



OAKLAND POLICE COMMISSION SPECIAL MEETING AGENDA

**June 11, 2020
5:30 PM**

Pursuant to the Governor's Executive Order N-29-20, members of the Police Commission, as well as the Commission's Counsel and Community Police Review Agency staff, will participate via phone/video conference, and no physical teleconference locations are required.



OAKLAND POLICE COMMISSION

SPECIAL MEETING AGENDA

June 11, 2020
5:30 PM

PUBLIC PARTICIPATION

The Oakland Police Commission encourages public participation in the online board meetings. The public may observe and/or participate in this meeting in several ways.

OBSERVE:

- To observe, the public may view the televised video conference by viewing KTOP channel 10 on Xfinity (Comcast) or ATT Channel 99 and locating City of Oakland KTOP – Channel 10
- To observe the meeting by video conference, please click on this link: <https://us02web.zoom.us/j/88652793270> at the noticed meeting time. Instructions on how to join a meeting by video conference are available at: <https://support.zoom.us/hc/en-us/articles/201362193>, which is a webpage entitled “Joining a Meeting”
- To listen to the meeting by phone, please call the numbers below at the noticed meeting time: Dial (for higher quality, dial a number based on your current location):

+1 669 900 9128 or +1 253 215 8782 or +1 346 248 7799 or +1 301 715 8592 or +1 312 626 6799 or +1 646 558 8656
For each number, please be patient and when requested, dial the following Webinar ID: 886 5279 3270

After calling any of these phone numbers, if you are asked for a participant ID or code, press #. Instructions on how to join a meeting by phone are available at: <https://support.zoom.us/hc/en-us/articles/201362663>, which is a webpage entitled “Joining a Meeting By Phone.”

PROVIDE PUBLIC COMMENT: There are three ways to make public comment within the time allotted for public comment on an eligible Agenda item.

- Comment in advance. To send your comment directly to the Commission and staff BEFORE the meeting starts, please send your comment, along with your full name and agenda item number you are commenting on, to Juanito Rus at jrus@oaklandca.gov. Please note that eComment submissions close thirty (30) minutes before posted meeting time. All submitted public comment will be provided to the Commissioners prior to the meeting.
- By Video Conference. To comment by Zoom video conference, click the “Raise Your Hand” button to request to speak when Public Comment is being taken on a eligible agenda item at the beginning of the meeting. You will then be unmuted, during your turