote. Counsel Rudin suggested recusal.

The motion fails by the following vote:

Aye: Jackson and Smith  
Opposed: Dorado and Harris

Chair Jackson asked Counsel Rudin for advice. Counsel Rudin reported that you still have quorum so the meeting can continue. She can continue as an Alternate Commissioner until further action. Chair Jackson said that Commissioner Anderson will continue as Alternate Commissioner – the matter will be restated and brought back on the next Agenda.

**V. Meeting Minutes Approval**

The Commission will vote to approve meeting minutes from February 14, 2019.

Comments were provided by the following public speakers:  
Saleem Bey  
Henry Gage III  
Larry White  
Mary Vail

José Dorado inquired about the meeting Minutes Transcripts and the availability. Thomas Smith said we do not need the Transcript to approve the Minutes. When the Transcription Service offers the Transcript back to us, we will make it available.

A motion was made by José Dorado, seconded by Thomas Smith, to approve the February 14, 2019 minutes. The motion carried by the following vote:

Aye: Anderson, Dorado, Harris, Jackson, and Smith

**VI. Oakland Police Department Report on Pawlik Investigation**

Chief Anne Kirkpatrick will provide all publicly reportable information on the

investigation and findings in the police involved shooting of Joshua Pawlik on March 11, 2018.

Chief Ann Kirkpatrick gave an update of the case from the beginning and shared where the Department is at presently. The 3304 date - March 11 has now been tolled. The case is not concluded until all steps are completed. According to our new law (SB1421), she has been given directions to prepare their case for public dissemination. Under the law, the public should be able to see this case filed subject to legal redaction. That is in process. She is preparing for policy changes and training (regardless of the outcome). Her goal is to get to best practices, if there are any in this country (people who are either asleep, unconscious, they are with guns, and the waking up). If there are none in this country, we will develop policy and training and we will be the Agency of best practice (OPD and the Commission).

Discussion/questions followed by Commissioners.

Ms. Tom spoke on the CPRA investigations. Some materials were available throughout the investigation; certain pieces were not received. She also spoke on tolling.

Chair Jackson asked the Chief if she was overruled by the Compliance Director and she said yes. Can you make available the Addendum and his report by the next Commission meeting? The Chief said that is her goal.

Comments were provided by the following public speakers:

Henry Gage III  
Lorelei Bosserman  
Cathy Leonard  
Rashidah Grinage  
Larry White  
Jim Chanin  
Karin Adams  
Anne Janks  
Mary Vail  
Saleem Bey  
Mary Howe

Chair Jackson read a statement to the Pawlik family and Joshua's friends.

## **VII. Oakland Police Report on Managing Job-Related Stress**

Chief Anne Kirkpatrick will provide her proposed budget and timeline recommendations to the Commission for providing education and training to OPD sworn employees regarding the management of job-related stress, and regarding the signs and symptoms of post-traumatic stress disorder, drug and alcohol abuse, and other job-related mental and emotional health issues. She will also identify what services OPD currently provides.

Chief Kirkpatrick is not present. Acting Deputy Chief Holmgren stated he is filling in for Deputy Director Gleason who oversees the Wellness Unit as well as DC Cunningham (who is the lead of the Collective Healing Initiative). He spoke about the significant topic and the Wellness Unit.

Discussion/questions followed by Commissioners.

Chair Jackson asked that in addition to Attachment 7, if they have a proposed budget and timeline and he said yes; will send it to the Commission when Ms. Gleason returns next week. Chair Jackson expressed concern the Commission is not receiving written

reports as requested and has spoken with Ms. Gleason and Chief Kirkpatrick (presenting a budget and timeline). DC Holmgren will email her tomorrow with update.

Comments were provided by the following public speakers:

Rashidah Grinage  
Saleem Bey  
Jesse Smith  
Henry Gage III

**VIII. Notice to the Commission of Community Police Review Agency Cases Proposed for Discipline Committee Review or Case Closure**

Interim Executive Director Karen Tom will provide notice to the Commission of cases she plans to refer to the discipline committee and/or propose for case closure as well as other issues relevant to case closure.

Ms. Tom stated that in her absence there appears to have been a mix up with the items that were submitted on this Agenda Item. This is not the Agenda Item as she initially anticipated would be submitted. The Pending Case List attachment is in the Packet; the completed case list was not. Mr. Rus placed them online for public and Commission viewing. The completed case list will be updated and resubmitted again for the next meeting. There are no cases that are coming before the Discipline Committee. Addition: The Pawlik case is an open case but it has been moved into the tolling cases; not reflected on this Pending Case List because it was tolled after the List was submitted. Chair Jackson said we will look at the report on the next Agenda.

Comments were provided by the following public speakers:

Rashidah Grinage  
Mary Vail  
Saleem Bey

**IX. Recess (8 Minutes)**

**X. Removal of Hiring Freeze on Community Police Review Agency**

The Commission will vote to remove the hiring freeze on vacant positions in the agency.

Comments were provided by the following public speaker:

Rashidah Grinage

A motion was made by José Dorado, seconded by Thomas Smith, to remove the hiring freeze on the vacant positions in the CPRA. The motion carried by the following vote:

Aye: Anderson, Dorado, Harris, Jackson, and Smith

Chair Jackson asked Ms. Tom to send the Investigator Job Descriptions to her/everyone.

**XI. Vote to Approve and Submit Quarterly Informational Progress Report**

The Commission will review the Quarterly Informational Progress Report and vote to approve and submit to the Public Safety Committee.

Chair Jackson reported this Item was primarily worked on by Commissioner Prather and he is out of town on business.

Discussion/changes to the Report followed by Commissioners.

Chair Jackson said the Report is to be presented March 19. We will have another

meeting so this will be presented on the next Agenda. Ginale Harris will forward changes/comments to Chair Jackson; then give these changes back to Chrissy Love and get an updated Report. Vote to approve this Item for the March 19 submission.

Comments were provided by the following public speakers:  
Rashidah Grinage  
Saleem Bey

**XII. Standing and Ad Hoc Committee Assignments and Updates**

The Commission will discuss and vote on a requirement for each commissioner to serve on at least one standing committee or ad hoc committee.

Discussion/concerns followed by Commissioners. Two Commissioners are not present this evening. Just vote on the Item and not assign anyone. Ginale Harris offered to continue to do the work of the Ad Hoc Committees that she formerly was assigned to by Thomas Smith when he was Chair until a vote is taken.

Ginale Harris – Budget update. She reported that Commissioners Dorado, Benson and herself worked on the Budget. Commissioner Dorado will speak first. We will do two portions – Budget itself and the explanation on where the money is coming from. He will speak on the plan that we want to present to the Commission. Counsel Rudin - Was this material posted with the Agenda and distributed to the public before this meeting? Chair Jackson said no. She said we will repost it and then Commissioners Dorado and Harris can speak to it at the March 14 meeting. José Dorado then gave a preview of coming attractions. Chair Jackson said the cost savings conversation in full is on March 14. She thanked the Commissioners for their work.

A motion was made by José Dorado, seconded by Thomas Smith, to vote that each Commissioner serve on at least one standing committee or ad hoc committee. The motion carried by the following vote:

Aye: Anderson, Dorado, Harris, Jackson, and Smith

**XIII. Task Force/Summit on Community Policing Update**

José Dorado will provide a verbal update on the progress he has made with this ad hoc committee.

Discussion/concerns followed by Commissioners.

Comments were provided by the following public speakers:  
No public comment.

**XIV. Reimbursement of Expenses for Public Hearing on Policing in the Homeless Community**

The Commission will vote on the reimbursement of certain funds expended for the Public Hearing on Policing in the Homeless Community.

Chair Jackson reported that every detail was handled by the Coalition for Police Accountability, had a wonderful turn out by our Commissioners, etc. – it was incredible.

Discussion followed by Commissioners. Chair Jackson said this was a hearing for our benefit – requests creating a standard operating procedure for future hearings (map), still want support of the Coalition and any other community members, but understand how to put our own on.

Comments were provided by the following public speakers:  
No public comment.

Chair Jackson asked to entertain a motion in order to facilitate the reimbursement of expenses for the Public Hearing.

Counsel Rudin, for the record, what is the amount that is being reimbursed? Chair Jackson said there is not a total on the Attachment – future attachments should include a total. Thomas Smith asked if we could do a not to exceed amount and Counsel Rudin said that is fine. Chair Jackson said it probably won't exceed \$400.

A motion was made by José Dorado, seconded by Tara Anderson, to reimburse funds (amount will not exceed \$400) for the Public Hearing on Policing in the Homeless Community. The motion carried by the following vote:

Aye: Anderson, Dorado, Harris, Jackson, and Smith

**XV. Agenda Setting and Prioritization of Upcoming Agenda Items**

The Commission will engage in the working session to discuss and determine agenda items for the upcoming Commission meeting and to agree on a list of agenda items to be discussed on future agendas.

Reimburse former Commissioner Maureen Benson for her laptop that was destroyed in an offsite Special Meeting (about \$1500). Chair Jackson - Provide additional research; arguments/context can be presented then.

Budget Presentation (Repost).

Chief's Goals.

Appointment/Selection of our new Commissioner (take another vote with a full Commission to approve her as a new Commissioner).

Set a standard for Commissioners - Absentees from Commission meetings, Standing Committee meetings, Ad Hoc Committee meetings. Chair Jackson asked Ginale Harris to send her research on this topic.

Creation of an Ad Hoc. Creation and approval of a criminal justice/racial equity statement where all policy bodies like in SF have expressly identified and acknowledged the harm that racism has caused and that it's the government's job to undo that harm. She would like to draft such a statement from the Oakland Police Commission and use it as an opportunity as we are working together to develop that statement. Develop methods for using an equity lens on any policy and practice work that we are developing. It is a big part of the government alliance on Race and Equity – we have a department on Race and Equity in Oakland – we have the equity indicators relative reports and other racial equity indicator reports from the State that could benefit this conversation. She thinks of it as you can't fix the problem until you identify you have the problem and acknowledge it's your responsibility to repair it. That is the sentiment from which she comes from in proposing it as an action that we take as a body. Chair Jackson - we will work on that for the language on the Agenda.

Quarterly Report from the Police Commission (Update with edits/changes).

Update - Parole and Probation status.

Inspector General update (Ms. Hom).

Prioritize OPD policies that are up for review and ask Mr. Rus to provide the suggested list of policies for review before the next meeting. Chair Jackson said we will direct Ms. Hom with that request – prioritize OPD policies that are up for review with a policy narrative/or research statement that goes under each of those policies provided by her staffer.

Updated Report from Ms. Tom

Written report from Chief Kirkpatrick and written report from Virginia Gleason on the Budget.

Legal Opinion from City Attorney's Office for two Vice Chairpersons (Vice Chairperson issues were not resolved).  
Finance Department provide us with updated numbers that they have gone through, etc.  
Ad Hoc Committee Update (Saleem Bey case).

Comments were provided by the following public speakers:  
Saleem Bey  
Henry Gage III

Ginale Harris asked Chair Jackson to go back to Item 12 to give a budget update which was granted.

**XVI. Adjournment**

A motion was made by Thomas Smith, seconded by José Dorado, to adjourn.  
The motion carried by the following vote:

Aye: Anderson, Dorado, Harris, Jackson, and Smith

The Commission adjourned the meeting at 10:22 p.m.



**CITY OF OAKLAND  
OAKLAND POLICE COMMISSION**

**Meeting Transcript**

**Thursday, February 28, 2019**

6:30 PM

City Hall, Council Chambers

1 Frank H. Ogawa Plaza, Oakland, California 94612

[Regina Jackson:](#) Hello. It's 6:30. All commissioners, can you please come up to the dais?

[Regina Jackson:](#) Excuse me, if I could have your attention. I am really sorry to announce that we're going to be delayed in starting. We just heard from Commissioner Ahmad, and he's about 20 minutes away. Unfortunately, we can't start without him being part of our quorum. My apologies for the delay. I don't know what else to do except to be transparent with you.

[Regina Jackson:](#) Excuse me, everyone.

[Speaker 1:](#) I'm going to ask him.

[Regina Jackson:](#) That's fine. Hello, everyone. I'd just like to make another update. It has been brought to my attention that since we have a recently sworn-in new commissioner, we are able to identify her as moving from the alternate to a sitting commissioner for now in order to establish our quorum. We will be able to get the meeting started. Thank you.

[Regina Jackson:](#) The time is now 6:38. I'm calling this meeting to order. This is a meeting of the Oakland Police Commission for February 28th at 6:38. Love life. We're going to take a roll call and determination of a quorum. Commissioner Dorado?

[Commissioner Dorado:](#) Here.

[Regina Jackson:](#) Commissioner Anderson.

[Tara Anderson:](#) Here.

[Regina Jackson:](#) Commissioner Smith.

[Commissioner Smith:](#) Here.

[Regina Jackson:](#) Here for myself.

[Female:](#) Harris.

[Regina Jackson:](#) Commissioner Harris.

[Commissioner Harris:](#) Here.

[Regina Jackson:](#) We have a quorum. Commissioner Prather is not with us today. He's on travel. Commissioner Ahmad, we anticipate his arrival shortly.

[Regina Jackson:](#) Moving to item three: Welcome, Purpose, and Open Forum. I have the opportunity, the distinct pleasure to welcome Alternate Commissioner Tara Anderson. She was recently approved by the City Council. We are delighted to have you with us. I have a nice, big impact binder to give to you as one of the many study opportunities for you. If you all just give me a moment on Public Speakers, Bruce Schmiechen

[Female:](#) Schmid.

[Female:](#) Schmiechen.

[Regina Jackson:](#) Schmiechen. Excuse me.

[Bruce Schmiechen:](#) Thank you, and welcome Chairman Jackson. I have another commitment, and I'm going to have to leave after public comment. I see the Pawlik Case is on the agenda, but I won't be able to be here for that. I wanted to just share a couple of observations about that case. This is an extremely important moment for the Commission as to what the outcomes are around this.

[Bruce Schmiechen:](#) You don't have complete control over everything, but I just want to say that having watched the video, and having thought about it, and read about other situations, which are very similar, if any investigative agencies come to the conclusion that this was all done according to rules and regulations, rules and regulations need to be changed. Whatever else happens that you don't have control over or didn't have control over, you have control over policy. It's really critical that the Commission represents the community, look at this thing in a way that says, "What can we do to make sure that this kind of tragedy never happens again to either the victims or the officers involved?"

[Bruce Schmiechen:](#) I just plead with you literally because people are going to be here showing up around this case if it goes south in terms of there being no departmental disciplinary or anything. We'll see how that shakes out. You have the opportunity to change the use of force rules, the escalation initiatives, when, and where, and how weapons can be used, and force can be. There are opportunities statewide, coming up, I think, again, possibly to change some of these rules, but I think if that doesn't happen, it needs to be done here, and it needs to be done now. Thank you very much.

[Regina Jackson:](#) Thank you. I have Oscar Fuentes, Celeste Guap, and Jesse Smith. Thank you.

[Oscar Fuentes:](#)

Hey there. I just wanted to make a comment about the last meeting. I was very shocked at the lack of judgment for many of the Commissioners in their comments about supporting or not supporting candidates for the chair. I've been to a lot of City Council meetings and other kinds of meetings. I've never seen anything like that. I thought I was in grade school.

[Oscar Fuentes:](#)

To promote somebody, you don't have to negate another person. These are the kinds of arguments and discussions that need to be had on a one-to-one basis before you comment. I don't know who you all were trying to convince. It just seemed really inappropriate, especially the person who was chair at that time, Mr. Smith. I thought your comments were extremely inappropriate. You took eight minutes to do them, much longer than anyone else. You abuse your ...

[Oscar Fuentes:](#)

If you're going to shake your head at me, can you actually listen to what I'm saying? I mean, this is a great example. You're really unprofessional up here. I watched the video of you talking over a community member how was bringing to your attention serious, serious issues about your presence at the Pawlik scene, which was ridiculous and amateur-ish. For you to shake your head up there at me, while I'm talking while also feigning not to be listening is an example of what I'm talking about. People are watching you. This is on camera, right? Anyone can look up and find this on a camera. You're embarrassing yourselves.

[Oscar Fuentes:](#)

Also, there is this issue. Look, you all may have your heart in the right place, and it may not matter whether you're appointed by the community, or not, or by the Mayor, but it certainly looks like the Mayor doesn't want this Commission to succeed. The people who are appointed by the Mayor have an extra step to take to win the confidence. If anyone was watching because that confidence is already not there, and they don't think you're going to do anything, if anyone was watching this stuff, and that's the reason why they don't, they would have lost any confidence they would have developed over that period of time.

[Oscar Fuentes:](#)

I suggest to you that you would take a hard look. Especially, also the coalition people who, I think, unfortunately, and maybe not intentionally egg on some of that as like, "Let's get to work, and I'll join in." These are things that need to be sorted out and done so with integrity and transparency. That's just the bare minimum. I'm a nobody from nowhere. I know that. If I get up in front of people, I have to be honest, I have to be professional, and I have to represent myself as somebody who's going to do my job fairly. Some of you aren't doing that so far.

[Oscar Fuentes:](#)

This is a sacred trust that you've been given. The first Police Commission in Oakland, in a city that has so many problems with the police, and some of you don't take it seriously. I'll just say that much. Also, one last thing, to give a former Police Commissioner as much time as they wanted when they came up here to speak, Mr. Thomas Smith, was an abuse of your position, and you didn't even turn on the clock.

[Regina Jackson:](#) Thank you. Celeste Guap, Jesse Smith, and then Rashidah Grinage. Welcome.

[Celeste Guap:](#) Hi. Hi.

[Regina Jackson:](#) Hello.

[Celeste Guap:](#) I wanted to know about the Joshua Pawlik case. I want to know if it has timed out because it's almost been a year. I'm really concerned that just like in my case that the officers are going to go unpunished for murdering a man who was sleeping. That's the same thing that keeps on happening. These officers keep going unpunished. I'm still walking around Oakland getting smirked at. Nothing's changed then. I don't see anything changing. I think there is an opportunity here to hand on some real consequences.

[Regina Jackson:](#) Thank you, Ms. Guap. Actually, we're going to be listening to that item. It's item six on the agenda. Hopefully, you can stay.

[Celeste Guap:](#) Mm-hmm (affirmative).

[Regina Jackson:](#) Thank you for your courage in coming to the microphone.

[Celeste Guap:](#) Thank you.

[Rashida Grinage:](#) Thank you. I just wanted to welcome the new Commissioner Tara Anderson. Now that you're beginning your second year of operation, and you have a new commissioner, and hopefully you'll have a replacement in the alternate as well, it will be easier for you to do the work that is in front of you. Hopefully, successfully will lead to more success and more visible achievement, so that the community can have confidence in this Commission. I want to also echo the words of Ms. Guap. The community is looking to see evidence. That will be very important, but we want to welcome Ms. Anderson. Thank you.

[Regina Jackson:](#) Thank you. Jesse Smith, Miles Cooper, and then Hilary Davis.

[Jesse Smith:](#) Hi. I have two points. One is an ongoing observation that I had verified in a confrontation with a police officer on Election Day in November right in front of City Hall here. It began as, perhaps, a charged conversation. Not too charged. There wasn't hostility going on, but there's a little bit of back and forth in good nature. I discovered that these particular police officer, when we were discussing things, he denied any of the scandals have happened. I've heard this before from people that I've received information from on the inside.

[Jesse Smith:](#) There's a culture where they have an alternate reality, like a cult or just like the echo chambers that we have where people have alternative facts. The Oakland Police, who are largely not from here, perhaps, we can even assume that they are Trump supporters by and large, and they're having an alternate view of history. They don't believe that any of these scandals have happened.

[Jesse Smith:](#)

This is an idea. Is there any way that we can actually check in on their beliefs? Assess, did this, in fact, happened, or was there a large left-wing conspiracy to besmirched the good name of OPD, which is exactly what I heard? That is the level that they're operating at. That's not too outrageous of claim to make. I understand that that's probably hard to believe but maybe not these days.

[Jesse Smith:](#)

The other point that I wanted to make is at a recent event where the community came out to West Oakland Library, near Bobby Hutton Park, we discussed ways of empowering the Council or empowering the Commission here. There is so much enthusiasm, and support, and so many great ideas. It occurs to me that so many people are waiting to hear from the Commission on how we can help. I know that there's the Oakland Police Accountability Oversight Organization, but perhaps, let's reach out directly to the community. Let us know what you need.

[Regina Jackson:](#)

Thank you very much.

[Hilary Davis:](#)

Hello. Hilary Davis, a resident of Oakland, longtime resident of Oakland, living in West Oakland. On September 30, 2017, I had a horrible motorcycle accident that nearly ended my life, put me in Highland Hospital for seven days, and an acute rehab in Sutter for another 12 days. It was another two months before I walked. I'm really lucky to be here. Thank you for hearing me.

[Hilary Davis:](#)

I really believe that Oakland can do better. It was 163 days before I got my police report, nearly six months before I got a copy of a police report that nearly took out my life. In that time, the vehicles involved had already been either repaired or impounded. I was long since out of hospital and care and had been consulting lawyers but couldn't really move forward with my case in getting reimbursed for healthcare, in pursuing damages, anything because I had no police report. No insurance company, no anybody is going to do anything for you without a police report.

[Hilary Davis:](#)

That is not serving the public. That is not helping residents. I was lucky enough to have my own health insurance, so I was covered. Within six months you don't pay hospital bills in that time, you're going to collections. You could have liens against your house, your property. It's not okay for it to take that long to get a three-page police report of damages that extreme. On the phone call, you call in, said 90 days. That's too long. It wasn't 90 days, 163. It's not okay. Oakland deserves better, and the Police Department can do better. Please help oversee that.

[Regina Jackson:](#)

Thank you, Hilary. Miles Cooper. Elise Bernstein, and Paula Hawthorn, please.

[Miles Cooper:](#)

Hi. I'm Miles Cooper. I represent Hilary Davis. We are here because if this were an issue that the records department was interested in, we wouldn't be here. We raised this issue with the records department because her situation is not isolated. Of the four cases I've had out of Oakland over the last two years, each

one of them, it has taken a minimum of four to six months to receive the police report. By contrast, San Francisco, seven to 10 days; same as CHP, same with pretty much every other city I deal with.

[Miles Cooper:](#)

As Hilary has pointed out, when we don't have that information, we can't move forward on a case. When we can't move forward on a case, some of the clients end up with things going to collections and having a huge consequence on an already troubling situation. We bring it to your attention because the records department doesn't seem interested in returning a phone call on this issue. I ask that you take this up with them and see if some resources can be redeployed to make sure that that process has sped up some. Thank you very much.

[Regina Jackson:](#)

Thank you.

[Elise Bernstein:](#)

Good evening. Elise Bernstein. Welcome Commissioner Anderson. I referred to this earlier. After an NCPC meeting, and had a second NCPC meeting, which confirmed these strange police thing, they are not able to stop cars who were speeding down the road in my area, 5. Captain Jones is wonderful, and he has made it clear to his officers, they are not to stop any car, even if they have a missing license plate and they need to identify who's speeding down the road. They can't stop any car unless it's intelligence-based.

[Elise Bernstein:](#)

Now, I can see how that might be an extension of the stopping Rachel Stops. It's not a misunderstanding. They reiterated it and clarified it last night. That's what they're following in Area 5. Thank you.

[Regina Jackson:](#)

Paula Hawthorn, Cathy Leonard, John Jones III, and Lorelei Bosserman.

[Paula Hawthorn:](#)

Hi. My name is Paula Hawthorn. Although I am a member of the Coalition for Police Accountability, I'm not representing them when I speak tonight because I haven't talked with them about what I'm going to say. The thing that I am most concerned about with this Commission is, actually, the staffing of the Commission for the needs that you have for your support.

[Paula Hawthorn:](#)

When I explain to people who are not keeping up with things in Oakland, that this is an all-volunteer Commission, they gasp. They're like, "Really?" The only way that an all-volunteer Commission can work well is with really good staffing. For that, you need the city administrators' help. You need the city administrator to come at every one of your meetings and report to you on exactly what is happening with each of the staff positions that you need. You may request that. Those requests can be made, and it should be met because you need to hold the city administrator accountable for these positions.

[Paula Hawthorn:](#)

I see in your wording and in your reports that you're reflecting it back to yourselves, "We need to do this," or "We need to do that." Actually, you need to push as much of that work as you can to paid staff members because you're not that. Only the City Administrators Office can post a job. Only the City

Administrators office can make a formal offer for a job that comes through the City Administration. You need to get them in here every other week to tell you exactly what is happening.

[Paula Hawthorn:](#)

I found in all my years of managing people that if you haven't come in and reported, then you get a sense of accountability. Then, you get things happening. Then, you get them understanding that you're really serious about getting the staff that you need in order for this to work as well as possible. Thank you.

[Regina Jackson:](#)

Thank you.

[Cathy Leonard:](#)

Good evening. Cathy Leonard with the Coalition for Police Accountability. I was on Twitter today, and I saw a post by Darwin BondGraham, who is here today. It says, "Breaking: US District Judge William Orrick has approved the hiring of an outside investigator to examine OPD's handling of the internal affairs case of the Joshua Pawlik shooting. This signals that Compliance Director Robert Warshaw thinks OPD mishandled the discipline case." We're all concerned about this. We've got an eye on this. I'd like to see this Commission and, particularly, CPRA look at this case seriously and not let this fall through the cracks. Thank you very much.

[Regina Jackson:](#)

Thank you.

[Lorelei Bosserman:](#)

Hi. I'm Lorelei Bosserman. Welcome to Commissioner Anderson. It's good to have you here. I also want to talk about the Joshua Pawlik case. Obviously, it's really important. Obviously, you've got voices coming at you from different areas. All I can say is please don't let it fall through the cracks.

[Lorelei Bosserman:](#)

I also want to talk about procedures because if people are saying that the officers followed procedure, you can change the procedures. I don't know what procedures would apply. Someone was asking me if there is a procedure on waking up people who are sleeping, and I have no idea. Maybe they should have one because this is the second case just recently where they woke someone up to shoot them, to kill them. That's true. That's all. Thank you.

[Regina Jackson:](#)

Thank you, Lorelei. John Jones III, [Mateo Belo], and Saleem Bey.

[John Jones III:](#)

Okay. Good evening. For the record, my name is John Jones III. In addition to being a member of the Coalition for Police Accountability, I also have the honor and privilege of serving as the Vice Chair of the Selection Panel for the Oakland Police Commission. Right now, I want to speak as a third generation Oakland resident who was a father to two fourth generation minor residents.

[John Jones III:](#)

First of all, to the chair, I want to congratulate you for being the chair. Also, to the Chairman, I congratulate Commissioner Anderson. Thank you. I wish you well. I wish all of you well. I do want to underscore this point. All of you know

what you're tasked to do. I just want to strongly encourage you to find ways to make this happen because of the things that are at stake. I don't have to underscore everything that the public speakers have spoken to. These are very real serious issues.

[John Jones III:](#)

On a personal note, I want to share something else that I believe is no less real or true. To the chair, I'm glad that Chief Kirkpatrick is here. I've been dealing with a situation involving my minor son. OPD has been actively involved with helping me locate my son. I do want to uplift an officer in particular, Officer [Sy 00:33:33] who has been very constant in communication and helping me every step of the way through this process.

[John Jones III:](#)

I think for these reasons and other reasons, as you already heard and will continue to hear, is the reason why we need true accountability. For me, police accountability is not just about holding the bad officers accountable. It's also about protecting those who really take their jobs seriously. I am blessed to know many officers on this force who do take their jobs seriously. To protect them as part of the process of restoring ...

PART 1 OF 7 ENDS [00:34:04]

[John Jones III:](#)

To protect them as part of the process of restoring trust with the public, it's very important that we have this system that we have in place to keep it truly accountable. I wanted to make sure that I lift that up, because I know the department gets a lot of flack. I'm not here to argue whether or not it's deserved or not, but as a human being, I do believe when people do good things, applaud that. When people don't, hold them accountable. I'm here to uplift that officer and everybody else who's been very helpful with me and my son. Thank you very much.

[Regina Jackson:](#)

Thank you.

[Mary Vale:](#)

Mary Vale. I want to follow-up on something Ms. Hawthorne said about all the staff vacancies on your staff and the agencies. Last year, again, because, you know, the City Administrator pleads "We're busy" or whatever, authorized positions not getting filled at the animal shelter. They lost a veterinarian over it. You guys really need to get on top of this. One of your biggest priority is to keep pushing to get the postings done, particularly on the line positions where there are no charter issues.

[Mary Vale:](#)

It has to happen, because otherwise, you know, you guys functioning without sufficient staff, it affects the reports that comes to you, you know, lures you into doing administrative work that you're not supposed to be doing, the staff is supposed to be there to do. The training, the last meeting with all the election drama, the one training you haven't had, really needs to be a priority, you have to insist on, if you have to pay an outside contractor, do it, working together as

a group as members of a public body. There are organizations that provide that kind of training and it will really make everything better for you to have it.

[Mary Vale:](#)

I'm very sympathetic to the position you were put in, because the selection panel with a much narrower task had the drive-by, you know, were told this law, that law, fill out these forms or whatever. You had a tremendous amount of, like, force-feeding of information about the police department's operations, but very little big picture about your role as overseers of the police department. A good starting point is the working together as a public body group.

[Mary Vale:](#)

I really, really, with the developments today with the federal court, you know, I would love to be persuaded that internal affairs does not function as a frontline protection of, you know, a sister to the union or as an officer justification unit, but unfortunately there's never really been a time when the court has said that they're doing their job professionally and objectively on a consistent basis. That's something, how they operate, how they do the investigations, you really need to be looking at with a skeptical eye. Thank you.

[Regina Jackson:](#)

Thank you. Celine Bay?

[Celine Bay:](#)

Celine Bay, longtime resident of Oakland. First of all, from the community's perspective, this isn't over when it comes to who the chair should be. When the community votes, three community members vote all the same way, it's not for one community member to change his mind. You represent the community. That means 75% of community representatives chose Janelle to represent the community. We have one community member who got up there and said, "You know what? I'm going to go with the mayor." Which mayor? The mayor who's responsible for this Commission being in existence. If the mayor hadn't failed three times with three different chiefs, you wouldn't exist.

[Celine Bay:](#)

When the mayor appoints mayoral appointments up here, you're representing a mayor that's failed when it comes to OPD. You shouldn't be breaking your neck to get up into a leadership position. What you really should be doing is supporting the community people. That should've been written in the ordinance, that the mayor's people should support the community's people.

[Celine Bay:](#)

I'm going to tell you why you're failing as mayor's people. You failing because, if you're the mayor's people, why is the mayor sabotaging this Commission? Why aren't you up in there telling the Commission or reporting back to the Commission exactly why the mayor's not doing it when you represent the mayor? We can't point the finger at the administration when you represent the administration.

[Celine Bay:](#)

If they're not functioning, it's because you're not representing the community on the Commission. Lastly, what I want to say is the police chief that's here needs to get up when she does her report and apologize to Ms. Guap. She's the one that promoted the officers that covered up the serial rape of this young

lady. That should not be [inaudible 00:39:19]. We demand a apology and then a resignation.

[Regina Jackson:](#) Thank you. The next item, excuse me, Election of Alternate Commissioner to Fill Commission Vacancy. This is to elect Alternate Police Commissioner Tara Anderson to fill the vacancy created by Commissioner Benson's resignation. I'm sorry. Commissioner, point of chair.

[Ginale Harris:](#) Mm-hmm (affirmative). In December of 2018, we adopted the Roberts Rules of Order. According to the Roberts Rules of Order, the voting party that voted in the member is the one to accept the resignation. Does that still stand, Chair?

[Regina Jackson:](#) What I understood is that the last several commissioners who have resigned, their resignations have been received and it has not been a Commission act to accept. The Chair has accepted. I received that information also from our attorney, but you, feel free to comment.

[Ginale Harris:](#) Question through the Chair. At the time, I know the acting attorney now was not here. I don't know if he's familiar with the voting in of the Roberts Rule of Order?

[Sergio Rudin:](#) There we go. Those rules are parliamentary procedure. As some of the Commissioners might be aware, resignations of public officers are a matter of state law. Government code provides for a particular procedure for resignation of officers. Additionally, common law in California provides that offices can be abandoned by those officers at any time if they, you know, indicate via their acts or deeds that they intend to relinquish their office. In this instance, I don't think that there's any sort of requirement for the Commission to formally act or accept a resignation. I think that a vacancy arises as a matter of course.

[Ginale Harris:](#) May I make a motion that we, as the Commission, accept Commissioner Benson's resignation?

[Jose Dorado:](#) I can second.

[Ginale Harris:](#) It is.

[Regina Jackson:](#) Yeah. Well, no, it's not. The vacancy has been created by Commissioner Benson's resignation, which I've already accepted.

[Ginale Harris:](#) Right, but we have a disagreement on the acceptance. We adopted the Roberts Rule of Order. It wasn't that we just, as a Commission, go by Roberts Rules.

[Regina Jackson:](#) Okay, well-

[Ginale Harris:](#) We adopted it.

[Regina Jackson:](#) Okay. Well, we have a first and a second.

[Ginale Harris:](#) Mm-hmm (affirmative).

[Regina Jackson:](#) I understand, it's election of an alternate commissioner. We probably would need to put that on the next agenda if that's what we were going to do.

[Ginale Harris:](#) Okay, but then we can't vote Tara in if we put it on the next agenda.

[Regina Jackson:](#) You're correct, but I think that Sergio has responded. I mean, like I said, in the last several resignations, the Chair has accepted those resignations. They've been confirmed by the person who resigned. That was exactly what I did with Commissioner Benson.

[Ginale Harris:](#) Okay. Again, Counsel, is that your legal advice? We adopted it as a rule.

[Sergio Rudin:](#) My advice is that vacancies occur as a matter of state law as opposed to a matter of parliamentary practice. In this instance, a vacancy does exist, if Commissioner Benson has indicated a intention to resign and has, you know, not intended to rescind her resignation.

[Regina Jackson:](#) And I did accept it, so it sounds like we do have a vacancy.

[Ginale Harris:](#) Moving forward, is that what we are adopting? Are we changing the rules that we all adopted? I'm just asking for clarity.

[Regina Jackson:](#) It sounds like our attorney has been clear, that Roberts Rules of Orders are ... Hmm? No?

[Ginale Harris:](#) Not clear. If we adopt something as a Commission, I want to know, when we change the rules, you know, is there anything we need to do? Are we now going by, if someone says, "I want to resign," that'll be it?

[Regina Jackson:](#) That has been a point of consistency. It's been a procedure. It's, you know, established over the last several people who have resigned, so it's a point of precedence as well.

[Sergio Rudin:](#) What I will say is that the Robert Rules of Order govern, you know, parliamentary procedures, sort of the conduct of meetings. They are not intended and cannot supersede state law as a matter of practice.

[Ginale Harris:](#) Okay. Thank you.

[Regina Jackson:](#) Thank you, appreciate that. We will get back to the election of the alternate commissioner to fill the Commission vacancy. The Commission will elect Alternate Police Commissioner Tara Anderson to fill the vacancy created by Commissioner Benson's resignation. Let's see if we need public discussion. I

don't have any cards for this point. Yeah, this is item number four. Are they out of order? Oh, yes, they are. I have two speakers, Rashida [Granage 00:45:33] and Celine Bay.

[Celine Bay:](#) Since I'm up here, Celine Bay. In dealing with this, we're still talking about filling out the Commission with quality people. I really don't know Ms. Anderson. I know that you come from the DA's office or you work with the DA in some sort of capacity. I also know that the DA's office is historically one of the most corrupt and one of the most vicious places in locking up people of color.

[Celine Bay:](#) If you are working with them, if you are friendly with them, then, you know, it seems to be a conflict of interest. The DA's office is friendly with the police officers, because they have to work with them. The police officers end up working for the DA's office as investigators, right? The DA's office calls police officers to work with all the time.

[Celine Bay:](#) Therefore, your office's interactions with the police department, seems to me, would disqualify you to be here based on, not, again, where your heart is or who you are personally, I don't know and I'm not pre-judging you on that, I'm just saying the perception of a conflict of interest or from the community's perspective. We'll be watching you to make sure that your actions are in line with what's best for the community.

[Celine Bay:](#) The problem that we've been having is that the mayoral appointments have always seemed to kick our cans down the road. I've been to every single Commission meeting since last year and our case still hasn't made it up. It's been on hold since it was formally adopted in October. It was ranked as a high priority and yet I don't see it on the agenda. I was assured personally by multiple people up there on the dais that this was going to be taken care of.

[Celine Bay:](#) Just like the chief jumped up and made sure that she spoke to the lawyer to find out what it is, that's what a good CEO is supposed to do, except that, as I'm up here, as I pointed out racial profiling, we still haven't seen her make a move. She's had racial profiling since last year. Why hasn't she come to you and said, "This is what we're doing. I can't speak about that document, but this is what we're doing"? If you're not adopting it, she's not adopting it, it seems as if you guys, somebody's in bed together.

[Regina Jackson:](#) Thank you, Mr. Bay. I believe you might remember that we are looking to plan a hearing on racial profiling later this year.

[Celine Bay:](#) [inaudible 00:48:25].

[Regina Jackson:](#) Rashida Granage? Oh, thank you. No? Rashida, you don't want to speak on Item 4? Okay, thank you. Dispensing with public comment, do I have a motion to ... Oh. Tara, would you like to introduce yourself?

[Tara Anderson:](#) Yes. Thank you. First, I'd like to thank the Selection Committee. The amount of effort required in interviewing all of the public at large candidates was immense. Just as a candidate, what I had to go through was quite a bit of a process, but I'm grateful for it because of the esteem, the quality of the questioners and the great respect that they garner. Many of them could be sitting in these roles, and possibly should be, instead of me.

[Tara Anderson:](#) I'm here before you, humbly, but with great confidence, that I have the passion, the skills, the experience to be a part of a reformed Oakland Police Department. I come from a long history, both family and professionally, in criminal justice. My uncle was a judge, my father, a legal officer in the Navy, also a defender of his fellow officers in the Navy, and my brother is a police officer.

[Tara Anderson:](#) I also worked in San Quentin State Prison. I've worked in community with individuals returning home and with their loved ones. I bring a balanced perspective to my work and I have a proven track record of reforming systems from the inside. I have the great privilege of doing that every day in the city of, county of San Francisco for District Attorney George Gascon, the most progressive district attorney in the country, who is called to task the San Francisco Police Department on many occasion.

[Tara Anderson:](#) I am very grateful for the work I get to do every day, but this is where I live and the city I love more than anything. I wanted to bring to bear my talents, for what they're worth, to help call to account the bad actors that give this honorable profession a bad name, to call out racism, to call out the fact that this profession has been used as a tool of oppression and we see the impact of institutional racism here today. I am a change-maker. I am a truth seeker. I know that I am not alone in that. I understand the great commitment it is to be here. I look forward to continue to be being challenged by the community, continuing to learn what it means to truly be in service for all of Oakland. Thank you for this opportunity to do so.

[Regina Jackson:](#) Thank you. I'd like to entertain a motion.

[Thomas Smith:](#) I'd like to make a motion that we approve Alternate Commissioner Tara Anderson to fill the vacancy on our Oakland Police Commission as a commissioner.

[Regina Jackson:](#) I'll second. Excuse me, Mr. Rudin, we should have Commissioner Anderson recuse herself from the vote, correct?

[Sergio Rudin:](#) If she's compensated in any way for her service, I would recommend recusal.

[Thomas Smith:](#) Well, she's not-

[Sergio Rudin:](#) Yeah.

[Thomas Smith:](#) ... compensated for her service.

[Sergio Rudin:](#) No, I mean, like, are expenses reimbursed for service up here?

[Regina Jackson:](#) For what?

[Sergio Rudin:](#) No?

[Thomas Smith:](#) Okay.

[Sergio Rudin:](#) On occasion, are expenses reimbursed?

[Thomas Smith:](#) Oh, yes, expenses are reimbursed.

[Sergio Rudin:](#) Okay. It doesn't seem to me like it would normally be a conflict of interest, but not having had the opportunity to research this further, out of abundance, caution, I think recusal would be appropriate at this moment.

[Regina Jackson:](#) Okay, thank you. We'll take a vote.

[Jose Dorado:](#) Madame Chair, excuse me, I had a question. Has she been sworn in?

[Regina Jackson:](#) Yes, by City Council this past Tuesday.

[Jose Dorado:](#) Okay, this past Tuesday. Okay, thank you.

[Regina Jackson:](#) Mm-hmm (affirmative). Oh, I'm sorry. Yeah. I'd like to hear votes to approve Commissioner Anderson. Commissioner Dorado?

[Jose Dorado:](#) No.

[Regina Jackson:](#) Commissioner Smith?

[Thomas Smith:](#) Yes.

[Regina Jackson:](#) Aye, for myself. Commissioner Harris?

[Ginale Harris:](#) No.

[Regina Jackson:](#) Okay. Motion fails. Without being in this situation before ...

[Sergio Rudin:](#) We still have a quorum, so the meeting can continue. She, I think, would continue serving as Alternate Commissioner until further action.

[Regina Jackson:](#) Okay. Commissioner Anderson, you will continue in the alternate spot until we have another meeting to consider. Thank you. We're going to move forward to number five, Meeting Minutes Approval. Item number five, we have Celine Bay.

[Celine Bay:](#) Celine Bay. For the meeting minutes, I know every time I get up here and speak about the same case over and over again, the people who are in charge of the case are sitting right over there, the people who closed it without investigating my brother's case for, my brother was shot by four gunmen who ambushed him. After over 12,000 pages of discovery, when we self-filed against the City and forced them to come up with 12,000 pages, turns out that OPD had a relationship with the lead suspect in my brother's case.

[Celine Bay:](#) Even though my brother survived, right, he was still attacked. That attack can be traced right back down to the police, right? We have the actual documents. Just as the police chief said, that they're under federal seal, they're OPD documents. They're available to her. She doesn't have to talk about them publicly, but she can act on criminal conduct by her police force. Compromising criminal cases is MOR370.72. That's obstruction of justice.

[Celine Bay:](#) 63 days after my brother was shot by these four gunmen in Montclair, which is an anomaly in itself, OPD closed the case and then lied about it for the next five years, saying that they working on it, until we did a records request and found out, between 2005 and 2011, that it had been closed. During the time that it was closed, I filed the complaint that nothing was happening in my brother's case. I filed it with the CPRB.

[Celine Bay:](#) The person that was supposed to investigate it was Ms. Tom, right there. She closed it in 2007. Flash forward to 2013, the compliance director, at our behest, reopened the case and renamed it IAD131062. What's funny about IAD131062, and nothing's funny about IAD131062, is that the CPRB found it not sustained. The IAD found it sustained, but they found it sustained for simple failure to investigate, which is MOR314.39.

[Celine Bay:](#) You see, that's the least amount. If you're talking about obstruction of justice as it applies to a non-statute of limitation attempted murder or murder case, then these are all still charges that the police chief should be acting on right now. There's criminality inside her department. Obstruction of justice, as it applies to these non-statute cases, can be looked at. Since these cases are still open and supposed to be being investigated, the 3304 date doesn't apply. It's still tolling at this moment right now so that we can hold these officers accountable.

[Celine Bay:](#) The main officer who was a supervisor at that time that wasn't found guilty was Ersie Joyner, who's now the head of Ceasefire. As Ersie Joyner, before he was the head of Ceasefire, was putting illegal weapons on the street and in the hands of shooters and then letting them shoot up the black community, we find out now that he's the head of Ceasefire about taking those same weapons off. As the charts showed, it said, "Oh, there was such a decline in illegal weapons." Of course there was a decline in illegal weapons, because they were all known ahead of time by OPD.

[Regina Jackson:](#) Thank you. Henry Gage and Larry White?

[Henry Gage, III:](#)

Thank you, Chair. Henry Gage, III, with the Coalition for Police Accountability. I want to draw your attention to Item 4, because the title is somewhat unfortunate. Calling this an "election" is technically not what's actually happening here. To have an election generally requires multiple candidates and you have that kind of competitive process.

[Henry Gage, III:](#)

I'd also like to draw your attention to a section of the Charter. I'm looking at 604C, both seven and eight. I'll give you a second to turn to that page if you have your phones handy. The keyword in those sections is "shall," "The Commission shall select from the alternates." You only have one alternate to select from. Unless there's some mayoral appointee waiting in the audience that I'm not unaware of, Ms. Anderson's who you've got right now. I see no discretion under this measure to not vote on her election. I could be mistaken about this, but this seems fairly straightforward.

[Henry Gage, III:](#)

Additionally, I'm somewhat surprised by the commissioners who voted against Ms. Anderson, because it doesn't seem to make a lot of sense, so to speak. If you're looking for another commissioner to replace her as a full commissioner, the only other way to get another commissioner would be to go via the mayoral appointment process, as you cannot have two selection panel alternates at the same time. This should've taken five minutes. I'm very confused as to what's going on here. Thank you.

[Larry White:](#)

Good evening, Commissioners. Larry White with the Coalition for Police Accountability. I'm going to agree with Henry, say it in slightly different way. I guess the main point, I'd like to make a real point here, which is that, from watching you tonight, it's obvious to me that you need more training. You especially need more training, more legal training. You need your own lawyer and that process has got to be moved forward. I really encourage you to get that going.

[Larry White:](#)

I worked with Commissioner Prather on the RFQ and it has gone to the City Attorney. You can't just let it stay with the City Attorney, because that may, you have no idea how long that will take, but it will take a long time, if ever. Please get that going. To echo Henry, it's in the City Charter that the alternate, you have to choose one of the alternates to become a regular member. You only have one alternate, therefore she becomes a regular member.

[Larry White:](#)

For Commissioner Dorado voting against this, it's purely you have just put a little bit of poison into the Commission that really wasn't necessary. We all have noted that. One more thing, getting back to the training, there was a discussion before about the acceptance of a resignation. Again, this is a matter of legal training. Your counsel did advise you, but you really need to have a training about the hierarchy of laws. State law takes precedence over any rules that you might make. You know, an ordinance would take precedence over any rules you might make. These are sort of legal issues that you need to get some training for. Thank you very much.

[Regina Jackson:](#) Thank you. Mary Vale?

[Mary Vale:](#) I just signed up. First of all, I understand Commissioner Harris' question about process. Unlike the seed, first Commissioner Nisperos resigned and, of course, you didn't elect, you elevated. The Charter amendment, unfortunately, was listed this way. Going back to Commissioner Harris' point, when Commissioner Nisperos resigned, he tendered a written resignation to the Chair of the City Council. When Alternate Commissioner [Duly 01:02:39] resigned, she'd been appointed by the mayor, she submitted a written resignation. Commissioner Benson resigned verbally to you guys, walked out of the meeting, and then publicized her resignation on Facebook. She never submitted the paperwork.

[Mary Vale:](#) Yeah, there was a factual question about, but her intent was clearly clear. Tonight, it's an elevation, LL, the Charter language, talks about the decision you make is not an election and it follows the origin of the original. The seed is sort of an all section committee seed, first Nisperos, then Benson was elevated into it.

[Mary Vale:](#) It's unfortunate, given your workload, that you have not elevated Commissioner Anderson. The fact that also the issue, some of the members of the public expressed reservations because she works for the DA, we have certain disqualifications in the Charter amendment. You can't be a city employee and serve on this body. You can't be a current or former OPD officer and serve on this body. Other law enforcement employees are eligible to serve, so there's no question about the qualifications.

[Mary Vale:](#) As reflected by Ms. Anderson's comment, I mean, the fact her approach to her work as the policy director for DA Gascon was discussed at length at the Selection Committee. She mentioned some of it this evening. Anyway, being a district attorney, for that matter being a criminal defense attorney or a DA does not disqualify you from serving, you know, either as an alternate or as a commissioner. You've got the workload. I think you need to consider going back and doing this matter.

[Regina Jackson:](#) Thank you. We will restate this and bring it back next agenda. We are still on the Meeting Minutes Approval. Does anyone have any comments for the minutes?

[Jose Dorado:](#) Madame Chair, was there a reason why there wasn't any transcripts of the minutes?

[Speaker 2:](#) My understanding is I was not here during that time, but the transcripts have not come back yet.

[Jose Dorado:](#) Do you have any idea when they will be here?

[Regina Jackson:](#) The transcripts are supposed to be-

[Speaker 2:](#) They should be-

[Regina Jackson:](#) ... separate from the minutes, I thought.

[Ginale Harris:](#) No, they're supposed to be together. The minutes are supposed to be transcribed. We voted on it.

[Speaker 2:](#) They should be ready-

[Thomas Smith:](#) No, we approve-

[Speaker 2:](#) ... by the next meeting.

[Thomas Smith:](#) Chair?

[Regina Jackson:](#) Commissioner Smith?

[Thomas Smith:](#) No, what we approve is the minutes. We're going to offer a transcript as well, but we're not approving. That was the whole idea of separating them out. We're just approving the minutes, but we're making the transcript available. You know, we don't need the transcript to approve the minutes. Whenever the transcript people get the transcript back to us, that's great, and we'll make that available, but we have everything we need in terms of approval of the minutes, because these are the minutes, you know?

[Jose Dorado:](#) Yeah, I was just-

[Regina Jackson:](#) Commissioner Dorado?

[Jose Dorado:](#) Excuse me. I was just responding to the request for a comment. It's not obstruction to approve the minutes. I understand that. I'll move to approve, but I just wanted to clarify that point. I'll move to approve the minutes.

[Regina Jackson:](#) Okay.

[Thomas Smith:](#) I'll second the motion.

[Regina Jackson:](#) All in favor? Dorado?

[Jose Dorado:](#) Aye.

[Regina Jackson:](#) Commissioner Anderson?

[Tara Anderson:](#) Aye.

[Regina Jackson:](#) Commissioner Smith?

[Thomas Smith:](#) Yes.

[Regina Jackson:](#) Aye, for myself. Commissioner Harris?

[Ginale Harris:](#) Aye.

[Regina Jackson:](#) Okay, minutes have been approved. Motion passes. The next item is six, Oakland Police Department Report on Pawlik Investigation. Police chief will provide all publicly reportable information on the investigation and findings in the police-involved shooting of Joshua Pawlik on March 11, 2018. Chief Kirkpat?

[Ms. Kirkpatrick:](#) Good evening. Welcome, Alternate Commissioner Anderson. I will begin with giving an update of the case from the beginning and to share where we are at this stage that we are in the Pawlik matter. First of all, I do want to say and recognize that I feel very sorry for the Pawlik family. This is painful for them that they have to not-

PART 2 OF 7 ENDS [01:08:04]

[Ms. Kirkpatrick:](#) Painful for them that they have to not only lose their loved one, but to go through the process of what we're doing now and that is painful for them. OPD was engaged in an officer involved shooting on March 11th, 2018. At the immediate aftermath of that shooting, we called out both two types of investigations, the criminal investigation team that works at the criminal side and does an investigation from the side of a criminal walk at the same time, the internal affairs team comes out and they began an investigation regarding policy or policy violations. On March 12th by 6:00 in the evening, all of the officers involved in the event had their initial interviews.

[Ms. Kirkpatrick:](#) Those initial interviews are also witnessed by the Alameda County [Dis 2 01:09:15] Alameda County district attorneys who also come out at the very time of the scene. On March the 12th through October 21, during that time period, that is when investigations, interviews, video enhancements, video analysis, submission of evidence and so forth, that is during that time period that the investigation is running. To give you a context, the investigative file is approximately 800 pages long with hours of PDR video. On October the 19th, the internal affairs division completed its investigation. Again, the internal affairs unit or division is looking at policy issues.

[Ms. Kirkpatrick:](#) On October 24th, I received the file from the criminal investigation division for my review of the file before I approve it to be submitted to the district attorney. On October 31, I had reviewed the criminal investigations file and I approved it to be given to the district attorney's office, and that is on October 31. On November 1st, 2018, I approved the release of the PDRD video which was public and on the news stations. On November the 7th, the criminal investigation division presented to the DA's office by their protocol the investigative file. I'm

now going to transition to focus on the internal affairs division investigation. On November the 9th, the investigation was forwarded to IAD.

[Ms. Kirkpatrick:](#)

In other words, the CID's file at this stage, goes over to the internal affairs division. Oh, November 28th and 29th, that is when the first executive force review board is convened to listen to the investigative results and it was a 2-day, full day presentation by subject matter experts and the investigative division commander presents that investigation to a review board. I do not participate nor sit during the review board. The review board is comprised of one deputy chief and two captains. They are the voting board. However, the board also includes one of the city attorneys, the deputy city attorneys who is present and a part of the board.

[Ms. Kirkpatrick:](#)

We also had by our new police commission, we had police commissioner chair at the time, Thomas Smith was also a witness to the board proceedings and we also had other people as observers but not voting. After the 2-day presentation, the board chair sent back to the internal affairs commander a request for additional information before there was a conclusion of the board. The internal affairs commander wanted additional investigation done to look at potential violations. On December 21 ... Let me make sure I'm following notes properly here. Okay. On December 21, the internal affairs unit division commander did indeed do the followup as directed and prepared what is called an addendum report at the request of the force review board chair.

[Ms. Kirkpatrick:](#)

On January 9th, when I should add, we had a second convening of the executive force review board. The boards are also conducted when the federal independent monitoring team is present for their monthly check-ins. On January 9th, there was the second reconvening of that executive force review board. At that time, the internal affairs commander did come back with a changed recommendation based on the additional investigation. It is at that particular board meeting on January the 9th, the vote was taken by the executive force review board members, the three members who vote and they came to their recommended findings after the vote.

[Ms. Kirkpatrick:](#)

They were voting on policy issues associated with whether or not the shooting was within policy and whether or not, there were any policy violations in terms of like supervision. There were several policies that they had investigated and they came to findings and made a recommendation, made a vote, and then they prepare a report that is brought to me. On February the 8th and in between that, I received the report of their recommended findings to me and on that date, February the 8th, I approved the recommendations in part I agreed and in part, I disagreed. I came to my findings and submitted those. On February the 15th, the compliance director also made findings and his findings did not align with mine, and so his addendum has also been prepared and submitted.

[Ms. Kirkpatrick:](#)

At this point in time, the 3304 which is the one year time limit, which would be March the 11th, that has now been told. With respect to the fact that the CPRA

as you know does an independent investigation and I cannot speak to that because I don't know the results or if there is a result as they make their findings. Depending on that, next steps occur, and so the main point would be that the case is not concluded until all steps are completed. That is where we are with respect to regardless of how the case ends up being concluded.

[Ms. Kirkpatrick:](#)

I do want you to know that according to our new law, which was SB1 421, I have given directions to prepare our case for public dissemination and that is being worked on as we speak because under the law, the public should be able to see this case file subject to legal redaction. That is in process. In addition, I want to say it this time regardless of the outcome of this case that I do and am preparing for policy changes and training, that will be additional training. My goal is to get to best practices if there are any in this country regarding people who are either asleep or unconscious and they are with guns and the waking up.

[Ms. Kirkpatrick:](#)

If there are none in this country, we and we together as a police commission, we will develop policy and training and we will be the agency of best practice. We are working on that at this time and that is my report for you.

[Regina Jackson:](#)

Thank you. Commissioners do you have any questions? Mister Anderson and then Harris.

[Tara Anderson:](#)

By the way, the chair? Thank you Chief Kirkpatrick. I had a clarifying question in reference to the disagreement you had and then subsequently sent back to the review board. Ultimately, the report that came out internally on the 8th, and possibly you may not be able to speak to this, did it come back and that ultimately you're in full agreement with the final findings of the board that then ...

[Ms. Kirkpatrick:](#)

I was not.

[Tara Anderson:](#)

That produced. Okay.

[Ms. Kirkpatrick:](#)

That's where I agreed in part and I disagreed in part. Now I do not get involved in the stages of the investigation until after the executive force review board does their vote and presents to me their findings and as the chief, I do have the option to agree, disagree, to agree in part, disagree in part, which is what I did. Then likewise, the compliance director also has that right to do the same.

[Tara Anderson:](#)

I guess I need clarity on the report that then is compared to what the CPRA findings are because ultimately when there's disagreement in findings, that's what comes before us.

[Ms. Kirkpatrick:](#)

That's correct.

[Tara Anderson:](#) I'm trying to understand if ultimately the review board has findings that you agree in part and disagree in part, but that has no bearing on what is compared to the ultimate investigation by CPRA.

[Ms. Kirkpatrick:](#) That's a good question for the public as well as for you process wise. At this stage, I am done with these steps or involvement in the case. CPRA and they can speak to it, I don't know what the findings or conclusions or the stage fully is for CPRA, but you are correct, it will depend on what their findings are, but at this stage for me and the police department, we have concluded our steps, but the steps are not completed in terms of the entire process.

[Regina Jackson:](#) Commissioner Harrison.

[Ginale Harris:](#) Thank you chair. Hello chief. I have a 2-part question. One is why did it take eight months to get to IED, and then the second question is when did the evidence get handed over to the CPRA.

[Ms. Kirkpatrick:](#) Okay. The first question, why did it take eight months for the case to go to IA. Actually they were operating from the very beginning that night. What is being referenced is when the criminal investigation cases also then turned over to IA, so they had been working the investigation all along from the very beginning as well.

[Ginale Harris:](#) Okay, so I think I'm going to let you know why I'm asking the question because we have two different agencies that to do two different investigations and if your agency is hanging on to the evidence for eight months and we have a 330 date that we must be in compliance with, how long do you think it takes the other agency to do an investigation with the evidence that you have?

[Ms. Kirkpatrick:](#) I will let the acting executive director speak to when you receive information and the fact that you can start your own investigation from the very beginning, so you may want to qualify. I can't speak about how the CPRA does their investigations.

[Regina Jackson:](#) Miss Tom.

[Ms. Kirkpatrick:](#) Generally, the CPRA conducts investigations. In this particular instance, there will be some lag time because a CPRA does not always received materials in the same timeframe and so if their case is in criminal investigation division, then the CPRA would not necessarily be able to receive and review the files until they are released from CID.

[Ginale Harris:](#) Do the chair ...

[Regina Jackson:](#) Go ahead.

[Ginale Harris:](#) May I ask when you received the information needed to do an investigation on Joshua Pollock's case?

[Karen Tom:](#) On this particular case, I don't want to get too much into the specifics of the case, but we were not able to receive the materials until CID had completed their investigation. I mean that is not unusual for this type of a serious case.

[Ginale Harris:](#) When was that?

[Karen Tom:](#) In this particular case if I recall correctly, the CPRA received the materials to review, I believe it was at the beginning of this year.

[Ginale Harris:](#) Say that again.

[Regina Jackson:](#) Say that one more time please.

[Karen Tom:](#) My understanding is that we received the materials after CID completed their investigation and so the chief said they didn't complete their investigation until November. I don't know the specifics of the details, but we were not able to receive the materials to review until after that time, so it would've been after they closed it after November.

[Regina Jackson:](#) Thank you. Chief go ...

[Ginale Harris:](#) I'm sorry, my question was not answered. Please answer the question Miss Tom. I need a date. You don't have to be specific, but I'd like a month because the information I'm getting from you doesn't match with the information that the chief just said. If they didn't finish their investigation until November 28th and 29th, when did you receive or your investigator received the information and this is a very high profile case. I'm sure we remember some dates. When did you receive it from OPD?

[Karen Tom:](#) This case we received ... I can only say that we have not ... Materials were available throughout the course of the investigation. It wasn't that there were no materials available, so let me begin with that. The materials, some of them have always been available, right? It's not as if nothing was received. However, there were certain pieces as the chief said of the materials that were not received and so throughout the investigation, the investigator did have some access to some materials specifically as to which materials the investigator had I cannot speak to at this time. However, all the pieces were not received together ...

[Ginale Harris:](#) Well, let me rephrase the question ...

[Karen Tom:](#) That's not unusual for the CID investigation to not have everything.

[Ginale Harris:](#) When was the last piece of information that you received?

[Karen Tom:](#) The last piece of information?

[Ginale Harris:](#) Correct.

[Karen Tom:](#) That I cannot speak to the last piece because that would be something the investigator is working on, so I couldn't speak to the last piece, but pieces come in throughout the course of the investigation.

[Regina Jackson:](#) Okay, thank you. Chief Kirk, you mentioned that based upon SB 1421 that the documents will be disclosed and that you were making sure that your staff will make them available. I'd like to know will they be available before our next commission meeting. I want to make sure that the documents are available as soon as humanly possible.

[Ms. Kirkpatrick:](#) I understand that. I can say out of the 800 pages, the redaction process nor the hours of PDRD video would be ready, but for instance, the executive force review board report and I've triaged the things that I know that we need to get out sooner that are not as lengthy of a time for the redaction but it's a very, very thick file.

[Regina Jackson:](#) Okay, so let be a little bit more specific. I'm in this process, were you overruled by the compliance director in terms of your recommendations?

[Ms. Kirkpatrick:](#) I was.

[Regina Jackson:](#) Okay. Can you make available the addendum and his report before the next commission meeting?

[Ms. Kirkpatrick:](#) We are working on that as we speak and my goal is to have that before the next commission meeting.

[Regina Jackson:](#) Okay, thank you. As it relates to the 3304 having been told, what does that mean for the CPRA investigation from a timing perspective?

[Ms. Kirkpatrick:](#) I'm not a part of that. I don't know. I don't know about the tolling.

[Regina Jackson:](#) Karen can you ... Miss Tom, sorry.

[Karen Tom:](#) I can speak to that. Part of the process. The CPRA is also tolling the case, so we've also made the determination to toll the case because of several factors, which is number one because of the fact that one of the reasons we can toll the case under 3304 is that when there is such a criminal investigation, this is one of the reasons why is that when we're not able to get all of the materials because there is a pending criminal investigation or there was one, it allows for the additional time to review the evidence after the fact. I wanted to clarify that because this is not something unusual that happens. This is why it's specifically built in to the government code that way.

[Karen Tom:](#) The other reason we are tolling the case as well as now that there's also civil litigation in the case, and the third reason is that there is because of the complex nature of the case involving many subject officers and many issues involved in that matter. There's a multitude of reasons why the case can be told. It does not alter the process itself. It merely only gives more time to complete the process because of these complex things that are going on as the chief explained. It doesn't mean that we would alter or change the process. It's simply legally allows for more time to complete an investigation and/or impose discipline if discipline ends up being the result.

[Karen Tom:](#) I just wanted to clarify that for the commission and for the public to know that that does not in any way impact the ability of the actual process by which ...

[Regina Jackson:](#) Thanks Miss Tom.

[Karen Tom:](#) The agency would function.

[Regina Jackson:](#) Excuse me, I'm sorry. I know that according to your conversation with us written correspondence that you anticipate it may take several more months before you all are completed. Is that correct?

[Karen Tom:](#) That is correct. I can't give you a specific date, but it could.

[Regina Jackson:](#) Is there any other support that you need from us to get this wound up?

[Karen Tom:](#) I appreciate the commission being willing to provide the support and at this time, I believe that the additional time will be helpful for our investigator to complete the investigation.

[Regina Jackson:](#) Okay, thank you. Do the commission have any more que ... Commissioner Dorado.

[Dorado:](#) Chief can you give us a brief synopsis of what the parameters of the redacting will be in that report?

[Ms. Kirkpatrick:](#) I don't have the legal foundation to answer that because this is a new law that became effective January 1, and so there's been a lot of trying to internally with legal counsel about what is redactable and what's not, so I don't know. It's new territory for us because the law became effective January 1.

[Dorado:](#) Madam chair ...

[Regina Jackson:](#) Commissioner Harris. I'm sorry. Did you have a followup?

[Dorado:](#) Yes.

[Regina Jackson:](#) Commissioner Dorado.

[Dorado:](#) Do you expect it to be extensive?

[Ms. Kirkpatrick:](#) I do, but there are certain portions as I said that are not ... For instance, like the EFRB report, it's 45 pages. There were other reports that are not as long, that's why I'm triaging, trying to get out to y'all and to the public as quickly as possible. I am giving directions for triaging, but the big case file that is like 800 pages and the hundreds or I don't know. It's hundreds of hours, but it's a lot of hours of police video that all has to be reviewed. Yeah.

[Regina Jackson:](#) Now Harris.

[Ginale Harris:](#) Thank you chair. Chief we've heard Miss Tom say that it's not unusual that they get things later on in an investigation after your agency has completed its investigation. Is there anything in process or any kind of support that you would need to hasten they investigations, that way the information or the things that the CPRA needs to do its investigation can be in a quicker fashion?

[Ms. Kirkpatrick:](#) Yes mam, that's a part of what I was referencing when I was saying we are going to be talking about policy changes, protocol changes, and indeed the new court order that y'all referenced earlier tonight about the Mr. Swanson coming under court order to do an audit, that should also be very helpful to talk about processes. He will be an independent reviewer of those processes and I would anticipate there would be recommendations just like as other audits.

[Ginale Harris:](#) Thank you.

[Regina Jackson:](#) Are there any other questions before we go to public comment? Okay. Henry Gage [Lorelei Bosserman, Rashida Grenache 01:34:49] and Cathy Leonard.

[Henry Gage, III:](#) Thank you chair. Henry Gage III with the Coalition for Police Accountability. A few comments. First, a process issue. I think I've said this a number of times already, but it's always helpful to have written reporting for items like this. If you can have a number of pages for job related stress which is the next agenda item, you can take one of the 800 pages of this file, redact that, and make that a publicly releasable agenda item. Thank you. No one who wants to investigate this matter further and sees this on K top should have to watch the entirety of an oral presentation to get relevant information.

[Henry Gage, III:](#) Second, my understanding has always been that CPRA and IAD are to conduct parallel investigations and you can't conduct parallel investigations if we're getting the file only after CID has completed their investigation. This is ridiculous. The measure itself has language to address this issue and the investigations section, the 604F, I believe it's three or four, it talks about how document requests from the agency are supposed to be completed within 10 days. If that's not happening, the action needs to be taken and it's borderline contemptible.

[Henry Gage, III:](#)

Finally, moving forward to more proactive action because you can't go back in the past and change what's already happened, but you can make sure that when CPRA gets investigative files on time under the measure, they have appropriate staffing to complete their investigation in the 6-month timeline laid out in the measure. Now my understanding is they're mandated to have one investigator per 100 sworn officers, which would put them at seven given current staffing. My understanding is also that they're down three and I'm glad to see that there's an agenda item on this agenda to address the current hiring freeze.

[Henry Gage, III:](#)

However, it also puts the onus on the agency itself to ensure that assuming those extra investigators are hired, that indeed is enough staffing to meet this mandatory 6-month deadline under the measure. My anticipation is that given what's been happening with these kinds of cases and how close we're getting to 3304 dates, seven people, which is minimum staffing please remember may not be sufficient and given that the finance office or committee, I can't remember the suffix there, is pushing this commission for 160 something thousand dollar budget cut, I suggest you push back quite strongly and encourage them to understand that in order for you to do your job, CPRA needs to staff up.

[Henry Gage, III:](#)

Please take some action on this. This is ridiculous. It should not take this many months to get information between agencies. Thank you.

[Regina Jackson:](#)

Thank you. Lorelei Bosserman.

[Henry Gage, III:](#)

Hi, I'm Lorelei Bosserman. I am confused because I'm fairly certain that I heard the former director of CPRA, Anthony Finnell say that he got information from the police department like within two days. I don't know if that was just the initial information that there was a case that had been opened, but I had the impression from him that information was coming over right away and that is very different from what I'm hearing today. I'm hoping someone can speak to that. My other question that I'm hoping someone can speak to is what is tolling? What does that mean? Does that mean the deadline is being pushed out? Does that mean the deadline is here? Do we get to have more time to decide on discipline? I just don't know. Thanks.

[Regina Jackson:](#)

Miss Tom, would you like to address that?

[Karen Tom:](#)

Yes. I'm just going to add a couple of points. Just for clarity for the public, there is a distinction between things that come out from criminal investigation division versus regular document requests because of the fact if a criminal investigation is pending into an act, that does change the nature sometimes of document release. I just wanted to distinguish that there is a difference between things that are in criminal investigation division versus just things that are generally requested in terms of documents, and that's again why there's a specific section in the government code for when cases are in told because of

that, because a criminal investigation can sometimes take an extensive amount of time or take some months if it's serious.

[Karen Tom:](#)

With that said, tolling really is a situation that again, it does just extend the amount of time you have when normally you have a year to conduct an investigation completed and impose discipline on a subject officer. Tolling simply allows additional time for that process, so it's a built in ... Because of the exception, the ones I articulated, those are specific to allow for that legally to have additional time where you can impose discipline beyond the typical one year statute of limitations.

[Regina Jackson:](#)

Okay. Two things. I'd like to make sure that our admin Chrissy Love can provide us a timeline of the dates that you all have received documents so that we can then understand if this is a continual delay and problem. Then the ... Oh shoot, I forgot the second point. I'll come back. Okay. Cathy Leonard, thank you.

[Karen Tom:](#)

Cathy Leonard with the Coalition for Police Accountability. I personally have heard, Henry Gage, my colleague asked Chief Kirkpatrick a number of times to provide a written report instead of giving an oral report. If you have a written report in advance of the hearing, you have an opportunity to prepare your questions, you can read and digest the report. We're at in an unfortunate situation where we have to hear the report given orally and not have a chance to digest it and ask some pertinent questions. I'm going to again reiterate that we really would like to have written reports from Chief Kirkpatrick.

[Karen Tom:](#)

The other thing is I'm a little shocked that neither the chief nor Miss Tom can give us a date certain of when they got the entire report from the police department or when the police department turned it over to CPRA. It seems to me that every case has a timeline. Okay. You have a written timeline. You say I got the document on this day, we have this period of time that we need to complete our report and these are the steps that we're going to take in between the time we got the report and the report has to be finished, so thank you, Commissioner Harris for bringing up that point. That's a very important point.

PART 3 OF 7 ENDS [01:42:04]

[Cathy Leonard:](#)

Thank you Commissioner Harris for bringing up that point. That's a very important point. The statute of limitations we see in a lot of cases by the police department has run because the investigators, whoever they might be, get the reports too late. Giving the reports to CPRA if it's true at the beginning of this year, is completely unacceptable. Completely unacceptable. We can't stand for this.

[Cathy Leonard:](#)

I'm glad that the chief has said on the record that her department is going to comply with SB 1421 because that's very important. We're seeing now in the news that a number of officers who have committed rapes, have beat up their

wives, beat up their children, rob banks. I mean, the crimes go on and on and on, and these officers are still on the job. Either they're in those departments where they committed those crimes or they just move to another department and keep committing criminal acts.

Cathy Leonard: We need to stop hiring officers who commit crimes and those that do commit crimes, we need to get rid of them. Fire those officers. Stop all this dilly dallying around. OPD will never gain credibility in the minds of the community, in the minds of anybody if they keep on hiring and keeping officers on the force that are criminals. Thank you very much.

Regina Jackson: Thank you. Rashida Grenache, Jim Shannon, Karen Adams and Ann Janks.

Rashida Grinage: I want to agree with everything that's been said. Particularly the notion about parallel not consecutive investigations, and particularly the enforcement language in measure LL, you need to enforce it. The problem didn't just start with the transmission of or lack of transmission of information. It started on the evening of March 11th at the incident itself.

Rashida Grinage: As the chief said, she had her criminal investigators there and she had internal affairs investigators there. Guess who wasn't there? CPRA. Guess who wasn't there? CPRA. The commission needs to be notified timely when these events occur, and the CPRA executive director needs to get an investigator over to the scene along with internal affairs.

Rashida Grinage: CPRA also needs to be out the executive force review board meetings where the evidence is presented so that they're not lagging. They're not waiting. They need to be on par with internal affairs. The only way they can do that is by fully participating from the time of the incident itself. It also took a day before internal affairs even presented the complaint or the incident to CPRA. So they lost a full day there.

Rashida Grinage: A lot happens in that time that is lost to CPRA. That's not okay. And that needs to be remedied for the future. The fact that the chief continues to not provide written reports after having been asked to do so is a problem. And I think that you need to make it clear that that is not acceptable, it's not useful to you or to the public to not be able to prepare ahead of time to know what it is she's going to present. Thank you.

Regina Jackson: Thank you. Larry White.

Larry White: Thank you Larry White with the coalition. If I can't [inaudible 01:46:25].

Speaker 3: All right, go ahead. I'll go find it.

Larry White: I want to read into the record a paragraph from measure LL, which is on Rashida's phone. I had to help. Normally, I don't read legal tax because it's so

boring, but I think it's important for this to go into the record and for everyone to think about it. This is a section 604 paragraph F2 of the Oakland city charter. Subject to applicable law, the agency shall have the same access to all department files and records with the exception of personnel records in addition to all files and records of other city departments and agencies as the department's internal affairs division.

[Larry White:](#)

Access to personnel records shall be limited to the agency director who shall maintain confidentiality as required by law. The department and other city departments and agencies shall make every reasonable effort to respond to the agency's request for files and records within 10 days. This is the Oakland city charter. If the city attorney had given you decent training, instead of trying to prevent you from doing your job, you would have known that the point of this is the agency shall have the same access to the records as IED, as the Oakland Police Department's Internal Affairs Division.

[Larry White:](#)

That is in the city charter. Also, please it's time to hire a permanent executive director and your own lawyer. Please make that a priority. Thank you.

[Regina Jackson:](#)

Thank you. I have Jim Shannon, Karen Adams, Ann Janks, Celine Bay and then Mary Vale.

[Jim Shannon:](#)

Hi. I just wrote about five or six points down as I was listening to the conversation. These are bullet points rather than fully developed thoughts, which I don't have time for in the short time I have available. Number one, why does a commissioner get to attend the FRB and not the CPRA? I have no understanding since the commissioner doesn't even get to vote on the case if IA and the CPRA agree with each other.

[Jim Shannon:](#)

This particular executive force review board went on for two or three days as the chief said. It absorbed an immense amount of evidence which the CPRA saw absolutely none of. Nothing. And you folks are the ultimate authority and yet your investigator has seen nothing. I'm sorry to say that I couldn't help notice that your investigator, the CPRA person, could not answer a question as to when they got the evidence.

[Jim Shannon:](#)

Evidently, they have no log or other document to tell them when they got evidence. That's a problem. I also had number three, I have no understanding as to why the CPRA has to wait for CID. Internal Affairs doesn't wait for CID and you have the same access as they do. There is absolutely no reason for you to wait for CID investigation to conclude.

[Jim Shannon:](#)

Number four, I don't know if you know why this case was told, but the one and only reason it can be told is because a civil case has been filed. The CPRA person told you that they are going to be finished in a few months. Well, what if the case settles in a couple of weeks, then the statute will start running. It's got about 20 days to go and you will be out and perhaps you'll take the city with you

because you're an integral part of the whole set up here. And the officers won't be disciplined at all if that in fact is going to happen.

[Jim Shannon:](#)

The answer of a few months is simply unacceptable given the vagaries of civil cases. And fifth, the CPRA was not at the scene. Internal Affairs was at the scene. CID was at the scene and your representative was not. You should have the right and more forcefully the obligation to be at the scene, to be at the FRB, to be the number one authority at these cases without interfering. But you have to see, hear and know what these investigations are.

[Jim Shannon:](#)

Otherwise, your final product will not be good enough to be on top, which is the way LL says it should be. Thank you.

[Regina Jackson:](#)

Thank you. Miss Tom.

[Karen Tom:](#)

I just wanted to address a couple of things. First of all, I just wanted to say that I myself did not have the log of my investigator regarding the ax. Specific dates and times are recorded in our logs. We do keep logs of what is there. So I just want to clarify that because I don't want anyone to think that we don't keep meticulous logs of the work that we're doing. I just simply don't have that in front of me because I could not anticipate the potential questions that were coming, which is why I was looking through what notes I-

[Speaker 4:](#)

Why not? It's the day of [inaudible 01:52:48].

[Karen Tom:](#)

I do have notes in general, but I don't have specific dates if you're asking for a specific report. Reporting times. But in any event, there are logs of things. Number two, there were multiple reasons why the case is being told. And so the date of calculation will allot for at least that amount of time that the investigator needs of the several month window.

[Regina Jackson:](#)

Okay. Thank you very much. Karen Adams, Ann Janks, Celine Bay, Mary Vale.

[Karen Adams:](#)

Hi, I'm Karen Adams. I work with Homeless Youth Alliance and we're a service organization in the Haight-Ashbury, work with homeless youths and Mr. Pawlik was one of our participants and I'm here today on behalf of him, on behalf of his family and on behalf of all the people I work with because this is not one part of my fucking job, is showing up to these meetings so I can ensure that the young people I work with who fall asleep in between homes because they don't have anywhere else to go are not woken up by an array, dozens of bullets killing them.

[Karen Adams:](#)

That's why I'm here and I'm an Oakland resident and the unprecedented numbers of homeless people in Oakland, I'm here for them too because they are new to that experience. They're new to being woken up by the police and they're unsafe. And I'm here too, because chief, no, no, you do not get to say

that you're starting new training and we have to start the wheel over into best practices. We know best practices.

[Karen Adams:](#)

I've been doing this work for over a decade and never have I ever had hands put on me or I put hands on anyone else. There are deescalation skills out there that exist. So no, that's a fucking bullshit excuse. Bullshit excuse. And I want to say his name. Joshua Pawlik. Say his name. We cannot forget Joshua Pawlik.

[Speaker 5:](#)

Joshua Pawlik.

[Karen Adams:](#)

Yes. We can not forget we're talking to him about a living person that represents thousands of people, thousands of people who come to this part of the country fleeing all sorts of different, traumatizing and oppressive situations. They come here seeking refuge not to be murdered by the fucking Oakland Police Department.

[Regina Jackson:](#)

Thank you Karen. Ann Janks.

[Ann Janks:](#)

Ann Janks. I was having some flashbacks of moments when I've been asked questions about a situation that I wasn't in, in the beginning. Karen Tom has my sympathy for having to be here now for something that you were the acting executive director when it was happening. I think that the fact that this case has being told, means that we dodged a bullet. And the one thing that I know about dodging bullets is it's a tremendous learning opportunity. If you don't learn from it the next time you will be shot.

[Ann Janks:](#)

The timeline is untenable. We shouldn't have to pray that the lawyers who are going to file a lawsuit that's going to enable totaling. The timeline is untenable. And I think it's incumbent upon us to ensure that these investigations are more timely. I'd like to have the chief reporting to the commission on what causes this process to bump up against the one year deadline repeatedly, and how it can be expedited so that we aren't facing this in the future.

[Ann Janks:](#)

It's very nice that the chief was mentioning some policy changes about how to approach sleeping or unconscious people. I think that there are larger policy changes that really need to be looked at here and I offer anything I can do to help the commission with that. I urge you to please look at the broader policy around use of force. Thank you.

[Regina Jackson:](#)

Thank you. Mary Vale, Celine Bay.

[Mary Vale:](#)

Mary Vale. LL, past practice when it was the CPRB. Parallel investigations. Parallel investigations is not being fed information in dribs and drabs when IA and DA's office feels like it. That has to stop. Should never happen again. Interestingly, when the shoe's on the other foot, in 2013, 2014 talking about consolidating all the civilian complaints and major incidents in the old CPRB,

they got frantic, "Oh, well we have to have our copies and 24 hours or whatever so we can do parallel investigations."

[Mary Vale:](#) Right now they're driving in the car and abusing the other car's driver by this. How this has unfolded. This issue came up in San Francisco with the OCC versus SFPD. SFPD was worried they'd lose their chance to investigate. No, and they consolidated the complaints. IA over there, we get a copy. They could choose to do a parallel investigation and in major cases they always did. But here we've got it backwards and it's really, really unfortunate.

[Mary Vale:](#) IA's decisions are always going to win when one group does the investigation first and one organization gets all the evidence and another one gets pieces of the evidence. It's wrong. Structurally fraud. It has to stop. Lastly, vis-à-vis your group for the chief to use the Skinner bill and reductions, you should be getting everything. Yes. And you're under multiple confidentiality and nondisclosure bands to protect the police personnel record confidentiality rights in the charter amendment, in the ordinance.

[Mary Vale:](#) You get everything if a case goes for discipline or case review before you ... Yeah, you're not going to be showing it in public, but you get it all. You don't get the little pieces of things and you don't get stuff six months later because the chief is choosing the Skinner bill reductions as some sort of like supreme court brief writing experience. Thank you.

[Regina Jackson:](#) Thank you. Celine Bay and then Mary Haule.

[Celine Bay:](#) Good evening. Celine Bay. I had to write down all of this stuff just the follow the trail of hockey BS that the chief came up here with. The very first thing that came to my mind was the NSA today stated today that your leadership chief is a failure, is still a failure because if you could have handled it, they wouldn't be doing anything independent of it. The fact that IED is still failing, which was one of the main failing points of the NSA is still failing, and just as today is proof is still failing.

[Celine Bay:](#) 16 years of failed NSA, at least two of those years are under your failure, which started off with Judge Orrick and Warshaw supporting your promotion of criminal leadership associated with Jasmine's case. And so that means you're still failing. I had to say something about the CPRA, you're not prepared. It said Pawlik that was going to be taken care of tonight, so therefore you should have had everything associated with the Pawlik case and possibly the investigator should have been here.

[Celine Bay:](#) The Pawlik case is actually the second killing in Oakland with the sleeping shooting. I believe Mr. Demario Hog, which was a black man. I don't hear anything about an investigation. I didn't hear anything about there's going to be something independent when a black person is shot, but we sure see a lot of movement when this young man was murdered and that is, I'm thankful for the

Pawlik family that they're going to get some kind of justice, but also will say that black lives matter also and that these members of the black community were all murdered, connected to the police and there's five of those.

[Celine Bay:](#)

Mr. Pawlik is just one and so I don't see any action to move like that. I don't see any action to move on Mr. Hog's case. I also heard that the chief assigned the Demario Hog killers to a police demonstration. And why wasn't policy addressed after that case? Why is it that the NSA has to come up here and pull her coat before she starts talking about having a good policy? I also heard the chief apologized to Mr. Pawlik's family, but there's a young lady in here who she's done completely wrong and I haven't heard her say anything about a apology for that young lady.

[Celine Bay:](#)

I also know that Mr. Channon is very good at getting investigations of his case or Mr. Bass getting independent investigations of their cases. They are the people who got the NSA started. So really and truly, I'm holding them accountable because they're still going up there collecting money to go to court every x amount of time and talk to Mr. Orrick or Mr. Henderson or judge Henderson and yet I don't see anything that's happening as the black community is still suffering for racial profiling and all these different things.

[Celine Bay:](#)

I do want to say, just as everybody wants to say people's names, there's five people on here I'm gonna call out their names just so you know what we're talking about and why we will never ever quit. It's Odell Robertson. He was an innocent person who was just murdered for being in the black community, minding his own business. Michael Wills, he was murdered inside the black community, just minding his own business in front of a police operation.

[Celine Bay:](#)

Chauncey Bailey, who was exposing the police operation when he was murdered by the same people the police were giving aid to. My brother, a person that I knew for over a decade, his name is YG Bay. I want you to see this. He's 51 years old, the CEO of a black corporation that hired 250 people. So if anybody up there has a payroll of over 250 jobs, and with the majority of them being formerly incarcerated, please stand up. And you may be able to stand in his shoes and then a young man who was being used by the police.

[Celine Bay:](#)

These black lives matter also. And I'd like to see some kind of action on these and have to keep on coming up here. And it's 13 1062 again, IED 13 1062 which was found sustained for the least amount of wrongdoing at the same time as the CPRB and Ms. Tom and her group found it unsustainable. Investigate that.

[Regina Jackson:](#)

Thank you. Mary Haule.

[Mary Haule:](#)

This is Josh Pawlik. I've been here before. I talked to you guys in August. It felt like we were appalled then that that investigation was going to take til December yet here we are at the end of February and it's still not fucking done. Have you guys watched the body cam footage that was released of this murder?

'Cause I watched all 270 minutes and eight seconds of it multiple times. I watched it multiple times and I still can't for the life of me, which I have a life, unlike Josh thank you, understand how we are here and how we're here again.

[Mary Haule:](#)

45 minutes from when the first officer got unseen until the last minute of that footage you guys, they did not attempt to wake him, move him, get his attention or move the weapon away. I'm going to tell you some things that were said on that video of the 45 minutes that nothing was done. Still not responsive at this time. He didn't even respond to the sirens. Subjects still appears to be unresponsive and unaware of our presence.

[Mary Haule:](#)

He's still not responsive. He's breathing a little bit. He just swallowed. Is he moving? I can't tell. I don't think so. Is there any rise and fall of his chest? He's breathing a little bit. He just swallowed. I've seen him swallow twice and his nostrils flare. He has not moved since we've been watching him. Nothing at all. That's what concerns me. That man is sleeping for sure. I just want to make sure he's not guppy breathing right now. It's not labored breathing, is it? I'm too far to see the rise and fall of his chest.

[Mary Haule:](#)

I can't tell if he's shot. Do you think he's an OD? Hopefully he's hammered enough, but not hammered enough that he can't follow instructions. Even if he may have shot himself, which I don't think, hey, he looks like a homeless guy. Bizarre. Too high, too drunk, and fell asleep with his gun in his hand. I wonder what he's doing out here. What were the details?

[Mary Haule:](#)

Look, the point is for 45 fucking minutes, there were about 40 officers that stood around and did nothing except secure the scene of a sleeping individual. Not once did they employ any kind of deescalation tactics. As I demonstrated last time, as I have done many times in my life, disarming an unconscious person is the fucking easiest thing to do you guys.

[Mary Haule:](#)

It's so much easier than disarming someone who is awake and conscious and aggravated, but you know what? We do that too. We do that every day at a homeless youth alliance. Never has someone ended up dead in our care. Never have we felt the need to have a weapon with us. Never did we need to call a bearcat. You do not need police response to these situations. I'm real glad to hear you guys are aware you need like a policy on how to wake people up, but like how many people needed to be killed before we thought that was important?

[Mary Haule:](#)

Joshua's mom is watching this right now so I think it's really telling you'll learn looking over here. But someone died at your guys' hands as you just observed him sleeping for 45 minutes and then you start giving commands. 46 seconds it took from the first command in 45 minutes until he was dead. And then the only time you approach is to handcuff his dead body. Disarm the Oakland police 'cause you all don't know how to act.

[Regina Jackson:](#)

Thank you. I have no more speakers on this item. I did want to take a brief point of privilege to read a statement to the Pawlik family and Joshua's friends. I'm very sorry for the loss of Joshua. Recently I've taken the time to try to get a more firm grasp on the procedural posture and timeline for decisions being made. My goal as chair is to create transparency between all the stakeholders in addition to ensuring that law enforcement is acting legally, appropriately and in the best interest of keeping the community safe.

[Regina Jackson:](#)

And more specifically that OPD's policies are in line with best practice nationwide. The investigation is ongoing so it's too soon to determine whether any officers in this case violated OPD's policies or training, but it is not too soon to start looking at OPD's policies and training regarding unconscious or unresponsive individuals and determining whether those policies and trainings can be improved. I realize that this may not feel like justice.

[Regina Jackson:](#)

However, my focus will be on the lessons learned throughout this experience in order to address them to prevent repetition by pushing for changes in police policies. Perhaps we can recognize situations that may require extra steps around deescalation before acting. We know that the Community Police Review Agency needs more staff in order to ensure capacity for effective and efficient investigations and therefore we are prioritizing the unfreezing of investigator positions and the hiring process for a full time permanent leadership.

[Regina Jackson:](#)

Finally, we're going to create a 180 day investigative timeline in order to track progress around case closures so that we may both meet our internal performance guidelines as well as our overall commitment to you.

[Regina Jackson:](#)

We're going to move forward to point seven. Oakland police department report on managing job related stress. Chief Kirkpatrick or not?

[Roland Holme:](#)

My name is acting deputy chief Roland Holme and I'll be filling in for deputy director Gleason who oversees the wellness unit as well as DC Cunningham who is in charge or is the lead of the collective healing initiative that cross pollinates with regards to officer wellness. Also, for starters, just let me express my gratitude to madam Chair and the commissioners for taking on this topic and showing support. This a very significant topic. Not only is it a pillar of President Obama's 21st century policing, but it speaks to officer's wellness.

[Roland Holme:](#)

How officers are able to function in dealing with some of the stressors that are associated with being a police officer, and then also how those stresses, how they affect how they treat our communities. So you can imagine some of the risks that are associated when either one, we don't have a proactive approach to identifying stresses, to identifying when an officer is suffering from some form of maybe mental health issues or PTSD, alcohol or substance abuse. And then two, not having a comprehensive system that's set up to provide the officer with resources in a manner that is accessible, equitable and relevant.

[Roland Holme:](#) Just a little history. In 2014, the Oakland Police Department began its wellness program through the graciousness of the city council. We were afforded a funding source of \$400,000 to get the program going with an annual commitment of \$200,000. That fiscal year of 2015 to 17, that's when we implemented our wellness unit. Services were identified along with the cost and funding source for implementation. We did some research in preparation to standing up the wellness unit.

[Roland Holme:](#) This consisted of taking an in depth look at San Francisco's police department, Behavioral Science Unit as well as San Jose police department's, Crisis Management Unit. And we did that in a manner to guide our decisions about framework and services, partners instructions for the establishment of the current wellness unit. So today, as I stand here today, these are some of the services that we provide officers and we have peer support, which has governed through our department general order B 17.

[Roland Holme:](#) This is typically triggers when a single incident, an officer who has been involved in a critical incident will usually respond to assist the officer going through some sort of event. Critical incident response teams. These are debriefs. This kind of, for the most part spanned pretty significantly back 10 years ago, right after March 21st when we had the officers killed. That's when we really started doing these critical incident debriefs.

[Roland Holme:](#) And this was a time back that I've seen some change when back then officers didn't feel that it was appropriate to talk about how they were impacted by an event, how they may have been impacted about responding to a scene where a child has been hurt or being involved in a situation that they had an extreme ... Yes ma'am.

[Regina Jackson:](#) I'm sorry to interrupt you. I wanted to know if we have a proposed budget and timeline. I don't know that we have an attachment. I just want to be able to follow what you're saying.

[Roland Holme:](#) I do not have that.

[Regina Jackson:](#) Okay. Will you be able to send that to us?

[Roland Holme:](#) We can get it to you. Yes. 100%.

[Roland Holme:](#) Moving on, we also provide mental health. We all also have mental health provider through a referral system and we have police chaplains to provide spiritual assistance for officers, substance abuse programs. We have a clinical psychologist that is actually embedded with the department through our association. And then we also have the resources that are available through the city employee assistant program.

[Roland Holme:](#)

While the department has long offered wellness related programs such as peer support and psychologists and police chaplains, like I just mentioned, the services are minimal and they're kind of decentralized. There are no members of OPD who proactively attend to the physical, emotional, mental, spiritual wellness of OPD officers and staff to coordinate ...

PART 4 OF 7 ENDS [02:16:04]

[Roland Holme:](#)

... spiritual wellness of OPD officers and staff to coordinate these services. In 2019, through the Collaboration Staff Survey and Analysis and examinations of national research, we have come to realize that the Wellness Unit developed by our department, although it started out being good, it's not enough to meet the needs and the demands for our officers. The department implemented the Collective Healing Initiative, which I talked about briefly. That is spearheaded by D.C. Cunningham. It's a grant that was awarded by the Department of Justice. A key component of this initiative is designated or designed to address officer health and wellbeing.

[Roland Holme:](#)

This is kind of fortuitous timing, as the department just received the results of a survey conducted by the Urban Institute and furthermore, the International Association Chiefs of Police, which kind of oversee and are technical advisors for the grant. They'll be here next week to do a site visit and try to build out our Wellness Unit. Our hope is that the survey, coupled with the site visit, ongoing technical assistance will allow us to create a comprehensive plan to ensure that our Wellness Unit is meeting the health and wellbeing needs of our staff.

[Roland Holme:](#)

Questions?

[Regina Jackson:](#)

Commissioners, do you have any questions?

[Regina Jackson:](#)

Commissioner Dorado.

[Comm Dorado:](#)

I find it interesting that the text, and I'll just read it quickly, "Trauma-informed policing is an approach that explicitly acknowledges the impact of trauma on those served, as well as on the workforce providing the services." So those served is the community.

[Roland Holme:](#)

100%. And it's not just the person that's directly impacted at that incident, but it's their concentric circles, right? So it's their family members, it's the community, it's their neighborhood. They all experience that trauma vicariously. Even though they're not directly impacted by that specific incident, it's the ripple effect.

[Comm Dorado:](#)

I couldn't agree more. So what we would expect then, I would ask for any clarification, is that out of this Wellness Unit will be a concerted effort by OPD to deal with that ripple effect of the trauma in specific instances? Particularly if they're dealing with issues that you'll see in the community, mental health, drug

addiction, et cetera, that is gonna be dealt with within OPD, those specific officers that actually have these services through OPD, to deal with these issues I would think would be even more insightful in terms of dealing with them on the job. Am I correct?

[Roland Holme:](#) Yes sir.

[Comm Dorado:](#) Okay. So then I would expect that the Wellness Unit would do any number of things to relate that it's doing within OPD to the larger community as stated here.

[Roland Holme:](#) 100%. We have. So I've only put in there because this is about officer wellness. Another component or other pillars of the initiative deal with that specifically. We deal with our Youth Alive, we deal with our other community based organizations throughout the city. That's just one piece of that initiative deals with officer wellness. I could provide you other information on it as well, but there are other parts of that.

[Regina Jackson:](#) Any other commissioners have questions?

[Regina Jackson:](#) So when can we expect that budget and timeline? Tomorrow?

[Roland Holme:](#) Well, Deputy Director Gleason's out of town so I would have to wait until she gets back, next week?

[Regina Jackson:](#) Okay. I'm a little concerned too that we're not getting written reports. And I know that I spoke back and forth with both Miss Gleason as well as Chief Kirkpatrick about actually presenting a budget and a timeline. I think that when we state those, that that's what we should get.

[Roland Holme:](#) Madam Chair, I will email you tomorrow first thing to give you a status update.

[Regina Jackson:](#) Okay, thank you very much. Appreciate it.

[Regina Jackson:](#) For speakers on this item, we have "Lorelei Bosserman", "Rashida Granage", "Shawna Monique McQueen", "Salim Bey", and it says "Police Commission" but there's no name.

[Regina Jackson:](#) Oh, gotcha. Okay, thanks.

[Rashida Grinage:](#) Thank you. I have a question. It regards moonlighting. So it's been reported that OPD officers take on additional jobs for other agencies, including guarding construction sites. It seems to me that putting in extra hours in addition to the shift and not having enough hours of rest in between shifts needs to create stress and instability. I'm wondering if we could get a response to that issue? Whether it's been identified, how prevalent it is, how many officers do engage

in additional jobs that compromise their ability to rest in between shifts? Thank you.

[Regina Jackson:](#) Is he still here? I don't see him.

[Roland Holme:](#) Could you restate the question?

[Rashida Grinage:](#) Oh, he wasn't paying attention?

[Roland Holme:](#) It was a very long question. I want to make sure I give you a thorough answer.

[Rashida Grinage:](#) Thank you.

[Rashida Grinage:](#) The question has to do with moonlighting, with officers who are engaged in employment aside from OPD. That, for example, AC Transit or other agencies where they are in their cars and they are guarding properties that are under construction. That's been reported. It seems to me that officers who are doing that are not getting appropriate rest in between shifts. In some cases, they roll right from their other gig right into their shift. So it seems to me that would be a factor in terms of stress. I'm wondering if you have statistics on how many officers are engaged in other activities beside OPD and if you've looked at the impacts of that? Thank you.

[Roland Holme:](#) So I don't have the statistics but I can tell you I share your concern as well. Sleep deprivation is something that affects an officer's judgment, it puts them at risk, and it puts the community at risk. We do have general orders that kind of gives us guidelines saying that a certain amount of time has to be off in between shifts for that particular reason itself. There are no, as you were calling them, moonlighting, everything is officers can only work internal overtime. So it's the backflow shifts from vacancies or other special events that are run through our Special Events section. I can try to work up some statistics for you to see where we are, but I share those concerns as well. That is something that we will look at, yes ma'am.

[Rashida Grinage:](#) I think that would be helpful, if we could get some data on that. Thank you.

[Regina Jackson:](#) Thank you. Thank you very much.

[Regina Jackson:](#) Mr. Bey?

[Celine Bay:](#) "Salim Bey". So just in reading this and looking at and also working with post traumatic stress disorder, this job is prime for PTSD. It's built into the job. We also know that PTSD, a lot of times, results in abuse of substances. But I never hear anything about the police being tested when they shoot somebody. I don't hear anything about the police being tested period. I know the fire department is tested, and rightfully so. But if a person has a gun and has your life in his hands, and especially coming from the black perspective where it's, "Shoot first

and never ask a question later. Bury it.", I would say that you look at the policy of requiring the Oakland police department to test for drugs. How do we not know that these dudes aren't hopped up on cocaine when they fear for their life? It's called paranoia, except they got a gun. And then we also know that Commander "Holmgren", as well as Commander Cunningham, were involved in coverups from previous times. In fact, Cunningham, who's now in Chain of Command, is the person that closed IAD13-1062 without investigating it.

[Celine Bay:](#)

So how do we even listen to people get up here and move their mouth and act like they really care? He says that he's concerned about people not getting enough sleep. I never heard him say anything about it. I never heard anything come out about it. And the issue is, is that there is an amount of time that they have in between shifts. It's the time that they fill with the moonlighting in between those shifts. So you don't get the rest that you're supposed to get and it endangers the community and the public in general and it results in people being shot when they're asleep.

[Regina Jackson:](#)

Thank you.

[Jesse Smith:](#)

Jesse Smith.

[Jesse Smith:](#)

The police suicide figures nationwide hover around 140 a year. That's several a week. That's higher than occupations such as emergency responders and fireman and this type of field. The police also have higher levels of drug and alcohol abuse rates, higher levels of domestic violence. Basically what we see in OPD and the nation at large, but especially in OPD, is a medical crisis. For the last five years, I've been studying this issue specifically and applying it in different projects, most recently in my own campaign to run for Mayor. It was a central piece of my police position.

[Jesse Smith:](#)

This is a medical crisis. It hasn't been quantified or even evaluated in a qualitative manner. One example that I learned from a cop in Texas, in a discussion, was one night he had to sit with a dead baby. There was no crime, but he had to sit there and wait for the coroner's office or something like that. That amount of time, hours spent in that manner, this is affecting him. And then we see a lot of our scandals with the police involve alcohol. They're breaking into people's homes, they're committing acts of hooliganism. They're going untreated.

[Jesse Smith:](#)

We can't expect good results from what is essentially an abused workforce. This is the most sympathetic outlook I can have on the police. They're tormented and tortured and just as we neglected military troops for so long, but now we understand- Every combat veteran, we just assume they have PTSD. We should assume every single cop has PTSD. I'm almost excited but I'm far too skeptical to hear that this issue is being brought forward because what I heard from Holmgren doesn't sound like they really grasp the problem and that they're really ready to head a-

[Jesse Smith:](#) I have a time seated to me. One minute?

[Jesse Smith:](#) In addition to this presentation not being convincing that they have grasped it, because like I said, I've been in it for five years, or six, and they're new to it, there's also a history in Oakland of the issue of PTSD being a bankable situation. We saw this under Measure Y. PTSD in the community promotes crime. So to alleviate PTSD in the community, thus alleviate crime, they hired, and he mentioned clergy, religious figures being brought in, that's called culturally relevant therapy. It's basically pay to pray. It's this idea that, because it's culturally relevant, it gets caudified this way, they are not using scientific methods for addressing this issue.

[Jesse Smith:](#) When they restarted Measure Y into Measure Z, they switched over to actual scientific therapy after that boondoggle had gone on for so long. I fear that can be the case here. And as well, like I said, I've been on this topic passionately and extensively for over five years now. If you would assign me to them, to observe their thing, I would love to give a report back, for whatever worth that could be.

[Regina Jackson:](#) Okay, thank you. Last speaker on this item is Henry "Gage".

[Henry Gage, III:](#) Thank you Chair. Henry Gage III with the Coalition for Police Accountability.

[Henry Gage, III:](#) While I'm listening to the speakers, it really struck me to think about how many lives are affected by police violence. We are all familiar with the subjects, people who are shot, arrested, people who have hands put on them. Deputy Chief Holmgren discussed some of the concentric circles of other people whose lives are affected by police violence in a coalitary fashion. And the emotional damage done to those individuals is just as damaging. The public at large is affected when things like this happen. By this, I'm referring to things like the "Pollack" case, and the officers themselves.

[Henry Gage, III:](#) I'm glad the Wellness Unit exists because the unit itself does fulfill a truly vital task. We ask police officers to do emotionally dangerous jobs and if you're going to ask individuals to do an emotionally dangerous job, then we have an obligation to provide appropriate emotional support to help them complete those jobs. We should provide emotional support for all parties. The subjects, the concentric circles, the public. But when I see items like this on the agenda, the first thing I think is that we're treating the symptoms and not the disease itself.

[Henry Gage, III:](#) We should take action to prevent the emotional damage from occurring in the first place. For me, that means completely rethinking present policy on use of force. See, I've always found the term "Peace Officer" to be sadly ironic because that's not what we're getting. We're not getting Peace Officers, we're not getting individuals who can step into a room and by their very presence, deescalate situations. We're getting police, we're getting the rod of authority, and that's not what we need. We have an opportunity here to make changes for

the better, that are persistent, that are systemic. We should seize it. I don't ever want to see someone come in and have to give that kind of emotional reaction, that kind of display of emotions, 'cause someone they care about has been lost. We all need to do better. We need to start here. Thank you.

Regina Jackson: Thank you.

Regina Jackson: Moving to Item Eight.

Regina Jackson: Notice to the Commission of the CPRA cases proposed for Discipline Committee review or case closure. Karen Tom.

Karen Tom: Thank you.

Karen Tom: I would just note that in my absence that there appears to have been a mix up with the items that were submitted on this agenda item. So therefore, the items, this is not the agenda item I had initially anticipated it would be submitted in. So just so that you're aware, one of the attachments that's in there is the pending case list. However, another attachment did not make it into this particular agenda and that would be the completed cases. And so, Mr. "Russe" has placed them online so that if there is anyone from the public or the Commission that wants to look at it, it is on there. But what will have to happen is that this completed case list will have to come with the next agenda item or I will update it to include new cases and resubmit it again for the next meeting.

Karen Tom: Other than that, there are no cases that are coming before the Discipline Committee and that was one of the items on this agenda. And so, the only addition I would like to make at this time is just to note that the "Pollack" case is an open case, but it's been moved into the Tolling cases and that is not reflected on this pending case list because it was Tolloed after this had already been submitted for this agenda. That would be the only correction.

Regina Jackson: Okay, thank you. Are there any questions?

Regina Jackson: So Speakers, on this number eight, "Rashida Granage", "Lorelei Bosserman", Mary "Vale".

Rashida Grinage: This is not a great night for you Miss Tom, sorry about that. So I was going to mention the fact that there were no cases proposed for closure, even though that's what the agenda item says. It would have been nice to know that there were cases posted online. That would have been good to know because there was no way to know that.

Rashida Grinage: I'm concerned about the time it takes CIPRA to receive complaints from IAD. It's supposed to be 24 hours. This is a carryover from what happened with the CPRB. It was part of the CPRB ordinance and it was carried over into Measure LL. When we look at the pending list, we can see in many cases that there is a

considerably longer time that it's taking IAD to copy cases to CIPRA. So as we said before in the "Pollack" case, there is no adherence to what is on paper. The Oakland Police Department is simply ignoring these requirements and you are not enforcing them.

[Rashida Grinage:](#)

I'm hopeful that as we start the second year, that we can get these processes in order. If there is no compliance based on the requirement of Measure LL, you are entitled to file a complaint with the Ethics Commission as a remedy. You are also authorized to subpoena records and documents. That is within your power to do. So I think what we're saying is, you have much more authority than you have used to date. And that may have been an effort to be conciliatory with the city, but now it's time to follow the law. Thank you.

[Regina Jackson:](#)

Thank you.

[Mary Vale:](#)

From the item that was attached, I want to talk about the link between the substance of the cases on the list and the sort of repeat topics and the policy areas that need to be dealt with. There's sure a lot of alleged sexual misconduct, sexual assault, on this list. Three or four cases. Of course we have the events of 15, 16, and 17, where officers engaged in sexual misconduct, coercion. Knowledge of it was delayed, a coverup happened. There were no disciplinary consequences, particularly for the officers of the coverup. So you have basically a hostile work environment for women and you have this recurring problem where officers think, just like they think they can drink and deal drugs on duty, that they can engage in inappropriate sexual conduct.

[Mary Vale:](#)

There are a couple racial profiling cases that are open, or alleged race discrimination cases that are open. As the federal court has expressed concern about, OPD and the administration are happy to put out the narrative, "We're gathering the data. We're cooperating with the Stanford professor. We're spending money on this." The problem is, they're not utilizing the data to change policies that lead to profiling, to hold officers who are slow to stop the profiling accountable. So therefore, of course, you have new cases of profiling coming up and showing up on the case logs.

[Mary Vale:](#)

And instead, we're spending a lot of time about community engagement instead of doing the deep change in the area of profiling, and spending money on more consultants being added, patting ourselves on the back about, "Oh, we've had community engagement events." That doesn't change the underlying problem, which is the profiling itself.

[Mary Vale:](#)

Looking forward and talking about the presentation on officer stress, there's such as being a bystander victim. So when you see officers at work that are belligerent, drunk, engaging in sexual harassment, or racial discrimination, and you either witness it or worse, you're in a victim target group but you're a member of the force, you have a lot of stress out of that. And it creates a bad culture where the wrongdoer officers are riding high and no one's holding them

to account. And the victims, or the people that see bad policing and bad treatment of the coworkers and the public unfolding under their eyes, they're gonna leave the department. They're gonna experience tremendous stress.

[Regina Jackson:](#) Thank you.

[Mary Vale:](#) So when you talk about reforming the culture of OPD, it's for the officers also who we want to keep, the officers who we want to recruit. Constantly there's this chatter and dismay, public safety, the Chief, "Oh, we don't have any women in the class." Well, anyone who's read the newspaper the last couple of years, an applicant would have pause coming here with one, the problem having occurred and two, the problem folks largely not being held to account. Thank you.

[Regina Jackson:](#) Thank you.

[Regina Jackson:](#) Last speaker on this item, "Salim Bey".

[Celine Bay:](#) Before I get started, does everybody have this package in front of you?

[Celine Bay:](#) I also provided copies for everybody in the audience right here, for anybody want to follow along. So before you start my time, we just want to make sure everybody gets this and has it in front on them, at least on the desk.

[Celine Bay:](#) Okay.

[Celine Bay:](#) So you'll see the first page, it says, "July 23, 2013". It comes from the actual NSA Compliance Director. It's to Assistant Chief Figueroa and it's about a citizen's complaint. And then you'll see a carbon copy of my brother's business card at the time, and it says "IA07-0538." On the third page, you will see it says 713-07. On the fifth or sixth line down, over on the right side, it says "Wajid" Bey and John Bey and there's a complaint about force, procedure, conduct, bias, and discrimination untruthfulness.

[Celine Bay:](#) The second page, it says on July 20, it says, "Please let this letter serve as a follow up letter." And it says, "The letter states that you had spoken to CPRB investigator Audrey "Shawnbern" about your complaint. However, it's come to our attention that you actually spoke with Investigator Karen Tom on the day that you filed your complaint about your allegations. Therefore, if you have any questions regarding this matter, or if you wish to amend your complaint, please do not hesitate to contact Complaint Investigator Karen Tom."

[Celine Bay:](#) So you saw that is said John Bey and "Wajid" Bey. On March 18, we received IAD131062, a three paragraph closing letter. And it says, "Performance of duty" in the second paragraph. "The complainant alleged that there was a systemic failure on the part of Oakland Police Department during the investigation of the murder of "Wajid" Bey and the attempted murder of John Bey as it relates to

the follow up criminal investigation. The investigation disclosed sufficient evidence to determine that the alleged conduct did occur. A finding of sustained has been determined. This finding is applied to the Oakland Police Department as the individual subject officers and their immediate supervisor are no longer employed."

[Celine Bay:](#)

Well, at the same time, the Chief at the time was "Wendt". The Deputy Chief at the time, who closed this, was David Downing, and "Erse Joiner" was the supervisor and they were all still employed. At the exact same time that 131062 was found sustained by IAD, the CPRB found it unsustainable. Now is that any wonder, since Miss Tom was still working there and didn't find it sustained on the first time, but IAD comes back in 2014, seven years later, and says the exact same cases she was supposed to be investigating were in fact. So that means retroactively.

[Celine Bay:](#)

And then once we found out that my brother's case, at the time that I filed this complaint and the police were telling us that it was being investigated, that in all actuality, my brother's case was closed. So that when that complaint went to the CPRB, if the CPRB had done the most simplest of due diligence and just looked at the cases that we were talking about, they would have seen that my brother's case had been closed and remained closed all the way up through 2015.

[Regina Jackson:](#)

Mr. Bey, the fourth page that you indicated-

[Celine Bay:](#)

There is no fourth page.

[Regina Jackson:](#)

We don't-

[Celine Bay:](#)

There's on three, I just read directly off-

[Regina Jackson:](#)

Okay, no problem.

[Celine Bay:](#)

I can get you a copy. I just didn't have-

[Regina Jackson:](#)

That's fine. We just weren't following that so I wanted to make that point.

[Celine Bay:](#)

But this is what it is. And this is available to you because as I said that it says that, "This finding 131062 is," according to the Oakland Police Department's Internal Affairs, it's "applied to the police department, Oakland Police Department." Therefore there is no individual officer's privacy that is keeping this case under seal. You have the ability to get this case and you will see in that case how the CPRB did a more thorough investigation of the people who made the complaint, in order to discredit us, than to actually investigate the officers and IAD. Now if that's not upside down, I would expect the CPRB to find it sustained and then there would be, because they represent the community, the citizens supposedly. But, that is why we've been saying, this is why I keep saying

Miss Tom, Miss Tom is tainted. Miss Tom cannot be your Director, she cannot even be associated with Investigations because she has no credibility. This is Oakland Police Department actually discrediting her. You don't have to believe us. They're saying something different. And one of the things that the Commission is actually bound to do is if there is a disagreement between IAD the CPRB, then it defaults to the Commission to investigate it even further. So,-

[Regina Jackson:](#) Thank you.

[Celine Bay:](#) ... can we get this investigated? Can we please get this investigated? I'm just asking. Chair? Can we please get this on the next agenda?

[Regina Jackson:](#) Yeah, we have an ad hoc committee. I'm just being apprised of that,-

[Celine Bay:](#) Very good.

[Regina Jackson:](#) ... to look into that. Thank you.

[Celine Bay:](#) So it will come up though? I mean, I saw that it was a high priority.

[Regina Jackson:](#) Yes, it will.

[Celine Bay:](#) As a matter of fact, it was way up there, and it's been up there since October, and we're getting into March. So even on your 180 days ... Although I did make it in June,-

[Regina Jackson:](#) Okay.

[Celine Bay:](#) ... so we're actually past 180 days.

[Regina Jackson:](#) Okay.

[Celine Bay:](#) So if we could just get some kind of action on that. Thank you.

[Regina Jackson:](#) Thank you. Yes, we'll get to that.

[Regina Jackson:](#) Now I wanted to just double check, Miss Tom, what you've said is that the information that got switched or misinterpreted is going to be on our next agenda, for the case closures?

[Karen Tom:](#) Basically, the item that was mixed up, I'm going to recreate the agenda item as I believe it should be properly stated and include the items. You'll just get a new pending case list. However, with the completed cases, I'll either submit this document with the new completed cases or I'll merge the two into a new document and submit it at that time.

[Regina Jackson:](#) Okay, so it sounds like we don't need to accept this report because it's not quite reflective of what her intention was. And so, we will take a look at it in the next Commission meeting. Thank you.

[Regina Jackson:](#) So we are now at recess. If we can make it eight tight minutes so that we can move ahead with this very packed agenda. Thank you.

PART 5 OF 7 ENDS [02:50:04]

[Regina Jackson:](#) Okay, so we'll be coming back together in about two more minutes. Hmm? Yeah, no. I started choking.

[Regina Jackson:](#) Okay, if we could have the commissioners come back to the dais so we can come back from recess please.

[Regina Jackson:](#) Alrighty, and we are back from recess. We are now on item 10. The removal of the hiring freeze on Community Police Review Agency. Commissioners, as you well know, we are severely understaffed in CPRA. We voted to freeze almost a year ago, and I would like entertain ... Well no, no, no, I guess I have to do public comments. Sorry. Does anybody need any additional information on this point?

[Speaker 6:](#) No.

[Regina Jackson:](#) Okay. For public comment, we have [Lorelei Bosserman, Rashida Grenache 03:01:10].

[Speaker 6:](#) Hiring freeze.

[Regina Jackson:](#) Okay. Lorelie is giving up her time.

[Speaker 7:](#) Rashida can have ...

[Regina Jackson:](#) Rashida ... Okay, thank you.

[Rashida Grinage:](#) I won't take much time. This is no brainer thing. We've seen all the evidence we need about the fact that being understaffed means you cannot function as intended and so there are also budget implications as well, so we have to make sure that your budget for the next two years reflects the increased number of investigators that are acquired. I certainly hope you move expeditiously to unfreeze. Thank you.

[Regina Jackson:](#) Thank you very much. That was the last speaker on this item. Can I have a motion please?

[Speaker 6:](#) I move that we remove the hiring freeze on the vacant positions in the CPRA.

[Regina Jackson:](#) You Commissioner Dorado.

[Jose Dorado:](#) I second the motion.

[Regina Jackson:](#) Okay. Commissioner Smith seconds the motion. May I have a vote?  
Commissioner Dorado?

[Jose Dorado:](#) Aye.

[Regina Jackson:](#) Commissioner Anderson?

[Anderson:](#) Aye.

[Regina Jackson:](#) Commissioner Smith?

[Thomas Smith:](#) Yes.

[Regina Jackson:](#) Aye for myself. Commissioner Harris?

[Ginale Harris:](#) Aye.

[Regina Jackson:](#) The motion passes.

[Ginale Harris:](#) All right.

[Regina Jackson:](#) Karen, do you have everything you need to put into motion job descriptions to HR and all?

[Karen:](#) Yes, thank you.

[Regina Jackson:](#) Okay, very good. Thank you. All right. Yes?

[Ginale Harris:](#) Can we just make sure that the job descriptions for the investigators don't reflect the CPRB and it reflects the CPRA?

[Regina Jackson:](#) Absolutely. Karen, would you just make sure that I have a copy of the job descriptions? You could send it to everyone just to make sure. Thank you. Item 11 is vote to approve and submit quarterly informational progress report. This item was primarily worked on by Commissioner Prather. He is out of town on business. For those of you who've had an opportunity to look at the quarterly information report, do you have any questions? Yes, Commissioner Smith? I mean Commissioner Harris.

[Ginale Harris:](#) It's the seating. Okay. Going over this report, there's a few things that I see that are not accurate according to my recollection. On page two, it says that we conducted three elections and there's no vice chair so we only did two, right? That's one. We didn't draft and adapt the rules of procedure, we only adapted Robert's Rules of Order. That's another one.

[Speaker 6:](#) We didn't?

[Ginale Harris:](#) Yeah. Commissioner Prather didn't finish them.

[Regina Jackson:](#) Okay, we'll go back and ask him to provide those to us and see if we can get that in there.

[Ginale Harris:](#) Under analysis and policy alternatives on the third bullet, we didn't complete all of the trainings required.

[Regina Jackson:](#) We will identify the commissioners that did complete the trainings. I think that's just the two of us, right Commissioner Dorado? Okay.

[Ginale Harris:](#) It says on bullet point six, where it says, "Considered, reviewed, and provided feedback on multiple police department procedures and policies including redrafting the police department's policy on probation and parole searches." Probation and parole searchers are the only one that we completed.

[Regina Jackson:](#) Thank you.

[Ginale Harris:](#) One more. On bullet point eight where it says, "Developed and approved an outreach and social media policy," I don't remember doing an ... I remember social media, but not an outreach policy and if so ...

[Regina Jackson:](#) I think you're probably right. I know the social media policy because I helped with that.

[Ginale Harris:](#) Right, and I can't remember the date that we adopted that, so if we could maybe have Chrissy remind us of what was adopted, that'd be good. Good. The ninth bullet, it says here we had conducted a special meeting in East Oakland Youth Development Center which centered on presentation from Attorney John [Bur's 03:06:27] legal rights when dealing with police and held a public hearing on the police department's practices and policies [crosstalk 03:06:38] ... Sorry.

[Regina Jackson:](#) Uh-huh (affirmative).

[Ginale Harris:](#) I'm just trying to see what my notes say. It says we had a second retreat and planning retreat. We've only had a training. I don't remember a retreat.

[Regina Jackson:](#) Yeah, the Saturday one ...

[Ginale Harris:](#) That was a training, right?

[Regina Jackson:](#) Down stairs, yeah.

[Speaker 6:](#) That's a retreat that we had.

[Ginale Harris:](#) Was that the homeless ...

[Speaker 6:](#) Not at the beginning.

[Regina Jackson:](#) For us as the commission.

[Ginale Harris:](#) Okay.

[Regina Jackson:](#) Yeah.

[Ginale Harris:](#) Okay.

[Regina Jackson:](#) Yup.

[Speaker 6:](#) On the rules of procedure item, I believe the commission did adopt rules and procedure December 27, 2017. I do have a copy of those. I do understand there were some updates that were in the process of being made. I'm not sure what the status of those are.

[Ginale Harris:](#) Right, but Commissioner Prather finish it.

[Speaker 6:](#) They were adopted though. We did adopt them, right? That's what you're saying.

[Regina Jackson:](#) He's saying they were adopted.

[Speaker 6:](#) Yeah, I remember that too. Yeah.

[Ginale Harris:](#) Okay. You said you have a copy of it? Okay.

[Regina Jackson:](#) Okay, so based upon what I'm hearing, conducted two elections for the position of chair and vice chair.

[Thomas Smith:](#) Well, three elections.

[Regina Jackson:](#) One election. Oh.

[Thomas Smith:](#) We completed three elections. We conducted all three elections, but one of them we didn't end up ... For the position of vice chair, we didn't end up to the vice chair.

[Regina Jackson:](#) Okay, we'll figure out how to update that and then ...

[Ginale Harris:](#) Chair?

[Regina Jackson:](#) Yes.

[Ginale Harris:](#) I'm not finished. I'm not finished. Okay. One, two, three, four, five, six, eight, nine ... It says we did a poll to the commission for pressing issues and there are a few things missing on the pressing issues. Do you see that?

[Regina Jackson:](#) This is a 75 pages?

[Ginale Harris:](#) Should identify posting jobs, creating job requirements, right here. The commission has currently identified other pressing issues currently underway, which include, and you have these posted here. There's like six total and we did not put the chief's goals. We did not put the IG position sitting with the city administrator's office who changed the whole job description, the RFQ for our attorney. Training for discipline committee is not completed and what are the key things that we need to succeed from the city council.

[Regina Jackson:](#) Okay. In terms of the chief goals, weren't you working on that?

[Ginale Harris:](#) Mm-hmm (affirmative).

[Regina Jackson:](#) We didn't ...

[Ginale Harris:](#) Did you turn it in or not?

[Thomas Smith:](#) Chair ...

[Ginale Harris:](#) We had ...

[Regina Jackson:](#) Sorry, I did ask that question.

[Ginale Harris:](#) We didn't get a chance to present them.

[Regina Jackson:](#) Okay. Commissioner Smith.

[Thomas Smith:](#) I was going to say the planning for the conducting of a performance review for the chief, I think that's where they incorporate the chief's goals and the performance review and the goals are together.

[Regina Jackson:](#) Okay, so let me see. This is supposed to be presented March 19th. We'll have another meeting. Can you go ahead and present that for the next agenda and that way, we can be an alignment for that particular item and maybe clean up some of the others?

[Ginale Harris:](#) Sure.

[Regina Jackson:](#) Okay, great. Thank you.

[Ginale Harris:](#) Do you want me to send you a list of the pressing issues that I just gave to you?

[Regina Jackson:](#) Yes.

[Ginale Harris:](#) Okay.

[Regina Jackson:](#) Anybody else have comments or I'm sorry, were you finished?

[Ginale Harris:](#) Yes. On the third page where it says public outreach and interest, it says no additional public outreach was deemed necessary for this report other than the standard posting of the city council agenda and my question is why would we say that we don't need additional public outreach, we haven't done any.

[Regina Jackson:](#) Well, we've done on the Twitter our commission handle. We've done that, but not an overt campaign.

[Ginale Harris:](#) Well, I think ...

[Regina Jackson:](#) Maybe what we do is change the wording deemed necessary and just say at this time this is what happened.

[Ginale Harris:](#) Yeah, I haven't seen the Twitter so I don't know anything about it.

[Regina Jackson:](#) Yeah, we've had it out there for about six months.

[Ginale Harris:](#) Okay.

[Regina Jackson:](#) Yeah.

[Ginale Harris:](#) If you can send me the handle, that'd be great.

[Regina Jackson:](#) Yes. Oakland Police Commission.

[Ginale Harris:](#) All right.

[Regina Jackson:](#) Okay, so we will give these changes back to Chrissy and get an updated one with your recommendations around the chief's goals, so we can make sure that those are in alignment. Are there any other observations? Okay. Yes, Commissioner Dorado. Oh, no, no, you're good. Okay, all right. Thank you. We will vote to approve this item for the March 19th submission. Okay, come on up Miss Rashida.

[Rashida Grinage:](#) Thank you. Commissioner Harris mentioned some of the points that I was going to make, but also you might want to include the fact that you had a presentation and/or training by Jim Channon on the history of the negotiated settlement agreement. I think that's important to mention. On the budget issue, Measure LL states that you are to have a public hearing that allows the public to weigh in on the budget proposed by the mayor with respect to the police department and take input from the public and then issue your own

recommendation. I think it's bullet seven under powers and duties of the commission.

[Rashida Grinage:](#) Under your perspective things to do, I think that that needs to be included because the first budget workshop happened this past Monday and there's going to be a followup workshop I think at the end of March, so maybe you could have Chrissy connect to a Councilman [inaudible 03:13:26] office or the President's office, President Kaplan's office and get the timeline of when the mayor's budget is scheduled to be presented, so that you can make sure your input comes before that.

[Ginale Harris:](#) Mm-hmm (affirmative).

[Regina Jackson:](#) Thank you.

[Rashida Grinage:](#) Thank you.

[Regina Jackson:](#) That's one of the reasons that we put their budget on expecting to have it so that we would be able to inform from it. Thank you.

[Rashida Grinage:](#) Oh, one more thing.

[Regina Jackson:](#) I'm sorry, I think it's done.

[Rashida Grinage:](#) Sorry, one more thing. You may have noticed that one of the topics discussed at the council meeting on Tuesday and also with the budget workshop was the \$19 million of overage in the OPD overtime budget. They were given a budget for overtime. They exceeded it by \$19 million, which it counts for the majority of the city's budget deficit this year, so that is something that I believe someone mentioned that the commission might want to wait. I think council member Boss mentioned that you might want to weigh in on this as a commission, so that's something that you might want to include as well. Thank you.

[Regina Jackson:](#) Yeah, mm-hmm (affirmative). Okay. Thank you. Celine Bay and yeah. Yeah, Mr. Bay is our last speaker on this item.

[Celine Bay:](#) Keep up the good work.

[Ginale Harris:](#) He passed.

[Regina Jackson:](#) Okay. Okay, so we are on item 12 standing an ad hoc committee assignments and updates. The committee will discuss and vote on a requirement for each commission to serve on at least one standing committee or ad hoc committee. I put this item fourth because I know that the majority of the work that we will do as commissioners will not necessarily happen on this dais, but in ad hoc and/or standing committees and we need all boots on the ground to helping our

capacity because we've got a very, very long list of items to handle.  
Commissioner Smith and Dorado.

Thomas Smith: No, I was just going to say one of the just concerns I obviously have is today we're missing two people also. In our effort to try to make sure that we assigned everybody responsibilities, there are two folks here who ... I mean maybe we assigned them to something, but we don't have the full constituency of our commission present. Yeah.

Regina Jackson: Commissioned Dorado.

Jose Dorado: Yeah, I was going to say we were just going to I would think just vote on this requirement. I'm not going to necessarily assign anybody, so that's an easy one.

Regina Jackson: Yes. Commissioner Harris.

Ginale Harris: I can say that I will dedicate myself to continuing to do the work of the ad hoc committees that I formerly was assigned by Chair Smith when he was chair. I don't have a problem doing that until we take a vote.

Regina Jackson: Excellent, thank you. Don't have any speakers on the subject. Given that, can we have a motion? Commissioner Dorado.

Jose Dorado: Yes, I move that we vote that each commissioner serve on at least one standing committee or ad hoc committee.

Thomas Smith: Second.

Regina Jackson: Commissioner Smith second. Are there any questions? Okay, so let's vote.  
Commissioner Dorado.

Ginale Harris: Aye.

Regina Jackson: Commissioner Anderson.

Anderson: Aye.

Regina Jackson: Commissioner Smith.

Thomas Smith: Aye.

Regina Jackson: Aye for myself. Commissioner Harris.

Ginale Harris: Aye.

Regina Jackson: Excellent, motion passes. Okay. Item 13, taskforce summit on community policing update. Commissioner Dorado.

[Jose Dorado:](#)

Yes, thank you. I'll make this a fairly brief. I've started to go out to other NCPCs, Neighborhood Crime Prevention Councils and talk about community policing as it should in fact be implemented in our city and I'm going to follow up as I've already mentioned to both the Community Policing Advisory Board and the Measure Z Oversight Committee that we should, meaning the police commission and those two bodies form a taskforce focused on the implementation of community policing in our city and that a big part of that can and should be, again, I mentioned to both of them a summit focused on community policing, where we really deal with the real questions in our city around community policing.

[Jose Dorado:](#)

That is what does it really mean, what is the [inaudible 03:19:17] process, what is a reasonable procedure of arriving at a priority. There's just a whole list. How do you evaluate your committee resource officer and your neighborhood services coordinator, what role does racial and social justice play in the community policing and in the mission of NCPCs. These are all workshop topics that I think should be part of a real community policing summit and so I'm continuing to talk to the CPAB about that. They're moving in that direction and I'll be bringing back reports on their progress and also the progress of the taskforce.

[Regina Jackson:](#)

Excellent, thank you. Commissioner Harris.

[Ginale Harris:](#)

Thank you, commissioner Dorado. I've looked at some of the work of urban strategies. I've looked at some of their work from 2002 and Commissioner Dorado brought some mapping to my attention from 2002 all the way up to 2016 and it identifies East Oakland as being the most saturated with violence and police racial profiling and that kind of stuff, but it's been since 2002 that they were able to actually track it and it has not declined. It has not declined and so that was a very big concern for me. Like he said, we're spending money in the bid budget and we have these NCPCs and we have the people that are supposed to be servicing under Measure Y to our communities, and it's not improving, nothing is improving.

[Ginale Harris:](#)

We're spending hundreds of thousands of dollars on these positions and nothing is improving, so that's a concern.

[Regina Jackson:](#)

I echo your concern as that's where I spend most of my time and we have a copy of that map from 2002. I don't even have the updated one but ...

[Ginale Harris:](#)

I'll give you a copy.

[Regina Jackson:](#)

Yeah, and urban strategies is the exact right resource to connect with for any updated information on that.

[Ginale Harris:](#)

Mm-hmm (affirmative).

[Regina Jackson:](#) Thank you for your report. Commissioner Dorado does anyone have any follow up questions? Okay, so then the only speaker I have on this subject is actually not listed. It just says police commission. Does anybody ... No? Okay, we'll pass on that. Next item is ask 14, reimbursement of expenses for public hearing on policing in the homeless community. May I say that it is a terrible shame that there aren't more people in the audience right now to hear about the phenomenal unhoused ... Well, policing of the unhoused. It was a packed effort. Every detail was handled by the Coalition of Police Accountability and I cannot thank you enough.

[Regina Jackson:](#) We had a wonderful turnout by our fellow commissioners and are so pleased that you thought of busing or driving the homeless folks to the spot, the food, just the thoughtfulness, the Goldman policy students. It was incredible, and I just hate that we weren't able to get out in front of the money so people didn't have to actually have to put it out there and then get reimbursed. Anyway, commissioner Dorado.

[Jose Dorado:](#) Yeah. I'd like to lead a round of applause at the commission for the coalition.

[Regina Jackson:](#) With that, Commissioner Smith.

[Thomas Smith:](#) Yeah. I mean I really was impressed by the turnout, the speeches that people made, they were powerful. The information that we got is so valuable and I think that these kinds of partnerships and doing these events is when we're at our strongest, so I think we need to continue to do these. Yeah.

[Regina Jackson:](#) I would also give the people who work hard, you want to keep giving them work because they do so well, right? What I'd like to request because this was a hearing for our benefit, but there was not, as I understand it, much legwork on our part. From that perspective, if you all would go one step further and create like a standard operating procedure, so that in the ...

PART 6 OF 7 ENDS [03:24:04]

[Regina Jackson:](#) ... Kind of like a standard operating procedure, so that in the hearings to come, we actually have a map. We still will want the support of the coalition and any other community members, but it would be good for us to actually understand how to put our own on. Is that okay?

[Regina Jackson:](#) Okay, we got a thumbs up by Rashidah Grinage, great. So there are no speakers on 14, so I would like to entertain a motion in order to facilitate the reimbursement of expenses for the public hearing. Commissioner Dorado.

[Jose Dorado:](#) I'd like to make a motion that we reimburse those certain funds expended for the public hearing on policing in the homeless community.

[Regina Jackson:](#) Thank you. Do I have a second?

[Tara Anderson:](#) I second.

[Regina Jackson:](#) Seconded by Commissioner Anderson. Can we take a vote?

[Thomas Smith:](#) Just for the record, what is the amount that is being reimbursed?

[Regina Jackson:](#) I know I totaled it before I gave it. Oh my goodness. It's not totaled on this document.

[Mr. Russe:](#) [inaudible 03:25:24] \$70.80.

[Regina Jackson:](#) Can you say that a little louder, Mr. Russe?

[Mr. Russe:](#) Yeah, it looks like it adds up to about \$70.80. Is that correct? [crosstalk 03:25:39].

[Thomas Smith:](#) We need the exact information.

[Regina Jackson:](#) No, no, no it's, there's-

[Speaker 8:](#) \$209.44.

[Regina Jackson:](#) Anybody have a calculator? I know that I ... There were receipts plus some mileage. Okay. Why don't we do this? I'm pulling the phone out so that we can get the calculator going. Jeez ...

[Regina Jackson:](#) (silence)

[Thomas Smith:](#) Can we do a not to exceed amount?

[Mr. Russe:](#) I don't see why not.

[Thomas Smith:](#) Yeah, I think maybe we should figure out what the amount is not to exceed and then we can ...

[Regina Jackson:](#) Okay, from a quick glance, it doesn't look like it's going to exceed \$400, but it probably will go into three from all these different ... Commissioner Dorado, would you amend your motion to say not to exceed \$400, please?

[Speaker 10:](#) [inaudible 03:27:15].

[Regina Jackson:](#) Not to exceed \$400.

[Jose Dorado:](#) Yes, let me amend my motion to include the provision that the amount will not exceed \$400.

[Regina Jackson:](#) Thank you. Commissioner Anderson.

[Tara Anderson:](#) Oh, I second.

[Regina Jackson:](#) Thank you. Okay, so can we get-

[Thomas Smith:](#) Aye.

[Regina Jackson:](#) Okay. Aye for myself, Commissioner Harris?

[Ginale Harris:](#) Aye.

[Regina Jackson:](#) Thank you, motion passes. Note to Chrissy, we need to make sure that there's a total on these in the future.

[Regina Jackson:](#) Okay, and we are on to agenda item 15, agenda setting and prioritization of upcoming agenda items. Yes?

[Jose Dorado:](#) Madam Chair, can we ... I would think that we would have to have it be an agenda item, but I'd like to reimburse former Commissioner Maureen Benson for the laptop that was destroyed in the special meeting we had at your facility. It was about \$1500 that she ...

[Thomas Smith:](#) Yeah, I think the ... We can obviously put it as an agenda item. I think the controversial part about it is that is the reimbursement that was denied by Oakland. We'll have to vote on it. We can obviously put it as an agenda item, but whether or not people support that, there needs to be full information about what came back in terms of the reimbursement denial from the City of Oakland.

[Regina Jackson:](#) Okay, so we'll have some research on that item as well as listing it, yes, on Commissioner Harris.

[Ginale Harris:](#) I think we're setting a double standard here because this police commission was put together for excessive force and racial profiling, not for homelessness. We are spending tax dollars on homelessness, therefore, Commissioner Benson came to our special meeting and one of our presenters damaged her computer, not on purpose, on accident. It was up to us to approve or deny. I don't want to set a precedent that we can spend money on food for things that have nothing to do with this commission and we don't reimburse the commissioner that gave all of her time to this commission.

[Thomas Smith:](#) Chair?

[Regina Jackson:](#) Mr. Smith?

[Thomas Smith:](#) Just a point of clarification, first of all the hearing is a requirement that we checked off or checked the box and successfully did and so it's something that we're expected to do as a commission and the funds expended within it were in

the scope of things that we're required to do as a commission, so it's appropriate use of public funds.

[Thomas Smith:](#) The item that we're talking about putting on the agenda is reimbursement of an individual's private property and it is not the case that the presenter is responsible for that. I mean, I was sitting right there and I watched what happened and it was actually a faulty bottle. The bottle had a convex bottom on it, I think because it was frozen or whatever and so it fell over. But, to blame it on the presenter is not accurate. He didn't, in my view from what I saw, he didn't do anything wrong. It was the bottle.

[Speaker 9:](#) Chair Jackson, if we could move past this item as it's not on the agenda.

[Regina Jackson:](#) Actually, we're setting the agenda for the next time.

[Speaker 9:](#) Oh, are we discussing the falling item now?

[Regina Jackson:](#) Yes, yes, thank you.

[Speaker 9:](#) My apologies.

[Regina Jackson:](#) No, no, no, that's okay. I think that probably what we need to do is-

[Thomas Smith:](#) I just want to finish my point. Public funds, obviously, are a very serious issue, right? The concern that I raise here is and that we'll have to discuss if this comes up as agenda item, is it appropriate to use public funds to reimburse an individual's private property. Obviously the city attorney's office decided no and if we do that we would be going against that. Each individual commissioner can make their own choice, but along with that comes the impact on the relationship of the commission in terms of being a guardian of public funds and so that's a serious matter to consider.

[Regina Jackson:](#) Okay, so I think what we have decided is that we can go ahead and put it on the agenda. Obviously we'll have the additional research that can be provided and then whatever arguments and context can be presented then. Are there any additional-

[Ginale Harris:](#) Chair?

[Regina Jackson:](#) Yes.

[Ginale Harris:](#) I'd like to say something. First of all, for clarity, the police commission was made up for racial profiling and excessive force, again. Chair Jackson, you opened the bottle. You opened the bottle when we gave it to our presenter, so it wasn't a default bottle. The bottle was open and nobody told him, so the water spilled. I just want to be clear that yes, it's public funds, but you cannot spend public funds on something that has absolutely nothing to do with why we're here. If

you're going to approve it, then it's going to be setting a standard that there's a double standard.

[Regina Jackson:](#) Our meeting was a community meeting, just to clarify.

[Ginale Harris:](#) A community meeting not about racial profiling or excessive force. Okay.

[Regina Jackson:](#) It was one of the designated things that we're supposed to do as part of the commission, but that's neither here nor there. The point that I've already identified is we can put it on the agenda. I'd like to move forward, though, so we can identify what other things need to be on the agenda. I do believe that you and I had a conversation about a budget presentation?

[Ginale Harris:](#) Yes.

[Regina Jackson:](#) Okay, so we will make sure that that's on the agenda and then the chief goals?

[Ginale Harris:](#) Absolutely.

[Regina Jackson:](#) Okay. I know you and I are going to meet next week. Yes, Commissioner Smith?

[Thomas Smith:](#) I would like to put the appointment or selection of our new commissioner on the agenda again. I think we'll have Mubarak Ahmad hopefully back and Commissioner Prather. I think I'd like to take another vote with hopefully a full commission to see if we can approve her as a new commissioner.

[Regina Jackson:](#) Okay. Thank you, and Commissioner Harris?

[Ginale Harris:](#) Chair, I'd like to set a standard for the commissioners as well on the absentees, of being absent from our commission meetings. That's a problem and it's a concern, so I'd like to put that on the agenda.

[Regina Jackson:](#) I'm not quite understanding.

[Ginale Harris:](#) When people miss the commission meeting, we cannot get the work done and it has been that way for the past year, so I'd like to set a standard. If we're going to hold people accountable to be on ad hoc committees, then we should hold them accountable for attending these meetings, and I believe I read somewhere that you only can miss so many meetings but we have not been following that at all.

[Regina Jackson:](#) Okay, so why don't you find whatever you thought, wherever it is-

[Ginale Harris:](#) I will do that.

[Regina Jackson:](#) And send it to me, thank you. Okay, Anderson?

[Tara Anderson:](#) Correct me if I'm not going about this procedurally, appropriately. I do believe what I'm requesting would require the creation of an ad hoc and I believe that would have to be agendized. One thing that I'm very proud of and the work that I've done recently in San Francisco is led the creation and approval of a criminal justice racial equity statement, where all policy bodies in San Francisco have expressly identified and acknowledged the harm that racism has caused, and that it's government's job to undo that harm.

[Tara Anderson:](#) I would like to draft such a statement from the Oakland Police Commission and also use it as an opportunity as we're working together to develop that statement. The ... develop methods for using an equity lens on any policy and practice work that we are developing. It's a big part of the government alliance in race and equity. We have a department of race and equity here in Oakland whose ... We have the equity indicators relative reports and also we have other racial equity indicator reports from the state that I think could benefit this conversation.

[Tara Anderson:](#) I think of it as you can't fix the problem until you identify you have the problem, and acknowledge it's your responsibility to repair it. That's the sentiment from which I come from in proposing this as an action that we take as a body.

[Regina Jackson:](#) Excellent. We will work on that for the language on the agenda.

[Regina Jackson:](#) I would also like to submit that we're going to re-put the quarterly report from the police commission on with all of the edits and changes.

[Ginale Harris:](#) Chair?

[Regina Jackson:](#) Yes, Commissioner Harris.

[Ginale Harris:](#) Can we get an update of the Parone [03:37:17] probation status for the-

[Regina Jackson:](#) Yes. Actually, that was not ready for this meeting. I think that it will be ready, so we should be able to put that on.

[Ginale Harris:](#) Okay. How about the Inspector General from his home?

[Regina Jackson:](#) I'm going to be meeting with the city administrator, I think next week, so hopefully we can do that, too.

[Regina Jackson:](#) Let's see. I'm not meeting with the city attorney's office until the 11th so we'll put the RFQ for the next one after that.

[Ginale Harris:](#) For the attorney?

[Regina Jackson:](#) Yes.

[Ginale Harris:](#) May I suggest one more thing?

[Regina Jackson:](#) Yes.

[Ginale Harris:](#) For the next agenda can we prioritize OPD policies that are up for review and ask Mr. Russe to provide the suggested list of policies for review before the next meeting?

[Regina Jackson:](#) We would direct Miss Tom with that request and that will be to prioritize OPD policies that are up for review with a policy narrative or research statement that goes under each of those policies provided by her staffer.

[Regina Jackson:](#) Okay? I think that's a pretty packed agenda, so I would submit that we will clean this up and get it out, and we will have the updated report from Ms. Tom. We will hopefully have the written report from Chief Kirkpatrick and written report from Virginia Gleason on the budget so that we can know what it was we thought we heard.

[Thomas Smith:](#) Chair Jackson, I think one other suggestion that I might have for you folks is that, as I recall from our last regular meeting, the issues regarding the vice chair issues have not been resolved and it might be prudent to have a selection of a vice chair or chairs.

[Regina Jackson:](#) Yes, excellent, thank you. Appreciate it. Okay, and with that-

[Jose Dorado:](#) Madam Chair.

[Regina Jackson:](#) Okay.

[Jose Dorado:](#) I'm not sure that this is an agenda item. It certainly relates to the budget. Just a request that the finance department provide us with updated numbers that they've gone through, so we have accurate numbers to deal with.

[Regina Jackson:](#) Okay, sounds good.

[Tara Anderson:](#) Would you put it on the calendar?

[Regina Jackson:](#) Yes, I've already put it on this one, thank you.

[Regina Jackson:](#) With that, we have several public speakers. We have Henry Gauge, Celine Bay and Rajshahi Grinage, and Lauralai Balsaman. [03:40:11] No Lauralai.

[Regina Jackson:](#) Thank you Mr. Bay.

[Celine Bay:](#) Celine Bay. I would ask that you add to the next agenda a report from the ad hoc committee regarding the case that I've been speaking about ad nauseum, right? I would like to get that on the next agenda so we can at least get an

update on where we stand, or at least to move it forward. Right now it's just spinning. It was listed as a high priority, one of the highest priorities as a matter of fact.

[Celine Bay:](#) In fact I believe I didn't see any other priorities that you just discussed, that you just stacked the agenda with that were rated higher than the case as it stood with your own designation of high priority. I'm just asking is that just a label? Or is the high priority something that you're going to act on, and that's why I'm asking that you please at least get a report back from that ad hoc committee, and possibly recommendations so we can move this thing forward, and not leave this to kick the can down the road, as Mr. Prather is so quick to do. Can we add that to that?

[Regina Jackson:](#) Will you be ready to go?

[Ginale Harris:](#) Yes, I'm ready now.

[Regina Jackson:](#) Okay, so yes, we can put it on the agenda. Thank you.

[Celine Bay:](#) Thank you very much.

[Regina Jackson:](#) Henry Gauge and Rashidah Grinage. Rashidah? Can you turn the timer off? Or reset it? My apologies. I misread that. You go ahead, and then we'll have Henry come up. I'm sorry.

[Karen Tom:](#) I just wanted to clarify something on the item that you were going to place on the agenda for CPR aid regarding prioritization of the OPD policies. Just want to get a couple of clarification items and then I wanted to bring up a concern from Mr. Russe.

[Karen Tom:](#) The first question is, I wanted to check to see whether the prioritization of OPD policies were based on the email I had sent you previously about that topic, or something completely separate and different and new, or what exactly specifically you were referencing in requesting that.

[Regina Jackson:](#) Commissioner Harris?

[Ginale Harris:](#) Thank you Chair. I was referencing the OPD policies that they're working on right now for review. We want to be a part of the review. We want to know what it is they're prioritizing that are upcoming, and then we'd like recommendations from your office on what policies you feel that we should be looking at.

[Karen Tom:](#) I know I had already sent an email. That's the one I'm asking about. That I just wanted to clarify whether you just wanted more information based on what information I'd already relayed to you in that email.

[Regina Jackson:](#) Commissioner Harris, we're talking about two different subjects. You have provided lots of background and those recommendations. Now I think what we're looking at is trying to identify what OPD sees on the horizon, and providing that same depth and breadth of background.

[Karen Tom:](#) The list that I gave you was based on what they had already provided. Correct. It was a list I believe that Commissioner Benson had forwarded, that they had said these were the items I'm working on. What do you recommend based off of this list. So that's why I'm saying it already has ... it was really an extrapolation of what they had. Then I had ... I believe Commissioner Benson's question was, do you have anything else to add? It included that plus more.

[Ginale Harris:](#) Thank you for the clarity, however, I want you to ... You're a separate entity so you don't work for the police department. We want to know what will be helpful to you. [crosstalk 03:44:07] on their lists or not.

[Karen Tom:](#) Yes, but that was also in my email as well.

[Regina Jackson:](#) I think what Commissioner Harris is asking is if you have any additional things that you'd like to put on, jump in with that so we've got the most updated list. Okay?

[Karen Tom:](#) Okay. Part two of the question goes to a question for Mr. Russe, which is, based off of the list I provided, which I believe has addressed both of the questions, what I would prioritize from their list and also additional comments I had made, the question would be, when you say you want a narrative research statement did you have something specific in mind for him? I think he was saying that, with the time frame that we have right now, he would have to submit something, he would only really have a few days to work on it before it's available for the next packet.

[Karen Tom:](#) I guess what the question would be, do you want whatever he can put together in that time frame, or would you like him to spend more time on it? Ideally he would like more time.

[Regina Jackson:](#) I think we want a quality job but we're not looking at research papers. We want a narrative. That can be a paragraph or two paragraphs, but basically, in alignment with what you've already provided as background related to other policies. Just a continuum. Commissioner Harris.

[Ginale Harris:](#) Thank you Chair. Are you done? Okay.

[Ginale Harris:](#) I was looking at our agenda packet and I would ask the Chair permission if we can go back to item 12, because it says 'assignments and updates', right? We're prepared to give a budget update. That's what I came prepared to do, I thought, because it was a time sensitive matter.

[Regina Jackson:](#) I'm sorry. I thought we moved past that. My apologies. Whoops, we're in the middle of public comment. Let's have Mr. Gauge do his comment and he's the last person on that subject, and then we'll go back to 12.

[Regina Jackson:](#) Apologies Mr. Gauge.

[Henry Gage, III:](#) Thank you Chair. I think at last meeting there was a discussion about former Commissioner Benson raised the issue of a potential for multiple Vice Chairs and responsibility sharing. I don't know if that conversation's been ongoing and if that's going to come up again during your debate at the next meeting when you discuss the Vice Chair election again, but if there's any chance that it does it might be prudent to request a legal opinion now, so you'll have that in hand from the city attorney's office to see whether or not that makes sense, if it's legal and whether you want to pursue that type of responsibility sharing. Thank you.

[Regina Jackson:](#) Thank you. We will handle that. Thanks.

[Regina Jackson:](#) We're going to go back to agenda item 12 now. Commissioner Harris has an update.

[Ginale Harris:](#) Thank you Chair. Commissioner Dorado, Commissioner Benson and myself all worked on the budget. I'm going to let Commissioner Dorado state his piece first. We're going to do two portions. One is on the budget itself and how and the explanation on where the money is coming from. He's going to talk about the plan that we want to present to the commission.

[Jose Dorado:](#) Thank you. The bottom line is that we've been asked to cut \$163,000 from the budget, but in fact we have over \$800,000 of carry over funds. That's really the bottom line. We have all of the numbers that have been provided to us, and that's why it's important that we get the updated numbers, to make sure these are accurate.

[Jose Dorado:](#) Based on that fact, our proposal is to move the separate policy analyst to the office of inspector general, and also to change the office assistant two to ... the current office assistant two to an administrative analyst two that reports to the executive director.

[Jose Dorado:](#) Thirdly, that we certainly have more than enough money to have seven investigators. There should certainly not be going down to six particularly since it's an LL requirement that we have one per hundred.

[Jose Dorado:](#) That's the first part of-

[Mr. Russe:](#) I'm sorry, Chair Jackson, was this material posted with the agenda or distributed to the public before this meeting?

[Speaker 8:](#) Yes, [inaudible 03:49:01].

[Regina Jackson:](#) No, what he's asking ... This is item 12 but the paperwork that's being distributed, no, I do not think that that was a part of the agenda.

[Regina Jackson:](#) What I'm going to have to request, Commissioners Harris and Dorado, is that we post it, and then you'll be able to speak to it at the March 14th meeting.

[Jose Dorado:](#) Okay, because this was not presented as a part of this agenda. Even though it was of a prior agenda, is that correct?

[Regina Jackson:](#) Right, because the attachment actually has to be posted with the agenda item. My apologies. I didn't think about that.

[Jose Dorado:](#) Can I give a preview of coming attractions?

[Mr. Russe:](#) Sure. There's an exception in the Brown Act for commissioners to provide brief reports on their own activities, but the commission can't have a substantive discussion on policy.

[Regina Jackson:](#) Okay, thank you.

[Jose Dorado:](#) Again, there's those three. Part one is these three, let's call them moves, that I will speak to at the next commission meeting.

[Jose Dorado:](#) The other will be directives to staff regarding the discretionary funds, the labor budget, the CPRB investigations project, the CPR admin project, discretionary funds, the admin project restricted funds, and [inaudible 03:50:50] labor. These are all part of our packet of our last meeting. That'll be part two of what I'll address in my remarks next meeting.

[Regina Jackson:](#) Just a clarification. Last meeting when Ms. Harris wasn't there but you were, we had this paperwork? Or we didn't?

[Jose Dorado:](#) We did.

[Regina Jackson:](#) It was posted as a part of the agenda. Okay, we just did not get to it.

[Jose Dorado:](#) Correct.

[Regina Jackson:](#) Alright, so we'll repost it.

[Speaker 8:](#) Here's the agenda [crosstalk 03:51:23].

[Regina Jackson:](#) No problem, thank you.

[Regina Jackson:](#) With that \$800,000 that you've identified, can you specify where it came from, so that we can make sure that there is a legend to identify?

[Ginale Harris:](#) I can break it down.

[Regina Jackson:](#) Terrific. Thank you.

[Ginale Harris:](#) The bottom line is we're moving the policy analyst to the IG position. We're changing the job description of the office assistant to admin analyst two. We're keeping seven investigators.

[Ginale Harris:](#) That \$800,000 we do not have to cut any ... that \$800,000 is ours. It's a carry over. The CPRA had it under their budget but they didn't spend a dime in the last two years.

[Regina Jackson:](#) Cost savings from 2016 2017? Sorry. Here we go again. Apologies.

[Regina Jackson:](#) We're going to have this conversation in full March 14th, but it sounds like we are on it. Thank you very much Commissioners Dorado and Harris and previously Benson.

[Regina Jackson:](#) I think that I'm ready to entertain a motion to adjourn.

[Thomas Smith:](#) So moved.

[Regina Jackson:](#) Thank you, Commissioner Smith. Do we have a second?

[Jose Dorado:](#) Second.

[Regina Jackson:](#) Commissioner Dorado. Can we vote please?

[Mr. Russe:](#) Aye.

[Regina Jackson:](#) Commissioner Anderson.

[Tara Anderson:](#) Aye.

[Regina Jackson:](#) Commissioner Smith.

[Thomas Smith:](#) Aye.

[Regina Jackson:](#) Aye for myself. Commissioner Harris.

[Ginale Harris:](#) Aye.

[Regina Jackson:](#) Beat me to the punch. Thank you all. It's been a wonderful night.

PART 7 OF 7 ENDS [03:53:23]

EXECUTIVE FORCE REVIEW BOARD  
OAKLAND POLICE DEPARTMENT  
Use of Force No.: 18F-0067  
28-29 November 18, 8 January 19



EXECUTIVE FORCE REVIEW BOARD REPORT

<i>Incident Date</i>	<i>UOF No.</i>	<i>Rcvd. from BFO Admin.</i>	<i>Rcvd. from IAD</i>	<i>IAD ROI No.</i>	<i>IAD ROI Closed</i>	<i>Days to the Board</i>
11 Mar 18	18F-0067	N/A	Yes	18-0249	19 Oct 18	41

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**I.**

**INTRODUCTION**

On November 28<sup>th</sup>, 2018, the Oakland Police Department convened an Executive Force Review Board to review an officer-involved shooting incident where the force subject was killed. The initial hearing was spread out over two days, November 28<sup>th</sup> and 29<sup>th</sup>, and, after the Board requested additional work completed by the Internal Affairs Division, a third day of the Board was held on January 8<sup>th</sup>, 2019.

Four sworn officers (three of the rank of Officer and one of the rank of Sergeant) discharged lethal firearms at the force subject (Level 1 uses of force), and a fifth officer discharged a less-lethal specialty-impact munition (SIM or “beanbag” round) at the subject (a Level 2 use of force). This report<sup>1</sup> discusses the hearing and the Board’s findings.

The involved members were:

- Sergeant Francisco Negrete 8956 (Level 1 Firearm Discharge)
- Officer William Berger 9264 (Level 1 Firearm Discharge)
- Officer Brandon Hraiz 9285 (Level 1 Firearm Discharge)
- Officer Craig Tanaka 9484 (Level 1 Firearm Discharge)
- Officer Josef Philips 9446 (Level 2 Less-Lethal SIM Discharge)
- Lieutenant Alan Yu 8605 (On-Scene Incident Commander)

The following personnel attended the hearing:

<b>VOTING MEMBERS</b>	<b>NAME</b>
Bureau of Field Operations 2	Deputy Chief L. Armstrong
Patrol Area 2	Captain C. Bolton
Patrol Area 4	Captain N. Joshi

<b>NON-VOTING MEMBERS</b>	<b>NAME</b>
Training Division Commander	Captain J. Bassett
Internal Affairs Division Commander	Captain S. Millington
Force Investigations Commander	Lieutenant T. Mork

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<sup>1</sup> Departmental General Order (“DGO”) K-4.1 *Force Review Boards* (16 Dec. 15), VI.10

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<b>NON-VOTING MEMBERS</b>	<b>NAME</b>
Technical Writer	Sergeant J. Turner
Video Technician	Sergeant I. Ramirez
Use of Force Coordinator	Police Records Specialist Nicole Causapin
City Attorney's Office	Supervising Deputy City Attorney K. Bliss

<b>PRESENTERS</b>	<b>NAME</b>
Criminal Investigation Division Commander	Acting Captain E. Lewis
Homicide Section Commander	Lieutenant R. Brandwood
Primary Criminal Investigation Division Investigator	Sergeant R. Vass
Secondary Criminal Investigation Division Investigator	Sergeant L. Sanchez
Internal Affairs Division Force Investigator	Sergeant J. Haney
Patrol Procedures Subject Matter Expert	Sergeant A. Jones
Bearcat, Specialty Impact Munitions, Firearms, and Patrol Rifle Officer Subject Matter Expert	Sergeant T. Sotto
Bearcat and Patrol Rifle Officer Subject Matter Expert	Lieutenant M. Beaver
Command and Control Subject Matter Expert	Lieutenant C. Shannon

<b>ADDITIONAL ATTENDEES</b>	
Independent Monitoring Team	Chief S. Kiyler
Independent Monitoring Team	Commander J. Girvin
Oakland Police Commission	Commission Chair T. Smith
Internal Affairs Division	Sergeant J. Skrdlant
Office of Inspector General	Lieutenant A. Mendoza
Internal Affairs Division	Sergeant L. Ausmus
Observer (Retired US Magistrate Judge)	Hon. M. James

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**II.**

**REVIEW BOARDS**

The Oakland Police Department (OPD) is committed to fair, respectful policing. OPD is likewise dedicated to minimizing the use of force. To these ends, OPD convenes Boards to review Level 1<sup>2</sup> and Level 2<sup>3</sup> uses of force; in-custody deaths; fatal vehicle pursuits; and certain matters that the Chief of Police directs a Board to review.

Some of the key points<sup>4</sup> that the Boards analyze are:

- Whether the use of force or the actions taken by members complied with the law and/or with OPD policy and training;
- Whether the incident presents training opportunities;
- The reason for the initial encounter with the police;
- Whether any member could have made a different tactical decision that may have resolved the situation with less force or none at all;
- Whether any member's actions contributed to the need to use force;
- The supervisors' performance;
- The opportunity to revise policy or to create new policy;
- Equipment functionality;
- The quality of the use-of-force and/or incident investigation; and
- Superior tactics or performance.

This review is meant to enhance the OPD's practices and service to the community. Force Review Boards ("FRB") review Level 2 uses of force and certain other uses of force as directed by the Chief of Police; Executive Force Review Boards ("EFRB") review the other incident types listed above.<sup>5</sup>

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<sup>2</sup> DGO K-4, Reporting and Investigating the Use of Force, II.A.

<sup>3</sup> *Id.* at II.B.

<sup>4</sup> DGO K-4.1, *Force Review Boards*, I.C, VI.A.3-4.

<sup>5</sup> *Id.* at I.D-E.

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**III.**

**FINDINGS**

After carefully reviewing the evidence and deliberating, the Board agreed with Criminal Investigation Division (CID) and Internal Affairs Division (IAD) investigators that all the uses of force during this incident (four Level 1 uses of force and one Level 2 use of force) were reasonable under law and in compliance with policy.

The Board reviewed the findings of the IAD investigation and unanimously agreed that the on-scene incident commander, a Lieutenant, did not properly command the scene and was culpable of class two misconduct. The Board determined, on a 2-1 majority vote, that the on-scene supervisor of the designated arrest team (DAT), a Sergeant, did not properly supervise the team in a manner which was so grossly derelict that he was culpable of class one misconduct<sup>6</sup>. The Board also determined on a 2-1 majority vote, that one of the DAT officers improperly deployed his patrol rifle without notifying communications as directed by policy, an instance of class two misconduct.

**IV.**

**INCIDENT SUMMARY**

On March 11<sup>th</sup>, 2018, at approximately 1817 hours, OPD officers were dispatched to the area of 928 40<sup>th</sup> Street, City of Oakland, on the report of a person armed with a firearm. Information initially came from a citizen, via Oakland Fire Department (OFD) dispatch, that a person (later identified as force subject Pawlik) was down on the ground, between two houses on the east side of 928 40<sup>th</sup> Street, apparently unconscious, and armed with a handgun. The caller, [REDACTED] (5)(B) gave a description of the subject, cautioning that he was unable to verify whether the item in Pawlik's hand was indeed a gun.

OPD Officer J. Philips, working as call sign 2L12, was dispatched to the scene in "Code 3" status (emergency lights and sirens activated), and arrived at approximately 1821 hours. Officer Philips approached on foot, leaning over from the front steps of 928 40<sup>th</sup> Street to peer down the area between the two buildings. There, visible from the street, Officer Philips saw Pawlik, and observed that Pawlik had a semi-automatic handgun in his right hand. Officer Philips reported his observations over the patrol radio, and noted that Pawlik might be under the influence of alcohol.

Officer Philips retreated to his parked patrol car, and moved it backwards in the #2 lane of westbound 40<sup>th</sup> Street until it was parked in front of the opening where Pawlik was lying. Using the vehicle as cover, Officer Philips maintained an observation post to monitor Pawlik's actions

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<sup>6</sup> As described in section VIII – **ADDITIONAL ASSESSMENTS AND DELIBERATIONS**, the dissenting Board member did not agree that the Sergeant's actions rose to the level of gross dereliction of duty, but did agree that the Sergeant was culpable of class two misconduct.

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while additional units arrived. The next unit on scene was Sergeant H. Webber 8223, who gave direction to Officer Philips and also stood by waiting for additional resources.

Sergeant F. Negrete, working as Crime Reduction Team 1 (CRT1) supervisor call sign 6L71, heard the situation developing via the patrol radio, gathered two of his direct subordinates, Officer W. Berger and Officer B. Hraiz, and responded to the scene. Sergeant Negrete, assigned an AR-15 rifle due to his ancillary duties as a member of the OPD Tactical Team (SWAT) Entry Element, reported that he and the two officers (Berger and Hraiz were assigned AR-15 rifles as members of the Patrol Rifle Officer, or PRO, program) were bringing their rifles to the incident.

In the meantime, additional patrol officers arrived on scene. A large perimeter was set around the 900 block of 40<sup>th</sup> Street, with a rear perimeter (supervised by Sergeant A. Pierce) set up in the 900 block of 41<sup>st</sup> Street. Officers also set up traffic control points to keep traffic and pedestrians from entering the 900 block of 40<sup>th</sup> Street. The officers on scene requested for medical assistance to stage, away but ready, in the event that Pawlik was suffering from a gunshot wound or other trauma. Lieutenant A. Yu, the Bureau of Field Operations 1 (BFO 1) watch commander, arrived on scene and became the incident commander.

Once on scene, Sergeant Negrete began formulating a plan to take Pawlik into custody. To this end, Sergeant Negrete formed a Designated Arrest Team (DAT) which included himself (as the officer in charge of giving commands), Sergeant Webber (SIM beanbag), Officers Hraiz and Berger (primary cover with their AR-15 rifles) and Officer Philips (electronic control weapon, or ECW). Sergeant Negrete also requested that Officer Craig Tanaka, another of his direct subordinates and a PRO, go to the Eastmont substation to retrieve the Bearcat, an armored vehicle which can withstand impacts from small arms fire.

While the DAT was waiting for the Bearcat, other officers were busy attempting to evacuate inhabitants from nearby residences and controlling access to the area. During this time, Sergeant Negrete discussed several contingencies with his team, he also met with Lieutenant Yu to discuss the plan of action for taking Pawlik into custody once the Bearcat arrived. While they waited, Pawlik shifted enough so that officers knew he was alive, but did not wake up or otherwise respond to the presence of the officers.

At approximately 1904 hours, Officer Tanaka arrived on scene with the Bearcat. Sergeant Negrete directed Officer Tanaka to replace Officer Philips' patrol SUV, #1447, with the Bearcat, placing the Bearcat as a piece of cover between the position of the officers in the street and where Pawlik was lying. Sergeant Webber moved the patrol SUV as Officer Tanaka, under the guidance of Sergeant Negrete, maneuvered the Bearcat into position. Once the Bearcat was in position, Sergeant Negrete directed Officer Hraiz to the Bearcat's turret.

Once Officer Hraiz got into the turret, Sergeant Negrete had Officer Tanaka move the Bearcat forward a few more feet, to give Officer Hraiz a better angle of view of Pawlik. As this occurred, Officer Berger noticed that Pawlik was moving, and called out "movement" to alert the rest of the team. Sergeant Negrete, who was standing behind the Bearcat at the front passenger-side quarterpanel, called Officer Berger to his position of cover behind the engine block. Officer

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Tanaka turned off the engine just as Pawlik moved again, and the officers began to verbally direct Pawlik.

For the next approximately 48 seconds, the officers gave Pawlik at least 12 commands, including, "Police, don't move", "Get your hands up", and several slight variations of "Get your hand off the gun" including one in Spanish. Pawlik did not reply to the officers, nor did he drop the gun or relinquish his grasp on it. Officers reported seeing Pawlik sit up, slightly, as if he were going to start getting up from the ground.

By this time Officer Tanaka, who had driven the Bearcat to the scene, had gotten out of the Bearcat through the passenger-side door and was just to the left of Sergeant Negrete, who was himself to the left of Officer Berger. Officer Hraiz was in the turret of the Bearcat, and Officer Philips, who had been just behind Sergeant Negrete and Officer Berger, had moved to Officer Berger's right with the SIM-loaded shotgun.

As the officers continued to give commands, Pawlik moved his head up and down, looking in the direction of the Bearcat and the officers. Pawlik was lying on his back and rolled slightly on his right side with his body almost perpendicular to the length of the small walkway between the two houses where he was lying. The officers reported that, even though they gave Pawlik commands to get his hands off the gun, Pawlik did not remove his right hand from the handgun. Suddenly, Pawlik rocked his head and upper body forward, as if he was going to get up, and the officers reported seeing the barrel of the gun in Pawlik's hand raise to point towards them. The officers also reported that Pawlik looked directly at them, that he appeared "agitated", "irritated", or "upset", and that he seemed to understand what was happening. Officers Hraiz, Berger, Tanaka, and Sergeant Negrete reported feeling that their lives and the lives of the other officers were in danger, and they all fired several rounds from their AR-15 rifles at Pawlik within the span of approximately three (3) seconds. Pawlik was struck by several rounds.

Sergeant Negrete put together a small team of officers and advanced with them behind a ballistic shield towards Pawlik's location. Once there, the officers separated the handgun from Pawlik and saw that he had sustained severe injuries. Sergeant Negrete requested that medical personnel come in to provide aid to Pawlik, but Pawlik succumbed to his injuries and was later pronounced dead on scene.

Lieutenant Yu initiated a Level 1 Force call-out, and CID and IAD investigators responded to the scene to begin the investigations.

**V.**

**INVESTIGATIVE STEPS**

Among other materials, the Board reviewed: the CID Investigative Action Report (IAR), the Force Investigations Section Report No. 18-0249, PDRD footage, the OPD file for RD Number 18-012685, witness statements, audio and video recording of personnel statements, surveillance video, and radio traffic related to the incident.

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In addition, the Criminal Investigations Division (“CID”) and Internal Affairs Division (“IAD”) presented to the Board. The Board also heard from subject matter experts.

**VI.**

**SUBJECT MATTER EXPERT TESTIMONY**

At the conclusion of the CID and IAD investigation presentations, and prior to the Board’s deliberations, subject matter experts testified in front of the Board.

**A. Patrol Procedures**

Sergeant A. Jones appeared before the Board as the Subject Matter Expert on Patrol Procedures and its attendant training. A member of the Oakland Police Department since 2003, Sergeant Jones worked in a Crime Reduction Team (CRT) for nine years, became a Patrol Rifle Officer (PRO) in 2006, and became a member of the Tactical Team (SWAT) Entry Element in 2008. He has been a member of the Patrol Procedures training staff since 2010, and became the lead Patrol Procedures instructor in 2016. Sergeant Jones is now an assistant team leader on the Entry Team, and he reviewed the materials prior to his appearance at the Board.

The Board asked Sergeant Jones to explain the training that supervisors (sergeants) receive in terms of Designated Arrest Teams (DATs). Sergeant Jones explained that all officers are introduced to the concept and use of DATs in the basic academy. Sergeant’s CPT has refresher training on DATs and critical incident management, as well as instruction on the roles of team members. (CPT is continuing professional training, a training evolution that officers are sent through every year to receive updates and refresher training.)

Sergeant Jones noted that training for all officers regarding DATs includes the role of the team leader, the roles of other officers in the team, and the criteria an officer or supervisor might use when selecting officers for the DAT. While there is no specific training to supervisors regarding supervision of DATs, they are taught more broadly about supervising critical incident scenes. This training includes explanations of the roles that officers can fill, and how supervisors should identify and lean on officers with specialized training and skills (e.g. SWAT or PRO) and place those officers in positions where they can lead and make critical decisions. Experience and abilities should dictate roles.

The Board asked for the specific roles that exist in a DAT. Sergeant Jones explained that at minimum there should be a designated “talker/cuffer” officer, whose job is to communicate with the subject, direct the movement of the subject, and handcuff the subject once feasible. Another officer should be designated as the less-lethal force user, should the situation turn into one where less-lethal force is necessary; the specific force option(s) chosen vary based on the circumstances of the particular encounter. A third officer is designated as the “primary cover”, whose main focus is protecting the entire team by being ready to engage the subject with lethal force if the actions of the subject dictate that necessity. Finally, a fourth officer (this does not have to be a supervisor, though it can be) should be the team leader, responsible for making sure that the other roles are filled and that the officers comprising the DAT are put in the most advantageous

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positions possible. The team leader also is typically the person thinking of possible contingencies, based on the scenario at hand, and formulating response plans.

Regarding a supervisor specifically as part of a DAT, Sergeant Jones noted that, if a sergeant is a member of a DAT then they are an active member of that team. While ideally the sergeant gains an overall strategic view of the incident to allow a "big picture" management of the incident, this does not preclude the sergeant from defending him or herself, other officers, or the public. When asked when something like this might occur, Sergeant Jones explained that, if a subject decided to present a lethal threat and run towards the sergeant and other members of the DAT, the sergeant might have to use lethal force to defend him/herself and the team.

The Board asked what the training and process is for the DAT's team leader briefing the team. Sergeant Jones stated that, typically, as officers arrive on scene, a DAT is formed quickly, with one officer taking charge. That person, the de facto team leader, assigns roles and attempts to get a minimum of four officers on the team. Once roles are assigned, contingency plans – for scenarios such as if the subject surrenders, if the subject attacks officers, or if the subject flees – are discussed and planned. Additionally, a plan for resolving the situation in the most ideal manner is typically formulated and, once sufficient resources are on scene, executed.

The Board asked for additional details on exactly how the DAT team leader briefs the team. It was explained that, ideally, the team leader gathers the team together and briefs everyone at the same time. However, there are often impediments (such as time constraints, or if a team member is on a critical assignment and cannot be pulled away) which preclude this. Instead, the team leader can approach the team members individually and brief them on their assigned roles and on the plans and contingencies. In terms of the team leader briefing the incident commander, Sergeant Jones noted that this was ideal, but not always feasible. If possible, the incident commander should be briefed on the team's plans so that feedback can be given, or so that the incident commander can alter the plan if necessary. However, this is not always feasible if the incident commander is not on scene or if the scene is rapidly evolving and no incident commander has yet been identified.

In response to a question about training on encounters with unresponsive, armed individuals, Sergeant Jones said that, while there has been reality-based training (RBT) with similar instances during training, there is no specific block of instruction on these encounters.

The Board asked Sergeant Jones to elaborate on some of the typical contingencies that the team leader of a DAT might be expected to consider. He replied that contingencies are dependent on the type of incident, terrain, and circumstances, but the contingency of how to safely take the subject into custody if he or she complies with the orders of officers is almost universally discussed. This includes talk of where to position the person for handcuffing. Another frequently discussed contingency is if the subject presents a firearm or other lethal threat, and typically involves identifying primary and secondary cover officers whose job it is to respond to lethal threats.

The Board asked about the process of setting the primary and secondary cover officers. Sergeant Jones explained that, while any officer can and should react according to training when they

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perceive a threat of great bodily injury or death to themselves or anyone else from the subject, ideally a minimum number of officers using lethal force will engage the subject if necessary. The team leader typically will communicate directly to the primary and secondary cover officers that they are filling those roles, and ideally those two officers would be set up with different vantage points, to see anything that the other officer might not be able to.

Continuing with typical contingencies of a DAT, Sergeant Jones explained that another common contingency is if the subject gets up, is not compliant with commands, and poses a less-lethal threat or advances on officers. Typically, the team leader will authorize the use of less-lethal force, and may use a landmark to draw a figurative "line in the sand" which, should the subject cross it, would prompt the officer to subdue the subject with less-lethal force. In that case, the team leader would identify the landmark to the less-lethal force officer, and give specific instructions on when and how force should be used if the subject crossed the "line."

Finally, a general contingency that is frequently discussed in circumstances where a DAT is formed is what officers should do in response to the subject attempting to flee. The goal of the DAT at that point is to contain the person within a perimeter and not simply chase the subject into backyards or enclosed spaces. Instead, containment should isolate the subject until the DAT can be set up and again challenge the suspect, with the overall goal of peaceful surrender.

In terms of the composition and positioning of the DAT, Sergeant Jones remarked that members of the DAT ideally are only assigned one role. However, this can be fluid, especially if circumstances change quickly. Also, depending on the terrain, positioning of the officers, and actions of the subject, assigned roles can switch between team members – Sergeant Jones said that this type of switch typically is directed by the team leader. Regarding the positioning of the team, Sergeant Jones explained that the team is typically close enough together for verbal communication but far enough away to provide slightly different vantage points – an example he cited was officers on both ends of an armored vehicle, using the body of the vehicle for cover.

In terms of initiative from individual team members, Sergeant Jones noted that DAT members can give instruction to other team members, but that ideally these instructions should be communicated with the team leader as well so that the leader is apprised of the entire plan. Similarly, officers could self-deploy to fill a gap or position in the DAT, but ideally would communicate what they are doing to the team leader, so that the team leader knows the personnel grouping and roles of the entire team.

The Board asked about any other training in the Department regarding police response to armed, non-responsive persons. Sergeant Jones replied that training specifically regarding armed, non-responsive persons exists in RBT scenarios in the basic academy – he described these scenarios as consisting of an armed unconscious person in a vehicle, and said that recruits are taught how to resolve these situations. The Board asked whether this training existed in other training environments in the Department, and Sergeant Jones said he had no knowledge of this training occurring outside of the basic academy.

Regarding the above RBT training recruits receive in the basic academy on responding to armed, non-responsive persons, the Board asked what guidance, if any, recruits were given about what

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to expect when confronting an armed, unconscious person. Sergeant Jones replied that recruits are told that these subjects are likely under the influence of some substance – he noted that in his experience these types of subjects are usually sleeping in vehicles. Training teaches that subjects might not wake up in response to commands, or that they might suddenly awaken startled and so create an exigency that has to be dealt with. Additionally, the person might be faking unconsciousness to lure the officers in closer.

The Board asked Sergeant Jones to expand on the concept of the subject being startled. He explained that officers are taught that the subject suddenly awakening and being startled is a contingency that officers must be aware could occur. Specific actions to be taken in response to this, however, are not given as so much depends on the circumstances of that specific encounter. General guidance is taught which directs the officers to protect themselves first and foremost. For instance, if, as the officers are approaching the subject, the subject awakens and points the firearm at the officers, that would be a lethal threat that the officers must protect themselves from.

The Board asked how this guidance about protecting oneself would apply if the officers were behind cover and/or concealment. Sergeant Jones replied that the training is still that officers must protect themselves and other officers; while cover and concealment might lower the risk of being struck if the subject opens fire, they do not entirely negate it. The Board asked specifically, then, if training on responding to lethal threats did not vary based on whether the officers were in cover or in the open. Sergeant Jones explained that this was correct – if a lethal threat presents itself, the officers are taught to address the threat in accordance with law, policy, and training, regardless of whether they are behind cover or in the open.

The Board asked whether any specific direction on supervising a DAT was written down in training documents or lesson plans. Sergeant Jones explained that, since so much of what is done by a DAT is based on the specific circumstances for that encounter, the training is not formalized to that degree.

The Board asked about RBT scenarios involving armed and unconscious persons, and Sergeant Jones explained that these scenarios can be done in conjunction with simunitions – equipment that simulates the firearm but uses marking cartridges instead of bullets – to enhance realism. The scenarios do not have suggested responses, but there is a general set of guidelines when dealing with armed, unconscious persons: set containment to isolate the subject from others and avenues of escape, assemble a DAT, then awaken and safely take the person into custody. Typically, this involves amplified announcements from a safe distance away. Generally, time is on the side of the officers in these situations.

The Board asked more specific questions about the role of the team leader, and whether the team leader could assume another role in the DAT. Sergeant Jones responded that, while having the team leader fill one of the other roles in addition to his/her role as the leader is not taught, it can happen depending on the circumstances of the encounter. Asked specifically about the team leader also serving as the talker/cuffer, Sergeant Jones said that, while not ideal, the team leader might develop rapport or have a specific set of skills which would dictate that they serve as the communicator as well as the team leader. However, the team leader typically should be focused

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only on that role; a consequence of the team leader taking on an additional role might be that they lose sight of the overall strategic picture while dealing with a specific tactical responsibility.

The Board asked if the Bearcat armored vehicle was used or discussed during patrol procedures instruction, to which Sergeant Jones replied that there is a block of training on use of the Bearcat in officer CPT, and that use of the Bearcat is discussed with recruits in the basic academy.

Sergeant Jones was asked about whether scenarios involving shoot / no-shoot decisions were presented during patrol procedures training. Sergeant Jones replied that the majority of the scenarios run during patrol procedures training are no-shoot scenarios if the officer or trainee demonstrates the proper actions based on the training they have received. The patrol procedures program is specifically designed to not correlate the fact that a person is armed with a firearm with a use of lethal force by the officer. To that end, the majority of scenarios involving armed subjects are no-shoot scenarios if the officers properly utilize their training.

Expanding on this, Sergeant Jones explained that officers are trained on tactics to reduce the likelihood of lethal force encounters. This includes teaching officers to scan for threats and aggressive movements during all types of encounters with people, to provide as much warning as possible that a threat may be imminent. Additionally, officers are taught to protect themselves by drawing their handguns in the face of a lethal threat while also giving commands and attempting to forestall the threat, when feasible. They are also trained to move to cover or concealment, or to at least create time and distance and then put the subject into a position of disadvantage, where the officers can safely handcuff them.

The Board asked Sergeant Jones to explain more about the idea of time and distance. He replied that officers are trained that distance between a threat and the officer is beneficial because officers have training on shooting at greater distances. Distance typically lends itself to increased time to make decisions and react to changing circumstances. Finally, Sergeant Jones explained that, with a subject who is unconscious or otherwise compliant, there is no exigency for the officers to approach that person to affect an arrest, but instead officers can call the person back to them.

Regarding commands, officers are taught in patrol procedures training that one officer should be designated to give commands. Commands to safely position and ultimately secure a subject are first taught in defensive tactics, and reinforced in patrol procedures. At present, officers are taught to identify themselves and give an immediate command to stop moving: "Police, don't move!" Next, depending on the position of the hands, officers are taught to address the hands of the subject, and to maneuver the subject such that the person can expose their hands and put their hands in the air. Finally, officers are taught to put the person in a position of disadvantage, such as the kneeling or prone position, and then safely handcuff the person in conjunction with other officers. Sergeant Jones explained that this is the general sequence to commands, which can be changed depending on the specific circumstances present. For instance, Sergeant Jones noted that, if a subject were lying next to a gun, an appropriate command to not touch the gun might be inserted early on.

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The Board asked if Sergeant Jones could recall any training scenarios which resulted in all members of the DAT engaging in lethal force against the simulated "suspect." Sergeant Jones replied that this had likely happened, but he could not recall a specific instance. Regarding feedback given to trainees after such a scenario, he noted that the practice of the training staff is to query each trainee who used force, at the conclusion of the scenario, why they used that force and what their rationale and reasoning was. Trainees are required to give specific justification as to why their force is lawful and within policy.

Finally, Sergeant Jones was asked to give the purpose of a DAT. He explained that a DAT's goals include accepting the peaceful surrender of the subject or affecting the arrest, preventing the escape of the subject, and managing contingencies, to include if the subject flees, takes hostages, or becomes a lethal threat.

**B. Bearcat, Specialty Impact Munitions, Firearms, and Patrol Rifle Officers**

Sergeant T. Sotto appeared before the Board as a subject matter expert on the Bearcat armored vehicle, the Patrol Rifle Officer Program, Firearms, and Specialty Impact Munitions (SIM). Sergeant Sotto has been a member of the Department since 2002, and spent nine years in uniformed assignments including patrol, CRT, and problem-solving officer (PSO), before being transferred to the Training Division as a firearms instructor. As an instructor, Sergeant Sotto taught all aspects of firearms training to recruits in the academy and to officers in CPT, and assists in teaching the patrol rifle officers and in the Department's SWAT school. Sergeant Sotto is a POST-certified firearms, patrol rifle, chemical agents, and less-lethal SIM instructor, and is a certified Glock and Remington 870 shotgun armorer. He has had hundreds of hours of practical training to include the San Jose PD MERGE rifle school, MACTAC training, and eight appearances as a participant in Urban Shield. Sergeant Sotto served as an Infantry Squad Leader in the US Army, went to Ranger School while serving, (5)(C). He reviewed the materials prior to his appearance at the Board.

The Board asked about the training that PROs receive in regards to DATs. Sergeant Sotto answered that PROs are typically asked to be primary or secondary cover in a DAT. If there are more than two PROs on scene, the additional are often called up to fill the other roles in the DAT because PROs receive more frequent and intensive training on DATs than do other officers.

Regarding the qualifications and training for PROs, Sergeant Sotto said that candidates for the program go through a testing process which includes a work history examination, oral board, physical agility test, and reality-based training scenario. Candidates are ranked based on their performance in the testing process, and the highest ranked candidates are selected to attend a 40-hour school, which consists of classroom-based learning on the history of the program and the mechanics and ballistics of the weapon, manipulations and safety, familiarization fire, live-fire standards, low-light fire, and tactics. The school ends with a written test, manipulations test, and a live-fire qualification.

Those passing the school can be selected as PROs and issued a rifle. Once so assigned, PROs are required to attend a one-day quarterly training, which consists of discussion and debrief of rifle deployments in the previous quarter, live-fire or stress-inoculation drills, manipulations,

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live-fire standards, and a qualifications course. In the afternoon, the training typically addresses particular tactical issues, such as yard searches, building searches, or designated arrest teams. Scenario training is included, and each quarterly training is different than the one before.

The Board asked for a description of some scenarios involving armed suspects that PROs might see during training. Sergeant Sotto gave an example of a scenario of a patrol call for service which becomes a barricaded domestic violence suspect armed with a gun. The scenario might evolve further into a hostage rescue operation where the students have to enter the structure to rescue the hostage and deal with the armed threat. Additionally, due to a trend of armed subjects asleep in cars, the firearms staff has run many scenarios with an apparently sleeping armed person in a vehicle in PRO training as well as in CPT. Per Sergeant Sotto, the scenario is designed such that, ideally, the officers approach, see the sleeping person and note that he/she is armed, retreat to cover, call for additional resources, contain the scene, set up a DAT, and then endeavor to take a methodical approach to resolving the situation.

Sergeant Sotto explained exactly how a scenario with a sleeping armed person might be run. First off, a script is produced for the role players, so that their actions are consistent throughout training and designed to prompt the specific reactions from students. Strict safety protocols are enforced for role players, instructors, and students, and the class is sectioned into groups. Typically, a group of four students is brought out at a time, with two brought to where the scenario is set up. There, cars are positioned such that the officers have just made a traffic stop, and the first two officers approach the car. Ideally, they see that the subject appears to be armed and is asleep, and they retreat to the cover of their patrol car and request additional units via radio. The second two officers are brought in as cover officers, and together all four officers are expected to create and execute a plan to safely take the person into custody. This type of training is given in both sergeant and officer CPT as well as in PRO training. The purpose of this is to apply the DAT concept – filling roles, communicating, discussing contingencies, and then executing a plan – to a multitude of different scenarios.

The Board inquired further about the DAT concept, and Sergeant Sotto explained that this concept is designed to get officers to plan and anticipate contingencies, as well as to fill roles and bring specialized equipment to bear on a problem. When asked who in the DAT was responsible for planning for contingencies, Sergeant Sotto responded that initially this must be handled by the officers who are on scene. Once a more experienced officer, or a sergeant if the sergeant has the requisite experience and skill, arrives, then that person can take over as the team leader.

Sergeant Sotto gave information on the use of the rifle, explaining that the PRO qualification course includes shooting from seven out to 50 yards, and that the rifle can be effective beyond that range.

In response to a question about how many PROs can be included in a DAT, Sergeant Sotto replied that it depends on the terrain and circumstances, including what the subject is armed with. If additional PROs are available, then additional DATs can be set up to cover different angles or possible escape routes. There is no optimal number or limit to the number of PROs on a DAT. If PRO or SWAT team members are available, however, it is preferred to have those officers on the DAT due to the higher amount of training they receive.

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Regarding the number of rounds officers are taught to fire when engaging a lethal threat, Sergeant Sotto explained that for all firearms platforms officers are not trained to fire a specific number of rounds, but instead are taught to continue firing as long as a lethal threat presents itself and stop firing once the lethal threat no longer exists. Officers are taught to continuously assess while they are firing, and to stop when they perceive that the threat has ended or been neutralized. The training also demonstrates that some delays, due to things like perception delays or view obstruction, may exist that keep the officer from immediately realizing that the threat is no longer present.

In terms of engaging a lethal threat with the patrol rifle, PROs are taught the different ballistic capabilities of the rifle but they are not trained to change their cadence or expectation of fire when using the rifle as opposed to the handgun to face a lethal threat. Although the rifle does have different ballistic capabilities, the characteristics and capabilities of the subject facing force – such as mental illness, susceptibility to pain, or internal drive to continue fighting – cannot be reliably determined prior to a lethal force encounter. Instead, PROs are taught to use appropriate force until the threat is no longer present, which is the same way they are trained to use their handguns when presented with a lethal threat.

Sergeant Sotto was asked about PROs self-deploying into a DAT. He explained that this can occur, although the arriving PRO will ideally get some briefing from other officers already on scene. However, there has been training, such as for active shooters, where a responding officer might not get a full briefing on the situation and needs to fill in with as much information as they can get on the fly. For a less-exigent circumstance than an active shooter, PROs are still allowed to self-deploy, but should get briefed as soon as is feasible – until they are assigned a specific role, the PRO would be expected to play the role of an extra, or utility, officer. Sergeant Sotto explained that Department General Order (DGO) K-06 specifies that PROs deploying their rifle advise of that fact over the radio when feasible.

Moving to the Bearcat, Sergeant Sotto explained that the Department first acquired it in approximately 2008 or 2009, and that his first experience with it was from SWAT training, where the SWAT team members were allowed to familiarize themselves with driving and using the vehicle. Sergeant Sotto said that the Bearcat's armor is rated to stop up to a .50 caliber bullet, and that the windows are all ballistic rated to stop rifle rounds as well. The SWAT team uses the Bearcat at almost all training days and for scenario training, and in approximately 2016 the Department began allowing PROs to take the Bearcat to critical incidents that did not warrant a full SWAT callout.

Sergeant Sotto noted that the SWAT team uses the Bearcat on almost every callout, and that team members are trained on its use and capabilities. Team members also have experience with live-fire drills using the Bearcat as cover. Typically, the Bearcat is set up broadside to the threat, so that operators can use the engine block, hood, turret, and back as cover points to engage the subject. While SWAT team members have trained in shooting from the portholes cut in the side armor of the Bearcat, this is an unconventional shooting position which is not the ideal platform for proper use of the rifle. SWAT team members receive training in positioning the Bearcat

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during many of the scenario trainings they attend throughout the year, and debrief every time that the Bearcat is used during a callout after the incident is concluded.

For PRO training with the Bearcat, initially the training was set up to mirror the familiarization given to SWAT team members. PROs were trained during the September 2016 quarterly training, and learned about driving and utilizing the Bearcat as cover. Sergeant Sotto explained that the main benefit to the Bearcat is that it can be used as a large piece of cover, especially compared to a patrol car or SUV, so that the officers can spread out and get different angles from which to see the subject. The only true point of cover on a patrol car or SUV is the engine block, whereas the Bearcat offers cover across its length.

Beyond SWAT and PRO officers, rank-and-file officers and sergeants are taught during critical incident training in CPT about how to utilize the Bearcat. Since CPT is conducted almost every week with a new group of officers or sergeants, the Bearcat is not brought out but instead thought exercises are conducted in the classroom. When conducting practical exercises, an SUV is used as a stand-in for the Bearcat. Officers and sergeants are taught about the ballistic capabilities of the vehicle and how it can assist officer safety in critical incident scenarios.

Sergeant Sotto explained that SWAT and PRO officers are authorized to retrieve the Bearcat for deployment to the field absent a SWAT callout. Typically, when an officer, supervisor, or commander on scene recognizes the need for the Bearcat they will request that a PRO or SWAT team member currently working retrieve it from the Eastmont substation. These deployments are typically made with the assent of the watch commander or on-scene incident commander, although there is no formal policy requiring consent from a command officer. Typically, a sergeant will consult with or advise the watch commander if the Bearcat is going to be deployed.

Sergeant Sotto explained that the purpose of the Bearcat is to enhance the safety of officers at the scene and to enhance the safety of the public. Since the Bearcat is fully armored, officers can drive it in to an area where there is an active shooter and rescue people, for example.

Moving on to SIM, the Board asked for the purpose of SIM in a police setting. Sergeant Sotto explained that SIM are used as a less-lethal force option, and that in many situations SIM can be more advantageous than other less-lethal options such as Oleoresin Capsicum (OC), baton, or the electronic control weapon (ECW) because of the greater range that SIM allow. The Department currently uses two less-lethal 12-gauge SIM, the Safariland / Def-Tec Drag-Stabilized Flexible Baton round and the CTS Super Sock, which have nearly identical capabilities. Both are small cloth pouch projectiles, with tails for stabilization, containing 40g of #9 lead shot. The projectiles are encased in a 12-gauge shotgun shell and are shot through the department-issued Remington 870 shotgun.

The bulk of the Department's sworn members are trained and qualified on the SIM – officers and sergeants are trained and re-qualify in CPT, and since 2016 all trainees graduating from the basic academy have received initial SIM qualification prior to graduation.

Concerning the use and capabilities of the SIM munitions, Sergeant Sotto explained that SIM are a necessary tool for situations where the need to use less-lethal force may arise but where

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officers do not necessarily want to get too close to the subject. This includes incidents where persons are barricaded in a structure, or where the person may possess an edged weapon. Sergeant Sotto described the SIM capabilities as being similar to that of a baton, but with the ability to deploy from distance. The SIM creates blunt-force trauma, which hopefully creates a psychological imperative for the subject to cease his or her resistance. Unlike an ECW, the SIM does not cause involuntary incapacitation. Sergeant Sotto explained that, even for a person armed with a firearm, having SIM available is good practice – for an unconscious or un-responsive armed subject, the SIM might be used to overcome their non-compliance, as officers at that distance often cannot determine whether the person is truly unconscious or is pretending. In this case, Sergeant Sotto explained that the SIM is not used simply to wake someone up, but might be used after other, less-intrusive means like the siren, shouting, or loudspeaker were used without compliance.

Asked about nicknames that officers use for the SIM, Sergeant Sotto replied that “thump” is often used as a verb in real and training scenarios when describing utilizing the SIM against an individual. He said that he had not heard the term “bag” used in this setting, but that due to the large instructor cadre and the amount of different levels of experience and sheer number of officers at the Department, it would not be surprising if “bag” was also used as a similarly-applied verb.

Returning to the deployment of the patrol rifle by PROs, Sergeant Sotto explained that the Department does not keep a record of the number of rifle deployments. Individual PROs keep a log book of deployments and a round count to ensure that the rifle is properly maintained. An individual PRO’s deployment log stays with that officer, and the PRO instructors will sometimes examine the logs at quarterly trainings. Sergeant Sotto stated that he was unsure whether a deployment log of PRO deployments was being forwarded to the BFO Deputy Chiefs, as is specified in DGO K-06.

The Board asked specifically about DGO K-06, section VIII, B, which states that, as soon as practical, a PRO deploying the patrol rifle shall advise the Communications Division. The Board inquired as to whether PRO training emphasized this direction. Sergeant Sotto explained that many times the fact that the PRO will be deploying their rifle is implied, and referenced the scenario of calling for a PRO to retrieve the Bearcat – it is implied that the PRO will also be deploying his or her rifle. Additionally, if a supervisor or commander calls for PROs to respond to the scene, it is implied that they will be deploying their rifles.

**C. Bearcat and Patrol Rifle Officer Program**

Lieutenant M. Beaver appeared before the Board as a subject matter expert on the use of the Bearcat armored vehicle and on the Department’s Patrol Rifle Program. Lieutenant Beaver has been with OPD since 1997, and has worked a variety of uniformed assignments including patrol and CRT. He became a PRO in 2000 and a member of the Tactical Team (SWAT) Entry Element in 2001. Lieutenant Beaver attended firearms instructor school in 2001 and began teaching in the police academy. In 2002 Lieutenant Beaver, then an officer, was selected as the PRO coordinator, a position he continues to hold as an ancillary assignment. In 2007, Lieutenant Beaver was promoted to Sergeant, and became a team leader on the SWAT Entry Element. He

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has been an instructor in the Department's SWAT school since 2008, and has attended five California Tactical Officer Conferences. In 2018, he was promoted to the rank of Lieutenant, and is currently a tactical commander for the SWAT team. Lieutenant Beaver reviewed the materials prior to his appearance at the Board.

Lieutenant Beaver explained that OPD obtained the Bearcat armored vehicle around 2006, and that members of the SWAT team initially brought it to training for familiarization. Since then, the Bearcat has been used on nearly every callout of the SWAT team. In 2016, the department decided to allow PROs to deploy the Bearcat to incidents in the field absent a full SWAT callout, and the Bearcat was brought to PRO training so that PROs could become familiar with the vehicle and its characteristics. In response to questions about policy and training for supervisors and commanders on the use of the Bearcat, Lieutenant Beaver explained that there is no written policy on the use of the Bearcat, and that he is not aware of any formal training for supervisors or commanders on the use of the Bearcat at critical incident scenes.

Lieutenant Beaver was asked about the role of the PRO coordinator, and answered that the PRO coordinator is responsible for the overall administration of the program. It is the coordinator's responsibility to plan and schedule training, and ensure that PROs are properly qualified on their weapons system. The coordinator also ensures that the rifles are maintained and deals with any equipment malfunctions, as well as coordinating with the PRO instructors on proposed training objectives – typically based on trends seen in previous deployments or issues identified in critical incident debriefs.

Currently, PROs qualify quarterly, and cannot miss more than one quarterly training in a row – if they miss two sessions they are de-certified and cannot deploy the rifle until they attend another training session and re-qualify with the weapon.

The Board asked specifically about the PRO coordinator's responsibility to forward a PRO activity log to the Bureau Deputy Chiefs. Lieutenant Beaver replied that this is written in policy, but practice has since changed. When the SWAT team went to its current model of holding regular training and having one of the team leaders submit a training after-action report, the PRO training switched to this model as well. When the PRO program was established, the PRO's logbook was used to track deployments and provide justification for the cost of the program, the equipment, and the training time. After a time, the Deputy Chiefs decided that an after-action report from the quarterly trainings provided a better record of how the PROs were being trained and utilized. The logbooks are still used to track round counts for maintenance purposes. Lieutenant Beaver noted that, as PRO coordinator, he had not been forwarding an activity log to the Bureau Deputy Chiefs for at least five years. PROs are still required to fill out log books, and Sergeant S. Toribio created a spreadsheet to track the round count of each weapon for maintenance purposes.

Regarding the deployment of PROs, Lieutenant Beaver stated that, per DGO K-06, PROs are required to notify the Communications Division when deploying their rifles – the intent of this was so that a supervisor was aware that a rifle was being deployed. However, he added that if a supervisor was requesting that the PRO respond to the scene, then the need for the policy requirement has been met.

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Lieutenant Beaver noted that PROs are trained to load their duty magazines with a full 30 rounds, but that this is not spelled out in a policy.

The Board asked about the training that PROs receive at quarterly training. Lieutenant Beaver replied that PROs receive scenario training including scenarios with armed subjects, such as simulating a yard search or a barricaded subject. The scenarios are designed to have various levels of outcome, from compliance to lethal force. PROs are also exposed to DAT training, including the possibility of having different force options available and the necessity for different roles on the DAT. Lieutenant Beaver stated that DAT training teaches tactics, techniques, and possible procedures, with the goal of setting guidelines on how to deal with various different scenarios.

In response to a question about PRO training on the Bearcat, Lieutenant Beaver replied that PROs are trained on retrieving the Bearcat from the substation and driving it, as well as working the doors, turret, and other accessories. PROs also get live-fire familiarization from the Bearcat, and are taught to keep in mind that the offset of the muzzle compared to the sights of their rifle must be considered when shooting to avoid striking the vehicle. SWAT team members get similar training, but the training is more frequent.

Lieutenant Beaver was asked about DAT training for SWAT team members. He replied that SWAT members are exposed to all of the different roles which exist in a DAT, and supervisors who are part of the team are given opportunities in training to supervise a DAT. During scenario training, this typically means that the person playing the team leader will gather the team, set the mission, explain the situation, and talk through the plan of action and possible contingencies.

In the field, Lieutenant Beaver explained, the manner in which a DAT team leader might brief the team is dependent on the circumstances of the event, including the proximity of the team to the incident and how much exigency exists in getting the team into place.

The Board asked if there was any training on self-deployment for PROs, or direction given on how a PRO might insert themselves into a DAT. Lieutenant Beaver explained that some scenarios are run where the students are introduced into the scenario at different times, to simulate as if they are arriving on scene during the course of an incident. PROs can put themselves into a DAT, although at some point they would need to be briefed by another team member or the team leader. PROs and SWAT team members are taught to play a utility role, available for a mission as needed, when they join with a DAT.

The Board asked a series of questions about SWAT team member training, specifically members of the entry element. Lieutenant Beaver stated that a supervisor or team leader of a DAT typically has only that job, which is to give assignments, plan for contingencies, take input, and control the team. The team leader may need to switch to a more active role, or take on another role, however, if the situation changes or an exigency presents itself.

The Board asked how sergeants on the SWAT team, and who are only operators and not supervisors while on the team, are expected to differentiate their behavior when they are in a

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patrol or other uniformed setting as a supervisor. Lieutenant Beaver explained that, due to the training that SWAT members receive, they frequently take command of DATs in the field even if they hold the rank of officer, so for a sergeant the role of the team leader would not be any different.

Asked about whether no-shoot scenarios were trained in PRO or SWAT training, Lieutenant Beaver explained that they are, and there are scenarios where the subject possesses a firearm but can be taken safely into custody without force. This can be taught both in drills and using reality-based training, such as with simunitions. During these scenarios, officers are taught tactics, techniques, and procedures – tools with which to identify the threat and then plan for a safe and peaceful resolution. Some of these scenarios have included subjects who were sleeping or otherwise unconscious, and officers are taught to consider all different types of force options.

Lieutenant Beaver stated that his belief is that the Bearcat has been deployed by field personnel without a SWAT callout an average of once per week.

#### **D. Command and Control**

Lieutenant C. Shannon appeared before the Board as a subject matter expert on command and control of critical incidents. Lieutenant Shannon has been a member of OPD for 21 years, and spent time as an officer working in patrol, CID, and as a field training officer. After being promoted to Sergeant, Lieutenant Shannon worked as a patrol supervisor. Since being promoted to Lieutenant, he has worked as a commander in IAD, OIG, and the Special Operations Division (SOD) and has served as a patrol watch commander. He holds an ancillary assignment as a tactical commander for the Tactical Team (SWAT), and for the last seven years has worked on major incident planning and logistics for the department. Lieutenant Shannon has a bachelor's degree from UC Berkeley and has attended training given by the California Narcotics Officers' Association (CNOA), National Tactical Officers' Association (NTOA), Force Science Institute, and Americans for Effective Law Enforcement (AELE). Lieutenant Shannon currently teaches recruits in the academy and sworn members in CPT on officer-involved shooting and critical incident scene management. He reviewed the materials prior to his appearance before the Board.

The Board asked Lieutenant Shannon about training he received as a commander regarding the incident command system (ICS). He replied that most command officers at OPD attend basic ICS courses, and that as part of continuing professional training for command-level officers he co-instructed with former Lieutenant M. Reilly on command and control of critical incidents. Within this course, there is instruction for command officers on topics such as handling barricaded subjects, ways to manage critical incident scenes with patrol personnel, and factors which may necessitate a SWAT callout. This training includes concepts such as forming DATs and setting perimeters to contain dangerous subjects.

Lieutenant Shannon was asked to explain the role of the watch commander as incident commander of a scene where a subject is armed with a firearm. He replied that the watch commander is typically not the first officer on scene, so instead they should ensure that initial

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steps, such as ensuring adequate response and making sure a supervisor is dispatched, occur. Next, the incident commander should begin ensuring that the scene is isolated, contained, and evacuated, dependent on the circumstances. For instance, if the location of the subject is known, having a DAT form may be the first priority, otherwise containment of the subject inside of a perimeter may take precedence. After the scene is contained, then formation of a DAT is typically the next main concern.

The Board asked whether the incident commander had a role in selection of DAT members and in setting their mission and tactics. Lieutenant Shannon replied that ultimately, as the person in command of the incident, the incident commander has full control and is responsible. In practice, this means that the incident commander approves concepts for a plan and sets tasks or missions for subordinate units, which are then tasked with executing those assignments. As such, the incident commander typically broadcasts general direction over the patrol radio to ensure that all personnel on that incident are informed of his or her direction.

Lieutenant Shannon spoke to the selection of a team leader for the DAT, and said that factors including that person's experience, their skill in handling whatever type of situation is being faced, and the incident commander's assessment of that team leader's decision-making processes all play a part in the choice.

In terms of the roles of officers within the DAT, and the incident commander's input or control over that level of detail within the team, Lieutenant Shannon said that, as with any command, there is an expectation of "trust but verify." He elaborated by saying that OPD assumes that a DAT will at minimum consist of a team leader, a talker/cuffer, a primary ("lethal") cover, and a less-lethal officer. The incident commander can safely assume that at the minimum these roles are filled, but then should also verify with the team leader that all the roles are filled and that the team leader has the requisite pieces needed to accomplish the team's mission.

In terms of the role of the team leader, Lieutenant Shannon explained that the DAT team leader is in charge of that team of officers, and is focused on leading and directing them. The focus of that team leader should not be any externalities, such as the perimeter or other assignments, as the DAT's main mission is to deal with the subject posing a threat and then plan for contingencies. The team leader is primarily responsible for forming the DAT, and the incident commander should be formulating the mission and intent of the DAT and communicating that to the team leader.

Asked specifically about a scenario with an armed and unconscious or unresponsive subject, and what resources he would want as part of a DAT, Lieutenant Shannon replied that there should be at least one – and possibly a second, depending on terrain – primary cover officer. Additionally, less-lethal options like the ECW or SIM, depending on the distance, should be present, as well as one officer assigned to communicate with and handcuff the subject. Ideally, there would be at least one additional officer as a utility to fill in if necessary or if an unexpected job arises.

The Board asked whether there might be a situation where a team leader might take over another role as part of the DAT. Lieutenant Shannon explained that this might happen, depending on the skill set of the team leader and whether an exigency presented itself. He cautioned that

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unexpected or unknown factors could change and require swift action. Even without an exigency, Lieutenant Shannon noted that if there was a critical, unfilled need (such as no PROs, or no less-lethal trained officer) and the team leader had specific skills to fill that need, the team leader might need to take on both roles.

Asked if there was any formal documentation on the roles for a supervisor of a DAT, Lieutenant Shannon replied that there was none of which he was aware. He explained that the ultimate purpose and objective of the incident commander for most critical incidents is the preservation of life, the arrest of the subject, and the preservation of the crime scene. To achieve that, critical incidents typically require an inner and outer perimeter, command post, and a staging area for additional resources. As the criminal investigation continues, other tasks such as intelligence gathering, notifications to affected or interested parties, and marshalling of additional resources (such as air assets, public information officer, armored vehicle, SWAT, etc.) come to bear.

Regarding where the incident commander should be located during a critical incident, Lieutenant Shannon noted that the command post should ideally be within the outer perimeter but outside of the inner perimeter, and out of direct line of sight with the incident. The operational concept is to place the command post slightly removed so that the incident commander can maintain a more global perspective. In terms of additional resources that may need to be brought to the scene, such as the Bearcat, often the suggestion will come from on scene officers and then will be approved by the supervisor or commander on scene.

Specifically regarding the Bearcat, Lieutenant Shannon explained that, even if the Bearcat is brought to a scene where an incident commander is in charge, the team leader in charge of the DAT will likely be the person who gives direction as to how the Bearcat is positioned.

Lieutenant Shannon stated that, as situations change in a critical incident, the incident commander needs to stay abreast of these changes and modify the mission of the assigned personnel accordingly. If the mission is modified or replaced with a new directive, the incident commander is the one responsible for notifying the rest of the officers, typically via the radio.

## VII.

### USE OF FORCE ASSESSMENT

The Board assessed each use of force under *Graham v. Connor*, as well as the event(s) that led to each use of force.<sup>7</sup> *Graham v. Connor* and its progeny require an assessment of the reasonableness of the officers' actions in light of the totality of the facts and circumstances confronting them, including the following three factors: "[1] the severity of the crime at issue, [2] whether the suspect poses an immediate threat to the safety of the officers or others, and [3] whether he is actively resisting arrest or attempting to evade arrest by flight."<sup>8</sup>

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<sup>7</sup> *Graham v. Connor*, 490 U.S. 386 (1989).

<sup>8</sup> *Id.* at 396; *Bryan v. McPherson*, 630 F.3d 805, 826 (9th Cir. 2010) (the Graham factors are "not exclusive" and determining reasonableness requires examination of the "totality of the circumstances").

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**A. Initial Investigation and Detention/Arrest Assessment**

The Board assessed the initial attempts to detain Pawlik, in light of the facts known to the officers at the time of the incident. The Board reviewed the audio recording of the call for service, which was originally routed to the OFD dispatch center, where the caller reported that he saw a male subject unresponsive in between two houses, with an object in his hand that could have been a firearm. Based on this information, OPD officers were dispatched to the scene.

Officer Philips was the first on scene, and approached the area on foot where Pawlik was lying. Officer Philips, peering down the walkway between the two structures from the steps of 928 40<sup>th</sup> Street, observed Pawlik with a handgun in his right hand. Officer Philips saw that Pawlik was breathing, and did not have any apparent injuries, and reported his observations over the patrol radio. Based on the details given by the caller, plus the observations of Officer Philips confirming that Pawlik was armed with a handgun in his right hand, the Board determined that there was reasonable suspicion to detain Pawlik to investigate whether the handgun Pawlik was carrying was loaded in a public place, a violation of Penal Code § 25850(a).

Once the officers made their plan and the Bearcat arrived, Pawlik woke up. The officers gave several commands, which Pawlik did not follow. Notably, the officers gave several commands for Pawlik to drop the gun; instead, Pawlik raised the gun and pointed it in the direction of the officers. All four of the officers who shot Pawlik gave statements attesting to the fact that Pawlik pointed the handgun at the officers (a violation of Penal Code § 417(c)), as did Officer Philips. All of the officers were found credible by IAD, and the Board discussed that no evidence contradicts the officers' statements that Pawlik raised the gun and that it was pointed in their direction after failing to comply with commands to drop the gun. The Board noted that the video forensic analysis presented by CID and IAD confirmed that Pawlik lifted the handgun up and pointed it towards the officers, after he had been told to drop the gun. The Board determined that the officers, at the time of the use of force, had probable cause to arrest Pawlik for violations of Penal Code § 148(a) (Resist, Obstruct, or Delay Peace Officer) and Penal Code § 417(c) (Brandish Firearm in Presence of a Peace Officer).

Based on the totality of the circumstances, the Board determined that the detention and arrest of Pawlik was legal and within Department Policy.

**B. Use of Force**

The Board concurred with CID and IAD's assessment that five (5) separate officers utilized force during this incident. Four officers (Sergeant Negrete, Officer Berger, Officer Hraiz, and Officer Tanaka) used lethal force, while Officer Philips fired a less-lethal SIM from a shotgun. The Board analyzed PDRD video from the incident and observed that each officer who used lethal force fired all of their shots almost simultaneously, and that the total amount of time between the first round and the last round by all the officers was just under three seconds. Given the compressed timeframe of each use of force, plus the testimony of the subject matter experts regarding the way that officers are trained to fire when faced with a lethal threat (*i.e.*, to continuously shoot and assess the threat, and to stop shooting only when the lethal threat no

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longer presents itself), the Board analyzed each officer's lethal use of force as a single event and decision.<sup>9</sup>

The Board reviewed each use of force independently, assessing the objective reasonableness of the force based not only on the *Graham v. Connor* Supreme Court precedent but also on OPD policy regarding the use of force. Discussion of each event follows:

**1. Lethal Firearm Discharge Level 1, Type 1 (Sergeant F. Negrete)**

The Board began deliberations on this use of force by reviewing the IAD findings. IAD found that Pawlik was in possession of a loaded firearm in a public place, a violation of Penal Code § 25850(a), and that he did not obey the commands of officers and pointed a loaded handgun at the officers in violation of Penal Code § 417(c). The Board agreed that the severity of the original crime, possession of a loaded firearm in public, increased when the officers gave Pawlik commands to which he did not comply. The Board addressed this further in their analysis of the immediacy of the threat posed by Pawlik, but noted that this non-compliance increased the severity of the overall situation.

IAD's investigation led the investigators to the conclusion that Pawlik posed an immediate threat to Sergeant Negrete when Sergeant Negrete fired his AR-15 rifle at Pawlik. Specifically, IAD found that Pawlik had the intent, means, opportunity, and ability to shoot the officers when he pointed the handgun he possessed at officers, and that this action constituted an immediate threat of lethal force.

The Board concurred that Sergeant Negrete reasonably perceived Pawlik as an immediate threat to Sergeant Negrete and other officers at the time the force was used. The Board noted that OPD's General Order K-03, *Use of Force*, characterizes a person as posing an immediate threat if "the person is reasonably perceived by a member or employee to have the present intent, means, opportunity and ability to complete the threat, regardless of whether the threatened action has been initiated." The Board examined in detail whether it was reasonable for Sergeant Negrete to believe that Pawlik posed an immediate threat.

- **Intent:** The Board noted that Pawlik did not say anything to the officers during the encounter, but that a reasonable officer could infer a likely intent based on Pawlik's actions. Once Pawlik woke up, after the Bearcat arrived on scene, the officers gave at least 12 separate commands to Pawlik over the course of approximately 48 seconds, at least seven of which commanded Pawlik to take his hand off the gun. Pawlik did not drop the gun and began to move his body as if to sit up. At this point, Pawlik demonstrated an intent not to comply with the officers' commands, however, officers did

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<sup>9</sup> See *Plumhoff v. Rickard*, 572 U.S. 765, 777 (2014) ("It stands to reason that, if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended").

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not use force. As officers continued to give commands to drop the gun, Sergeant Negrete reported that Pawlik looked at the officers, grasped the gun, and then raised it up and pointed it at him and other officers. Sergeant Negrete believed that this showed Pawlik's intent to fire the gun at him and the other police officers.

The Board noted that all the involved officers reported seeing Pawlik raise the handgun and point it towards them, but that the un-enhanced PDRD video of Pawlik's movements was not clear enough to discern whether this occurred. However, the OPD video forensic analyses showed Pawlik's arm and body moving in a manner consistent with him pointing the handgun at the officers. Moreover, PDRD confirms that all the officers fired their weapons almost simultaneously, evidencing that all the officers perceived the same lethal intent and threat. Given the totality of the circumstances, the Board agreed that there was sufficient evidence to come to a finding that Pawlik had indeed pointed the handgun at the officers.

**Means:** The Board unanimously agreed that Pawlik possessed the handgun recovered from near his body at the conclusion of the incident, and that a reasonable officer could have believed that it was loaded and capable of inflicting great bodily injury or death on one of the officers or a member of the public. Officer Philips had gotten close enough to view the handgun in Pawlik's hand. Additionally, Sergeant M. Rowley, who was on scene, used a pair of binoculars to view Pawlik. Sergeant Rowley reported to the officers on scene that he believed the handgun to be a ".45" (.45 caliber, a common handgun caliber available in the US and capable of causing great bodily injury or death and an authorized caliber which OPD personnel may carry on duty). On the other hand, there were no facts that would have led the officers to believe that the gun was not loaded. (Officers confirmed at the end of the incident that the weapon was in fact loaded.)

- **Opportunity:** The Board agreed that Pawlik possessed the opportunity to shoot the officers. While the officers were behind a piece of cover, subject matter expert Sergeant Jones testified that a piece of cover may lower, but does not entirely negate, the chance of an officer being struck by a round, and that officers are trained accordingly. The officers were positioned in such a way as to put the Bearcat armored vehicle in between them and the threat (Pawlik), but still had their heads and parts of their upper bodies exposed as they both attempted to communicate with Pawlik and keep vigilant surveillance on Pawlik as part of their primary duties: contain the subject and take him into custody. From where Pawlik was lying, a reasonable officer could conclude that Pawlik could have fired the handgun and struck Sergeant Negrete or one of the other officers.
- **Ability:** The Board found that a reasonable officer could have concluded that Pawlik was capable of firing the handgun he possessed at the officers. Pawlik, though initially asleep or unconscious, roused himself after the Bearcat arrived on scene. Once he did so, Pawlik did not follow the clear and loud commands of the officers as they told him several times to take his hand off the gun. Just before Sergeant Negrete used force, Pawlik made a sudden movement which was captured on Sergeant Webber's PDRD and appeared to be Pawlik attempting to sit or get up. Video forensic analyses showed further evidence that Pawlik's hand, containing the handgun, was moving upwards from the

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ground just before Sergeant Negrete used force. The officers noted that Pawlik, aside from initially being unresponsive, did not appear injured or otherwise unable to utilize the handgun to fire at officers.

The Board also agreed with IAD's assessment that, although officers had restricted the public's access to the scene by establishing a perimeter and traffic control posts, and had attempted evacuations of nearby residences, the officers could not be certain other members of the public would be out of harm's way if Pawlik fired his handgun into a nearby structure or generally in the area. The Board determined that Pawlik's pointing of the firearm in a residential area posed an immediate threat to the public.

IAD determined that, at the time that Sergeant Negrete used force, Pawlik's passive resistance (in failing to comply with the officers' orders) had escalated to active and potentially lethal resistance (in raising the weapon at the officers). The investigators noted that Pawlik did not comply with the officers' orders to drop the gun, and that video analysis showed that Pawlik was holding a handgun in his right hand and that his right arm moved as the officers gave him commands to drop the gun. The Board agreed, noting that the officers gave Pawlik several commands to get his hand off the gun. The time between when Pawlik awoke and when the officers used force, approximately 48 seconds, was brief but was sufficient time for Pawlik to gather his faculties and take his hand off the handgun. The Board noted that the officers were all wearing full police uniforms, and that the OPD Bearcat says "OAKLAND POLICE DEPARTMENT" in large white letters on the side.

Based on the totality of the circumstances, the Board determined that Sergeant Negrete's use of force – firing seven lethal rounds from his AR-15 rifle at Pawlik – was reasonable under law and In Compliance with OPD Policy.

The Board also agreed with IAD's assessment that Sergeant Negrete properly de-escalated his force once Pawlik was no longer a threat. The IAD investigation found that Sergeant Negrete fired his seven rounds in less than three seconds, and then stopped firing as Pawlik fell back to the ground. Sergeant Negrete re-assessed, determined that Pawlik was no longer a lethal threat, and then worked with other officers to take Pawlik into custody.

**2. Lethal Firearm Discharge Level 1, Type 1 (Officer W. Berger)**

The Board began deliberations on this use of force by reviewing the IAD findings. IAD found that Pawlik was in possession of a loaded firearm in a public place, a violation of Penal Code § 25850(a), and that he did not obey the commands of officers and pointed a loaded handgun at the officers in violation of Penal Code § 417(c). The Board agreed that the severity of the original crime, possession of a loaded firearm in public, increased when the officers gave Pawlik commands to which he did not comply. The Board addressed this further in their analysis of the immediacy of the threat posed by Pawlik, but noted that this non-compliance increased the severity of the overall situation.

IAD's investigation led the investigators to the conclusion that Pawlik posed an immediate threat to Officer Berger when Officer Berger fired his AR-15 rifle at Pawlik. Specifically, IAD found that Pawlik had the intent, means, opportunity, and ability to shoot the officers when he pointed

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the handgun he possessed at officers, and that this action constituted an immediate threat of lethal force.

The Board concurred that Officer Berger reasonably perceived Pawlik as an immediate threat to Officer Berger and other officers at the time the force was used. The Board noted that OPD's General Order K-03, *Use of Force*, characterizes a person as posing an immediate threat if "the person is reasonably perceived by a member or employee to have the present intent, means, opportunity and ability to complete the threat, regardless of whether the threatened action has been initiated." The Board examined in detail whether it was reasonable for Officer Berger to believe that Pawlik posed an immediate threat.

- **Intent:** The Board noted that Pawlik did not say anything to the officers during the encounter, but that a reasonable officer could infer a likely intent based on Pawlik's actions. Once Pawlik woke up after the Bearcat arrived on scene, the officers gave at least 12 separate commands to Pawlik over the course of approximately 48 seconds, at least seven of which commanded Pawlik to take his hand off the gun. Pawlik did not drop the gun and began to move his body as if to sit up. At this point, Pawlik demonstrated an intent not to comply with the officers' commands, however officers did not use force. As officers continued to give commands to drop the gun, Officer Berger reported that Pawlik sat up and appeared "agitated", as if the officers were bothering him. Officer Berger reported that Pawlik then laid down briefly before sitting up again and raising the right hand, holding the firearm, and pointing it directly at him. Officer Berger thought that Pawlik was going to shoot him.

The Board noted that all the involved officers reported seeing Pawlik raise the handgun and point it towards them, but that the un-enhanced PDRD video of Pawlik's movements was not clear enough to discern whether this occurred. However, OPD video forensic analyses showed Pawlik's arm and body moving in a manner consistent with him pointing the handgun at the officers. Moreover, PDRD confirms that all the officers fired their weapons almost simultaneously, evidencing that all the officers perceived the same lethal intent and threat. Given the totality of the circumstances, the Board agreed that there was sufficient evidence to come to a finding that Pawlik had indeed pointed the handgun at the officers.

- **Means:** The Board unanimously agreed that Pawlik possessed the handgun recovered from near his body at the conclusion of the incident, and that a reasonable officer could have believed that it was loaded and capable of inflicting great bodily injury or death on one of the officers or a member of the public. Officer Philips had gotten close enough to view the handgun in Pawlik's hand. Additionally, Sergeant M. Rowley, who was on scene, used a pair of binoculars to view Pawlik. Sergeant Rowley reported to the officers on scene that he believed the handgun to be a ".45" (.45 caliber, a common handgun caliber available in the US and capable of causing great bodily injury or death and an authorized caliber which OPD personnel may carry on duty). On the other hand, there were no facts that would have led the officers to believe that the gun was not loaded. (Officers confirmed at the end of the incident that the weapon was in fact loaded.)

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- **Opportunity:** The Board agreed that Pawlik possessed the opportunity to shoot the officers. While the officers were behind a piece of cover, subject matter expert Sergeant Jones testified that a piece of cover may lower, but does not entirely negate, the chance of an officer being struck by a round, and that officers are trained accordingly. The officers were positioned in such a way as to put the Bearcat armored vehicle in between them and the threat (Pawlik), but still had their heads and parts of their upper bodies exposed as they both attempted to communicate with Pawlik and keep vigilant surveillance on Pawlik as part of their primary duties: contain the subject and take him into custody. From where Pawlik was lying a reasonable officer could conclude that Pawlik could have fired the handgun and struck Officer Berger or one of the other officers.
- **Ability:** The Board found that a reasonable officer could have concluded that Pawlik was capable of firing the handgun he possessed at the officers. Pawlik, though initially asleep or unconscious, roused himself after the Bearcat arrived on scene. Once he did so, Pawlik did not follow the clear and loud commands of the officers as they told him several times to take his hand off the gun. Just before Officer Berger used force, Pawlik made a sudden movement which was captured on Sergeant Webber's PDRD and appeared to be Pawlik attempting to sit or get up. Video forensic analyses showed further evidence that Pawlik's hand, containing the handgun, was moving upwards from the ground just before Officer Berger used force. The officers noted that Pawlik, aside from initially being unresponsive, did not appear injured or otherwise unable to utilize the handgun to fire at officers.

The Board also agreed with IAD's assessment that, although officers had restricted the public's access to the scene by establishing a perimeter and traffic control posts, and had attempted evacuations of nearby residences, the officers could not be certain other members of the public would be out of harm's way if Pawlik fired his handgun into a nearby structure or generally in the area. The Board determined that Pawlik's pointing of the firearm in a residential area posed an immediate threat to the public.

IAD determined that, at the time that Officer Berger used force, Pawlik's passive resistance (in failing to comply with the officers' orders) had escalated to active and potentially lethal resistance (in raising the weapon at the officers). The investigators noted that Pawlik did not comply with the officers' orders to drop the gun, and that video analysis showed that Pawlik was holding a handgun in his right hand and that his right arm moved as the officers gave him commands to drop the gun. The Board agreed, noting that the officers gave Pawlik several commands to get his hand off the gun. The time between when Pawlik awoke and when the officers used force, approximately 48 seconds, was brief but was sufficient time for Pawlik to gather his faculties and take his hand off the handgun. The Board noted that the officers were all wearing full police uniforms, and that the OPD Bearcat says "OAKLAND POLICE DEPARTMENT" in large white letters on the side.

Based on the totality of the circumstances, the Board determined that Officer Berger's use of force – firing six lethal rounds from his AR-15 rifle at Pawlik – was reasonable under law and In Compliance with OPD Policy.

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The Board also agreed with IAD's assessment that Officer Berger properly de-escalated his force once Pawlik was no longer a threat. The IAD investigation found that Officer Berger fired his six rounds in less than three seconds, and then stopped firing as Pawlik fell back to the ground. Officer Berger re-assessed, determined that Pawlik was no longer a lethal threat, and then worked with other officers to take Pawlik into custody.

**3. Lethal Firearm Discharge Level 1, Type 1 (Officer B. Hraiz)**

The Board began deliberations on this use of force by reviewing the IAD findings. IAD found that Pawlik was in possession of a loaded firearm in a public place, a violation of Penal Code § 25850(a), and that he did not obey the commands of officers and pointed a loaded handgun at the officers in violation of Penal Code § 417(c). The Board agreed that the severity of the original crime, possession of a loaded firearm in public, increased when the officers gave Pawlik commands to which he did not comply. The Board addressed this further in their analysis of the immediacy of the threat posed by Pawlik, but noted that this non-compliance increased the severity of the overall situation.

IAD's investigation led the investigators to the conclusion that Pawlik posed an immediate threat to Officer Hraiz when Officer Hraiz fired his AR-15 rifle at Pawlik. Specifically, IAD found that Pawlik had the intent, means, opportunity, and ability to shoot the officers when he pointed the handgun he possessed at officers, and that this action constituted an immediate threat of lethal force.

The Board concurred that Officer Hraiz reasonably perceived Pawlik as an immediate threat to Officer Hraiz and other officers at the time the force was used. The Board noted that OPD's General Order K-03, *Use of Force*, characterizes a person as posing an immediate threat if "the person is reasonably perceived by a member or employee to have the present intent, means, opportunity and ability to complete the threat, regardless of whether the threatened action has been initiated." The Board examined in detail whether it was reasonable for Officer Hraiz to believe that Pawlik posed an immediate threat.

- **Intent:** The Board noted that Pawlik did not say anything to the officers during the encounter, but that a reasonable officer could infer a likely intent based on Pawlik's actions. Once Pawlik woke up, after the Bearcat arrived on scene, the officers gave at least 12 separate commands to Pawlik over the course of approximately 48 seconds, at least seven of which commanded Pawlik to take his hand off the gun. Pawlik did not drop the gun and began to move his body as if to sit up. At this point, Pawlik demonstrated an intent not to comply with the officers' commands, however officers did not use force. As officers continued to give commands to drop the gun, Officer Hraiz reported that Pawlik appeared "agitated" and "upset", and appeared to know what was going on around him as he glanced back and forth between the officers. Officer Hraiz said that he saw Pawlike's grip on the handgun become firmer, and that Pawlik elevated the gun and pointed it directly at him. Officer Hraiz reported that he thought that Pawlik was a lethal threat.

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The Board noted that all the involved officers reported seeing Pawlik raise the handgun and point it towards them, but that the un-enhanced PDRD video of Pawlik's movements was not clear enough to discern whether this occurred. However, the OPD video forensic analyses showed Pawlik's arm and body moving in a manner consistent with him pointing the handgun at the officers. Moreover, PDRD confirms that all the officers fired their weapons almost simultaneously, evidencing that all the officers perceived the same lethal intent and threat. Given the totality of the circumstances, the Board agreed that there was sufficient evidence to come to a finding that Pawlik had indeed pointed the handgun at the officers.

- **Means:** The Board unanimously agreed that Pawlik possessed the handgun recovered from near his body at the conclusion of the incident, and that a reasonable officer could have believed that it was loaded and capable of inflicting great bodily injury or death on one of the officers or a member of the public. Officer Philips had gotten close enough to view the handgun in Pawlik's hand. Additionally, Sergeant M. Rowley, who was on scene, used a pair of binoculars to view Pawlik. Sergeant Rowley reported to the officers on scene that he believed the handgun to be a ".45" (.45 caliber, a common handgun caliber available in the US and capable of causing great bodily injury or death and an authorized caliber which OPD personnel may carry on duty). On the other hand, there were no facts that would have led the officers to believe that the gun was not loaded. (Officers confirmed at the end of the incident that the weapon was in fact loaded.)
- **Opportunity:** The Board agreed that Pawlik possessed the opportunity to shoot the officers. While the officers were behind a piece of cover, subject matter expert Sergeant Jones testified that a piece of cover may lower, but does not entirely negate, the chance of an officer being struck by a round, and that officers are trained accordingly. The officers were positioned in such a way as to put the Bearcat armored vehicle in between them and the threat (Pawlik), but still had their heads and parts of their upper bodies exposed as they both attempted to communicate with Pawlik and keep vigilant surveillance on Pawlik as part of their primary duties: contain the subject and take him into custody. From where Pawlik was lying, a reasonable officer could conclude that Pawlik could have fired the handgun and struck Officer Hraiz or one of the other officers.
- **Ability:** The Board found that a reasonable officer could have concluded that Pawlik was capable of firing the handgun he possessed at the officers. Pawlik, though initially asleep or unconscious, roused himself after the Bearcat arrived on scene. Once he did so, Pawlik did not follow the clear and loud commands of the officers as they told him several times to take his hand off the gun. Just before Officer Hraiz used force, Pawlik made a sudden movement which was captured on Sergeant Webber's PDRD and appeared to be Pawlik attempting to sit or get up. Video forensic analyses showed further evidence that Pawlik's hand, containing the handgun, was moving upwards from the ground just before Officer Hraiz used force. The officers noted that Pawlik, aside from initially being unresponsive, did not appear injured or otherwise unable to utilize the handgun to fire at officers.

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The Board also agreed with IAD's assessment that, although officers had restricted the public's access to the scene by establishing a perimeter and traffic control posts, and had attempted evacuations of nearby residences, the officers could not be certain other members of the public would be out of harm's way if Pawlik fired his handgun into a nearby structure or generally in the area. The Board determined that Pawlik's pointing of the firearm in a residential area posed an immediate threat to the public.

IAD determined that, at the time that Officer Hraiz used force, Pawlik's passive resistance (in failing to comply with the officers' orders) had escalated to active and potentially lethal resistance (in raising the weapon at the officers). The investigators noted that Pawlik did not comply with the officers' orders to drop the gun, and that video analysis showed that Pawlik was holding a handgun in his right hand and that his right arm moved as the officers gave him commands to drop the gun. The Board agreed, noting that the officers gave Pawlik several commands to get his hand off the gun. The time between when Pawlik awoke and when the officers used force, approximately 48 seconds, was brief but was sufficient time for Pawlik to gather his faculties and take his hand off the handgun. The Board noted that the officers were all wearing full police uniforms, and that the OPD Bearcat says "OAKLAND POLICE DEPARTMENT" in large white letters on the side.

Based on the totality of the circumstances, the Board determined that Officer Hraiz's use of force – firing five lethal rounds from his AR-15 rifle at Pawlik – was reasonable under law and In Compliance with OPD Policy.

The Board also agreed with IAD's assessment that Officer Hraiz properly de-escalated his force once Pawlik was no longer a threat. The IAD investigation found that Officer Hraiz fired his five rounds in less than three seconds, and then stopped firing as Pawlik fell back to the ground. Officer Hraiz re-assessed, determined that Pawlik was no longer a lethal threat, and then worked with other officers to take Pawlik into custody.

**4. Lethal Firearm Discharge Level 1, Type 1 (Officer C. Tanaka)**

The Board began deliberations on this use of force by reviewing the IAD findings. IAD found that Pawlik was in possession of a loaded firearm in a public place, a violation of Penal Code § 25850(a), and that he did not obey the commands of officers and pointed a loaded handgun at the officers in violation of Penal Code § 417(c). The Board agreed that the severity of the original crime, possession of a loaded firearm in public, increased when the officers gave Pawlik commands to which he did not comply. The Board addressed this further in their analysis of the immediacy of the threat posed by Pawlik, but noted that this non-compliance increased the severity of the overall situation.

IAD's investigation led the investigators to the conclusion that Pawlik posed an immediate threat to Officer Tanaka when Officer Tanaka fired his AR-15 rifle at Pawlik. Specifically, IAD found that Pawlik had the intent, means, opportunity, and ability to shoot the officers when he pointed the handgun he possessed at officers, and that this action constituted an immediate threat of lethal force.

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The Board concurred that Officer Tanaka reasonably perceived Pawlik as an immediate threat to Officer Tanaka and other officers at the time the force was used. The Board noted that OPD's General Order K-03, *Use of Force*, characterizes a person as posing an immediate threat if "the person is reasonably perceived by a member or employee to have the present intent, means, opportunity and ability to complete the threat, regardless of whether the threatened action has been initiated." The Board examined in detail whether it was reasonable for Officer Tanaka to believe that Pawlik posed an immediate threat.

- **Intent:** The Board noted that Pawlik did not say anything to the officers during the encounter, but that a reasonable officer could infer a likely intent based on Pawlik's actions. Once Pawlik woke up after the Bearcat arrived on scene, the officers gave at least 12 separate commands to Pawlik over the course of approximately 48 seconds, at least seven of which commanded Pawlik to take his hand off the gun. Pawlik did not drop the gun and began to move his body as if to sit up. Officer Tanaka reported that Pawlik initially appeared to be "scanning" the area, and that the arm holding the handgun was limp. At this point, Pawlik demonstrated an intent not to comply with the officers' commands, however officers did not use force. The second time that Pawlik sat up, Officer Tanaka believed that Pawlik was analyzing the situation, moving his head back and forth at the officers. Officer Tanaka reported that Pawlik was frowning and appeared "irritated", but appeared to understand the situation. Officer Tanaka said that Pawlik raised the handgun and pointed it directly at the officers, and Officer Tanaka felt that Pawlik was a lethal threat to himself, the other officers, and members of the public.

The Board noted that all the involved officers reported seeing Pawlik raise the handgun and point it towards them, but that the un-enhanced PDRD video of Pawlik's movements was not clear enough to discern whether this occurred. However, the OPD video forensic analyses showed Pawlik's arm and body moving in a manner consistent with him pointing the handgun at the officers. Moreover, PDRD confirms that all the officers fired their weapons almost simultaneously, evidencing that all the officers perceived the same lethal intent and threat. Given the totality of the circumstances, the Board agreed that there was sufficient evidence to come to a finding that Pawlik had indeed pointed the handgun at the officers.

- **Means:** The Board unanimously agreed that Pawlik possessed the handgun recovered from near his body at the conclusion of the incident, and that a reasonable officer could have believed that it was loaded and capable of inflicting great bodily injury or death on one of the officers or a member of the public. Officer Philips had gotten close enough to view the handgun in Pawlik's hand. Additionally, Sergeant M. Rowley, who was on scene, used a pair of binoculars to view Pawlik. Sergeant Rowley reported to the officers on scene that he believed the handgun to be a ".45" (.45 caliber, a common handgun caliber available in the US and capable of causing great bodily injury or death and an authorized caliber which OPD personnel may carry on duty). On the other hand, there were no facts that would have led the officers to believe that the gun was not loaded. (Officers confirmed at the end of the incident that the weapon was in fact loaded.)

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- **Opportunity:** The Board agreed that Pawlik possessed the opportunity to shoot the officers. While the officers were behind a piece of cover, subject matter expert Sergeant Jones testified that a piece of cover may lower, but does not entirely negate, the chance of an officer being struck by a round, and that officers are trained accordingly. The officers were positioned in such a way as to put the Bearcat armored vehicle in between them and the threat (Pawlik), but still had their heads and parts of their upper bodies exposed as they both attempted to communicate with Pawlik and keep vigilant surveillance on Pawlik as part of their primary duties: contain the subject and take him into custody. From where Pawlik was lying, a reasonable officer could conclude that Pawlik could have fired the handgun and struck Officer Tanaka or one of the other officers.
- **Ability:** The Board found that a reasonable officer could have concluded that Pawlik was capable of firing the handgun he possessed at the officers. Pawlik, though initially asleep or unconscious, roused himself after the Bearcat arrived on scene. Once he did so, Pawlik did not follow the clear and loud commands of the officers as they told him several times to take his hand off the gun. Just before Officer Tanaka used force, Pawlik made a sudden movement which was captured on Sergeant Webber's PDRD and appeared to be Pawlik attempting to sit or get up. Video forensic analyses showed further evidence that Pawlik's hand, containing the handgun, was moving upwards from the ground just before Officer Tanaka used force. The officers noted that Pawlik, aside from initially being unresponsive, did not appear injured or otherwise unable to utilize the handgun to fire at officers.

The Board also agreed with IAD's assessment that, although officers had restricted the public's access to the scene by establishing a perimeter and traffic control posts, and had attempted evacuations of nearby residences, the officers could not be certain other members of the public would be out of harm's way if Pawlik fired his handgun into a nearby structure or generally in the area. The Board determined that Pawlik's pointing of the firearm in a residential area posed an immediate threat to the public.

IAD determined that, at the time that Officer Tanaka used force, Pawlik's passive resistance (in failing to comply with the officers' orders) had escalated to active and potentially lethal resistance (in raising the weapon at the officers). The investigators noted that Pawlik did not comply with the officers' orders to drop the gun, and that video analysis showed that Pawlik was holding a handgun in his right hand and that his right arm moved as the officers gave him commands to drop the gun. The Board agreed, noting that the officers gave Pawlik several commands to get his hand off the gun. The time between when Pawlik awoke and when the officers used force, approximately 48 seconds, was brief but was sufficient time for Pawlik to gather his faculties and take his hand off the handgun. The Board noted that the officers were all wearing full police uniforms, and that the OPD Bearcat says "OAKLAND POLICE DEPARTMENT" in large white letters on the side.

In regards to Officer Tanaka's use of force, the Board recognized that it had previously determined that Officer Tanaka had failed to properly advise over the radio that he was deploying his rifle (see the section ADDITIONAL ASSESSMENTS AND DELIBERATIONS, below). However, the Board determined that Officer Tanaka was still acting as a peace officer,

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within the scope and in the course of his duties, when confronted with the threat posed by Pawlik, and that Officer Tanaka's failure to follow an administrative procedure did not have bearing on whether his use of force was objectively reasonable.

Based on the totality of the circumstances, the Board determined that Officer Tanaka's use of force – firing four lethal rounds from his AR-15 rifle at Pawlik – was reasonable under law and In Compliance with OPD Policy.

The Board also agreed with IAD's assessment that Officer Tanaka properly de-escalated his force once Pawlik was no longer a threat. The IAD investigation found that Officer Tanaka fired his four rounds in less than three seconds, and then stopped firing as Pawlik fell back to the ground. Officer Tanaka re-assessed, determined that Pawlik was no longer a lethal threat, and then worked with other officers to take Pawlik into custody.

**5. Impact/Impromptu Weapon with Contact – Regardless of Injury Level 2, Type 12  
(Officer J. Philips)**

The Board began deliberations on this use of force by reviewing the IAD findings. IAD found that Pawlik was in possession of a loaded firearm in a public place, a violation of Penal Code § 25850(a), and that he did not obey the commands of officers and pointed a loaded handgun at the officers in violation of Penal Code § 417(c). The Board agreed that the severity of the original crime, possession of a loaded firearm in public, increased when the officers gave Pawlik commands to which he did not comply. The Board addressed this further in their analysis of the immediacy of the threat posed by Pawlik, but noted that this non-compliance increased the severity of the overall situation.

IAD's investigation led the investigators to the conclusion that Pawlik posed an immediate threat to Officer Philips when Officer Philips fired a less-lethal SIM at Pawlik. Specifically, IAD found that Pawlik had the intent, means, opportunity, and ability to shoot the officers when he pointed the handgun he possessed at officers, and that this action constituted an immediate threat of lethal force.

The Board concurred that Officer Philips reasonably perceived Pawlik as an immediate threat to Officer Philips and other officers at the time the force was used. The Board noted that OPD's General Order K-03, *Use of Force*, characterizes a person as posing an immediate threat if "the person is reasonably perceived by a member or employee to have the present intent, means, opportunity and ability to complete the threat, regardless of whether the threatened action has been initiated." The Board examined in detail whether it was reasonable for Officer Philips to believe that Pawlik posed an immediate threat.

- **Intent:** The Board noted that Pawlik did not say anything to the officers during the encounter, but that a reasonable officer could infer a likely intent based on Pawlik's actions. Once Pawlik woke up, after the Bearcat arrived on scene, the officers gave at least 12 separate commands to Pawlik over the course of approximately 48 seconds, at least seven of which commanded Pawlik to take his hand off the gun. Pawlik did not drop the gun and began to move his body as if to sit up. At this point, Pawlik

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demonstrated an intent not to comply with the officers' commands, however officers did not use force. As officers continued to give commands to drop the gun, Officer Philips reported that Pawlik lifted his right hand, which was holding a handgun, and pointed the handgun in the direction of the officers. Officer Philips believed that Pawlik presented a lethal threat to the officers.

The Board noted that all the involved officers reported seeing Pawlik raise the handgun and point it towards them, but that the un-enhanced PDRD video of Pawlik's movements was not clear enough to discern whether this occurred. However, the OPD video forensic analyses showed Pawlik's arm and body moving in a manner consistent with him pointing the handgun at the officers. Moreover, PDRD confirms that all the officers fired their weapons almost simultaneously, evidencing that all of the officers perceived the same lethal intent and threat. Given the totality of the circumstances, the Board agreed that there was sufficient evidence to come to a finding that Pawlik had indeed pointed the handgun at the officers.

- **Means:** The Board unanimously agreed that Pawlik possessed the handgun recovered from near his body at the conclusion of the incident, and that a reasonable officer could have believed that it was loaded and capable of inflicting great bodily injury or death on one of the officers or a member of the public. Officer Philips had gotten close enough to view the handgun in Pawlik's hand. Additionally, Sergeant M. Rowley, who was on scene, used a pair of binoculars to view Pawlik. Sergeant Rowley reported to the officers on scene that he believed the handgun to be a ".45" (.45 caliber, a common handgun caliber available in the US and capable of causing great bodily injury or death and an authorized caliber which OPD personnel may carry on duty). On the other hand, there were no facts that would have led the officers to believe that the gun was not loaded. (Officers confirmed at the end of the incident that the weapon was in fact loaded.)
- **Opportunity:** The Board agreed that Pawlik possessed the opportunity to shoot the officers. While the officers were behind a piece of cover, subject matter expert Sergeant Jones testified that a piece of cover may lower, but does not entirely negate, the chance of an officer being struck by a round, and that officers are trained accordingly. The officers were positioned in such a way as to put the Bearcat armored vehicle in between them and the threat (Pawlik), but still had their heads and parts of their upper bodies exposed as they both attempted to communicate with Pawlik and keep vigilant surveillance on Pawlik as part of their primary duties: contain the subject and take him into custody. From where Pawlik was lying, a reasonable officer could conclude that Pawlik could have fired the handgun and struck Officer Philips or one of the other officers.
- **Ability:** The Board found that a reasonable officer could have concluded that Pawlik was capable of firing the handgun he possessed at the officers. Pawlik, though initially asleep or unconscious, roused himself after the Bearcat arrived on scene. Once he did so, Pawlik did not follow the clear and loud commands of the officers as they told him several times to take his hand off the gun. Just before Officer Philips used force, Pawlik made a sudden movement which was captured on Sergeant Webber's PDRD and appeared to be Pawlik attempting to sit or get up. Video forensic analyses showed further

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evidence that Pawlik's hand, containing the handgun, was moving upwards from the ground just before Officer Philips used force. The officers noted that Pawlik, aside from initially being unresponsive, did not appear injured or otherwise unable to utilize the handgun to fire at officers.

The Board also agreed with IAD's assessment that, although officers had restricted the public's access to the scene by establishing a perimeter and traffic control posts, and had attempted evacuations of nearby residences, the officers could not be certain other members of the public would be out of harm's way if Pawlik fired his handgun into a nearby structure or generally in the area. The Board determined that Pawlik's pointing of the firearm in a residential area posed an immediate threat to the public.

IAD determined that, at the time that Officer Philips used force, Pawlik's passive resistance (in failing to comply with the officers' orders) had escalated to active and potentially lethal resistance (in raising the weapon at the officers). The investigators noted that Pawlik did not comply with the officers' orders to drop the gun, and that video analysis showed that Pawlik was holding a handgun in his right hand and that his right arm moved as the officers gave him commands to drop the gun. The Board agreed, noting that the officers gave Pawlik several commands to get his hand off the gun. The time between when Pawlik awoke and when the officers used force, approximately 48 seconds, was brief but was sufficient time for Pawlik to gather his faculties and take his hand off the handgun. The Board noted that the officers were all wearing full police uniforms, and that the OPD Bearcat says "OAKLAND POLICE DEPARTMENT" in large white letters on the side.

Based on the totality of the circumstances, the Board determined that Officer Philips' use of force – firing one less-lethal SIM at Pawlik – was reasonable under law and In Compliance with OPD Policy. The Board agreed that, although Pawlik presented a lethal threat to Officer Philips and Officer Philips could have used lethal force to defend himself and the other officers, the use of a lower level of force was also reasonable.

The Board also agreed with IAD's assessment that Officer Philips properly de-escalated his force once Pawlik was no longer a threat. The IAD investigation found that Officer Philips fired one SIM round at Pawlik. By the time Officer Philips had worked the action of the shotgun and chambered another round, other officers had already shot and fatally wounded Pawlik. Officer Philips re-assessed, determined that Pawlik was no longer a lethal threat, and then worked with other officers to take Pawlik into custody.

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**VIII.**

**ADDITIONAL ASSESSMENTS AND DELIBERATIONS**

Along with assessing this incident as explained above, the Board deliberated as to the following topics:

**A. Internal Affairs Division Training and Policy Recommendations**

As part of its far-reaching investigation and assessment of the entirety of the incident and the actions of OPD personnel before, during, and after the incident, IAD made a number of recommendations regarding training and policy that the Board considered and accepted:

- IAD recommended that the department-issued cell phones of all officers involved in a Level 1 force incident be collected by CID for possible analysis (see TRAINING POINTS AND DELIVERABLES, below);
- IAD recommended that the Department adopt clear guidelines on requesting forensic video analysis for PDRD, surveillance, or other evidentiary video for force incidents;
- IAD recommended that the Department develop and implement additional training on encounters with unresponsive armed persons as well as on reasonable contingencies to expect during critical incidents involving a DAT;
- IAD recommended various training reminders for several of the involved officers and other personnel who were on scene – the Board accepted all of these recommendations and ordered the training completed;
- IAD recommended that more training should be developed for sworn members on the use and deployment of the Bearcat;
- IAD recommended that SOD maintain a list of personnel who have been trained to operate the Bearcat;
- IAD recommended that CID develop and train all CID investigators on the decision-making process regarding what personnel are sequestered and interviewed after a Level 1 force investigation;
- IAD recommended that the information technology unit explore mounting a PDRD to the Bearcat (Sergeant I. Ramirez noted that this is already in progress) and explore improving the resolution of video from PDRDs deployed in the field;
- IAD recommended that CID update its investigation guidelines and protocols so that command officers overseeing a critical incident where Level 1 force is used are also interviewed.

**B. Criminal Investigation Division Procedures**

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The Board discussed the procedures followed by CID during Level 1 force investigations at length, and developed several recommendations to enhance future investigations of this type. The Board was adamant about ensuring that CID investigators have adequate training on sequestering and interviewing **all** involved officers in a Level 1 force incident, to include command and supervisory officers who may not have directly used force but were supervising or managing the incident.

The Board directed CID to develop training on several aspects of Level 1 force investigations, including on sequestering subjects. In this incident, officers on scene who used force were allowed to “self-select” the member who sequestered them, in some cases calling off-duty members to respond to the scene. The Board recognized that, although there was no evidence of impropriety in this case, this practice could lead to doubts about the integrity of the investigation, and the Board directed CID to review its policies and procedures on this issue, and develop training if appropriate.

The Board also noted that CID needed additional training on all aspects of lethal force investigations, to include reviewing and critically examining all pieces of evidence discovered during an investigation and resolving all discrepancies to the best of their abilities. In this incident, the autopsy report from the Coroner’s Office medical examiner initially listed one wound on Pawlik’s back as a gunshot entry wound, which was incongruent with the visual evidence from the PDRD as well as the statements of the officers. This was not resolved by CID investigators, and IAD had to re-contact the examiner to resolve the discrepancy. (The medical examiner, upon taking a second look, advised that this wound was likely an exit wound but was misidentified due to the ballistic characteristics of high-velocity rifle rounds.)

The Board directed CID to examine the lethal-force investigation protocols and practices of other, similar departments to ascertain whether there are best practices which might be adopted by the Department. The Board noted that CID faces a staffing challenge with Level 1 force investigations because the assigned investigator likely also has other homicide cases that he or she is investigating, which can affect how expeditiously CID can complete a Level 1 force investigation. The Board felt that any opportunities to identify best practices which might streamline or reduce the total investigation time, as well as enhance quality, should be explored.

### **C. Patrol Rifle Officer Program**

The Board debated at length over aspects of the Patrol Rifle Officer Program, specifically in regards to the idea of officers “self-deploying” or otherwise taking the initiative to bring their unique weapons system and training to bear during a critical incident (much of this was precipitated by discussion on whether or not Officer Tanaka violated DGO K-06 by deploying his patrol rifle without advising the communications division).

The Board determined that the entire department needed to review training, policy, and practice on “self-deployment” and initiative-based tactics, to ensure that the flexibility of trained officers recognizing gaps in resources is not lost while at the same time maintaining incident management and control. To that end, the Board directed that additional training on this issue be explored.

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The Board also examined a divergence between policy and practice in regards to patrol rifle officers advising the Communications Division when deploying their rifles on a scene. The Board recognized that DGO K-06, *Patrol Rifle Program*, is outdated and needs revision.

**D. Designated Arrest Teams**

Stemming from the discussion of self-deployment, the Board examined training and practice surrounding the utilization of DATs. The Board noticed that, throughout SME testimony, the importance of communication between members of the DAT and between all officers on a critical incident scene was recognized. The Board saw that, in one instance, communication was done using a “slang” term – Officer Berger told Officer Philips that, if Pawlik moved the handgun he was holding, Officer Philips should “bag” Pawlik. Officers Berger and Philips both stated that they understood this to mean that Officer Philips should use a less-lethal SIM on Pawlik, and that this term was common to the Department. The SME, Sergeant Sotto, said that he had not heard this term, but that the word “thump” was common vernacular in the department to mean utilization of a less-lethal SIM. The Board recommended that training incorporate and train one plain-English term to ensure that, if used, all personnel would understand its meaning.

The Board also felt that additional training was needed for supervisors and commanders on the supervisory and leadership aspects of leading a DAT. The Board recommended that all members, regardless of rank, receive additional training on the roles and responsibilities of a DAT, and that supervisory and command staff receive additional training on top of that on the supervision and leadership of a DAT.

**E. Equipment Issue and Customization**

The Board identified a possible issue regarding one piece of equipment which was used during the incident: Sergeant Negrete’s PDRD and post-incident photos show that his AR-15’s magazine had a stenciled shamrock painted on it. Board member Captain Joshi explained that he was aware of information suggesting that certain white-supremacist fringe groups have co-opted this symbol as their own. The Board unanimously agreed that this symbol was not being used in that fashion in this case; instead, the Board recognized that members of the department’s SWAT team have shamrocks affixed to some items like magazines, uniform patches, or hats in honor of Officer William Burke, an officer born in Ireland who tragically took his own life in 2013. Nevertheless, the Board felt that persons un-familiar with Officer Burke or this tradition could misconstrue the presence of the shamrock on a piece of equipment worn or carried by a police officer.

The Board was made aware that many officers carry personally-owned rifle magazines, and some carry personally-owned handgun magazines as well. To rectify the above issue, the Board strongly recommended that the department purchase and outfit all members authorized to carry rifles with department-owned rifle magazines, which by policy should not be modified or defaced. Additionally, the Board recommended that a command directive be issued reminding all personnel that un-authorized symbols or slogans must not be worn on uniform items or affixed to equipment carried in the field.

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**F. Initial Assessment of Misconduct and IAD Findings**

As part of any Level 1 force investigation, the Internal Affairs Division completes a full assessment not only of the reasonableness of the force at the moment that it is used (as prescribed in *Graham v. Connor*), but also of the entirety of the circumstances including adherence to Department policy and procedure. During the initial convening of the Board, on November 28<sup>th</sup> and 29<sup>th</sup>, 2018, IAD's presentation included the results of their investigation and their recommended findings.

Command and Control – Lieutenant Yu – Initial IAD Findings

In every use of force investigation, the Department strives to examine not only the actions of the involved personnel, but also the supervisory and command accountability attendant to those actions. In this case, IAD examined the overall command and control of the scene by Lieutenant Yu, who was the BFO 1 watch commander at the time of the incident and was on scene acting as the incident commander.

IAD determined that Lieutenant Yu responded to the scene quickly, within ten minutes of the call being dispatched, and set up a command post to manage the incident. He ensured that a perimeter was set, called for resources, and appropriately delegated responsibilities to the sergeants on scene. IAD's initial assessment was that Lieutenant Yu appropriately managed the scene by meeting with Sergeant Negrete and approving Negrete's plan for resolving the issue. IAD felt that Sergeant Negrete lost supervisory control at a critical juncture of the incident, but this was not the fault of—nor under the control of—Lieutenant Yu, and that Lieutenant Yu's responsibilities had been appropriately carried out. IAD recommended a finding of **Exonerated** regarding the allegation that Lieutenant Yu failed to fulfill his command responsibilities (MOR 234.00-2).

Supervision – Sergeant Negrete – Initial IAD Findings

IAD initially found that Sergeant Negrete appropriately formulated a systematic and reasonable plan, and conveyed this plan to each member “in a clear and concise manner.” He shared this plan with Lieutenant Yu and received approval. IAD also found that Sergeant Negrete appropriately positioned the members of the DAT, set up the Bearcat armored vehicle in a tactically sound manner, and had a step-by-step plan for taking Pawlik into custody. However, IAD stated that this plan relied on the assumption that the officers would have to wake Pawlik, and that planning did not account for any scenarios where Pawlik awoke on his own.

Just as the Bearcat was moved into position, Pawlik woke up and began moving, prompting the members of the DAT to start giving Pawlik commands. IAD, based on PDRD video and statements from the officers, determined that Sergeant Negrete became overly focused on directly engaging Pawlik. IAD found that Sergeant Negrete was looking at Pawlik, giving commands, and pointing his AR-15 rifle at Pawlik – IAD stressed that these were all appropriate reactions, but that there were others (such as Officer Berger and Officer Hraiz) who were in position to fill these roles and should have been doing this work while Sergeant Negrete took a more global view.

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IAD found that Sergeant Negrete taking the role of lethal cover, command-giver, and team leader at the same time resulted in the loss of effective control of the DAT. This meant that Sergeant Negrete was unable to supervise the members of the DAT, and he did not see Officer Tanaka get out of the Bearcat and deploy his patrol rifle, raising the number of “lethal” cover officers to four. While IAD noted that there is no limit to the number of officers who can provide lethal cover, the fact that there were at least two available and Officer Tanaka self-deployed without Sergeant Negrete becoming aware showed that Sergeant Negrete had lost supervisory control of the team.

Additionally, IAD noted that Officer Berger, not Sergeant Negrete, gave Officer Philips the direction to use a less-lethal SIM on Pawlik if Pawlik moved the gun. IAD felt that direction of this type was the responsibility of the team leader, and that Sergeant Negrete had allowed his control in that area to lapse by becoming overly focused on Pawlik and the threat he presented.

Based on the totality of the circumstances, IAD felt that Sergeant Negrete’s loss of effective control in the crucial half-minute prior to the use of force was a failure to exercise the responsibilities of a supervisor as expected by the Department, and recommended a finding of **Sustained** for this allegation. IAD noted that the Department differentiates some forms of misconduct as class one (the most serious) and class two depending on whether the alleged conduct included “gross dereliction of duty.” Allegations of failure to carry out the responsibilities of a supervisor are one of these forms of misconduct, and IAD initially found that Sergeant Negrete’s misconduct was of the class two variety (MOR 285.00-2).

Use of Force – All Officers – IAD Initial Findings

As noted in section VII, **USE OF FORCE ASSESSMENT**, IAD’s investigation found that all five of the uses of force identified and examined during their investigation were objectively reasonable under law and in accordance with OPD Policy. IAD recommended that all five force use incidents (MOR 370.27-1) be found as **Exonerated**.

Initial Board Deliberations – November 28<sup>th</sup> and 29<sup>th</sup>, 2018

When conducting its initial deliberations, the Board focused specifically on the issues of command and supervisory responsibility. In regards to the allegation that Sergeant Negrete failed to properly supervise the DAT, the Chair raised concerns that the allegation was improperly classified; instead of a class two allegation, the Chair suggested that the allegation should be viewed as class one. The Chair noted that there was an issue with Sergeant Negrete taking multiple roles (team leader, talker/cuffer, primary cover with a rifle), and that this contributed to his lack of supervision of the team. Additionally, the Chair noted his belief that Sergeant Negrete did not properly brief the DAT, and that his planning was insufficient. Given the outcome of this incident (the loss of Pawlik’s life), the Chair believed that Sergeant Negrete’s conduct did not take due consideration of the need to preserve life, and that as such the misconduct should be analyzed as a class one violation.

There was discussion, but no consensus, on this point. Rather than vote on IAD’s recommendation, the Chair decided that additional interviews and work by IAD should examine

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whether Sergeant Negrete's conduct was indeed grossly negligent, and thus a class one failure to supervise.

In regards to Lieutenant Yu's overall command of the scene, the Chair felt that, while IAD Investigator Sgt. J. Haney did an excellent overall job on his examination, the command and control of a critical incident should be analyzed by an investigator of the same rank or above as the subject member. Additionally, the Chair felt that Lieutenant Yu did not have a strong enough participatory involvement in the planning and running of the scene, which set the stage for the supervisory deficiencies of Sergeant Negrete to go unchecked. The Chair also questioned whether Lieutenant Yu was derelict in allowing the involved officers to self-select their own sequestering officers, and whether he exercised the required amount of control over the other sergeants on scene. After some discussion, the Board agreed to also direct IAD to re-evaluate whether Lieutenant Yu's conduct constituted misconduct and, if so, whether it was class one or class two misconduct.

Finally, the Board directed IAD to examine whether Officer Tanaka failed to perform his duty by not advising the Communications Division of his rifle deployment. The Board remanded the investigation back to IAD with the above specific investigatory goals, and set a re-convention date for the Board of the 7<sup>th</sup> or 8<sup>th</sup> of January, 2019.

**G. Board Re-Convention – January 8<sup>th</sup>, 2019 – IAD Additional Analysis and Findings**

IAD Presentation of Memorandum Regarding Additional Findings

**As to Sergeant Negrete:** Sergeant Haney presented to the Board and explained that the originally identified issues with Sergeant Negrete's supervision of the DAT on the date of the incident – as detailed on pages 125 and 126 of IAD's original report – were still present. Additionally, through interviews with SMEs, IAD found that Sergeant Negrete's failure to supervise the DAT was specifically characterized by his failure to plan for one of the three main roles of a DAT as trained by the Department.

Sergeant Haney advised that OPD training directs all OPD sworn members to prepare for at least these three main responsibilities of a DAT: 1) accept surrender of the subject; 2) prevent the subject's escape; and 3) react to exigent circumstances. IAD determined that Sergeant Negrete had adequate plans conceived and briefed for the first two responsibilities, but that he failed to have a plan in place for how the DAT should react to an exigent circumstance created by Pawlik. Sergeant Haney wrote that, "The potential for Pawlik to awaken and not respond to the officers' commands was a realistic possibility that should have been planned for." Given that Sergeant Negrete had additional training in DATs as a member of the Department's SWAT team, IAD felt that this failure to plan for a foreseeable exigent circumstance was a dereliction of duty.

However, Sergeant Haney asserted that IAD determined that, while Sergeant Negrete's supervision was lacking, his conduct did not rise to the level of gross dereliction of duty. Sergeant Haney quoted MOR section 175.99, which defines gross dereliction of duty, as saying that gross dereliction is "[f]ailure to use reasonable care to protect life and/or property and to safeguard the legal rights of individuals. Gross dereliction of duty is characterized by

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carelessness and a reckless disregard for the consequences of the member or employee's conduct."

IAD's examination of the evidence led them to the conclusion that Sergeant Negrete made a good faith effort to create a plan and take Pawlik into custody safely. While his planning and supervision were lacking, IAD felt that his conduct was not careless or reckless in its disregard for the consequences of his actions. IAD therefore recommended that its original finding of **Sustained** for a **Class Two** violation of supervisory responsibilities (MOR 285.00-2) stand.

**As to Lieutenant Yu:** Originally, IAD recommended that the allegation that Lieutenant Yu failed to properly command this incident be found as **Exonerated**. After additional investigation, IAD recommended that this be changed, and instead that Lieutenant Yu be found as **Sustained** for a **Class Two** violation of command responsibilities (MOR 234.00-2).

Sergeant Haney noted that Sergeant Negrete's plan (described above) failed to properly plan for a foreseeable contingency, namely an exigency caused by Pawlik. Through investigation into Lieutenant Yu's training history, IAD determined that Lieutenant Yu should have recognized that this planning was deficient when he was briefed on the DAT's plans by Sergeant Negrete. That Lieutenant Yu did not recognize and correct this deficiency, as the incident commander on scene, was derelict.

Sergeant Haney examined whether this failure constituted gross dereliction of duty, and determined that it did not. Sergeant Haney analyzed the actions that Lieutenant Yu did take towards resolving the situation – such as coordinating the scene management, placing the more experienced Sergeant Negrete in control of the DAT as opposed to one of the less-trained sergeants, setting up a command post, and requesting resources – and found that Lieutenant Yu made a good faith effort to manage the scene with the goal of reaching a peaceful conclusion. While his planning and management were lacking, IAD felt that his conduct was not careless or reckless in its disregard for the consequences of his actions. Therefore, IAD recommended a finding of **Sustained** for a **Class Two** violation of command responsibilities (MOR 234.00-2).<sup>10</sup>

**As to Officer Tanaka:** Sergeant Haney presented his conclusion that, while Officer Tanaka did not advise the Communications Division that he was deploying his rifle, this action did not constitute misconduct. Speaking with SMEs and reviewing the policy, Sergeant Haney determined that the purpose of the requirement for a PRO to advise the Communications Division of a patrol rifle deployment was to keep supervisors informed of resources when managing incidents. However, the policy requires this advisement when it is practical to do so. Sergeant Haney reviewed PDRD video which showed that, when Officer Tanaka was getting out of the Bearcat and deploying his rifle, Pawlik had already awoken and other officers were giving him commands. This was an emergency, and Sergeant Haney indicated that it would have been impractical for Officer Tanaka to get on the radio at this point to fulfill an administrative duty.

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<sup>10</sup> Pursuant to the Board's request, Sergeant Haney's analysis and recommendation was specifically reviewed and approved by IAD Commanders at the rank of Lieutenant and Captain.

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Shortly after deploying the rifle, Officer Tanaka used it as a means of lethal force. Sergeant Haney wrote that the spirit of the policy clearly did not imagine or require an advisement that the rifle was being deployed after a use of force had already occurred. Given the totality of the circumstances, Sergeant Haney and IAD recommended that Officer Tanaka's failure to advise the Communications Division about his rifle deployment be given the finding of **Exonerated**.

Deliberations as to Sergeant Negrete

The Chair opened the floor for discussion on IAD's recommendation that Sergeant Negrete's failure to properly supervise be found as **Sustained** and classified as **class two**.

Board member Captain Bolton stated that he agreed with IAD's finding. He opined that there was a lack of planning on Sergeant Negrete's part, and that this manifested itself in a variety of ways. One example that Captain Bolton specifically pointed to was the fact that multiple officers were giving Pawlik commands when Pawlik awoke, which Captain Bolton thought would have been curtailed or eliminated if Sergeant Negrete had properly supervised the DAT, as opposed to becoming too involved in the incident. However, Captain Bolton asserted that the lack of planning and supervision on the part of Sergeant Negrete did not create the exigency nor the use of force; instead, Pawlik's failure to follow commands of the officers and his pointing his handgun at the officers created a lethal threat which the officers had to defend themselves against.

The Chair disagreed and contended that Sergeant Negrete's conduct constituted gross dereliction of duty when examining the event in totality, and thus rose to a class one violation. The Chair cited a confluence of multiple failures which, when viewed in totality, were so inappropriate that they constituted gross dereliction. These included:

- Sergeant Negrete deploying his own rifle as part of the DAT, even though he had two officers already with rifles as primary cover officers;
- Sergeant Negrete taking the role of both team leader and talker/cuffer, which split his attention and did not allow him to effectively supervise the team;
- Sergeant Negrete's failure to plan for a foreseeable exigency – Pawlik awakening and refusing commands – did not meet the standard of a reasonable care to protect life;
- The outcome of this incident (Pawlik losing his life) was so severe that it had to be taken into consideration when determining whether Sergeant Negrete's conduct rose to the level of gross negligence.

Captain Bolton rejoined by saying that, although the result of the incident was extremely unfortunate, that result came about as a consequence of the actions of the subject, Pawlik. Captain Bolton proposed a thought experiment where all the actions were the same but instead Pawlik dropped the gun and was taken into custody without force. The same failures would have been present, and Sergeant Negrete's failures to plan would have still needed correction. But in that light, they would not have been considered gross dereliction of duty. As such, Captain

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Bolton opined that the outcome should not be weighted to that degree, and that looking solely at Sergeant Negrete's actions in a vacuum they did not rise to a level of gross negligence.

The Chair respectfully disagreed, and shared his view that the outcome of this case was important, as a person lost his life. The Chair noted that OPD has seen a decrease in lethal force incidents because of a trend of good supervision and a desire to plan, create time and distance, and work towards peaceful resolution. In the estimation of the Chair, Sergeant Negrete's failures of supervision robbed the DAT of their abilities to utilize the superior tactics, equipment, and opportunities which could have changed the outcome of this incident. The Chair asserted that his vote was that Sergeant Negrete should be **sustained** for **class one** gross dereliction of duty in his failure to supervise the DAT (MOR 285.00-1).

Captain Bolton responded and respectfully disagreed with the Chair's assessment. Captain Bolton noted that, while the Chair felt that Sergeant Negrete did not make plans that created time or distance, the IAD investigation showed that a plan had been created and that this plan was, in the view of Captain Bolton, adequate for taking Pawlik into custody. The main issue was that plans for other exigencies were not discussed. Secondly, Captain Bolton took issue with the idea that the Bearcat armored vehicle was not used to its full capabilities, saying that, based on his understanding of the training regarding the Bearcat, there was no different way that he saw of using it.

The Chair responded by noting that, while Sergeant Negrete did create a plan and tell it to Lieutenant Yu, Sergeant Negrete did not follow that plan when Pawlik unexpectedly woke up, but instead got sucked into addressing the threat himself, losing supervisory control. Additionally, the Chair's assessment of the way that the officers were using the Bearcat based on the PDRD video was as a platform from which to shoot, and not as a piece of armor to shield themselves behind. These were deficiencies that were directly caused by Sergeant Negrete's failure to supervise, in the estimation of the Chair.

Board member Captain Joshi weighed in, saying that in his estimation there were too many mistakes made by Sergeant Negrete as a supervisor. While each of the issues – here Captain Joshi referenced Sergeant, Negrete taking a primary cover role with his rifle, assigning himself the talker/cuffer role, and not adequately planning for contingencies – in and of themselves were not overly serious, put together they constituted a gross dereliction of duty. Captain Joshi also noted that, after the use of force incident, Sergeant Negrete was captured on PDRD reassuring other involved officers that they had no choice and “had to” use lethal force. Captain Joshi felt that this was also a factor which should be included in a decision as to whether Sergeant Negrete's actions were gross dereliction of duty.

Captain Bolton responded, again referencing that, while there is a subjective line between ordinary and gross dereliction of duty, his assessment of the incident was that Sergeant Negrete was making a good faith effort, and that his failure to properly supervise did not constitute gross dereliction. Additionally, he shared his belief that the conduct of Sergeant Negrete should be examined untethered from the outcome of the incident. Captain Bolton also referenced an example given by IAD of gross dereliction, which would have been if the supervisor had not even shown up to the scene but just monitored the incident via the radio, as an example of clear

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gross dereliction of duty. The Chair and Captain Joshi disagreed, saying that this example was outside the bounds of reality and that the outcome of an incident must be factored in when making decisions about the conduct of the officers on scene.

The Chair called for a vote. The Chair and Captain Joshi voted to reject IAD's recommendation and instead sustain Sergeant Negrete for class one gross dereliction of duty for failure to supervise. Captain Bolton dissented, voting to uphold IAD's original recommendation to sustain Sergeant Negrete for a class two violation for failure to supervise. By a two-to-one vote, the Board recommended the following finding for Sergeant Negrete in regards to the allegation of gross dereliction of duty by failing to supervise:

**Gross Dereliction of Duty – Supervisors – Responsibilities MOR 285.00-1 SUSTAINED**

Deliberations as to Lieutenant Yu

The Chair opened the floor to discussion regarding whether Lieutenant Yu failed to properly command the scene as incident commander.

Captain Bolton discussed his assessment that the most important aspect of the failure to command was that the three main responsibilities of a DAT (arrest subject, prevent flight, react to contingencies) were not properly addressed, and that Lieutenant Yu did not rectify this. Additionally, troubling was the fact that Sergeant Pierce, who was on scene and purportedly in charge of the rear perimeter, stated in her interview that she did not know who the incident commander was. For Captain Bolton, this spoke to a larger theme that there was a lack of firm communication to all involved members as to exactly what the plan was from the incident commander.

Captain Joshi agreed with Captain Bolton, and said that, while the failures exhibited in the events leading up to the use of force were properly addressed, there were failures after the use of force – such as the issues with officer sequestration – which were the fault of Lieutenant Yu. Captain Joshi also said that Lieutenant Yu should have seen Sergeant Negrete carrying a rifle and told Sergeant Negrete to store the rifle and concentrate on leading the DAT.

The Chair called for a vote. The Board unanimously agreed with IAD's updated finding that Lieutenant Yu failed to properly command the incident, and agreed with the IAD recommendation:

**Commanding Officers – Responsibilities MOR 234.00-2 SUSTAINED**

Deliberations as to Officer Tanaka

The Chair opened the floor to discussion regarding whether Officer Tanaka failed to advise of his deployment of the patrol rifle and whether that failure was an acceptable deviance from policy.

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**IX.**

**TRAINING POINTS AND DELIVERABLES**

All Training Points will be included in the Fourth Quarter 2018 Information Bulletin concerning Force Review Board Training Points and Information Updates. This Bulletin will be completed by the Policy and Publication Unit by January 31<sup>st</sup>, 2019.

**TRAINING AND DELIVERABLES**

CID will develop training and collection protocols for obtaining department-cell phones from members involved in a Level 1 force incident.	FRB	CID
The Training Division will develop additional training for all sworn members on handling incidents with unconscious, armed subjects.	FRB	Training Division
CID will ensure that previous training from EFRB board #17P-0064, regarding properly identifying subjects to interview, is conducted. Further, CID will develop and administer additional training on sequestration of members involved in level 1 force incidents.	FRB	CID
CID will ensure that guidelines for level 1 force incidents are updated so that command officers who actively manage incident scenes are sequestered and interviewed.	FRB	CID
CID will look into the best practices on lethal force investigations from other departments, and will integrate any improvements into training for level 1 force investigators.	FRB	CID
IAD will ensure that all subjects that they feel should be interviewed in the course of a level 1 incident are interviewed, and will investigate the circumstances if it is found that a key member was not interviewed by CID.	FRB	IAD

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DGOs I-19 and K-06 will be added to the list of policies that need revision. I-19 must have seizures of cell phones in level 1 investigations spelled out, whereas K-06 must bring the policy into alignment with PRO training.	FRB	<b>Planning and Research</b>
The Training Division will create additional training on DATs for all sworn members, to include roles, responsibilities, contingencies, plain-English commands and communication, and supervisory responsibilities. This training will include information and considerations regarding self-deploying into an established DAT or critical incident scene.	FRB	<b>Training Division</b>
If a command officer's performance is being evaluated in an overall incident investigation, IAD will ensure that an IAD command officer is part of the interview process and is evaluating the assessment of that commander for the purpose of the final report.	FRB	<b>IAD</b>
Department-wide direction from the Executive Team will be disseminated reminding members to refrain from putting unauthorized symbols or writing on equipment or uniform items.	FRB	<b>OCOP</b>
The Special Operations Division will coordinate the purchase and distribution of ample rifle magazines, of both 30 round and smaller capacities, for PROs and SWAT team members.	FRB	<b>SOD</b>
Officer Philips will receive training on maintaining a constant visual on armed suspects until it is safe to move.	IAD	<b>Officer Philips' Chain of Command</b>
Officer Berger will receive training regarding the importance of having the DAT team leader give all direction to team members, as well as training on loading his rifle magazines to capacity before deploying.	IAD	<b>Officer Berger's Chain of Command</b>
The Training Division will formulate additional training for all sworn personnel on use of the Bearcat, which will include supervisory and command considerations.	IAD	<b>Training Division</b>

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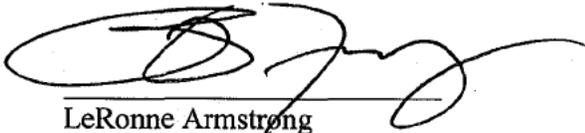
The Special Operations Division will create procedures on the use of the Bearcat in the field, and will maintain a list of all officers trained in operating the Bearcat.	IAD	<b>SOD</b>
The information technology unit will explore increasing the resolution of PDRD video, and will continue with their project to mount PDRDs to the Bearcat.	IAD	<b>ITU</b>
Lieutenant Yu and Sergeant Jim will receive training on properly identifying officers who need to be sequestered after level 1 force incidents.	IAD	<b>Respective Chains of Command</b>
Officer D. Vantree will receive training on how to properly sequester an officer after a level 1 force incident.	IAD	<b>Officer Vantree's Chain of Command</b>

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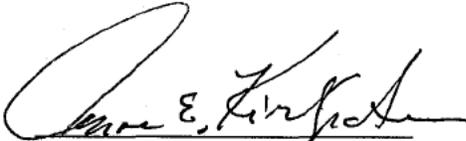
Reviewed and approved,



LeRonne Armstrong  
Deputy Chief of Police

*Agree with EFRB report*

*Disagree with EFRB report*



Anne E. Kirkpatrick  
Chief of Police

2-8-2019

Date

I agree in part and disagree  
in part. My Findings are attached  
along with an addendum.

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COMPLIANCE DIRECTOR ROBERT S. WARSHAW'S ADDENDUM to  
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The state entrusts law enforcement personnel with great authorities, and police officers have a compact with the community to use that authority judiciously and appropriately. The use of deadly physical force by a police officer is the most extreme use of that authority. Accordingly, any instances of the use of deadly force must be examined and investigated thoroughly.

In the case of Use of Force 18F-0067, a critical piece of evidence is the Portable Digital Recording Device (PDRD) footage from a sergeant who had the foresight to place his camera on the armored vehicle as it came to a stop at the scene of the shooting. This camera provided an unobstructed view of the subject, Joshua Pawlik, and recorded his actions in the moments leading up to the officers' lethal discharge of their weapons.

For this case, I reviewed the Criminal Investigation Division (CID) investigation, the Internal Affairs Division (IAD) investigation, the Executive Force Review Board (EFRB) report, and Chief Anne E. Kirkpatrick's February 11, 2019 addendum to her February 8, 2019 general finding to the EFRB report.

I have found no reference to the use of the video during the questioning of the involved officers. The Department failed to use the video to in any way challenge the involved officers' assertions about Mr. Pawlik's movements. Yet their assertions are contradicted by the raw and enhanced versions of the video – both readily available to the investigators in this case.

An essential part of any investigation is the resolution of discrepancies. IAD and CID are required to do this by Department policy, by the Negotiated Settlement Agreement (NSA), and by responsible police practices. However, in the matter at hand, the investigators – both in their questioning and analysis – failed to address the inconsistencies between officers' statements and the video evidence. The involved officers' descriptions of Mr. Pawlik's movement of his right hand range from a few inches to two feet. In both the CID and IAD investigations, the Department failed to challenge the officers on these inconsistencies. In addition, the questioning in both investigations was deficient, non-invasive, and replete with leading questions that served as attempts to support the justification of the officers' actions.

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Likewise, despite having access to the officers' statements and all versions of the video, the EFRB members did not address the apparent discrepancies between the statements and the video. With respect to the uses of force, the EFRB members appeared to accept IAD's recommendations at face value. The board was duty-bound to resolve those discrepancies if IAD did not. However, the board failed to do so. In her addendum, Chief Kirkpatrick repeatedly referenced the totality of the circumstances, but her assessment of these circumstances was both disappointing and myopic.

In this incident, officers were dealing with an unresponsive and apparently unconscious man who was laying on the ground between two houses with a handgun in his possession. Despite the presence of the firearm, there was no information that Mr. Pawlik was an immediate threat to anyone or had harmed anyone at that point. There were no citizens in immediate danger. The Department had established a perimeter, and officers were behind excellent cover afforded by the Bearcat armored vehicle they had summoned to the scene. OPD personnel had over 40 minutes to plan viable options for successfully resolving this situation.

Mr. Pawlik roused to consciousness, and the video shows his actions to be consistent with someone who was waking up and attempting to orient himself. He was moving minimally. He was a live human being – and any reasonable officer should not have expected him to remain perfectly still. His movements, as seen on the video, do not coincide with the movements to which the officers claim they reacted. Mr. Pawlik's slight movements did not constitute intent and a reasonable officer should not have concluded such. Any analysis of the officers' actions ignored the presence and intended utility of the Bearcat. Further, the EFRB Chair pointed out that officers did not use the armored vehicle as cover. They utilized it as a shooting platform.

In her addendum, Chief Kirkpatrick dismisses the possibility of sympathetic fire. While she readily accepts that all of the officers reacted to possible *visual* stimulation – as slight as it may have been – within a split-second of each other, she rejects the notion that they could respond similarly to *audio* stimulation. At the time of the shooting, four officers already had their rifles trained on Mr. Pawlik and were ready to shoot. Since the video does not show an overt threatening action on his part, sympathetic fire remains a viable explanation for the near simultaneous discharges by the officers, and the large number of rounds fired.

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While the video is the *key* piece of evidence in this case, it is not the *only* piece of evidence. The quality of the IAD investigation is evidentiary as well. The video itself is neutral – it shows what it shows. The Department had the video professionally enhanced twice and analyzed once. Further, during the course of our monitoring of this investigation, a Departmental sergeant attempted to enhance the video and provide an analysis of what it showed. In the aftermath of the sergeant's presentation, the Chief discounted its usefulness, quality, and accompanying analysis. In fact, the Chief informed me that the Department would not consider this analysis in the investigation of this case as she considered it substandard and an embarrassment. Nevertheless, it was prominently referenced in the IAD investigation, which was presented to the EFRB.

I agree with the EFRB Chair in his assessment that when examining the circumstances in their totality, Sergeant Negrete's conduct constituted gross dereliction of duty. As part of his reasoning, the EFRB Chair cited multiple failures on the part of Sergeant Negrete. He deployed his own rifle as part of the Designated Arrest Team (DAT), though he had designated two officers with rifles as primary cover officers. He assumed the role of both team leader and talker/cuffer, which divided his attention and did not allow him to effectively supervise the team. He failed to plan for a foreseeable exigency: Mr. Pawlik awakening and not complying with commands. The most important point the EFRB Chair made is that the outcome of this incident was so severe that it needed to be considered when determining whether Sergeant Negrete's conduct rose to the level of gross negligence.

The review in this case begs for consideration of the totality of circumstances in the encounter between the officers and Mr. Pawlik. The event was fully captured on the video from a body-worn camera. Neither the Executive Force Review Board nor Chief Kirkpatrick adequately considered the event as a whole.

After reviewing all of the investigations undertaken by the Department and the resultant deliberations of the Executive Force Review Board, I reject the Chief's principal conclusions in this matter.

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My determinations of findings are as follows:

Sergeant Negrete, Officer Berger, Officer Hraiz, and Officer Tanaka; Allegation: Violation of MOR 370.27-1 (Level 1) Use of Force – *Sustained*.

Officer Phillips, Allegation: Violation of MOR 370.27-1 (Level 2) Use of Force – *Sustained*.

Officer Tanaka, Allegation: Violation of MOR 314.39-2, Performance of Duty-General for failure to advise the Communications Division of his rifle deployment in violation of DGO K-06 – *Sustained*. I concur with the EFRB's reasoning and determination.

Officer Tanaka, Allegation: Violation of MOR 314.39-2, Performance of Duty-General for self-deploying as lethal cover – *Not Sustained*.

Lieutenant Yu, Allegation: Violation of MOR 234.00-2, Failure to fulfill his command responsibilities – *Sustained*.

Sergeant Negrete, Allegation: Violation of MOR 285.00-1, Failure to Supervise – *Sustained*.



Chief (Ret.) Robert S. Warshaw  
*Compliance Director*

**CHIEF ANNE KIRKPATRICK'S ADDENDUM to  
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**I. EFRB Findings re Use of Force**

My charge is to analyze all the facts and circumstances in this matter to determine whether there is sufficient evidence to determine that a member's conduct was in violation of law or policy. Absent a preponderance of evidence that the conduct is out of compliance with law or policy, there is no violation.

The policy that governs this matter is Department General Order K-3: Use of Force. The relevant sections of this 12-page policy are the definitions of Reasonable Force (Section II.A), the definition of Immediate Threat (Section II.B) and Discharging a Firearm at a Person (II.D).

Starting with the authority to discharge a firearm, the policy states that lethal force ... "is authorized only when there is reasonable cause to believe there is an immediate threat of death or serious bodily injury." Thus, in determining whether there was reasonable cause to use lethal force, my threshold question is whether the facts and circumstances in this case meet the criteria of an "immediate threat." The policy states:

*"An immediate threat is considered to exist if a person has demonstrated actions that would lead one to reasonably believe the suspect will continue to pose a threat of death or serious bodily injury if not apprehended without delay. A person is an immediate threat, if the person is reasonably perceived by a member or employee to have present intent, means, opportunity and ability to complete the threat, regardless of whether the threatened action has been initiated." (Emphasis added.)*

If the threshold for what constitutes an immediate threat is met, then the next analysis, under both law and policy, is to determine if the amount of force used was "objectively reasonable to affect a lawful police purpose and protect the safety of members or others based upon the totality of the circumstances." (Emphasis added.)

The evidence in this case is vast: it includes hours of PDRD video and audio (including subject and witness interviews), and hundreds of pages of documentary evidence. The Internal Affairs Division (IAD) Report of Investigation, including its analysis and recommended findings, is more than 830 pages long. The Executive Force Review Board (EFRB or the Board) took three separate hearing days to evaluate both IAD's and CID's evidence and presentations, and to make their findings. In evaluating the Board's conclusions and recommendations, I personally reviewed the underlying evidence, including, but not limited to, the PDRD footage (including the enhanced video and expert report), subject and witness statements, and the autopsy report. For the reasons described below, I accept the analysis and unanimous findings by both IAD and the EFRB that the lethal force used in this case was within law and policy.

Each of the four officers who used lethal force stated that they did so only after they saw Pawlik begin to raise his arm and hand off of the ground and point the gun in their direction. The video analysis was inconclusive regarding the specific movement of Pawlik's lower arm, hand and the gun just prior to the shooting. However, it is not inconsistent with the officers' statements that Pawlik looked at the officers, raised his arm and pointed the gun toward them. Also, other evidence corroborates the statements. For example, the statement that he gripped the gun is supported by the fact that the gun was flung behind Pawlik when he was shot. Moreover, the evidence shows that Pawlik did not comply with numerous (12) commands to take his hand off the gun as he looked toward the officers and moved in a rocking motion to sit up. Despite Pawlik's movement and failure to comply with numerous commands, the officers did not initially fire their weapons. Thus, the evidence does not contradict the officers' statements that they fired only after perceiving a lethal threat, when Pawlik raised his arm and pointed the gun in their direction.

The most compelling evidence of a reasonably perceived threat was that the five officers shot almost simultaneously at Mr. Pawlik, with all shots fired within 2.23 seconds. I find this evidence persuasive and corroborative of the officers' statements regarding their perceptions of an immediate threat. In other words, the evidence supports that this was not the perception of just one officer, with sympathetic fire trailing the initial shot after a delay; this was the perception of multiple officers. The evidence shows the individual shots occurred too closely together to be sympathetic fire. This is illustrated in a frame-by-frame analysis of the shooting. There are at least three rounds distinguishable in the PDRD video which was recorded at a rate of 30 frames per second. The first shot is captured at frame #1714 and the more visible bean bag contrail is captured at frame #1731.<sup>1</sup> There are also several shots between the first shot and the bean bag round. The video analysis was not able to discern which shots came from each particular officer. However, we know that the first rifle shot and the bean bag were two different officers. They occurred just over a half second apart. These shots are so close together that they are not likely sympathetic fire. Based on my training and experience, I know that studies in the field of human factors teach that firing a weapon at a threat or other stimulus takes time to perceive and react. Accordingly, sympathetic fire generally includes a sufficient delay for the second officer firing to perceive and react not to a lethal threat – but to the sound of the first weapon firing. Here, at least three of the shots took place within 0.5 seconds, and all 22 lethal rounds and one less-lethal bean bag round were fired within 2.23 seconds. The multiple shots fired almost simultaneously and the incredibly short period of time between the first shot and the bean bag deployment (.567 seconds), suggest that (at least two of) the officers perceived and reacted to the same stimulus or threat. Also compelling is the fact that the officers stopped their fire almost simultaneously. The video evidence that the officers started and stopped their fire almost simultaneously is persuasive to me that the five officers independently perceived a lethal threat and independently perceived when that threat no longer presented itself.

Lethal force analysis requires an assessment of the reasonableness of the officers' perceptions under the totality of the circumstances without the benefit of 20/20 hindsight. Based on the evidence, I find that there is not a preponderance of evidence of a violation of policy or law. Indeed, the greater weight of the evidence shows that each officer independently concluded that Pawlik posed a lethal threat. I find that the evidence shows that the officers' perceptions of an immediate threat were reasonable under the circumstances.

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<sup>1</sup> Taking into consideration that the PDRD footage is 30 frames per second (FPS), the bean bag round was fired 17 frames after the first round (.567 seconds).

The EFRB report contains extensive assessment of the level of risk the officers were exposed to considering they had the benefit of the Bearcat for cover. The SMEs on Bearcat use and the Patrol Rifle Officer program stated that the protocols and training for use of the Bearcat do not anticipate that everyone will be completely covered and entirely protected from the threat of gunfire. The Bearcat does have portholes in the side armor of the vehicle but according to the SME, these do not allow for a conventional shooting position and are not ideal platforms for proper rifle use. Accordingly, officers are trained to use the body of the bearcat for cover. While the Bearcat provides enhanced cover, officers will still be partially exposed. It is not so much their choice to be exposed as much as it is their training.<sup>2</sup>

As I step back and reflect on the totality of the evidence presented at the EFRB, I am mindful of the Supreme Court's language in Graham v. Connor, 490 U.S. 386 (1989) regarding proper perspective and the balancing and analysis required in evaluating the force. The test of reasonableness under the Fourth Amendment requires careful attention and weighing of the totality of the facts and circumstances of each individual case. The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The Supreme Court noted that officers are forced to make split-second judgments in circumstances that are tense, uncertain and rapidly evolving.<sup>3</sup>

The loss of an individual's life is a tragic outcome that OPD trains extensively to avoid—a fact borne out by the tremendous reduction in the number of the Department's officer involved shootings in recent years. I am committed to supporting and continuing this trend, and to holding officers accountable when they use unreasonable force. In this case, however, after a careful review and analysis of all of the evidence and the application of the Fourth Amendment's objective reasonableness test, I agree with the recommendation of IAD and the unanimous decision of the EFRB that the force used was within law and policy.

## **II. Findings re Other Allegations, Including Supervisory Failures**

**Officer Tanaka, Allegation: Violation of MOR 314.39-2, Performance of Duty-General** for failure to advise the Communications Division of his rifle deployment in violation of DGO K-06 and for self-deploying as lethal cover.

IAD's initial recommendations in this case did not address a potential failure for Officer Tanaka, but after IAD's initial presentation to the Board, the Board asked IAD to consider whether Officer Tanaka engaged in misconduct for failing to advise the Communications Division of his rifle deployment. IAD returned with a recommendation of Exonerated. The Board had a split vote on this issue. Two of the three members of the Board voted to sustain Officer Tanaka for this failure. I reviewed the issue of Officer Tanaka's deployment in detail, including a review of the relevant PDRD footage. The purpose of the policy is to put one's supervisor on notice that a rifle has been deployed. It requires an officer to advise Communications when it is practical to do so in order to keep one's supervisor informed of resources. I find this a technical violation given the exigency of the circumstances. When Officer Tanaka self-deployed his rifle while next to his Sergeant, it was reasonable to assume that his supervisor was on notice that he had deployed his rifle. Therefore, on this question alone relating to Officer Tanaka's deployment, I would come to a finding of Exonerated.

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<sup>2</sup> Also, if a shot were to be fired into the air or past the bearcat, the bearcat would not protect members of the public or other officers in the area.

<sup>3</sup> Graham, 490 US at 396.

However, I also evaluated whether it was appropriate for Officer Tanaka to self-deploy as lethal without being directed to do so by the DAT leader, Sgt. Negrete. While neither IAD nor the Board came to an explicit finding regarding Tanaka's decision to self-deploy, both elicited evidence regarding its appropriateness, and I find it to be an allegation of potential misconduct that should be specifically addressed. With regard to lethal cover, the Department trains with the objective to minimize the use of lethal force by, among other things, designating specific officer(s) to the role of lethal cover. Given that two other officers were designated and positioned as lethal cover, I believe that Officer Tanaka should not have self-deployed as lethal. However, the question is whether his decision to do so was unreasonable for an officer of his experience and training. The subject matter expert stated that officers are trained that they can self-deploy to fill a gap or position in a DAT. The training allows flexibility for officers to bring their skill and training to bear during a critical incident. When Officer Tanaka arrived on scene, the situation changed quickly, with the heightened threat of Pawlik, who began moving and failing to obey commands. Neither the IAD investigation nor the EFRB provided evidence regarding specific training Officer Tanaka received about the expectations of a utility officer in circumstances such as those at issue here that would support a Sustained finding. Accordingly, it is unclear whether or not Officer Tanaka should have known under the circumstances not to self-deploy as lethal. The appropriate finding for MOR 314.39-2, Performance of Duty-General regarding **Officer Tanaka's self-deployment is Not Sustained.**

**Lieutenant Yu, Allegation: Violation of MOR 234.00-2, Failure to fulfill his command responsibilities.**

Initially, IAD recommended Lieutenant Yu be Exonerated for his supervision of the scene as the Commanding Officer. During the first round of EFRB deliberations, the Chair of the Board sent IAD back for further review of the facts and circumstances, including further exploration of supervisory responsibilities of incident commanders with an appropriate SME. The Board also directed that an IAD Commander with Incident Commander experience make the analysis and recommendation. At the second convening of the EFRB, IAD changed its recommendation from Exonerated to Sustained. The Board unanimously voted that there were shortcomings in Lt. Yu's exercise of his command responsibilities and oversight. In my review, I found Lieutenant Yu took many appropriate actions that I expect of a commander over a critical incident. His statement revealed his critical thinking skills. For example, he took command action when he overruled Sergeant Negrete's assignment of less lethal from Sergeant Webber to Officer Phillips. He also made sure that his sergeants were dispersed properly around the perimeter and ensured medical was staged. However, I agree that Lieutenant Yu deferred to Sergeant Negrete too much and he should have had more firm control of the management of the scene as articulated by the Board. I also agree that after he was briefed by Sgt. Negrete, Lt. Yu should have recognized that Sgt. Negrete failed to plan for one of the three basic contingencies all DAT leaders must consider—*i.e.*, how to react to foreseeable exigencies created by the suspect. Accordingly, for the reasons stated in IAD's Addendum Memorandum (dated 8 Jan 19) and the Board's report, I find Lieutenant Yu **Sustained for a class 2 violation of command responsibilities.**

**Sergeant Negrete, Allegation: Violation of MOR 285.00-1, Failure to Supervise**

Initially, IAD recommended to the Board that Sergeant Negrete be sustained for a class 2 violation for failures in his supervision. The Chair sent IAD back to further analyze whether the facts and circumstances surrounding his supervision rose to the level of a class 1 violation. After this review, IAD returned and reaffirmed its recommendation for a sustained finding of a class 2 violation. The Board

voted 2 to 1 to sustain Sergeant Negrete for the class 1 violation, finding there was a gross dereliction of duty.

In my analysis, I reviewed our MOR on gross dereliction of duty, the standard required for this violation to be a class 1 instead of a class 2.<sup>4</sup> Gross dereliction of duty is a high standard. It requires both carelessness and a reckless disregard for the consequences of the member's conduct. I took guidance from case law addressing the standard of recklessness, including the following. In *Delaney v. Baker*, the California Supreme Court stated: "'Recklessness' refers to a subjective state of culpability greater than simple negligence, which has been described as a 'deliberate disregard' of the 'high degree of probability' that an injury will occur. [Citations omitted.] Recklessness, unlike negligence, involves more than 'inadvertence, incompetence, unskillfulness, or a failure to take precautions,' but rather rises to the level of a 'conscious choice of a course of action . . . with knowledge of the serious danger to others involved in it.' [Citations omitted.] *Id.*, (1999) 20 Cal. 4th 23, 31-32.

Similarly, in *Conservatorship of Gregory v. Beverly Enterprises, Inc.*, the court found that the following instruction adequately defined "recklessness": "[T]he term 'recklessness' requires that the defendant have knowledge of a high degree of probability that dangerous consequences will result from his or her conduct and acts with deliberate disregard of that probability or with a conscious disregard of the probable consequences." *Id.*, (2000) 80 Cal. App. 4th 514, 521.

Reckless disregard is a degree of culpability greater than both ordinary negligence and "gross negligence." "'Ordinary negligence'"—an unintentional tort—consists of a failure to exercise the degree of care in a given situation that a reasonable person under similar circumstances would employ to protect others from harm. [Citation.] 'Gross negligence' long has been defined in California and other jurisdictions as either a 'want of even scant care' or 'an extreme departure from the ordinary standard of conduct. [Citation.]" *City of Santa Barbara v. Superior Court* (2007) 41 Cal. 4th 747, 753–54; *see also, e.g., Hass v. RhodyCo Prods.* (2018) 26 Cal. App. 5th 11, 32, *review denied* (Nov. 28, 2018). "'[G]ross negligence' falls short of a reckless disregard of consequences." *E.g., Hass* at 32.

In assessing Sergeant Negrete's conduct under these standards, I find that his decisions, though very negligent, did not rise to the level (degree) of conscious and deliberate disregard for the safety of others, including Mr. Pawlik. Although his failures may stem from inadvertence, including a clear failure to follow his training regarding the three basic contingencies of a DAT and the role of a DAT leader, I do not see his failure to take precautions as evidence of deliberate disregard for Mr. Pawlik's safety. Sergeant Negrete's actions in taking on multiple roles and not planning adequately for foreseeable contingencies were supervisory failures. However, his decisions cannot be characterized as being done with reckless disregard. Instead, the evidence shows that in his planning he sought to resolve the situation with everyone's safety in mind, determining that he was the best person for the talker/cuffer role and believing that he was planning for contingencies with the goal of taking Mr. Pawlik safely into custody. Sgt. Negrete assigned DAT roles and articulated a detailed plan for two different scenarios, which he shared with the incident commander. The subject matter expert testified during the EFRB that the DAT leader takes an overall big picture/strategic view of the incident and sergeants are not taught to take on one of the more specific roles. Nonetheless, it does not appear that sergeants are explicitly

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<sup>4</sup> MOR 175.99: GROSS DERELICTION OF DUTY – Failure to use reasonable care to protect life and/or property and to safeguard the legal rights of individuals. Gross dereliction of duty is characterized by carelessness and a reckless disregard for the consequences of the member or employee's conduct.

trained they are not to take on a specific team-member role. In fact, the subject matter expert said that a team leader may take on an additional role such as talker/cuffer depending on the circumstances.

The Board Chair pointed out that Sergeant Negrete's decision to deploy his own rifle was unnecessary given the fact that he had two lethal cover officers assigned. Although I do not disagree with this assessment, I do not believe it supports a finding of gross dereliction of duty under the circumstances. The subject matter expert told the Board that the DAT team leader's big picture role does not preclude the sergeant from defending him/herself or others from a threat. Sgt. Negrete decided to deploy his rifle in response to what he perceived as a lethal threat to himself and his officers. Moreover, he did not fire his weapon at Mr. Pawlik when Mr. Pawlik gained consciousness, began rocking back and forth to sit up and failed to heed multiple warnings. The evidence does not contradict his statement that he fired at the moment he felt their lives were in danger.

In sum, during the course of the incident, a review of Sgt. Negrete's conduct in its entirety under the totality of the circumstances shows errors in judgment and action. Errors that occurred in a very serious situation with the lives of both Mr. Pawlik and others at stake. However, despite his failures, his conduct viewed as a whole does not demonstrate gross misconduct carried out with carelessness and reckless disregard for the safety of others. Instead, there is evidence of his desire to resolve the situation without harm to anyone, including Mr. Pawlik. Accordingly, I find Sergeant Negrete **Sustained for a class 2 failure to supervise.**



# Internal Affairs Case Update

Date: 7 Feb 19

Officer Involved Shooting

IAD Case: 18-0249

Law Enforcement Only

# Video Analysis – Slow Motion



## Frame by Frame - 1710 to 1740



## Frame by Frame - 1710 to 1740



## Frame by Frame - 1710 to 1740



## Frame by Frame - 1710 to 1740



## Frame by Frame - 1710 to 1740



First plume of smoke becomes visible.

## Frame by Frame - 1710 to 1740



## Frame by Frame - 1710 to 1740



Second plume of smoke becomes visible.

0.067 seconds since first round fired.

Frame by Frame – 1710 to 1740



## Frame by Frame - 1710 to 1740



## Frame by Frame - 1710 to 1740



## Frame by Frame - 1710 to 1740



## Frame by Frame - 1710 to 1740



## Frame by Frame - 1710 to 1740



## Frame by Frame - 1640 to 1740



## Frame by Frame - 1710 to 1740



Pronounced movement in Pawlik's torso can be discerned from previous frame.

0.333 seconds since first round fired.

## Frame by Frame - 1710 to 1740



## Frame by Frame - 1710 to 1740



## Frame by Frame - 1710 to 1740



## Frame by Frame - 1640 to 1740



## Frame by Frame - 1710 to 1740



## Frame by Frame - 1710 to 1740



## Frame by Frame - 1710 to 1740



Beginning of  
bean bag  
round "trail"  
becomes  
visible.

0.567 seconds since first round fired.

## Frame by Frame - 1710 to 1740



Bean bag round  
"trail" becomes  
more visible.

0.600 seconds since first round fired.

Frame by Frame – 1710 to 1740



## Frame by Frame - 1710 to 1740



## Frame by Frame - 1710 to 1740



## Frame by Frame - 1710 to 1740



## Frame by Frame - 1710 to 1740



## Frame by Frame - 1710 to 1740



## Frame by Frame - 1710 to 1740



## Frame by Frame - 1710 to 1740



# Observations

- Based on this frame by frame analysis, the bean bag round “trail” becomes visible 0.567 seconds after the initial rifle round was fired. The initial rifle round and bean bag round were fired an indeterminate length of time (likely small fractions of a second) before the respective smoke plume and “trail” became visible. It appears that the bean bag round was fired approximately 0.567 seconds after the first rifle round.
- The low end of an officer’s estimated “perception-reaction time” is 0.7 seconds (*Source: Lexipol and Technology Associates Engineering Experts*). It appears that the bean bag round was fired in less time (0.567) than the low end estimation (0.7) for an officer’s “perception-reaction time”. With this in mind, it does not appear that Officer Phillips could have fired his bean bag round “sympathetically” in reaction to the initial rifle round.



DEPARTMENTAL GENERAL ORDER

**R-02: SEARCHES OF INDIVIDUALS ON PROBATION OR PAROLE**

Effective Date: XX ~~Jan~~ ~~XX~~ 19

Coordinator: Training Division

Individuals on probation with certain court-imposed search clauses and individuals on parole/PRCS (Post-Release Community Supervision) may be subject to warrantless searches by law enforcement. One role of Law Enforcement is to act as an arm of the probation and parole/PRCS systems by ensuring that probationers and parolees are conforming to the conditions of their release.

**COMMAND INTENT**

The intent of this policy is to enhance the effectiveness of Oakland Police Officers while also reminding them to use their best judgment on when to use probation and parole/PRCS searches. The Department values the abilities of Oakland Police Officers to make sound judgments when using law enforcement tools available to them, such as probation and parole/PRCS searches, to ensure officer, community, and subject safety. At the same time, the Department recognizes that those searched and other community members can view searches as intrusive. Accordingly, the Department seeks to build community trust through transparency of Department operations by requiring officers to document articulable facts supporting a decision to search.

**A. DEFINITIONS**

**A - 1. Non-Violent Offense**

An offense in which violence or use of a weapon is not a factor. Examples include simple possession of controlled substances or property crimes such as petty theft.

**A – 2. Cursory Search**

A cursory search (also known as a pat search or search for weapons) is a limited search of the outer clothing in a manner designed to determine whether the person being searched is in possession of any weapons or items which may be used as such. Cursory searches typically require A cursory search is most typically conducted if the officer has reasonable suspicion to believe that the person being searched is armed and/or dangerous, and are governed by applicable case law and OPD policy.<sup>1</sup>

**A – 3. Full Search**

A full search of a person is a “relatively extensive exploration”<sup>2</sup> of the person being searched, including their clothing, their pockets, and containers in their

<sup>1</sup> See for example *Terry v. Ohio*, 392 US 1 (1968) and OPD Training Bulletin I-O.02, *Legal Aspects of Searching Persons*.

<sup>2</sup> *US v. Robinson*, 414 US 218, 236 (1973)

possession. A full search of a person is most typically conducted incident to that person's arrest.

## **B. PROBATION OR PAROLE SEARCHES AND THE COMMUNITY**

### **B - 1. Purpose of Probation and Parole/PRCS Searches**

Probation and parole/PRCS searches must further a legitimate law enforcement or rehabilitative interest. Such searches shall<sup>3</sup> not be:

1. Arbitrary;
2. Capricious; or
3. Harassing

### **B - 2. Procedural Justice Considerations**

Law enforcement contact with individuals on probation, parole, and PRCS provides an opportunity to practice the tenets of procedural justice: voice, neutrality, respect, and trustworthiness. Probation and parole/PRCS contacts can be used as a means of providing counseling, referral to rehabilitative resources, and a deterrent against recidivism.

### **B - 3. Inquiring About Probation or Parole/PRCS Status**

Inquiring about an individual's probation or parole/PRCS status, especially at the beginning of an interaction, or without an apparent basis for the inquiry, can be viewed as unjustly assuming that the individual has a criminal history. Officers ~~must shall~~ refrain ~~when possible~~ from immediately asking whether a person is on probation or parole/PRCS unless there is an immediate threat to the safety of officers or others. Any subsequent inquiries about probation or parole/PRCS status must be framed in a respectful manner.

## **C. REQUIREMENTS FOR PROBATION OR PAROLE/PRCS SEARCHES**

Probation and parole/PRCS searches shall be conducted in consideration of the totality of the circumstances surrounding the encounter.

### **C - 1. Knowledge of Searchable Probation or Parole/PRCS Status**

Officers must know that an individual is on searchable probation or parole/PRCS, with a clause which allows the search the officer seeks to conduct, before the search. This information may be obtained/confirmed via:

1. Prior knowledge of the individual's searchable probation or parole/PRCS status;
2. Check of law enforcement databases such as AWS, CRIMS, CLETS, and CORPUS;<sup>4</sup>

<sup>3</sup> Manual of Rules 175.77: SHALL – Indicates that the action is mandatory.

<sup>4</sup> CRIMS is the recommended database for confirming probation status. CLETS is the recommended database for confirming parole status.

3. The individual's confirmation of his or her searchable probation or parole/PRCS status.<sup>5</sup> In such cases, the officer shall confirm the status of the individual with a records check. In cases where the individual is mistaken concerning status, the officer shall provide the correct information to the individual and document the results in the appropriate report.

#### **C – 2. Individuals on Probation or Parole/PRCS for Non-Violent Offenses**

For individuals on probation or parole/PRCS for **non-violent** crimes, officers shall consider articulable fact(s) which tend to show that the individual is connected in some way to criminal activity, that the individual is a threat to officer or citizen safety, or that a probation or parole/PRCS search would further a rehabilitative interest.

The mere fact that a person is on probation or parole/PRCS is not in itself a connection to criminal activity.

~~Some examples of facts that could support a search include, **but are not limited to**, the following:~~

- ~~• The individual is a known gang member or affiliate~~
- ~~• The individual has been identified as a person of interest in a crime~~
- ~~• The individual is in the company of another who is a person of interest in a crime~~
- ~~• The individual is connected to a crime reduction strategy (such as Ceasefire or a specific crime reduction plan)~~
- ~~• The individual is a person of interest in, or uncooperative witness to, an ongoing criminal investigation~~

#### **C – 3. Traffic Stops of Persons on Probation or Parole/PRCS for Non-Violent Offenses**

~~When officers contact a person on probation or parole/PRCS for a non-violent offense during a vehicle stop for an infraction vehicle code violation, and there are no articulable facts present which tend to show that the individual on probation or parole/PRCS is connected in some way to criminal activity, or that the individual is a threat to officer or citizen safety, officers **shall not** search that person pursuant to any probation or parole/PRCS search clauses or conditions.~~

#### **C – 4. Individuals on Probation or Parole/PRCS for Violent or Weapons-Related Offenses**

Individuals contacted or detained who are found to be on searchable probation or parole/PRCS for violent or weapons-related offenses may be searched pursuant to the terms of their probation or parole/PRCS conditions.

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<sup>5</sup> See In re Jeremy G. (1998) 65 Cal.App.4th 553, 556 (officer reasonably relied on minor's statement that he was on probation or parole; "[t]he fact that the minor was in error is immaterial").

**C – ~~54~~.Cursory and Full Searches**

In those instances where a cursory search is justified and the individual is on probation or parole/PRCS, ~~for any reason, with a clause which allows~~ a full search of the area which would be subject to the cursory search their person, ~~a full search~~ may be conducted if the individual's search terms allow it.

**D. MEMORIALIZING FACTS OF THE SEARCH**

**D - 1. Required Documentation**

Officers conducting a probation or parole/PRCS search shall at a minimum document the following in the appropriate report:

1. The circumstances of the encounter/detention;
2. How it was determined that the individual was on searchable probation or parole/PRCS;
3. How searchable probation or parole/PRCS status was verified including, if verified via a Mobile Data Terminal (MDT), a paste of this information from the MDT to the body of the report (if feasible);
4. Any articulable fact(s) which informed the decision to search; and
5. The type(s) of search completed and disposition.

By order of

Anne E. Kirkpatrick  
Chief of Police

Date Signed: \_\_\_\_\_

**DEPARTMENTAL GENERAL ORDER****R-02: SEARCHES OF INDIVIDUALS ON PROBATION OR PAROLE**

Effective Date: XX XX 19

Coordinator: Training Division

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Individuals on probation with certain court-imposed search clauses and individuals on parole/PRCS (Post-Release Community Supervision) may be subject to warrantless searches by law enforcement. One role of Law Enforcement is to act as an arm of the probation and parole/PRCS systems by ensuring that probationers and parolees are conforming to the conditions of their release.

**COMMAND INTENT**

The intent of this policy is to enhance the effectiveness of Oakland Police Officers while also reminding them to use their best judgment on when to use probation and parole/PRCS searches. The Department values the abilities of Oakland Police Officers to make sound judgments when using law enforcement tools available to them, such as probation and parole/PRCS searches, to ensure officer, community, and subject safety. At the same time, the Department recognizes that those searched and other community members can view searches as intrusive. Accordingly, the Department seeks to build community trust through transparency of Department operations by requiring officers to document articulable facts supporting a decision to search.

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A cursory search (also known as a pat search or search for weapons) is a limited search of the outer clothing in a manner designed to determine whether the person being searched is in possession of any weapons or items which may be used as such. Cursory searches typically require reasonable suspicion that the person to be searched is armed and/or dangerous, and are governed by applicable case law and OPD policy.<sup>1</sup>

**A - 3. Full Search**

A full search of a person is a “relatively extensive exploration”<sup>2</sup> of the person being searched, including their clothing, their pockets, and containers in their possession. A full search of a person is most typically conducted incident to that person’s arrest.

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<sup>1</sup> See for example *Terry v. Ohio*, 392 US 1 (1968) and OPD Training Bulletin I-O.02, *Legal Aspects of Searching Persons*.

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3. Harassing

### **B - 2. Procedural Justice Considerations**

Law enforcement contact with individuals on probation, parole, and PRCS provides an opportunity to practice the tenets of procedural justice: voice, neutrality, respect, and trustworthiness. Probation and parole/PRCS contacts can be used as a means of providing counseling, referral to rehabilitative resources, and a deterrent against recidivism.

### **B - 3. Inquiring About Probation or Parole/PRCS Status**

Inquiring about an individual's probation or parole/PRCS status, especially at the beginning of an interaction, or without an apparent basis for the inquiry, can be viewed as unjustly assuming that the individual has a criminal history. Officers shall refrain from immediately asking whether a person is on probation or parole/PRCS unless there is an immediate threat to the safety of officers or others. Any subsequent inquiries about probation or parole/PRCS status shall be framed in a respectful manner.

## **C. REQUIREMENTS FOR PROBATION OR PAROLE/PRCS SEARCHES**

Probation and parole/PRCS searches shall be conducted in consideration of the totality of the circumstances surrounding the encounter.

### **C - 1. Knowledge of Searchable Probation or Parole/PRCS Status**

Officers must know that an individual is on searchable probation or parole/PRCS, with a clause which allows the search the officer seeks to conduct, before the search. This information may be obtained/confirmed via:

1. Prior knowledge of the individual's searchable probation or parole/PRCS status;
2. Check of law enforcement databases such as AWS, CRIMS, CLETS, and CORPUS;<sup>4</sup>
3. The individual's confirmation of his or her searchable probation or parole/PRCS status.<sup>5</sup> In such cases, the officer shall confirm the status of

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<sup>5</sup> See *In re Jeremy G.* (1998) 65 Cal.App.4th 553, 556 (officer reasonably relied on minor's statement that he was on probation or parole; "[t]he fact that the minor was in error is immaterial").

the individual with a records check. In cases where the individual is mistaken concerning status, the officer shall provide the correct information to the individual and document the results in the appropriate report.

**C - 2. Individuals on Probation or Parole/PRCS for Non-Violent Offenses**

For individuals on probation or parole/PRCS for **non-violent** crimes, officers shall consider articulable fact(s) which tend to show that the individual is connected in some way to criminal activity, that the individual is a threat to officer or citizen safety, or that a probation or parole/PRCS search would further a rehabilitative interest.

The mere fact that a person is on probation or parole/PRCS is not in itself a connection to criminal activity.

**C - 3. Traffic Stops of Persons on Probation or Parole/PRCS for Non-Violent Offenses**

When officers contact a person on probation or parole/PRCS for a non-violent offense during a vehicle stop for an infraction vehicle code violation, and there are no articulable facts present which tend to show that the individual on probation or parole/PRCS is connected in some way to criminal activity, or that the individual is a threat to officer or citizen safety, officers **shall not** search that person pursuant to any probation or parole/PRCS search clauses or conditions.

**C - 4. Individuals on Probation or Parole/PRCS for Violent or Weapons-Related Offenses**

Individuals contacted or detained who are found to be on searchable probation or parole/PRCS for violent or weapons-related crimes may be searched pursuant to the terms of their probation or parole/PRCS conditions.

**C - 5. Cursory and Full Searches**

In those instances where a cursory search for weapons is justified and the individual is on probation or parole/PRCS, a full search of the area which would be subject to the cursory search may be conducted if the individual's search terms allow it.

**D. MEMORIALIZING FACTS OF THE SEARCH**

**D - 1. Required Documentation**

Officers conducting a probation or parole/PRCS search shall at a minimum document the following in the appropriate report:

1. The circumstances of the encounter/detention;
2. How it was determined that the individual was on searchable probation or parole/PRCS;

3. How searchable probation or parole/PRCS status was verified including, if verified via a Mobile Data Terminal (MDT), a paste of this information from the MDT to the body of the report (if feasible);
4. Any articulable fact(s) which informed the decision to search; and
5. The type(s) of search completed and disposition.

By order of

Anne E. Kirkpatrick  
Chief of Police

Date Signed: \_\_\_\_\_



# OAKLAND POLICE COMMISSION

## Agenda Report

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<b>Subject:</b>	<b>CPRA Input on OPD Policies Under Revision</b>
Date:	March 8, 2019
Requested by:	Oakland Police Commission
Prepared by:	Juanito Rus, CPRA Policy Analyst
Approved by:	Karen Tom, CPRA Interim Executive Director

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### Action Requested:

That the Oakland Police Commission discuss and determine its highest policy priorities with respect to the Oakland Police Department where the Police Commission would engage all stakeholders (i.e., community, industry experts, and the Oakland Police Department) in comprehensive policy deliberations.

Based on CPRA investigative history, the CPRA recommends that the Police Commission consider the following two policies as its highest priorities at this time and begin working with the Oakland Police Department on appropriate development, review and/or revisions to such policies:

1. Handling of persons with armed individuals that are found unconscious or unresponsive. The gravity of potential consequences and recent incidents in the City of Oakland warrant that this new policy be a priority.
2. DGO I-15.1 Body Worn Cameras (BWC)  
OPD is currently working on revisions to this policy and the CPRA suggests that this policy be of highest priority for the Police Commission based on a number of recommendations generated from CPRA investigations.

### Background:

In January 2018, the policy team at the Oakland Police Department (OPD) sent the Oakland Police Commission a list of all OPD policies and procedures currently under revision by the Department (Attachment 12a). At their regularly scheduled Commission meeting on February 28, 2019, the Commission requested a “narrative summary report” from the Community Police Review Agency (CPRA) on the Agency’s priorities and recommendations with respect to this list. This Agenda Report constitutes the CPRA response to that request.

**Attachment (12a):**

List of OPD Policies and Procedures Currently Under Review

**Attachment (12b):**

CPRA/CPRB Recommendations with respect to OPD body worn camera (formerly called personal digital recording device or PDRD) policy

**Attachment (12c):**

CPRA/CPRB Policy Recommendations with respect to Vehicular Pursuit of ...

**Summary:**

The CPRA has split the list of OPD policies under revision into four general categories reflecting both the degree to which they impact Agency investigations and whether they have been the subject of past Agency policy recommendations. Additionally, within each category the ordering of the items is reflective of the level of interaction that the Agency has had with the policy development process and Agency priorities.

Unless otherwise noted, this document reflects the CPRA's comments on the fact that the specific policy is under revision without access to any specific revisions contemplated by the Department. The Agency is interested to see what changes the Department proposes in their review of each listed policy. And, when draft versions of the revisions to the policies on this list become available, the Agency is prepared to submit more detailed responses and recommendations addressing that specific language.

The 4 categories and the listed policies that fall under each are as follows:

- 1. OPD Policies and Procedures Directly Related to Core CPRA Operations**
  - DGO M-03 Complaints Against Departmental Personnel or Procedures
  - TB V-T.1 Internal Affairs Investigation
- 2. Policy Revisions arising directly from CPRA Investigations**
  - DGO H-04 8102 W&I – Confiscation of Weapons from 5150 Individuals
- 3. Policies that are CPRA Priorities or that have been the subject of Agency Policy Recommendations**
  - DGO I-15.1 Body Worn Cameras (BWC)
  - DGO J-04 Pursuit Driving
  - DGO K04.1 Force Review and Executive Force Review Boards
  - DGO K-04 Reporting and Investigating the Use of Force
  - DGO H-01 Property and Evidence
  - DGO K-04 Reporting and Investigating the Use of Force
  - RWM R-1 Field Interview and Stop Data Report
- 4. OPD Policies and Procedures about which the CPRA has no significant policy recommendations:**
  - DGO R-02 Probation and Parole Searches
  - TB VIII-I Homeless Encampment Response
  - Lexipol 430 Automated License Plate Readers (ALPR)

- P&P XX-XX Community Policing
- TB III W Cannabis
- DGO C-01 Uniforms and Equipment
- DGO D-01 Overtime
- Lexipol 415 Immigration

## **CPRA Narrative Review of OPD Policies Under Revision:**

### **1. OPD Policies and Procedures Directly Related to Core CPRA Operations**

#### **DGO M-03 Complaints Against Departmental Personnel or Procedures**

This Departmental policy outlines the expected behavior of Department personnel with respect to CPRA investigations and requests. While the Oakland City Charter and Municipal code as established by Measure LL and its enabling ordinance set out certain parameters for the interactions between the CPRA and the OPD at a departmental level, the details of M-03 governing everything from the responsibilities of individual members of the OPD to assist in CPRA investigations; to the form and processes through which notices are served on Department personnel and who is responsible for specific types of CPRA informational requests have been the subject of extensive and ongoing meetings between the Agency, the Internal Affairs Division (IAD), the OPD policy team, and the City Attorney. The Agency will be happy to provide more information and comment on specific details of this policy when a draft is ready to be presented to the Commission.

#### **TB V-T.1 Internal Affairs Investigation**

This policy sets out the rules and procedures for conducting Internal Affairs Division (IAD) investigations of police misconduct. While the Agency has no specific recommendations on V-T.1, we understand that the Department has received technical assistance with the revision of this policy from the Independent Monitoring Team that oversees the OPD under the Federal Consent Decree. The Agency is therefore following this policy closely, both to see how it will affect IAD procedures as well as with an eye towards whether it holds any lessons for CPRA investigative practices.

### **2. Policy Revisions Arising Directly from CPRA Investigations**

#### **DGO H-04 8102 W&I – Confiscation of Weapons from 5150 Individuals**

DGO H-04 is a new policy being proposed by the OPD arising directly from CPRA recommendations associated with the findings from an Agency investigation of a community complaint. State and Federal laws regarding the detainment of individuals under psychiatric holds (Section 5150 of the California Welfare and Institutions Code) is complex, nuanced and continues to evolve; and Departmental policies have often not kept up with these developments. Specifically, when placing an individual on a 5150-psychiatric detention (also known as “green-sheeting” within the Department), the police are authorized to remove weapons that they believe potentially could pose an imminent threat to the detained individual or others. The scope of this confiscation ability is limited in specific ways however. While weapons can be confiscated, ammunition and other materials and accessories associated with the confiscated weapons cannot be removed. Likewise, all confiscated items must be documented and the individuals from whom these items have been removed must be informed of the processes through which they can regain custody of their property. Because these issues have been the subject of CPRA investigations and the Agency played a significant role in identifying the lack of sufficient

department policy and training in this area, it is closely monitoring this proposed policy and will have more recommendations when initial drafts of this policy are released.

### **3. Policies that are CPRA Priorities or that have been the subject of Agency Policy Recommendations**

#### **DGO I-15.1 Body Worn Cameras (BWC)**

The Oakland Police Department was an early adopter of body worn cameras. In the years since they were introduced, they have become the single most important tool for Agency investigators reviewing community allegations of police misconduct. Getting this policy right is therefore a top priority of the CPRA. The Agency, and prior to that the Community Police Review Board (CPRB) has made numerous policy recommendations on the Department's deployment and use of body worn cameras (Attachment 12b). In 2018, CPRA staff including the Policy Analyst and an investigator participated extensively in the initial OPD review of DGO I-15. Our current understanding is that aspects of the policy are subject to meet and confer provisions with the Oakland Police Officers' Association (OPOA) and review by the Oakland Privacy Commission. We have been assured that those processes are in motion, and that we will be notified when the policy in its entirety is ready for final review, which is likely to occur later in the year. When the Department presents their new draft of the BWC policy after these review processes involving other stake-holders, the Agency will be interested in any changes to language that was agreed upon in the initial review and what that final language will be. We will present the Commission with a more detailed response to the policy at that time.

#### **DGO J-04 Pursuit Driving**

In 2007, the Community Police Review Board (CPRB) convened a special panel on OPD DGO J-04 Pursuit Driving after several high-profile pursuit related incidents that came under Board review. That panel compiled extensive policy and training recommendations for the Department, many of which were adopted at that time. In general terms, the then Board and now the staff of the Agency believe that the extreme danger that vehicular pursuits pose to both those who engage in the pursuit and the public calls for a highly restrictive policy with respect to the decision to engage in a pursuit. Further, the 2007 CPRB recommendations focused on several specific recommendations to minimize the dangerous aspects of these pursuits. The Agency is therefore curious to see any new language in revisions to DGO J-04 that speak to these issues, and is prepared to provide additional background materials and policy advice to the Commission when the item comes up for review.

In addition to the general pursuit policy, the CPRB made additional recommendations with respect to vehicular pursuits of subjects fleeing on foot, bicycle or other modes of transportation (including scooters) that are not explicitly covered under DGO J-04 (Attachment 12c). The OPD received these CPRB recommendations and referred them to the Department's Training Division when they were first issued. The Agency believes that the increasing mixture of transportation modes on Oakland streets increases the possibility of these alternate types of police pursuit and continues to advocate for more attention to the policies that guide police behavior in these incidents.

#### **DGO K04.1 Force Review and Executive Force Review Boards**

In 2013, the Citizens' Police Review Board made a policy recommendation that the Oakland Police Department include the Agency Director and other key staff as non-voting members of OPD Force Review (FRB) and Executive Force Review (EFRB) Boards. This recommendation was never adopted as formal Departmental or City policy, however the goal of CPRB

participation in these important reviews was accomplished through informal agreements between the Director of the CPRA and successive Chiefs of the Oakland Police Department such that until the dissolution of the CPRB the Agency Director was regularly invited to participate as a non-voting member of Department FRBs and EFRBs. Measure LL which created section 640 of the Oakland City Charter thereby establishing the Oakland Police Commission and moving the staff of the CPRB into the new Community Police Review Agency included a provision allowing the participation of the Commission Chair as a non-voting member of these review boards, however no formal provision was made to also include the Agency Director and staff, and the CPRA has not had any role in these Board reviews since the empanelment of the Police Commission.

The CPRA agrees that the participation of the Police Commission through the inclusion of the Chair or their designee as a non-voting member of FRBs and EFRBs is important because of the need for transparent processes that include community voice and participation. And further recognizes the important educational goal of having Commissioners witness and participate in what are otherwise closed process.

By their construction, FRBs and EFRBs constitute the most significant top-level Departmental review of police interactions that involve the use of force, and participants in the review process include the investigators or investigative teams from within the Department's Criminal Investigations and Internal Affairs Divisions who report on the findings of these investigations to the review board of Departmental command staff assembled for this purpose. Because Measure LL mandates that the CPRA conduct parallel investigations in all major Use of Force incidents, the incidents under review in FRBs and EFRBs are in most cases – except for the most minor uses of force – also the subject of Agency investigations. The Agency therefore believes that the active participation as non-voting members by minimally the Agency Director and the lead investigator assigned to the case under review is not only warranted, but an important part of the Agency's oversight and review role, and vital to its investigations. From the perspective of the reviews conducted within the FRB and EFRB process, Agency investigations sometimes discover facts and evidence which the Department's investigative teams have not, and because the Agency is independent of the Police Department, its investigators also tend to approach the investigation of these facts and evidence from a slightly different perspective more focused on complainants and community impacts. The Agency therefore believes that in at least some subset of the cases that come before FRBs and EFRBs, Agency participation on par with that of Internal Affairs investigators is both warranted and can provide useful information and insights to Department leadership. This flow of information is important in both directions however. To conduct thorough investigations, Agency investigators need to know all relevant information about the incidents under review in a timely manner and to understand the approach that the Department is taking with respect to these investigations. For these purposes, there is simply no substitution for being present during the main Departmental review of the investigated incident. The Agency therefore believes that a formalization of the participation of Agency personnel in FRBs and EFRBs is warranted, either within the OPD policy on FRBs and EFRBs or within City policy establishing the range of duties and responsibilities of the Agency Director and staff.

### **DGO K-03 Use of Force**

The CPRA has no pending policy recommendations relating to DGO K-03. However, the Agency is mandated to investigate Department Use of Force incidents so it is closely monitoring any developments in this policy's revision. Additionally, current high profile incidents have brought the Department's Use of Force Policy back into the spotlight. As with the Agency's position on the J-04 Vehicle Pursuit policy, the Agency and prior to that the CPRB have

generally advocated for more restrictions on police uses of force – calling for force to be used only as a last resort and for graduated and non-lethal responses to dynamic situations in accordance with accepted best practice. The Agency is therefore interested to see what, if any, changes are proposed by the Department to DGO K-03.

### **DGO H-01 Property and Evidence**

The CPRA has made no recent policy recommendations specifically related to DGO H-01. However, the Agency has concerns about the police conduct that this DGO covers that have been the subject of Agency recommendations with respect to other Departmental policies and training. The CPRA receives many community complaints every year alleging damage to personal property during interactions with the OPD, or other indications of lack of care for property evinced by OPD members. These allegations can be among the most difficult to investigate because of a lack of direct dispositive evidence that any damage claimed occurred during the incident involving the police. Many of the Agency's recommendations with respect to body worn cameras therefore specifically reference their use to document care of property – including that OPD personnel conducting searches create pre- and post-search videos documenting the condition of the areas searched, and that video should also be used to document the securing and/or confiscation of property in addition to OPD written reports.

Additionally, the CPRA has made several training recommendations with respect to DGO H-01, from improved training on documenting property and evidence in written reports, to better training on the nuance of the law with respect to care and documentation of property and evidence in specific legally complex situations such as the special requirements that apply to individuals subject to 5150 holds as described in the newly proposed DGO H-04 previously.

The Agency is interested to read any proposed changes to DGO H-01 and to make additional recommendations when drafts of the revised policy become available.

### **DGO K-04 Reporting and Investigating the Use of Force**

This policy review was triggered by a report by the Federal Independent Monitoring Team (IMT) indicating that OPD personnel were under-reporting use of force incidents because of systematic failures to document incidents in which officers had pointed weapons at suspects without firing them – which legally constitutes a reportable use of force. The documentation of Departmental uses of force are important for establishing trends and potentially documenting disparities in policing amongst different groups within the Oakland community to better capture possible issues of bias and profiling. Under-reporting of these incidents – even in relatively lower level uses of force – potentially skews this sort of analysis. While the CPRA has made no specific recommendations with respect to DGO K-04, the reporting issues highlighted in the IMT report are similar to CPRA recommendations to improve officer training on report writing and the nuance of reporting requirements across a range of policy areas. The Agency is therefore following the review of this policy and may have additional recommendations when the Department presents its revisions to the Commission.

### **RWM R-1 Field Interview and Stop Data Report:**

As with the reporting issues raised with respect to DGO K-4 above, the revision of the OPD Report Writing Manual (RWM) R-1 relating to Field Interviews and Stop Data Reports are important to the extent that these reports are ultimately crucial to the documentation of systematic issues such as profiling and bias. Specific to this item, the CPRA notes that stop data and field interview reports are collected only when Officers make involuntary detentions in the field. If interactions between the police and community members are voluntary, then they don't constitute stops and are not documented in the same way. Agency investigators have

commented that in many interactions between the police and the public observed in the course of CPRA investigations, the community member may not be aware that they are not technically being detained and are legally free to walk away from the interaction at any time because of fears of the police and lack of specific detailed knowledge of their individual rights. Therefore, some stops which community members may perceive as involuntary detentions are unreported because they are technically not involuntary. The CPRA is therefore tracking any changes to this portion of the OPD Report Writing Manual and may have additional recommendations when the item is presented to the Commission.

#### **4. OPD Policies and Procedures about which the CPRA has no significant policy recommendations:**

The final group of policies listed as currently under revision by the OPD are those for which the CPRA has no significant recommendations at this time. These policies are listed with brief explanations below:

- **DGO R-02 Probation and Parole Searches** has already been the subject of extensive action by the Oakland Police Commission and the Agency has no further input to provide.
- **TB VIII-I Homeless Encampment Response** was the subject of a recent Commission special public forum, and has received Commission attention, but has not been the subject of a large number of Agency investigated misconduct complaints, and is not the subject of any current CPRA policy recommendations
- **Lexipol 430 Automated License Plate Readers (ALPR), P&P XX-XX Community Policing, and TB III W Cannabis** have not been the subject of any complaints investigated by the Agency, and will receive additional community review by the Oakland Privacy Commission, the Community Policing Advisory Commission (CPAB), and the Cannabis Commission respectively. The Agency believes that these other oversight bodies are in a better position to review and advise the Department and Commission on any proposed changes to existing policy in these areas.
- **DGO C-01 Uniforms and Equipment, DGO D-01 Overtime, and Lexipol 415 Immigration** are not the subject of any CPRA policy recommendations at this time. The OPD has advised the Agency that they have received and are considering recommendations regarding DGO C-01 that were offered by the Coalition for Police Accountability at a Commission meeting in 2018. However, no draft language of any proposed revisions of this policy have been made available to the CPRA as of yet, and the Agency has no specific comments on this policy item.

## OPD Policies and Procedures Currently Under Revision

DGO C-01	Uniforms and Equipment
DGO D-01	Overtime
DGO H-01	Property and Evidence
DGO H-04	8102 W&I - Confiscation of Weapons from 5150 Individuals
DGO I-15.1	Body Worn Cameras (BWC)
DGO J-04	Pursuit Driving
DGO K-03	Use of Force
DGO K-04	Reporting and Investigating the Use of Force
DGO K04.1	Force Review and Executive Force Review Boards
DGO M-03	Complaints Against Departmental Personnel or Procedures
DGO R-02	Probation and Parole Searches
Lexipol 415	Immigration
Lexipol 430	Automated License Plate Readers (ALPR)
P&P XX-XX	Community Policing
RWM R-1	Field Interview and Stop Data Report
TB III W	Cannabis
TB VIII-I	Homeless Encampment Response
TB V-T.1	Internal Affairs Investigation

## **OAKLAND POLICE DEPARTMENT PERSONAL DIGITAL RECORDING DEVICE (PDRD) POLICY**

The Oakland Police Department was an early adopter of body-worn police cameras, and the deployment of these cameras has taken an increasingly central role in both police investigative work in Oakland, and in the review of allegations of Officer misconduct by both the OPD Internal Affairs Division and the independent Citizens' Police Review Board. As the professional staff and appointed Board of the CPRB have grown accustomed to the important role of the body-worn camera in the exercise of police oversight however, they have also reviewed incidents in which current policies and training have failed to maximize the full potential of this technology both as a tool for investigators and as a method of documenting police procedure and improving departmental transparency to an often-mistrustful public.

As part of its ongoing policy review process, the Oakland Police Department is currently engaged in an extensive review of PDRD related policy and training. It is therefore an appropriate time for the CPRB to re-emphasize past policy recommendations regarding PDRD deployment and usage and to forward all additional recommendations to the appropriate authorities within the OPD. These recommendations span a range of issues having to do with PDRD deployment, activation and de-activation; and requests for additional training of officers emphasizing the importance of PDRD evidence both for public transparency and to document mandated tasks that frequently generate citizen complaints. The appointed Board of the CPRB believes the adoption of these proposed changes to PDRD policy and training is vital to facilitate the review process and minimize recurrent problems of miscommunication, conflicting statements, and gaps in the investigatory record that affect both investigations of officer misconduct and OPD investigations of criminal behavior.

On Tuesday, July 18, 2017, members of the CPRB staff met with Timothy Birch, who leads the Office of Research and Planning within the Oakland Police Department Office of Chief of Police, to discuss the current OPD PDRD policy review process. Both outstanding CPRB policy recommendations and additional recommendations that have been generated this year relating to the deployment of PDRDs by members of the department were discussed, and several of the CPRB's standing recommendations have already been included in proposed policy language as part of the review process. This summary constitutes a full list of specific changes to OPD PDRD policy generated by the appointed Board of the CPRB which were discussed at this meeting and have been forwarded to the Department.

These specific CPRB PDRD policy recommendations can be broken down into 3 broad categories: PDRD activation/deactivation during regular patrol and investigatory functions; video documentation of police vehicle stops – especially related to faulty equipment related stops; and the use of PDRDs during the execution of property searches. In all three categories, the Board has advocated for increased usage of video documentation employing the PDRD technology to increase transparency and improve the review process. Additionally, the Board emphasized – and staff discussed with OPD policy personnel – the need for expanded training of officers to improve the quality and investigatory value of such video documentation.

**Summary of PDRD Policy Recommendations based on CPRB Investigations**

**A) PDRD Activation (general)**

- 1) Officer PDRDs should be activated for all contacts between officers and the public. (subject to restrictions on recordings of minors and other special circumstances)
- 2) PDRDs should be activated to document citizen contacts to confirm or dispel a suspicion that the citizen may be involved, as a suspect *or witness* in criminal activity.
- 3) Officers shall activate their PDRD to document all welfare checks

Statement Taking

- 4) Members shall activate PDRDs when taking statements from *officers* in the same manner that such activation is used when taking statements from the public. While this should not be construed to limit existing expectations with respect to an officer's duty to file written statements, interviews of witness and subject officers conducted by supervisors in the field should be treated with the same level of care and with the same requirements of video documentation as they would be if conducted in the context of departmental review at police headquarters.

**B) Documentation of Vehicle Stops**

Where possible PDRDs should be activated to positively document the basis for all vehicle stops involving faulty equipment. Officers documenting the basis of vehicle stops using their department issued PDRDs should assure that the faulty equipment being document is clearly visible and sufficiently lit in the video as to provide sufficient video documentation for subsequent investigations or incident reviews.

**C) Documentation of Police Searches**

OPD should document all searches and services of warrants with PDRD or other recording devices. Specifically:

- 1) Officers shall record the service of any warrant to those individuals who are legally entitled to such a warrant, and shall document that a copy of the warrant remains on the property after the search is complete.
- 2) Officers should activate and record all areas that are the subject of a warrant search both pre- and post-search with special focus on any changes to the search area and any damage or breakage caused by the search.
- 3) All pre- and post- recordings of areas searched by OPD personnel should be conducted with sufficient lighting, pace and detail as to assure a record is captured which will be probative in the case of further investigation or after-action review.
- 4) Officers employing PDRDs to document searches, both pre- and post- search sweeps and evidence searches, should be trained in providing high-quality contemporaneous narration of the subject of the video. This should include a verbal description of the specific items/areas

being captured on video where these are deemed relevant to the investigation and a general narration providing details with respect to the areas/rooms being examined as the camera documents these areas.

- 5) Where searches are conducted either by sworn or unsworn personnel who have not been issued a personal PDRD, the department should make every reasonable effort to make a PDRD available for filming purposes. Such PDRDs may either be issued specifically for such purposes prior to deployment of the search team; or, where a specific search PDRD is not available, search personnel should be allowed to use the PDRDs of sworn personnel on scene or be accompanied by a member with a PDRD to insure the existence of pre- and post-video documentation of applicable search areas.
- 6) PDRDs used to document searched areas post search shall not be de-activated until the searches requiring activation have concluded and the member believes they will have no further interaction with the person, ***and the property being searched has been properly secured. A post search video must document that OPD personnel involved in the search have properly secured, or have made a good faith effort to properly secure, all properties subject to the search.***

## **VEHICULAR PURSUIT OF SUSPECTS FLEEING ON FOOT OR BICYCLE**

In the past year, the CPRB has received and investigated several complaints involving OPD officers pursuing suspects fleeing on foot or bicycle in their patrol vehicles. In each of these incidents, the appointed Board has expressed severe reservations about the actions of subject officers, and have questioned both tactics and the context of the decision to pursue, however no specific allegations related to these decisions have led to Sustained findings of officer misconduct. The reason for the lack of Sustained findings in these incidents should not be construed as an endorsement of the tactics of OPD officers in these cases however, rather they highlight a gap in current OPD policy and training which does not address the specific case of a pursuit in which the officer is in a patrol vehicle while the fleeing suspect is on foot or bicycle. The lack of either a specific policy addressing these pursuits or the formal application of either the OPD's Vehicle Pursuit Policy, or Foot Pursuit Policy to decisions to engage in these hybrid pursuits means that conduct which would be otherwise prohibited if both the officer and fleeing suspect engaged in the same modes of transportation (foot/bicycle or vehicle), instead fall into a policy vacuum which does not allow for disciplinary action related to the specific decision to pursue except when some other violation of policy is involved.

In reviewing these incidents, the Board has appreciated that such pursuits may be justified, however the justifications for such pursuits have often been deemed insufficient when compared against the risks to both the officers involved in the decision to pursue and to the public. In specific incidents that have generated complaints reviewed by the CPRB, the probable cause used to justify the "hybrid" pursuit have – in every case – been based on suspected criminal activity that is well below the threshold of posing an immediate danger to public health or safety which would be required under either the Vehicle or Foot pursuit policies, and have often involved low level drug transactions and other crimes which would otherwise be treated as low-priority arrests.

Additionally, specific complaints have involved incidents in which officers have, during a pursuit of suspects fleeing on foot or bicycle, employed tactics the appointed Board have deemed to be inappropriate methods for accomplishing the stated goal of apprehending suspects while minimizing dangers to themselves and others. These specific tactics include but are not limited to:

- 1) Employing the vehicle pursuit tactic of "channeling" – defined as the usage of a patrol vehicle to constrain the range of action of the fleeing suspect by actively blocking movement in certain directions – which is designed and more appropriately employed in the context of vehicular pursuits.
- 2) Driven patrol vehicles onto sidewalks and public areas designed for foot traffic to more quickly apprehend fleeing suspects.

Suspect officers involved in disciplinary review have even gone so far as to describe their choice of tactics using terms related to vehicle pursuit training and policy, while clarifying that these descriptors did not apply in the incidents under review because they were not engaged in a vehicle pursuit.

Furthermore, in several of these incidents, the pursuits under review have occurred in locations with large numbers of bystanders and have generated multiple citizen complaints about single incidents relating either to the perceived dangers to uninvolved pedestrian and bicycle traffic, or to accusations that police vehicles have been used to “hit” fleeing subjects. Therefore, these incidents – even where they do not lead to specific incidence of harm – should be understood in the context of both their high visibility and public perceptions of the inappropriateness of the tactics and potential dangers as expressed through the generation of multiple public complaints of misconduct filed with the CPRB and IAD.

To date, the CPRB has not reviewed a single incident where a collision between an officer in a patrol vehicle and a suspect fleeing on foot or bicycle can be determined to have occurred, however the potential for accidental contact when involved in such pursuits is perceived to be high, and poses grave dangers to both the public and to the officers engaged in such tactics. A contact between patrol vehicle and pedestrian (or bicyclist) is – under OPD departmental policy and the laws of the State of California – deemed to be a level 1 [deadly] Use of Force. Therefore, where even the possibility for accidental contact exists, departmental policy and training should emphasize that pursuits of suspects fleeing on foot or bicycle employing patrol vehicles are both dangerous to the public and potentially subject to the highest levels of official review and legal scrutiny.

Over the past decade a significant effort has been made to improve the tactics of OPD personnel involved in vehicular pursuits (of suspects fleeing in vehicles), and to limit an officer’s ability to initiate such pursuits to incidents where the fleeing suspect is believed to have engaged in **“violent forcible crimes and/or crimes involving the use or possession of firearms”** (OPD Vehicle Pursuit Policy DGO J-4). Likewise, the California Lexipol policy for foot pursuits, in which both the fleeing suspect and the pursuing officer are on foot (and/or bicycle) is clear in establishing that **“It is the policy of this [department] when deciding to initiate or continue a foot pursuit that [officers/ deputies] must continuously balance the objective of apprehending the suspect with the risk and potential for injury to department personnel, the public or the suspect. [Officers/Deputies] are expected to act reasonably, based on the totality of the circumstances. Absent exigent circumstances, the safety of department personnel and the public should be the primary consideration when determining whether a foot pursuit should be initiated or continued. [Officers/Deputies] must be mindful that immediate apprehension of a suspect is rarely more important than the safety of the public and department personnel.”** (Lexipol California foot pursuit draft policy 2015)

It is therefore the belief of the appointed Board of the CPRB that the language which applies to Vehicle and Foot pursuits must explicitly extend to the case in which the officer making the decision to pursue is in a patrol vehicle and the suspect is fleeing on foot or bicycle. Officers involved in such pursuits should have more than probable cause of a minor violation, and should be expected to exercise the same standard of review to balance the payoff of apprehension based on the severity of the suspected criminal activity against potential dangers to the public and to the officer themselves given the small margins for error involved in potential collisions between motor vehicles and pedestrians.

Furthermore, whereas the City of Oakland has embraced pedestrian traffic and actively encourages bicycle use through several city-wide programs and initiatives, the Board believes that the likelihood that problematic interactions between officers in patrol vehicles and suspects on foot or bicycle are likely to increase in the years ahead. The Department would therefore be well served to engage in a review of departmental policies and training related to pursuits of suspects using these methods of transportation now rather than waiting for an incident or accident in which the outcomes of the decision to engage in a mixed-mode pursuit leads to actual harm to the public or the officers of the OPD.

**OPD Vehicle Pursuit Policy**

**DEPARTMENTAL GENERAL ORDER J-4 Pursuit Driving**

Effective Date 25 Aug 14

The purpose of this order is to establish Departmental policy and procedures for vehicle pursuits.

I. VALUE STATEMENT

The protection of human life shall be the primary consideration when deciding to engage in a vehicle pursuit. Vehicle pursuits are inherently dangerous, but at times may be necessary to apprehend dangerous criminals who evade police in an attempt to escape. ***However, the decision to engage in a vehicle pursuit to immediately apprehend a fleeing suspect requires a careful weighing of the risks to the safety of officers, motorists, bystanders and the general public versus the benefit to public safety. Therefore, this policy only allows vehicle pursuits for violent forcible crimes and/or crimes involving the use or possession of firearms.***

II. ENGAGING IN A VEHICLE PURSUIT

A. What is a vehicle pursuit

A Vehicle Pursuit is an event involving one or more law enforcement officers attempting to apprehend a suspected or actual violator of the law in a motor vehicle while the driver is using evasive tactics, such as high speed driving, driving off a highway or turning suddenly and failing to yield to the officer's signal to stop.

B. When a pursuit may be initiated

Vehicle pursuits may only be initiated when there is reasonable suspicion to believe the suspect committed a violent forcible crime (See Appendix A) and/or a crime involving the use of a firearm, or probable cause that the suspect is in possession of a firearm. A monitoring commander may authorize a pursuit for a crime not involving a violent forcible crime or firearms, under exigent circumstances, when the fleeing suspect's actions pose an immediate and serious threat to officers and the public. A pursuit report shall be completed and forwarded to the Department Safety Coordinator for all pursuits initiated under exigent circumstances and shall go before the Department Safety Committee for a full review to determine policy compliance.

C. When a pursuit must be terminated

Pursuits shall be terminated whenever the totality of circumstances known or which should be known to involved personnel during the pursuit indicate that the risks in continuing the pursuit reasonably appear to outweigh the risks resulting from terminating the pursuit.

III. RISK FACTORS

Involved personnel shall consider all Risk Factors, in determining whether to initiate and continue a vehicle pursuit, including but not limited to:

1. The volume of vehicular and pedestrian traffic in the area;
2. Traffic conditions;

3. Location of pursuit;
4. Safety of the public in the area of the pursuit (e.g., the presence of children, the elderly or disabled, the proximity to hospital or school zones in the vicinity of the pursuit);
5. Safety of the pursuing officers;
6. Speeds of both officer and suspect vehicles;
7. Familiarity of the officer and supervisor with the area of the pursuit;
8. Road and weather conditions;
9. Time of day;
10. Quality of communications between the pursuing units, the Communications Section, and/or supervisor;
11. The performance capabilities of the police vehicle or the operation of the emergency lights and siren
12. Availability of air or field support;
13. Whether the officer has a ride-along passenger with him/her;
14. Whether the suspect is known and can be apprehended at a later time;
15. Whether the suspect is known to be a juvenile;
16. When a non-suspect vehicle and/or pedestrian accident has occurred during a pursuit;
17. The safety of occupants in the fleeing vehicle;
18. The distance between the pursuit and fleeing vehicles is so great that further pursuit is futile; and
19. The pursued vehicle's location is no longer known.

IV. DUTIES OF INVOLVED PERSONNEL

“Involved personnel” refers to officers, supervisors and commanders who are involved in the pursuit of the fleeing suspect or making command and control decisions relative to the pursuit. A supervisor or commander, who becomes engaged in the pursuit, shall relinquish his/her supervisory control to an uninvolved supervisor or commander as soon as reasonably practical. A passenger officer in a pursuit vehicle is considered involved personnel and shall be held accountable for advising the driver whenever a pursuit should be terminated. Involved personnel shall comply with all other policy requirements including the driving rules, notification and reporting requirements.

A. Initiating a pursuit

1. When initiating a pursuit, involved officers must ensure there is: ***a. Reasonable Suspicion the pursuit is for a violent forcible crime and/or a crime involving the use of a firearm; or b. Probable Cause that the suspect is in possession of a firearm.***
2. All vehicle pursuits shall be conducted with red light and siren, as required by 21005 VC, and with due regard and caution for the safety of all persons using the highway, as required by 21056 VC.
3. During a pursuit, involved officers and monitoring supervisors/commanders shall continually consider the Risk Factors and whether the pursuit should be terminated in order to protect officers and the public from the risks associated with the pursuit. All involved personnel may be required to explain their decision making and analysis of the risk factors.

**Lexipol Foot Pursuit Policy**

Lexipol California DTB Date: 2015/08/04 Foot Pursuit Policy - Guidelines \*\*\*DRAFT\*\*\* 11 Printed Date: 2015/08/13 © 1995-2015 Lexipol, LLC 458.1.1

458.3 GUIDELINES FOR FOOT PURSUIT ***Unless the [officer/deputy] reasonably believes that exigent circumstances exist (e.g. a serious threat to the safety of personnel or members of the public), [officers/deputies] should consider alternatives to engaging in or continuing a foot pursuit*** under the following conditions:

- (a) When directed by a supervisor to terminate the foot pursuit. Such an order shall be considered mandatory
- (b) When the [officer/deputy] is acting alone.
- (c) When two or more [officers/deputies] become separated, lose visual contact with one another, or obstacles separate them to the degree that they cannot immediately assist each other should a confrontation take place. In such circumstances, it is generally recommended that a single [officer/deputy] keep the suspect in sight from a safe distance and coordinate the containment effort.
- (d) The [officer/deputy] is unsure of his/her location and direction of travel.
- (e) When pursuing multiple suspects and the pursuing [officers/deputies] do not reasonably believe that they would be able to control the suspect should a confrontation occur.
- (f) When the physical condition of the [officers/deputies] renders them incapable of controlling the suspect if apprehended.
- (g) When the [officer/deputy] loses radio contact with [the Communications Center] or with backup [officers/deputies].
- (h) When the suspect enters a building, structure, confined space or a wooded or otherwise isolated area and there are insufficient [officers/deputies] to provide backup and containment. The primary [officer/deputy] should consider discontinuing the pursuit and coordinating containment pending the arrival of sufficient [officers/deputies].
- (i) The [officer/deputy] becomes aware of unanticipated or unforeseen circumstances that unreasonably increase the risk to [officers/deputies] or the public.
- (j) The [officer/deputy] reasonably believes that the danger to the pursuing [officers/deputies] or public outweighs the objective of immediate apprehension.
- (k) The [officer/deputy] loses possession of his/her firearm or other essential equipment.
- (l) The [officer/deputy] or a third party is injured during the pursuit, requiring immediate assistance, and there are no other emergency personnel available to render assistance.

(m) The suspect's location is no longer definitely known.

(n) The identity of the suspect is established or other information exists that will allow for the suspect's apprehension at a later time, and it reasonably appears that there is no immediate threat to department personnel or the public if the suspect is not immediately apprehended.

(o) The [officer/deputy]'s ability to safely continue the pursuit is impaired by inclement weather, darkness or other conditions.

POLICY

***It is the policy of this department when deciding to initiate or continue a foot pursuit that [officers/deputies] must continuously balance the objective of apprehending the suspect with the risk and potential for injury to department personnel, the public or the suspect. [Officers/Deputies] are expected to act reasonably, based on the totality of the circumstances. Absent exigent circumstances, the safety of department personnel and the public should be the primary consideration when determining whether a foot pursuit should be initiated or continued. [Officers/Deputies] must be mindful that immediate apprehension of a suspect is rarely more important than the safety of the public and department personnel.***



# AGENDA REPORT

**TO:** The Honorable City Council

**FROM:** Regina Jackson  
Chair, Oakland Police  
Commission

**SUBJECT:** Police Commission Quarterly Report

**DATE:** March 4, 2019

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## **RECOMMENDATION**

**Staff Recommends That The City Council Receive A Quarterly Progress Report From The Oakland Police Commission.**

## **EXECUTIVE SUMMARY**

At the January 31, 2019 Rules and Legislation Committee, the Committee approved a request from Councilmember Noel Gallo to schedule a quarterly informational progress report from the Oakland Police Commission. This is the first quarterly report submitted to the Public Safety Committee.

The Police Commission, authorized by Measure LL in the November 2016 election, is a seven Commissioner, and two alternate Commissioners, civilian oversight board that oversees the policies, practices and customs of the Oakland Police Department (OPD) to meet national standards of constitutional policing and oversees the Community Police Review Agency (CPRA) that investigates complaints of police misconduct and makes recommendations for discipline. The Police Commission is also charged with conducting an annual performance review of the CPRA Executive Director and OPD Chief of Police.

## **BACKGROUND / LEGISLATIVE HISTORY**

On November 8, 2016, voters approved Measure LL which created the Oakland Police Commission run by civilian commissioners to oversee OPD's policies and practices and CPRA's investigations of police misconduct complaints. Measure LL granted the Mayor authority to appoint three regular members and one alternate member to the Police Commission. Additionally, a selection panel comprised of members of the public, appoint four regular members and one alternate member.

At its meeting of October 17, 2017, the City Council approved the Mayor's and selection panel's appointments to serve on the Police Commission. The Police Commission held its first meeting on December 13, 2017, and currently meets on the second and fourth Thursday of each month at 6:30 pm.

Item: \_\_\_\_\_  
Public Safety Committee  
March 19, 2019

## **ANALYSIS AND POLICY ALTERNATIVES**

At the time of consideration by the City Council of this Progress Report, the Police Commission will have been in existence for approximately 15 months. During that time, the Commission has met many tasks and includes several highlights:

- Completed elections for the positions of Chair (three elections – 2017, 2018, 2019) and Vice Chair (two elections – 2017, 2018);
- Drafted and adopted a Rules of Procedure;
- Trained individual Commissioners on various topics relevant to the Police Commission's operation and as required by the Enabling Ordinance (trainings were completed by Commissioners Dorado and Jackson);
- Held a special presentation by Jim Chanin entitled "History of the Negotiated Settlement Agreement";
- Created a full-time Administrative Analyst II position, previously not assigned to the Commission, and filled such position to provide administrative staff support;
- Created a Police Commission website;
- Considered, reviewed and provided feedback on the Police Department's Policy on Probation and Parole Searches;
- Analyzed and edited the Police Commission's Enabling Ordinance for submission to the City Council;
- Developed and approved a social media policy, and created a Twitter account @OakPoliceComm;
- Held two Police Commission planning and training retreats;
- Conducted a special meeting at the East Oakland Youth Development Center, which centered on a presentation from attorney John Burris on the "Legal Rights of Citizens When Dealing with Police"; and
- Held a public hearing on the Police Department's practices of policing the homeless community;

The Commission has currently identified other pressing issues currently underway which include:

- Posting the job requirements for, and working with the City Attorney's Office, to hire a General Counsel to the Police Commission;

- Creating the job requirements for, and working with the City Administrator to hire, an Inspector General to the Police Commission;
- Planning for the conducting of a performance review for the Chief of Police;
- Any relevant disciplinary issues;
- Submission of a proposed budget to the Mayor regarding training and education for Department sworn employees regarding management of job-related stress;
- Drafting an annual report for the Mayor, City Council and the public; and
- Further review of issues regarding the Police Department raised by the Public.

### **FISCAL IMPACT**

There are no direct fiscal costs associated with this report.

### **PUBLIC OUTREACH / INTEREST**

No additional public outreach was done for this report other than the standard posting of the City Council Agenda.

### **SUSTAINABLE OPPORTUNITIES**

***Economic:*** There are no economic opportunities associated with this report.

***Environmental:*** There are no environmental opportunities associated with this report.

***Social Equity:*** There are no social equity opportunities associated with this report.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That The City Council Receive A Quarterly Progress Report From The Oakland Police Commission.

For questions regarding this report, please contact Regina Jackson, Chair of the Oakland Police Commission, at 510-238-2187.

Respectfully submitted,



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REGINA JACKSON  
Chair, Oakland Police Commission

**Oakland Police Commission**

**Standing Committees**

**Community Outreach**

Ahmad  
Dorado

**Personnel**

Harris  
Jackson

**Ad Hoc Committees**

**Annual Report**

Prather  
Smith

**Appeals Plan/New**

**Evidence Discovery on Bey  
Case**

Dorado  
Harris

**Budget**

Harris  
Jackson

**Chief's Goals**

Dorado  
Harris

**Probation and Parole**

Jackson  
Prather  
Smith

**Public Hearing on Data Re: Racial Profiling**

Ahmad  
Jackson

**Public Hearing on Policing and  
the Homeless**

Dorado

**Rules, Bylaws**

Harris  
Prather

**Task Force/Summit on Community Policing**

Dorado

## Oakland Police Commission Organizational Chart

Directive from Finance: Cut \$163k from budget.

Challenges:

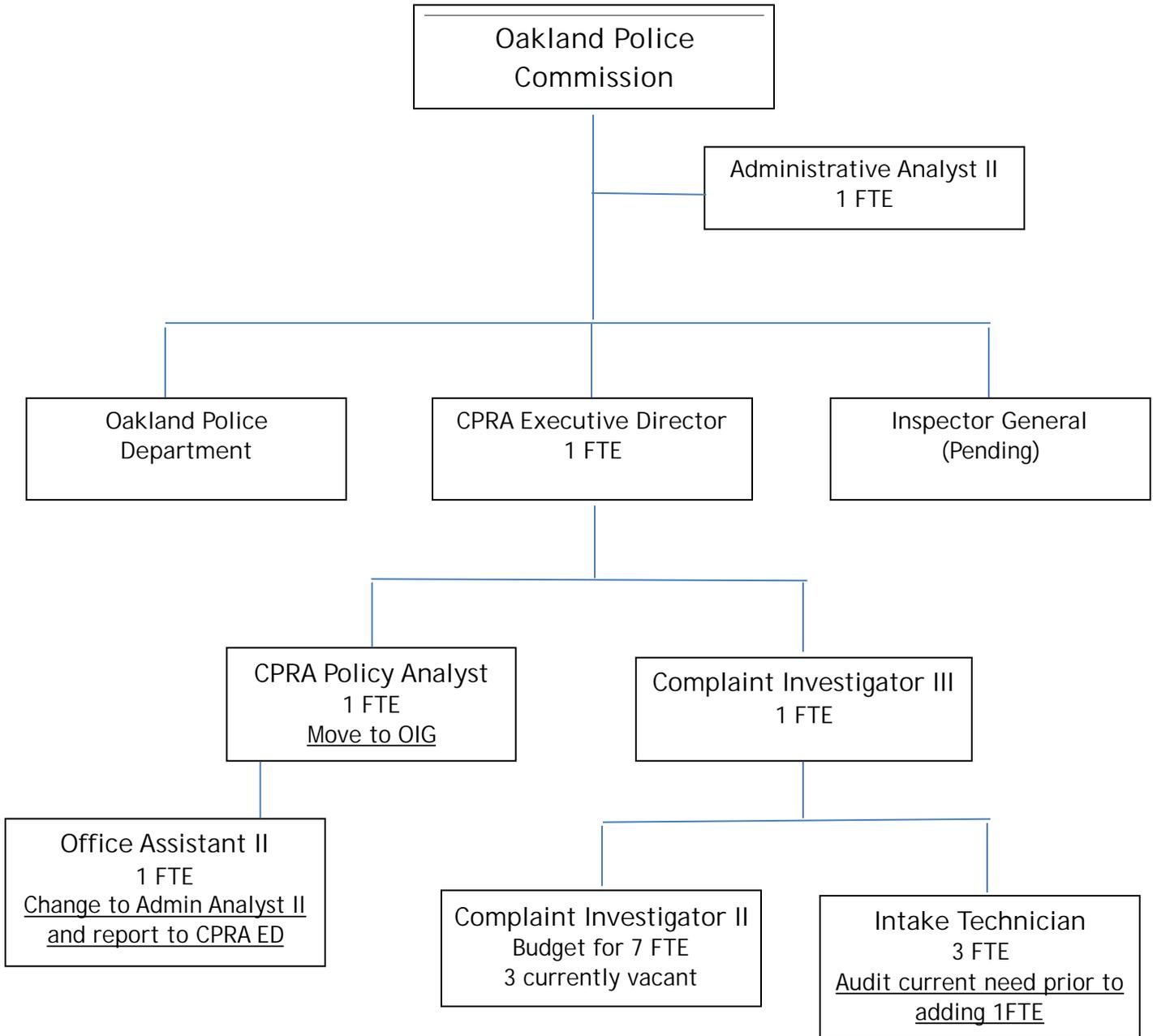
1. CPRA is requesting to fill all 7 FTE Investigators and add 1 additional Intake Tech to meet demand, plus update Office Assist.
  1. Question: We have budget for 7FTE Investigator II, but also 1 Investigator III. Does this go over what Measure LL says?
2. The pending move of Policy Analyst to OIG leaves duties to address
  1. We have assessed the situation and suggest
    1. Move Policy Analyst position to OIG and create new job description because the current job description does not fit the needs of the office
    2. Reallocating many of the tasks identified by CPRA Policy Analyst as indicated on "CPRA Policy Analyst Analysis by Budget Ad Hoc"
    3. Our analysis suggests that we need to modify the Office Assistant II position given the complex needs of the CPRA office
3. Enabling Ordinance states: the Policy Analyst position and funding then budgeted to the Agency shall be reallocated to the OIG
  1. Move Policy Analyst position to OIG and create new job description because the current job description does not fit the needs of the office

Recommendation from J. Rus is to freeze 1 FTE for Complaint Investigator II (to meet the 163k cut) and to ask for Intake Tech in a supplemental request- leaving 6FTE Investigator II and only hope for additional Intake Tech

Recommendation from Ad Hoc: Re-org CPRA to eliminate current "CPRB Policy Analyst", eliminate Office Assistant II and replace Admin Analyst II, develop clear job expectations for CPRA ED, Admin Analyst II, OIG and OIG Policy Analyst to address the current tasks completed by "CPRB Policy Analyst" (see "CPRA Policy Analyst Analysis by Budget Ad Hoc")

Measure LL: "The staff of the Agency shall consist of no fewer than one line investigator for every one hundred (100) sworn officers in the Department, rounded up or down to the nearest one hundred (100). The number of investigators shall be determined at the beginning of each budget cycle based on the number of sworn officers employed by the Department the previous June 1. At least one investigator shall be a licensed attorney. The budget set-aside for such minimum staffing may be suspended for a fiscal year or two-year budget cycle upon a finding in the budget resolution that the City is facing an extreme fiscal necessity, as defined by City Council resolution."

\*Submitted by J. Rus 2.8.19, suggested modifications from Budget Ad Hoc underlined



<b>66111 Police Commission Labor Budget</b>						
<b>Account Description</b>	<b>Budget</b>	<b>Encumb</b>	<b>Actual</b>	<b>Balance</b>	<b>Suggested</b>	<b>Notes</b>
Civilian: Regular	61,462.00	-	10,038.35	51,423.65	61,462.00	Unchanged, no recommendations for additional staffing
Civilian: Paid Leave Charge	18,256.00	-	2,298.80	15,957.20	18,256.00	
Civilian: Retirement Accrual	32,741.00	-	5,067.30	27,673.70	32,741.00	
Civilian: Fringe Benefits Accrual	27,273.00	-	4,217.85	23,055.15	27,273.00	
<b>Total</b>	<b>139,732.00</b>	<b>-</b>	<b>21,622.30</b>	<b>118,109.70</b>	<b>139,732.00</b>	<b>-</b>
<b>6611 Police Commission O&amp;M Discretionary</b>						
<b>Account Description</b>	<b>Budget</b>	<b>Encumb</b>	<b>Actual</b>	<b>Balance</b>	<b>Suggested</b>	<b>Notes</b>
Public Relations					10,000.00	Moved from CPRA. Question: Do we need this much on top of Special events?
Facilitation/Consultants: Training, Planning and Development					75,000.00	We expect to need multiple trainers per our 5 areas and would like to have access to consultants as needed for support
Public Hearings/Special Meetings					28,000.00	Moved from CPRA (Special Set Ups) to here for Public Hearings/Community Meetings (5k per meeting plus 7k for food, PR, printing, facility rental, etc.)
Stationery and Office Supplies	5,000.00	-	-	5,000.00	5,000.00	While currently unencumbered, we expect to need this budget
Minor Computer Hardware and Software (No Asset Num	5,000.00	-	-	5,000.00	5,000.00	While currently unencumbered, we expect to need this budget
Books	1,000.00	-	-	1,000.00	1,000.00	While currently unencumbered, we expect to need this budget
Bottled Water and Food for Human Consumption	5,000.00	-	2,166.84	2,833.16	3,500.00	\$150 per meeting x 22 meetings per year with a small bump up.
Supplies: Miscellaneous and Commodities	1,000.00	-	115.15	884.85	1,000.00	
Contract Contingencies (Budgetary Only)	80,000.00	-	-	80,000.00	???	Still unclear about how discretionary this is or why it is here
Non-City Vehicle Rentals	3,000.00	-	251.10	2,748.90	2,000.00	Priority: Commissioners engage in training/development
Commercial Transportation	8,000.00	-	2,242.95	5,757.05	8,000.00	Priority: Commissioners engage in training/development
Per Diem and Lodging	8,000.00	-	6,155.49	1,844.51	8,000.00	Priority: Commissioners engage in training/development
Miscellaneous Travel Expenditures (Tips, Parking)	2,000.00	-	122.34	1,877.66	2,000.00	Priority: Commissioners engage in training/development
Registration and Tuition	8,000.00	-	-	8,000.00	8,000.00	Even though this was not spent, we expect to maintain a fund for training/education
<b>Total</b>	<b>126,000.00</b>	<b>-</b>	<b>11,053.87</b>	<b>114,946.13</b>	<b>156,500.00</b>	<b>30,500.00</b>
<b>Restricted O&amp;M</b>						
<b>Account Description</b>	<b>Budget</b>	<b>Encumb</b>	<b>Actual</b>	<b>Balance</b>	<b>Suggested</b>	<b>Notes</b>
Special Setups	1,320.00	-	330.00	990.00	1,320.00	Unchanged, This area appears non discretionary. Will confirm with finance
Facilities: General Support	3,473.00	-	1,736.52	1,736.48	3,473.00	
City Accounting Services	68.00	-	17.00	51.00	68.00	

City Contract Compliance Dept-Purchasing Services	213.00	-	53.25	159.75	213.00	
Printing	193.00	-	-	193.00	193.00	
Duplicating	-	-	48.25	(48.25)		
<b>Total</b>	<b>5,267.00</b>	<b>-</b>	<b>2,185.02</b>	<b>3,081.98</b>	<b>5,267.00</b>	<b>-</b>
<b>66211 Community Police Review Agency Labor Budget</b>						
<b>Account Description</b>	<b>Budget</b>	<b>Encumb</b>	<b>Actual</b>	<b>Balance</b>	<b>Suggested</b>	
Civilian: Regular	893,582.00	-	448,487.60	445,094.40	893,582.00	
Civilian: Holiday Overtime	-	-	1,214.46	(1,214.46)		This is the area where we are faced with dilemma of CPRA re-org as needed for staffing, completion of investigations and move of Policy Analyst to OIG
Civilian: Other Overtime	-	-	31,447.66	(31,447.66)		
Civilian: Comp Time Earned 1.5x	-	-	33,217.64	(33,217.64)		
Allowance: Meal	-	-	36.00	(36.00)	-	
Allowance: Auto Flat (1, 2, Partially 3)	4,200.00	-	1,750.00	2,450.00	2,100.00	
	-	-	782.86	(782.86)		
Premium: Bilingual	4,680.00	-	2,930.55	1,749.45	9,360.00	We would like to add an additional bilingual Investigator with the new hires
Civilian: Paid Leave Charge	265,407.00	-	110,620.22	154,786.78	265,407.00	
Civilian: Retirement Accrual	477,917.00	-	245,381.17	232,535.83	477,917.00	
Civilian: Fringe Benefits Accrual	396,495.00	-	202,989.14	193,505.86	396,495.00	
Disability: Paid to Employees	-	-	275.38	(275.38)	-	
Adjustments: Miscellaneous Payroll Adjustments (Subject)	-	-	1,370.54	(1,370.54)	-	
<b>Total</b>	<b>2,042,281.00</b>	<b>-</b>	<b>1,080,503.22</b>	<b>961,777.78</b>	<b>2,044,861.00</b>	<b>2,580.00</b>
<b>CPRB Investigations Project - One time funding O&amp;M</b>						
<b>Account Description</b>	<b>Budget</b>	<b>Encumb</b>	<b>Actual</b>	<b>Balance</b>	<b>Suggested</b>	
Minor Computer Hardware and Software (No Asset Num	6,018.51	-	-	6,018.51	???	Need to align with Special Fund: These funds were designated for several related investigation-related activities including increased staffing, improved training and professional development, and the contracting of outside legal counsel to assist investigations. [SEP] AS IS: This has not been utilized. How can we use this in the spirit it was set up and meet CPRA/Commission needs? [SEP] <b>Concern:</b> With one time funding, CPRA and Commission attorneys are funded here. To keep this in one time funding is not sustainable nor efficacious long term planning. How can we budget the legal fees for long term
Legal Fees	281,862.37	-	WHY ZERO?	281,862.37	???	
Commercial Transportation	18,000.00	-	-	18,000.00	???	
Per Diem and Lodging	29,000.00	-	-	29,000.00	???	
Miscellaneous Travel Expenditures (Tips, Parking)	1,500.00	-	-	1,500.00	???	
Registration and Tuition	31,300.00	-	-	31,300.00	???	
<b>Total</b>	<b>367,680.88</b>	<b>-</b>	<b>-</b>	<b>367,680.88</b>	<b>-</b>	<b>(367,680.88)</b>
<b>66211 CPRA Admin Project Discretionary O&amp;M</b>						
<b>Account Description</b>	<b>Budget</b>	<b>Encumb</b>	<b>Actual</b>	<b>Balance</b>	<b>Suggested</b>	
Stationery and Office Supplies	20,139.82	1,499.09	1,398.59	17,242.14	10,000.00	Not encumbered: still plenty left if office increases use
Minor Furniture and Office Equipment (No Asset Number, Not Capitalized)	3,000.00	-	-	3,000.00	3,000.00	Will need for new hires
Minor Computer Hardware and Software (No Asset	5,000.00	58.59	681.38	4,260.03	5,000.00	Will need for new hires

Books	1,200.00	-	198.29	1,001.71	1,200.00	Expect to see this utilized with Prof. Dev. plans for all staff
Bottled Water and Food for Human Consumption	3,500.00	-	735.22	2,764.78	1,000.00	Not encumbered: aligned with actual
Supplies: Miscellaneous and Commodities	1,304.64	361.67	403.67	539.30	1,304.64	
Telephone	6,000.00	-	1,222.49	4,777.51	6,000.00	Non discretionary per city
Rental: Miscellaneous	1,000.00	-	229.42	770.58	1,000.00	
Public Relations	10,000.00	-	-	10,000.00	-	Moved to Commission Budget
Advertising and Promotion	3,500.00	-	-	3,500.00	3,500.00	We expect to see a plan for this, including wide use of app
Postage and Mailing	5,000.00	-	445.44	4,554.56	2,500.00	Not encumbered: still plenty left if office increases use
Miscellaneous Services	12,000.00	-	1,276.00	10,724.00	6,000.00	Not encumbered: still plenty left if office increases use
Contract Contingencies (Budgetary Only)	83,000.00	-	-	83,000.00	???	Still unclear about how discretionary this is or why it is here
Advertising: Classified	1,000.00	-	-	1,000.00	-	Not encumbered
Non-City Vehicle Rentals	1,000.00	-	-	1,000.00	-	Not encumbered
Commercial Transportation	5,000.00	-	2,091.38	2,908.62	5,000.00	Expect to see this utilized with Prof. Dev. plans for all staff
Per Diem and Lodging	10,000.00	-	6,368.55	3,631.45	10,000.00	Expect to see this utilized with Prof. Dev. plans for all staff
Miscellaneous Travel Expenditures (Tips, Parking)	2,000.00	-	335.16	1,664.84	2,000.00	Expect to see this utilized with Prof. Dev. plans for all staff
Registration and Tuition	10,000.00	-	5,407.34	4,592.66	10,000.00	Expect to see this utilized with Prof. Dev. plans for all staff
Miscellaneous Educational Expenditures	15,000.00	-	-	15,000.00	10,000.00	Not encumbered: still plenty left for increasing prof. Dev of staff
Memberships: City	1,000.00	-	-	1,000.00	1,000.00	Expect to see this utilized with Prof. Dev. plans for all staff
<b>Total</b>	<b>199,644.46</b>	<b>1,919.35</b>	<b>20,864.43</b>	<b>176,860.68</b>	<b>78,504.64</b>	<b>(121,139.82)</b>
<b>66211 CPRA Admin Project Restricted O&amp;M</b>						
<b>Account Description</b>	<b>Budget</b>	<b>Encumb</b>	<b>Actual</b>	<b>Balance</b>	<b>Suggested</b>	
Special Setups	27,770.00	-	6,942.50	20,827.50	-	Moved to Commission Budget above for Public Hearings
Facilities: General Support	73,069.00	-	36,534.48	36,534.52	0	Need one time funds to modify offices for additional staff. This should be a supplemental request *Note, long term planning is needed for better community engagement
City Accounting Services	1,432.00	-	358.00	1,074.00	1,432.00	
City Contract Compliance Dept-Purchasing Services	4,492.00	-	1,123.00	3,369.00	4,492.00	
Printing	4,076.00	-	-	4,076.00	4,076.00	
	-	-	1,019.00	(1,019.00)		
<b>Total</b>	<b>110,839.00</b>	<b>-</b>	<b>45,976.98</b>	<b>64,862.02</b>	<b>10,000.00</b>	<b>(100,839.00)</b>
<b>66311 Inspector General Labor</b>						
<b>Account Description</b>	<b>Budget</b>	<b>Encumb</b>	<b>Actual</b>	<b>Balance</b>	<b>Suggested</b>	

Adjustments: Miscellaneous Payroll Adjustments (Subject	154,804.00	-	-	154,804.00	154,804.00	This office will need additional staff per the Enabling Ordinance. Finance has asked that we not ask for that now, however moving Policy Analyst here now makes sense to the ad hoc committee
Total	<b>154,804.00</b>	-	-	<b>154,804.00</b>	<b>154,804.00</b>	
Total of all categories	<b>3,146,248.34</b>	<b>1,919.35</b>	<b>1,182,205.82</b>	<b>1,962,123.17</b>	<b>2,589,668.64</b>	

<b>66111 Police Commission Labor Budget</b>						
<b>Account Description</b>	<b>Budget</b>	<b>Encumb</b>	<b>Actual</b>	<b>Balance</b>	<b>Carry Over</b>	<b>Notes</b>
Civilian: Regular	61,462.00	-	10,038.35	51,423.65		Request actuals/encumbered and carry over remainder of funds not spent
Civilian: Paid Leave Charge	18,256.00	-	2,298.80	15,957.20		
Civilian: Retirement Accrual	32,741.00	-	5,067.30	27,673.70		
Civilian: Fringe Benefits Accrual	27,273.00	-	4,217.85	23,055.15		
<b>Total</b>	<b>139,732.00</b>	<b>-</b>	<b>21,622.30</b>	<b>118,109.70</b>	<b>-</b>	
<b>6611 Police Commission O&amp;M Discretionary</b>						
<b>Account Description</b>	<b>Budget</b>	<b>Encumb</b>	<b>Actual</b>	<b>Balance</b>	<b>Carry Over</b>	
Stationery and Office Supplies	5,000.00	-	-	5,000.00	5,000.00	
Minor Computer Hardware and Software (No Asset Number, Not Capitalized)	5,000.00	-	-	5,000.00	5,000.00	
Books	1,000.00	-	-	1,000.00	1,000.00	
Bottled Water and Food for Human Consumption	5,000.00	-	2,166.84	2,833.16	2,833.16	
Supplies: Miscellaneous and Commodities	1,000.00	-	115.15	884.85	884.85	
Contract Contingencies (Budgetary Only)	80,000.00	-	-	80,000.00	80,000.00	???
Non-City Vehicle Rentals	3,000.00	-	251.10	2,748.90	2,748.90	
Commercial Transportation	8,000.00	-	2,242.95	5,757.05	5,757.05	
Per Diem and Lodging	8,000.00	-	6,155.49	1,844.51	1,844.51	
Miscellaneous Travel Expenditures (Tips, Parking)	2,000.00	-	122.34	1,877.66	1,877.66	
Registration and Tuition	8,000.00	-	-	8,000.00	8,000.00	
<b>Total</b>	<b>126,000.00</b>	<b>-</b>	<b>11,053.87</b>	<b>114,946.13</b>	<b>114,946.13</b>	
<b>Restricted O&amp;M</b>						
<b>Account Description</b>	<b>Budget</b>	<b>Encumb</b>	<b>Actual</b>	<b>Balance</b>	<b>Carry Over</b>	
Special Setups	1,320.00	-	330.00	990.00		
Facilities: General Support	3,473.00	-	1,736.52	1,736.48		
City Accounting Services	68.00	-	17.00	51.00		
City Contract Compliance Dept-Purchasing Services	213.00	-	53.25	159.75		
Printing	193.00	-	-	193.00		
Duplicating	-	-	48.25	(48.25)		
<b>Total</b>	<b>5,267.00</b>	<b>-</b>	<b>2,185.02</b>	<b>3,081.98</b>	<b>-</b>	
<b>66211 Community Police Review Agency Labor Budget</b>						
<b>Account Description</b>	<b>Budget</b>	<b>Encumb</b>	<b>Actual</b>	<b>Balance</b>	<b>Carry Over</b>	
Civilian: Regular	893,582.00	-	448,487.60	445,094.40		
Civilian: Holiday Overtime	-	-	1,214.46	(1,214.46)		
Civilian: Other Overtime	-	-	31,447.66	(31,447.66)		
Civilian: Comp Time Earned 1.5x	-	-	33,217.64	(33,217.64)		
Allowance: Meal	-	-	36.00	(36.00)	-	

Allowance: Auto Flat (1, 2, Partially 3)	4,200.00	-	1,750.00	2,450.00	2,450.00	
	-	-	782.86	(782.86)		
Premium: Bilingual	4,680.00	-	2,930.55	1,749.45		
Civilian: Paid Leave Charge	265,407.00	-	110,620.22	154,786.78		
Civilian: Retirement Accrual	477,917.00	-	245,381.17	232,535.83		
Civilian: Fringe Benefits Accrual	396,495.00	-	202,989.14	193,505.86		
Disability: Paid to Employees	-	-	275.38	(275.38)	-	
Adjustments: Miscellaneous Payroll Adjustments (Subject to Retirement)	-	-	1,370.54	(1,370.54)	-	
<b>Total</b>	<b>2,042,281.00</b>	<b>-</b>	<b>1,080,503.22</b>	<b>961,777.78</b>	<b>2,450.00</b>	
<b>CPRB Investigations Project - One time funding O&amp;M</b>						
<b>Account Description</b>	<b>Budget</b>	<b>Encumb</b>	<b>Actual</b>	<b>Balance</b>	<b>Carry Over</b>	
Minor Computer Hardware and Software (No Asset Num	6,018.51	-	-	6,018.51	6,018.51	
Legal Fees	281,862.37	-		281,862.37	281,862.37	It is possible the report provided does not reflect accurate actual and encumbered (i.e. the legal services have been happening, but billing does not reflect it here)
Commercial Transportation	18,000.00	-	-	18,000.00	18,000.00	
Per Diem and Lodging	29,000.00	-	-	29,000.00	29,000.00	
Miscellaneous Travel Expenditures (Tips, Parking)	1,500.00	-	-	1,500.00	1,500.00	
Registration and Tuition	31,300.00	-	-	31,300.00	31,300.00	
<b>Total</b>	<b>367,680.88</b>	<b>-</b>	<b>-</b>	<b>367,680.88</b>	<b>367,680.88</b>	
<b>66211 CPRA Admin Project Discretionary O&amp;M</b>						
<b>Account Description</b>	<b>Budget</b>	<b>Encumb</b>	<b>Actual</b>	<b>Balance</b>	<b>Carry Over</b>	
Stationery and Office Supplies	20,139.82	1,499.09	1,398.59	17,242.14	17,242.14	
Minor Furniture and Office Equipment (No Asset Numbe	3,000.00	-	-	3,000.00	3,000.00	
Minor Computer Hardware and Software (No Asset Num	5,000.00	58.59	681.38	4,260.03	4,260.03	
Books	1,200.00	-	198.29	1,001.71	1,001.71	
Bottled Water and Food for Human Consumption	3,500.00	-	735.22	2,764.78	2,764.78	
Supplies: Miscellaneous and Commodities	1,304.64	361.67	403.67	539.30	539.30	
Telephone	6,000.00	-	1,222.49	4,777.51	4,777.51	
Rental: Miscellaneous	1,000.00	-	229.42	770.58	770.58	
Public Relations	10,000.00	-	-	10,000.00	10,000.00	
Advertising and Promotion	3,500.00	-	-	3,500.00	3,500.00	
Postage and Mailing	5,000.00	-	445.44	4,554.56	4,554.56	
Miscellaneous Services	12,000.00	-	1,276.00	10,724.00	10,724.00	
Contract Contingencies (Budgetary Only)	83,000.00	-	-	83,000.00	83,000.00	
Advertising: Classified	1,000.00	-	-	1,000.00	1,000.00	
Non-City Vehicle Rentals	1,000.00	-	-	1,000.00	1,000.00	
Commercial Transportation	5,000.00	-	2,091.38	2,908.62	2,908.62	
Per Diem and Lodging	10,000.00	-	6,368.55	3,631.45	3,631.45	

Miscellaneous Travel Expenditures (Tips, Parking)	2,000.00	-	335.16	1,664.84	1,664.84	
Registration and Tuition	10,000.00	-	5,407.34	4,592.66	4,592.66	
Miscellaneous Educational Expenditures	15,000.00	-	-	15,000.00	15,000.00	
Memberships: City	1,000.00	-	-	1,000.00	1,000.00	
<b>Total</b>	<b>199,644.46</b>	<b>1,919.35</b>	<b>20,864.43</b>	<b>176,860.68</b>	<b>176,932.18</b>	
<b>66211 CPRA Admin Project Restricted O&amp;M</b>						
<b>Account Description</b>	<b>Budget</b>	<b>Encumb</b>	<b>Actual</b>	<b>Balance</b>	<b>Carry Over</b>	
Special Setups	27,770.00	-	6,942.50	20,827.50	20,827.50	
Facilities: General Support	73,069.00	-	36,534.48	36,534.52	0	Note this carry over in our supplemental request
City Accounting Services	1,432.00	-	358.00	1,074.00		
City Contract Compliance Dept-Purchasing Services	4,492.00	-	1,123.00	3,369.00		
Printing	4,076.00	-	-	4,076.00	4,076.00	
	-	-	1,019.00	(1,019.00)		
<b>Total</b>	<b>110,839.00</b>	<b>-</b>	<b>45,976.98</b>	<b>64,862.02</b>	<b>24,903.50</b>	
<b>66311 Inspector General Labor</b>						
<b>Account Description</b>	<b>Budget</b>	<b>Encumb</b>	<b>Actual</b>	<b>Balance</b>	<b>Suggested</b>	
Adjustments: Miscellaneous Payroll Adjustments (Subject)	154,804.00	-	-	154,804.00	154,804.00	
<b>Total</b>	<b>154,804.00</b>	<b>-</b>	<b>-</b>	<b>154,804.00</b>	<b>154,804.00</b>	
<b>Total of all categories</b>	<b>3,146,248.34</b>	<b>1,919.35</b>	<b>1,182,205.82</b>	<b>1,962,123.17</b>	<b>841,716.69</b>	Request total of carry over funds address deficits

Budget Ad Hoc Committee Review of Current Job Responsibilities of “ CPRB Policy Analyst” position within the CPRA

\*Tasks by Juanito Rus, Policy Analyst 2.8.19 as requested by Commissioners Harris and Benson, Budget Ad Hoc Committee. Table with suggested re-allocation of responsibilities recommended by Harris, Benson

Thinking ahead: Per the enabling ordinance: 2.45.100 - Office of Inspector General. D. Within thirty (30) days after the first Inspector General is hired, the Policy Analyst position and funding then budgeted to the Agency shall be reallocated to the OIG.

Mr Rus brought to our attention that this was in the EO and that there had not been a plan to ensure the current duties of the CPRA Policy Analyst would be covered. We requested a list of actual job responsibilities and have done due diligence to ensure that these can be addressed by upgrading the Office Assistant II position to Admin Analyst II in support of the CPRA ED and in partnership with the OIG.

Action Item: A job description for Policy Analyst in the office of OIG must be created.

Area of work	Tasks as written by J. Rus	Suggested Reallocation of Responsibility
Data	Lead development and maintenance of CPRA data infrastructure including the CPRA Complaint App and Case Management System and legacy/historical databases and files.	CPRA Admin +IT
Data	Coordination with IT and outside contractors with respect to data initiatives and Agency project management and continuing work on digital issues including database, website development, and Agency IT infrastructure	CPRA ED+ CPRA Admin
Data	Agency point of contact responding to informational requests regarding current and historical CPRA data and practices including requests from the Police Commission, City Council, the press, other similar agencies, academic researchers, etc.	CPRA ED+ CPRA Admin
Reporting	Compile agency statistical information and write CPRA Annual and Semi-Annual Reports.	CPRA ED+ CPRA Admin +Commission
Reporting	Prepare and provide trainings on CPRA processes and functions & civilian oversight for multiple audiences including Police Commission, City Council, and the public.	CPRA ED+ CPRA Admin
Reporting	Develop and post CPRA website content.	CPRA Admin +IT

Area of work	Tasks as written by J. Rus	Suggested Reallocation of Responsibility
Reporting	Production of and follow up through all stages of the process of preparing Agency reports related to CPRA work as requested by City Council and the Public Safety Committee	CPRA ED+ CPRA Admin +Commission
Reporting	Agency point of contact responding to disclosures under SB 1421	CPRA ED
Policy	Serve as intermediary between CPRA investigations and OPD Policy Staff. Forward and follow CPRA policy recommendations arising from investigations through the OPD policy process. Participate in OPD policy reviews as Agency representative.	Commission with CPRA ED and IG Policy Analyst
Policy	Maintain relationships with OPD Training Staff, forward CPRA Training Recommendations arising from investigations and follow up on training changes.	IG/Policy Analyst
Policy	Provide policy assistance to CPRA investigative staff including research and information on state laws and city policies related to CPRA work.	IG/Policy Analyst
Policy	Participate in bi-weekly CPRA/IAD meetings regarding processes and policies relating to investigative interactions between CPRA and OPD, with follow-up as necessary.	CPRA ED/IG/Policy Analyst
Policy	Produce, maintain and modify CPRA document and report templates and contribute to internal policy development.	CPRA Admin
Policy	Perform other Policy Analysis at direction of Agency Director.	IG/Policy Analyst
Dep't Rep.	<p>Currently serving as departmental Single Point of Contact (SPOC) with various city initiatives/teams. This work mostly entails attendance at monthly or bi-monthly meetings however also includes preparing Agency reports for inclusion in City reporting including:</p> <ul style="list-style-type: none"> <li>- Digital Services - serve as department Digital Lead with the City Digital Services department (web development team)</li> <li>- Equal Opportunity - Departmental representative with Equal Opportunity (including annual Language Assessment and departmental EEO reporting)</li> <li>- Race and Equity - serve as departmental representative with the City's Race and Equity team/initiative</li> <li>- On-Call City of Oakland Skelly Officer as needed</li> </ul>	CPRA ED to delegate to CPRA Admin and include IG as needed

Area of work	Tasks as written by J. Rus	Suggested Reallocation of Responsibility
Admin/ CPRA	Lead day to day administrative functions of the Agency including payment of invoices, overtime and leave requests and authorizations, budget process, following up and preparing materials with HR for hiring and contracts and compliance for contracts.	CPRA Admin under direction of CPRA ED
Admin/ CPRA	Supervision of administrative staff.	CPRA ED
Admin/ CPRA	Hiring and supervision of all interns and temporary staff assistance.	CPRA ED
Admin/ CPRA	Participate in all internal investigator and intake staff meetings.	CPRA ED / include IG as needed
Admin/ Commission	Coordinate all Agency staffing with respect to meetings and events of the Oakland Police Commission including coordination with Commission Analyst II and Agency staff in the preparation of Agendas and Minutes, mailings and filing, meeting prep, ordering of food, etc.	CPRA Admin
Admin/ Commission	Attendance as CPRA staff representative at all regular Police Commission meetings and standing committee meetings.	CPRA ED and IG
Admin/ Commission	Preparation of new Commissioner orientation packets and materials.	CPRA Admin under direction of CPRA ED
Other Projects	All other CPRA projects which are not directly related to current CPRA investigations as assigned by Director. These duties vary depending on Agency needs, but a current example is the CPRA project to increase staff access to various informational sources important to investigations including State and Federal databases (CLETS, CRIMS, etc.) - requiring initial application and extensive follow up to shepherd all clearances through the process.	

Current Job Description, which was under CPRB and has not been updated (per job posting 5/26/15)

## **THE POSITION:**

The City of Oakland is currently recruiting to fill one Policy Analyst vacancy in the Citizens' Police Review Board Division of the City Administrator's Office. The ideal candidate will have a minimum of five years' experience developing policy as it pertains to civilian oversight of law enforcement, working closely with boards and commissions. A clear understanding of government processes as they relate to building positive community relationships, experience in research methods and data analysis are also attributes sought in the ideal candidate.

Under general supervision in the City Administrator's Office, the Policy Analyst position plans and coordinates administrative functions, provides policy direction and engages in community outreach to advance the goals and objective of the Citizens' Police Review Board (CPRB). The incumbent works with Citizens' Police Review Board, Citizens' Police Review Board staff, Oakland Police Department, other City departments, community organizations, Oakland Police Officer's Association, the Mayor, City Council and the general public. Performs other duties as assigned.

## **EXAMPLES OF DUTIES:**

*Duties may include, but are not limited to the following:*

- Design and maintain complaint database.
- Write annual and semi-annual reports.
- Monitor and conduct follow-up on CPRB recommendations to Oakland Police Department.
- Create a comprehensive community outreach plan with youth engagement and community forums on current issues.
- Prepare written staff reports for the CPRB Executive Director and Public Safety Committee.
- Maintain CPRB website; develop and distribute organizational brochures and other materials.
- Review and analyze existing police practices, training materials and recommend improvements.
- Make policy recommendations on improving police and community relations.
- Build contacts and relationships with existing community organizations to help recruit potential Board members and inform the community of the CPRB's services.
- Conduct special studies and research on other agency practices.

## **Budget Review for Oakland Police Commission and CPRA:**

Task to cut \$163k from budget, while being mindful of needs of commission and long term planning for staffing of CPRA

\*Submitted by Budget Ad Hoc Committee: Vice Chair Harris and Commissioner Benson

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### Here are the highlights by budget category

66111 Police Commission Labor Budget:

- Unchanged, no action needed

6611 Police Commission O&M Discretionary:

- Added three line items
  - Public Relations- moved from CPRA
  - Facilitation/Consultants: Training, Planning and Development (for the areas we addressed in our survey for a Commission retreat and any special projects needed)
  - Public Hearings/Special Meetings (estimate 4 per year)- moved from CPRA budget to Commission
- Kept unencumbered amounts aligned with supplies, equipment, books, transportation
- Modified Water/Food to be more realistic based on expenses

Restricted O&M

- Unchanged, no action needed

66211 Community Police Review Agency Labor Budget

- This is the area where we are faced with dilemma of CPRA re-org as needed for staffing, completion of investigations and move of Policy Analyst to OIG (see supporting documents)
  - Suggestion: Move Policy Analyst to OIG now and create new job description by end of fiscal year
  - Suggestion: Update Office Assistant II to address needs of CPRA and moving of Policy Analyst to OIG
- Increase bilingual stipend in the hopes that we add another bilingual investigator
- Decreased Auto Flat due to unencumbered

CPRB Investigations Project - One time funding O&M- we requested from J. Rus a background on where this money came from and how it was intended to be used so we could spent it in alignment.

- Need to align with Special Fund: These funds were designated for several related investigation-related activities including increased staffing, improved training and professional development, and the contracting of outside legal counsel to assist investigations.
  - AS IS: This has not been utilized. How can we use this in the spirit it was set up and meet CPRA/Commission needs?
- Suggestions: Special Projects (including but not limited to an audit/analysis of Investigation and Intake Process to focus on quality, efficiency and thoroughness.) To be developed with Commission and CPRA ED.
- Concern: With one time funding, CPRA and Commission attorneys are funded here. To keep this in one time funding is not sustainable nor efficacious long term planning. How can we budget the legal fees for long term?

Description: In FY 2014-15, the City of Oakland created a special fund to improve the quality and timeliness of investigations by the investigative staff of the Citizen's Police Review Board (CPRB) of community generated complaints of misconduct by sworn members of the Oakland Police Department. These funds were designated for several related investigation-related activities including increased staffing, improved training and professional development, and the contracting of outside legal counsel to assist investigations. This funding was crucial to improvements in CPRB investigative capacity, and contributed to the ability of that Board and its staff to absorb a large additional volume of community complaints filed with the Oakland Police Department (OPD) in addition to those filed directly with the CPRB (Complaint volume processed by the CPRB increased from 47 in 2014 to 453 in 2015 as part of this transition, with increasing timeliness of complaint investigation such that in the past several years not a single investigation by CPRB investigative staff – and later Community Police Review Agency (CPRA) staff – has failed to meet the statutory deadlines to impose discipline on officers based on sustained findings of misconduct (under §3304 of the California Evidence Code).

J. Rus: As a special fund, money allocated to this project did not revert to the City's General Fund at the end of each fiscal year, but were carried over to be used in subsequent years, and some funds remain available under the auspices of this City-funded project. With the voter-approved passage of Measure LL in 2016, some aspects of the funding allocated under the CPRB Investigations Project are instead directly mandated by the Oakland City Charter, including funding of the new investigative Agency's outside legal counsel. These funds continue to be allocated to the Community Police Review Agency within the new Police Commission baseline budget under the auspices of the Investigations Project however.

3366211 CPRA Admin Project Discretionary O&M

- Cut some expenditures due to the budget projection being significantly higher than what has been spent (stationary/ office supplies, water/food, postage/mailing, misc. services, etc.)
- Kept unencumbered funds for materials needed for new hires
- Moved Public Relations to Commission Budget
- Modified training/travel slightly due to encumbered funds, but realized staff must have a substantial budget for development and conferences
- Still unclear about parameters re. Contract Contingencies (Budgetary Only)

66211 CPRA Admin Project Restricted O&M

- Moved Special Set Ups to Commission Budget (Public Hearings/Community Meetings)
- Removed facilities pending estimate, long term plan and we will create a supplemental request (i.e. satellite offices in East and West Oakland)

66311 Inspector General Labor

- This office will need additional staff per the Enabling Ordinance. Finance has asked that we not ask for that now, however moving Policy Analyst here now makes sense to the ad hoc committee
- Action: We propose moving CPRA Policy Analyst to this item in preparation for Enabling Ordinance

*Carry Over Funds:*

- 1. Action: Request Finance Department to provide actual/encumbered funds re. The carry over request made prior to end of fiscal year 2018.*
- 2. Action: Request that all unencumbered funds be granted to our financial request for 2019-21*

# Working Draft of Chief Goals for Annual Evaluation

Submitted by Ad Hoc Committee: Harris, Dorado, Benson

For the purposes of this document, we are seeking feedback on how to align these with the collective vision we have for OPD, linking to a former strategic plan (from 2016) and how to make these measurable.

Recommended modified Mission, Vision:

MISSION: The Oakland Police Department is committed to transformation through the philosophical shift and cultural change of improving both Public Safety and the quality of life in Oakland by serving as Guardians of Human and Constitutional rights for all.

VISION: The Vision of the Oakland Police Department is to be a legitimate authority, mutually trusted by the community to collaboratively promote self-help, self-policing and self-organization through Community Policing and Procedural/Restorative Justice principles.

## **1. Crime Reduction**

- **Reduce gun crimes with an emphasis of removing illegal guns ((by what %??))**
  - Questions:
    - What programs have worked? \*Note increasing stops is not effective or equitable.
    - How will you do this?
    - How are guns getting into Oakland?
    - What happened to the Brady/UCLA policy lab offer to do free trace analysis of the guns Oakland collects? \*sitting with CA office since 2017
    - How many of the guns you confiscate are involved in other crimes?
    - How can we assess current technology and what technological improvements need to happen to eliminate illegal guns?
    - What are the Ceasefire performance indicators? What are these based on?
- **What other violent crimes must be reduced (sex trafficking, robberies, domestic violence, etc.) that we can create measurable goals around?**
  - What does the data show re. violent crime?
  - Must name that focus on violent crimes, we're talking about saturation of East and West Oakland. How do we balance the need to address violent crime and impact of over policing poor, black and brown communities?
  - How can Measure Y stress indicators impact the creation and implementation of this goals?
  - What kind of data does Urban Strategies have re. Violent crime for east and west oakland?

Mayor's request: 10% annual reduction in violent crime and meeting our ceasefire performance indicators

## **Working Draft of Chief Goals for Annual Evaluation**

**Submitted by Ad Hoc Committee: Harris, Dorado, Benson**

For the purposes of this document, we are seeking feedback on how to align these with the collective vision we have for OPD, linking to a former strategic plan (from 2016) and how to make these measurable.

# **Working Draft of Chief Goals for Annual Evaluation**

**Submitted by Ad Hoc Committee: Harris, Dorado, Benson**

For the purposes of this document, we are seeking feedback on how to align these with the collective vision we have for OPD, linking to a former strategic plan (from 2016) and how to make these measurable.

## **2. NSA/ Racial Profiling compliance**

### **Racial Profiling**

- Reduction of racial disparities (by x %)
  - *In stop and search data*
  - *Use of force*

### **NSA tasks for compliance this year**

- What is the timeline for completion of all tasks?
- How does the community survey (Tim Birch and Curt Below) impact and influence achieving these?

### **Dr. Eberhardt's recommendations?**

- What is the timeline for completion of all recommendations?

Mayor: Eberhardt recommendations and NSA requirements

# **Working Draft of Chief Goals for Annual Evaluation**

**Submitted by Ad Hoc Committee: Harris, Dorado, Benson**

For the purposes of this document, we are seeking feedback on how to align these with the collective vision we have for OPD, linking to a former strategic plan (from 2016) and how to make these measurable.

## **3. Gain Public Trust**

### **Community Policing: Full Implementation of SARA Process**

- Collaborate with task force made up of Police Commissioners, Measure Z, NSC's and CPAB to evaluate the implementation of the community policing plan

### **Chief working collaboratively with police commission**

- Align all areas of Commission oversight with proactive working relationship
- Regular meetings with Area Chiefs/Command staff to engage in:
  - Policy Changes
  - Areas of success
  - Areas to develop

### **Engage the Communities impacted by Police Contact**

- Create and work with area specific advisory councils made up of Oakland's historically marginalized voices (i.e. advocates for and those that are Black, Latinx, youth, parole/probation, poor, homeless, flatlands)
- Report/Poll on impacted areas on building community trust
- Quarterly public meetings to review data pro-actively (in partnership with the Commission)

### **Effective Whistleblower Reporting for Police**

- Develop a whistleblower program for OPD
- **What would be the measurables for creation of a safe space for officers to uphold the honor of the badge?**

Mayor: Responsive and trustworthy government

## **Working Draft of Chief Goals for Annual Evaluation**

**Submitted by Ad Hoc Committee: Harris, Dorado, Benson**

For the purposes of this document, we are seeking feedback on how to align these with the collective vision we have for OPD, linking to a former strategic plan (from 2016) and how to make these measurable.

### **4. Fiscal Responsibility**

- **Develop and implement staffing plan that includes community policing**
  - How can we determine the real staffing needs, current state of affairs?
  - What are the priorities from the community?
  - How effective is the current staffing?
  - How do we measure effectiveness of NSC's?
  
- **Plan to have IAD fully staffed to ensure integrity of the department**
  - See proposal from Cpt. Millington
  - How can civilian investigators/non sworn support the staffing here so we're not pulling Sgt's and creating OT.
  
- **Fill all vacancies and reduce overtime (what is an achievable number here?)**
  
- **Ensure that all Measure Z funds are used appropriately**
  - Review Richmond Model of Community Policing
  - Develop policy to ensure CRO's are only pulled off in crisis with documented explanations
  - What is the criteria used to pull CRO's off their beats?
    - How is this tracked?
    - How can we ensure Measure Z funds are not being used for regular non CRO staffing and needs?

## **Working Draft of Chief Goals for Annual Evaluation**

**Submitted by Ad Hoc Committee: Harris, Dorado, Benson**

For the purposes of this document, we are seeking feedback on how to align these with the collective vision we have for OPD, linking to a former strategic plan (from 2016) and how to make these measurable.

### **5. OPD Internal Process Goals**

- **Achieve 100% accuracy in reporting data by OPD and/or accountability when erroneous reporting happens**
  - Body Camera usage consistency
  - Use of Force Data
  - STOP data
    - Compare records in dispatch to reported records
  
- **Create 360 evaluation for Chief**
  - Command Staff to submit performance evaluation for the Chief
  - Community Advisory Councils offer feedback
  - Models from other Police Chief evaluations, NACOLE, San Jose, LA, Chicago, Denver
  - Review the existing survey being used by OPD, consider a comprehensive survey
  - Look at 2 prong approach: standardized and a 360 piece (to create a new construct- this takes time, that includes training for those who participate) \*Be mindful about capacity in designing- consider it's a year out
  - Dr. Walker Nebraska models of civilian oversight, designed a survey (Rashida provided an example)

## **Working Draft of Chief Goals for Annual Evaluation**

**Submitted by Ad Hoc Committee: Harris, Dorado, Benson**

For the purposes of this document, we are seeking feedback on how to align these with the collective vision we have for OPD, linking to a former strategic plan (from 2016) and how to make these measurable.

Given the Chief was given direction from the Mayor, we wanted to clarify so that we could be sure our asks were aligned and/or raise questions/challenge if these guidelines were different than the commission asks.

\*Mayor's Email to the Chief: Did you have any plans to do a strategic plan or is it part of the CALEO certification process? My overarching priorities that affect your department are 1. Holistic community safety and 4. Responsive and trustworthy government.

My SMART goals I set during our last budget was a 10% annual reduction in violent crime. I'd need to track the others, but meeting our ceasefire performance indicators, the Eberhardt recommendations and NSA requirements are all what we track together.

TO: Chair Jackson, Oakland Police Commission

FROM: Tara Anderson, Alternate Commissioner, Oakland Police Commission

CC: Chrissie Love, Administrative Analyst II

RE: Ad Hoc Committee Proposal: Racial Equity Statement

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## Overview

The Oakland Police Commission, as established by Measure LL and set forth in Ordinance 13498 Police Commission Enabling Ordinance, oversees the Oakland Police Department by reviewing and proposing changes to Department policies and procedures. I propose the creation of a time limited ad hoc committee for the sole purpose of developing a racial equity statement and toolkit for the Oakland Police Commission. Once established the equity statement and tool kit will serve as a foundation for completing the policy and procedure oversight responsibilities within the authority of the Commission.

“Racial equity tools are designed to integrate explicit consideration of racial equity in decisions, including policies, practices, programs, and budgets. It is both a product and a process. Use of a racial equity tool can help to develop strategies and actions that reduce racial inequities and improve success for all groups. Too often, policies and programs are developed and implemented without thoughtful consideration of racial equity. When racial equity is not explicitly brought into operations and decision-making, racial inequities are likely to be perpetuated. Racial equity tools provide a structure for institutionalizing the consideration of racial equity.”- *Racial Equity Toolkit: An Opportunity to Operationalize Equity*

## Purposed Activities

The proposed activities of the Ad Hoc committee include;

- Hold meetings to discuss the development of an Oakland Police Commission Racial Equity Statement.
- Review existing publications on racial equity tools, measures and reports including but not limited to;
  - *City of Oakland Equity Indicators Report 2018*
  - *City of Oakland Equity Briefings*
  - *Racial Equity Toolkit: An Opportunity to Operationalize Equity*
- Consult with the Department of Race and Equity to refine racial equity statement and develop racial equity toolkit.
- Draft Oakland Police Commission Racial Equity Statement
- Draft Oakland Police Commission Racial Equity Toolkit

## Proposed Deliverables

- Completed Draft Racial Equity Statement for Oakland Police Commission Approval
- Completed Equity Toolkit Proposal for Oakland Police Commission Approval

### **Sample Equity Statement**

The Oakland Police Commission prioritizes racial equity so that all people may thrive. The Oakland Police Commission collectively acknowledges that communities of color have borne the burdens of inequitable social, environmental, economic and criminal justice policies, practices and investments. The legacy of these government actions has caused deep racial disparities throughout Oakland. We further recognize that racial equity is realized when race can no longer be used to predict life outcomes. We commit to the elimination of racial disparities in the criminal justice system.

### **Sample Equity Tool**

According to the Government Alliance on Race and Equity, Racial Equity Toolkit: An Opportunity to Operationalize Equity the Racial Equity Tool is a simple set of questions:

1. Proposal: What is the policy, program, practice or budget decision under consideration?  
What are the desired results and outcomes?
2. Data: What's the data? What does the data tell us?
3. Community engagement: How have communities been engaged? Are there opportunities to expand engagement?
4. Analysis and strategies: Who will benefit from or be burdened by your proposal? What are your strategies for advancing racial equity or mitigating unintended consequences?
5. Implementation: What is your plan for implementation?
6. Accountability and communication: How will you ensure accountability, communicate, and evaluate results?



# OAKLAND POLICE COMMISSION

## Agenda Report

**Subject:** Pending Agenda Matters List  
**Date:** March 8, 2019  
**Requested by:** Police Commission  
**Prepared by:** Chrissie Love, Administrative Analyst II  
**Approved by:** Karen Tom, Interim Executive Director, CPRA

**Action Requested:**

Review Pending Agenda Matters List and decide on which, if any, to include in upcoming agendas.

**Background:**

The following exhaustive list was begun in early 2018 and includes items submitted for consideration on future agendas. Community members may suggest agenda items by completing and submitting the Agenda Matter Submission Form found on the Commission’s webpage.

**Discussion:**

The following items have upcoming deadlines:

Agenda Matter	Deadline	Notes	Measure LL and Enabling Ordinance Sections
Proposed Budget re: OPD Training and Education for Sworn Employees on Management of Job-Related Stress	4/15/2019	Prepare for submission to the Mayor a proposed budget regarding training and education for Department sworn employees regarding management of job-related stress.	Ord. Section 2.45.070(D)
Annual Report	4/17/2019	Submit Commission's first annual report to the Mayor, City Council and the public	Ord. Section 2.45.220
NACOLE Northern California Regional Conference on May 3rd at BART	5/3/2019		
Public Hearing on OPD Budget	5/9/2019	Conduct at least one public hearing on the Police Department’s budget	LL Section 604(b)(7)

**Attachment (20a):**

Pending Agenda Matters List (13 pages)

**Police Commission  
Pending Agenda Matters List**

Pending Agenda Matter	Date Placed on List	Duties/Deliverables	Additional Information/Details	Priority Level	Timeline/Deadline	Scheduled	Lead Commissioner(s), if any
Election of Vice Chair	2/14/2019	Members shall elect a Vice-Chairperson	A new Chairperson was elected on 2.14.19; Commission is awaiting response from City Attorney's office regarding the potential of having two Vice Chairpersons.	High	Annually; first regular meeting of each year after February 1, 2019	3/14/2019	
Follow up on appeals plan and/or discovery of new evidence for Bey Case	10/2/2018		This was added as a result of a motion and action on 10.11 commission meeting. How can we alert NSA? How can we confirm if there is an active case?	High		3/14/2019	Dorado, Harris
Follow up on Parole and Probation Policy	10/10/2018		We have the authority, since this is connected to racial profiling, to write a new policy.	High		3/14/2019	Jackson, Prather, Smith
Joshua Pawlik Follow-Up	10/6/2018			High		3/14/2019	
Quarterly Informational Progress Report	1/31/2019	Submit to Public Safety Committee a Quarterly Informational Progress Report	At the January 31, 2019 Rules and Legislation Committee, the Committee approved a request from Councilmember Noel Gallo to schedule a quarterly informational progress report from the Oakland Police Commission. This is the first quarterly report submitted to the Public Safety Committee.	High	3/6/2019	3/14/2019	Prather
Create an Ad Hoc Policy Committee	3/5/2019		OPD has requested a Policy Committee to work with the Department on policy development to address those situations where officers encounter people who are asleep or in various stages of unresponsiveness and are armed.	High		3/28/2019	
Stop Data and Racial Profiling	1/1/2018		We need regular reporting on stop data and racial profiling directly from research, and coordinate from NSA team with IG for data and policy recommendations. Do a deep dive on racial	High		5/23/2019	Jackson
Annual Report	1/1/2018	Submit Commission's first annual report to the Mayor, City Council and the public		High	4/17/2019		Prather, Smith
Commissioner Training, Part 1	1/1/2018	Complete the training described in section 2.45.190(A) through (H)	The training described in subsections (G) and (H) must be done in open session. The one-year deadline only applies to the first group of Commissioners and alternates; all other Commissions must complete this training within six months of appointment.	High	10/17/2018		Ahmad, Dorado
Commissioner Training, Part 2	1/1/2018	Complete the training described in section 2.45.190(I) through (M)	The eighteen-month deadline only applies to first group of Commissioners and alternates; all other Commissioners must complete this training within twelve months of appointment.	High	4/17/2019		Ahmad, Dorado
Finalize hiring of CPRA full-time Executive Director			Decide on 2-3 candidates to submit to City Administrator.	High			Personnel Committee

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Hire Inspector General (IG)	1/14/2019	Hire IG once the job is officially posted	HR staff is completing a compensation study for the position. Since this position is new to the City's Salary Ordinance, this step is required so the IG can be properly funded. Concurrently, HR staff has been conforming the IG job description approved by the Police Commission to fit a class specification for the position. HR staff anticipates this work to be completed in the coming weeks. The next two immediate steps are: 1) The Civil Service Board will need to approve the class specification, which staff anticipates will happen in February; and 2) The salary ordinance will then need to be approved by the City Council. The IG position will become open after these two steps are completed.	High			Personnel Committee
Notification of OPD Chief Regarding Requirements of Annual Report	1/1/2018	Commission must notify the Chief regarding what information will be required in the Chief's annual report	<p>The Chief's report shall include, at a minimum, the following:</p> <ol style="list-style-type: none"> <li>1. The number of complaints submitted to the Department's Internal Affairs Division (IAD) together with a brief description of the nature of the complaints;</li> <li>2. The number of pending investigations in IAD, and the types of Misconduct that are being investigated;</li> <li>3. The number of investigations completed by IAD, and the results of the investigations;</li> <li>4. The number of training sessions provided to Department sworn employees, and the subject matter of the training sessions;</li> <li>5. Revisions made to Department policies;</li> <li>6. The number and location of Department sworn employee-involved shootings;</li> <li>7. The number of Executive Force Review Board or Force Review Board hearings and the results;</li> <li>8. A summary of the Department's monthly Use of Force Reports;</li> <li>9. The number of Department sworn employees disciplined and the level of discipline imposed; and</li> <li>10. The number of closed investigations which did not result in discipline of the Subject Officer.</li> </ol> <p>The Chief's annual report shall not disclose any information in violation of State and local law regarding the confidentiality of personnel records, including but not limited to California Penal Code section 832.7</p>	High	June 14, 2018 and June 14 of each subsequent year		Dorado

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Pending Agenda Matter	Date Placed on List	Duties/Deliverables	Additional Information/Details	Priority Level	Timeline/Deadline	Scheduled	Lead Commissioner(s), if any
Performance Reviews of CPRA Director and OPD Chief	1/1/2018	Conduct performance reviews of the Agency Director and the Chief	The Commission must determine the performance criteria for evaluating the Chief and the Agency Director, and communicate those criteria to the Chief and the Agency Director one full year before conducting the evaluation. The Commission may, in its discretion decide to solicit and consider, as part of its evaluation, comments and observations from the City Administrator and other City staff who are familiar with the Agency Director's or the Chiefs job performance. Responses to the Commission's requests for comments and observations shall be strictly voluntary.	High	Annually; Criteria for evaluation due 1 year prior to review		
Proposed Budget re: OPD Training and Education for Sworn Employees on Management of Job-Related Stress	1/1/2018	Prepare for submission to the Mayor a proposed budget regarding training and education for Department sworn employees regarding management of job-related stress. (See Trauma Informed Policing Plan)	Review and comment on the education and training the Department provides its sworn employees regarding the management of job-related stress, and regarding the signs and symptoms of posttraumatic stress disorder, drug and alcohol abuse, and other job-related mental and emotional health issues. The Commission shall provide any recommendations for more or different education and training to the Chief who shall respond in writing consistent with section 604(b)(6) of the Oakland City Charter. Prepare and deliver to the Mayor, the City Administrator and the Chief by April 15 of each year, or such other date as set by the Mayor, a proposed budget for providing the education and training identified in subsection (C) above.	High	Annually; April 15 of each year		
Revise employment contracts with CPRA and Commission legal counsels	10/10/2018		The employment contract posted on the Commission's website does not comport with the specifications of the Ordinance. As it stands, the Commission counsel reports directly to the City Attorney's Office, not the Commission. The Commission has yet to see the CPRA attorney's contract, but it, too, may be problematic.	High			

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3/8/2019

Pending Agenda Matter	Date Placed on List	Duties/Deliverables	Additional Information/Details	Priority Level	Timeline/Deadline	Scheduled	Lead Commissioner(s), if any
Set Agendas for Future Meetings	1/10/2019		This should be done at each meeting. Review priority list and schedule items.	High			
Support AB 392	3/5/2019		Vote to support AB-392 Peace Officers: deadly force	Medium		3/28/2019	
Public Hearing on OPD Budget	1/1/2018	Conduct at least one public hearing on the Police Department's budget	Tentative release date of Mayor's proposed budget is May 1, 2019.	Medium	Biennial, per budget cycle	5/9/2019	
Ad-Hoc Discipline Committees for Each Discipline or Termination Case	1/1/2018	Discipline Committees may not decide disputes until the following training is completed: * Department operations, policies and procedures, including but not limited to discipline procedures for Misconduct, and * Training described in section 2.45.190(A) through (F) of the enabling ordinance	Establish on an as-needed basis	Medium			
Brian Hoefler case: review video	10/11/2018		Response to allegation was officer was Just and Honorable, when allegations were the officer was untrue. All of the issues, despite what the officer said, was a deportation matter. Chief stated that people were charged with crimes, when they were not.	Medium			

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Community Policing Task Force/Summit	1/24/2019			Medium			Dorado
CPAB Report			Oakland Municipal Code §2.45.070 (O) Receive any and all reports prepared by the Community Policing Advisory Board (hereinafter referred to as "CPAB") and consider acting upon any of the CPAB's recommendations for promoting community policing efforts and developing solutions for promoting and sustaining a relationship of trust and cooperation between the Department and the community.	Medium			
CPRA report on pending cases and completed investigations on a monthly basis	2/13/2019		CPRA Interim Executive Director will provide a report on pending and completed investigations	Medium			
De-escalation Policy	1/1/2018		Review existing policy (if any) and take testimony/evidence from experts and community about best practices for de-escalation. Draft policy changes as needed.	Medium			
Determination of Number of CPRA Investigators	1/1/2018	Determine number of Agency investigators (no fewer than one line investigator for every 100 sworn officers)	January 9, 2019 is the tentative budget cycle start date.	Medium	Annually; beginning of each budget cycle		K. Tom w/ G.Harris
Executive session for confidential reports on open investigations, disciplinary matters and legal issues, including the status of bargaining with OPOA and open meet and confer issues			Schedule as needed	Medium			
Finalize Bylaws and Rules	1/24/2019			Medium			Prather

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Follow up on Najiri Smith Case	10/10/2018		Community members representing Najiri claim the officer lied re. the time of interaction, which makes the citation (loud music after 10pm) invalid. They claimed he was engaged by OPD around 9.10pm.	Medium			
NACOLE Northern California Regional Conference on May 3rd at BART	1/28/2019		Determine Commissioners' attendance at event and cost.	Medium	5/3/2019		
Need for an easy to read process to determine if Commission can open or re-open an investigation	10/2/2018		We've been hearing a lot from community members about concerns about what the commission's power actually is. We've passed a few motions to ask for legal advice on whether we have the authority to open an investigation, but an easy to read flow chart or checklist format might be easier to digest by the community. We are suggesting a flow chart for what our parameters are and resources for where we can send people if we can't help them.	Medium			
Offsite Meetings	1/1/2018	Meet in locations other than City Hall	The offsite meetings must include an agenda item titled "Community Roundtable" or something similar, and the Commission must consider inviting individuals and groups familiar with the issues involved in building and maintaining trust between the community and the Department. (OMC § 2.45.090(B).)	Medium	Annually; at least twice each year		Ahmad, Dorado, Jackson
Plan for Policy Assignments	1/10/2019		Plan which go to Ad Hoc Committees and which are for long-term based on OPD.	Medium			

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Preliminary Budget Development Dates & Milestones	10/11/2018		Per a memo received 9.27 from Mr. Finnell (who received it from the city), "Attached is the preliminary timeline for the FY 2019-21 Biennial Budget development. The memorandum highlights the key dates that departments should keep in mind for planning/scheduling purposes. Future communications from the Budget Bureau will provide additional instructions to departments as deadlines/milestones approach. " We should give this item to the budget committee and request they work with Mr. Finnell to create a timeline of action items. This is for CPRA (and any suggestions for OPD?) to have a final budget request to department by Feb 13, 2019.	Medium			Budget Ad Hoc Committee
Proposal For Staff Positions for Commission and CPRA	1/1/2018	Provide the City Administrator with its proposal for staff positions needed for Commission and Agency to fulfill its functions and duties		Medium	June 14, 2018, and on an ongoing basis as appropriate		
Report Regarding OPD Chief's Report	1/1/2018	Submit a report to the Mayor, City Council and the public regarding the Chief's report in addition to other matters relevant to the functions and duties of the Commission	The Chief's report needs to be completed first.	Medium	Annually; once per year		
Reports from OPD on such issues as response times, murder case closure rates, hiring and discipline status report (general number for public hearing), any comp stat data they are using, privacy issues, human trafficking work, use of force stats, homelessness issues, towing cars of people who sleep in their vehicles	10/6/2018			Medium			
Review budget and resources of IAD	10/10/2018		In our discipline training we learned that many "lower level" investigations are outsourced to direct supervisors and sergeants. We spoke with leaders in IAD ad they agreed that it would be helpful to	Medium			

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Pending Agenda Matter	Date Placed on List	Duties/Deliverables	Additional Information/Details	Priority Level	Timeline/Deadline	Scheduled	Lead Commissioner(s), if any
Review OPOA Email re. "No Af-Am"	2/11/2019		See e-mail thread	Medium			
Review taser policy per outcome of Marcellus Toney	10/10/2018		In the report we were given, we were told that officers have choice as to where to deploy a taser. Commission to review these policies and make recommendations and/or find if there is connection to NSA.	Medium			
Standing and Ad-Hoc Committee Reports	1/10/2019		As needed. Committees report on work plans and deadlines.	Medium			
Supervision policies	10/2/2018		Review existing policy (if any) and take testimony/evidence from experts and community about best practices for supervisory accountability. Draft policy changes as needed. In addition, IG should conduct study of supervisor discipline practices. In other words, how often are supervisors held accountable for the misconduct of their subordinates.	Medium			
What are the outstanding issues in meet and confer and what is the status of the M&C on the disciplinary reports?	10/6/2018		Need report from police chief and city attorney. Also need status report about collective bargaining process that is expected to begin soon.	Medium			
Vote needed on utilizing funds to replace former Commissioner Benson's laptop that was destroyed at a	10/2/2018		Commission needs to vote to use available funds to reimburse Commissioner Benson for the laptop which was destroyed at an offsite meeting.	Low		3/14/2019	
1421 bill – Should we have a policy on supporting state legislation + AB 931: use of deadly force (Webber)	10/6/2018		In effect January 1 (1421) and July (931) 2019. As to broader question about legislation, not time sensitive until next legislative session.	Low			
Amendment of DGO C-1 (Grooming & Appearance Policy)	10/10/2018		DGO C-1 is an OPD policy that outlines standards for personal appearance. This policy should be amended to use more inclusive language, and to avoid promoting appearance requirements that are merely aesthetic concerns, rather than defensible business needs of the police department.	Low			
Assessing responsiveness capabilities	10/6/2018		Review OPD policies or training regarding how to assess if an individual whom police encounter may have a disability that impairs the ability to respond to their commands.	Low			

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Consider creating a list of ways to be engaged with OPD so that Commission can clearly state what issues should be addressed.	2/6/2019			Low			
CPRA report on app usage	10/10/2018		Report from staff on usage of app.	Low			
Creation of Form Regarding Inspector General's Job Performance	1/1/2018	Create a form for Commissioners to use in providing annual comments, observations and assessments to the City Administrator regarding the Inspector General's job performance. Each Commissioner shall complete the form individually and submit his or her completed form to the City Administrator confidentially.	To be done once Inspector General position is filled.	Low			
Discipline: based on review of MOU	10/6/2018		How often is Civil Service used v. arbitration? How long does each process take? What are the contributing factors for the length of the process? How often are timelines not met at every level? How often is conflict resolution process used? How long is it taking to get through it? Is there a permanent arbitration list? What is contemplated if there's no permanent list? How often are settlement discussions held at step 5? How many cases settle? Is there a panel for Immediate dispute resolution? How many Caloca appeals? How many are granted? What happened to the recommendations in the Second Swanson report?	Low			

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Discipline: Second Swanson Report recommendations – have these been implemented?	10/6/2018		<p>Supervisor discipline</p> <p>Process for recommending improvements to policies, procedures and training, and to track and implement recommendations</p> <p>Tracking officer training and the content of training</p> <p>Comparable discipline imposed – database of discipline imposed, demonstrate following guidelines</p> <p>IAD civilian oversight for continuity in IAD</p> <p>Improved discovery processes</p> <p>Permanent arbitration panel implemented from MOU</p> <p>OPD internal counsel</p> <p>Two attorneys in OCA that support OPD disciplines and arbitration (why not use CPRA attorney who knows the detailed investigation and is already paid for?)</p> <p>Reports on how OCA is supporting OPD in discipline matters and reports on arbitration</p> <p>Public report on police discipline from mayor’s office (Why not from CPRA? The history is that it was included in the annual CPRB report provided to City Council.)</p> <p>OIG audit includes key metrics on standards of discipline</p>	Low			
Do Not Call list issues – cops whose untruthfulness prevents them from testifying	10/6/2018		This is impacted by SB1421 and will require legal analysis.	Low			
Executive session for confidential reports on open investigations, disciplinary matters and legal issues, including the status of bargaining with OPOA and open meet and confer issues	10/6/2018			Low			

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Feedback from Youth on CPRA app	10/10/2018		We want to get some feedback from youth as to what ideas, concerns, questions they have about its usability. We've already cleared a process with CPRA, just wanted to get this on the list of items to calendar in the future (ideally early 2019)	Low			
Modify Code of Conduct from Ethics Commission for Police Commission	10/2/2018		On code of conduct for commissioners there is currently a code that was developed by the Ethics Commission. It is pretty solid, so perhaps we should use portions of it and add a process for engagement with city staff and community.	Low			
OPD Data and Reporting			Oakland Municipal Code §2.45.070(P) Review and comment on the Department's police and/or practice of publishing Department data sets and reports regarding various Department activities, submit its comments to the Chief, and request the Chief to consider its recommendations and respond to the comments in writing.	Low			
Outreach Committee: work with Mayor's Office and City Admin to publicize app	10/10/2018			Low			
Outreach Plan Discussion, including use of social media	10/6/2018			Low			
Overtime Usage by OPD (cost and impact on personnel health + moonlighting for AC Transit)	1/1/2018		Request Office of Inspector General conduct study of overtime usage and "moonlighting" practices.	Low			

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Performance Audit and Financial Audit of Commission and CPRA	1/1/2018	City Auditor to conduct a performance audit and a financial audit of the Commission and the Agency	No later than two (2) years after the City Council has confirmed the first set of Commissioners and alternates, the City Auditor shall conduct a performance audit and a financial audit of the Commission and the Agency. Nothing herein shall limit the City Auditor's authority to conduct future performance and financial audits of the Commission and the Agency.	Low	10/17/2019		
Policy on Tasers			Policy on the discretion of tasers, review with Cunningham	Low			
Process to review allegations of misconduct by a commissioner	10/2/2018		Maureen Benson has named concerns/allegations about a sitting commissioner since early in the year, but no process exists which allows for transparency or a way to have those concerns reviewed. It was suggested to hold a hearing where anyone making allegations presents evidence, the person named has an opportunity to respond and then the commission decides if there's sanctions or not. *Suggestion from Regina Jackson: we should design a form...check box for the allegation...provide narrative to explain..hearing within 4 weeks?	Low			Jackson
Promotions of officers who have committed crimes	10/6/2018			Low			
Protocol on how OPC handles serious incidents	10/6/2018			Low			
Protocol on how to handle issues that are non-critical	10/6/2018			Low			
Public Hearings on OPD Policies, Rules, Practices, Customs, General Orders	1/1/2018	Conduct public hearings on Department policies, rules, practices, customs, and General Orders; CPRA suggests reviewing Body Camera Policy	Coalition for Police Accountability is helping with this.	Low	Annually; at least once per year		Dorado

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Recommendations for increasing communication between CPRA and IAD (ensure prompt forwarding of complaints from IAD to CPRA and prompt data sharing)	10/6/2018		Review of existing communication practices and information sharing protocols between departments, need recommendations from stakeholders about whether a policy is needed.	Low			
Request City Attorney Reports	1/1/2018	Request the City Attorney submit semi-annual reports to the Commission and the City Council	<p>Oakland Municipal Code 2.45.070(l). Request the City Attorney submit semi-annual reports to the Commission and City Council which shall include a listing and summary of:</p> <ol style="list-style-type: none"> <li>To the extent permitted by applicable law, the discipline decisions that were appealed to arbitration;</li> <li>Arbitration decisions or other related results;</li> <li>The ways in which it has supported the police discipline process; and</li> <li>Significant recent developments in police discipline.</li> </ol> <p>The City Attorney's semi-annual reports shall not disclose any information in violation of State and local law regarding the confidentiality of personnel records, including but not limited to California Penal Code 832.7</p>	Low	Semi-annually		Smith
Select Topics and Facilitators for Retreat				Low			
Supervision Policies	1/1/2018		Review existing policy (if any) and take testimony/evidence from experts and community about best practices for supervisory accountability. Draft policy changes as needed. In addition, IG should conduct study of supervisor discipline practices. In other words, how often are supervisors held accountable for the misconduct of their subordinates.	Low			
What does "insufficient evidence" mean and what is the basis of challenges to the template?	10/6/2018		This is a CPRA report issue that will hopefully be improved by SB1421.	Low			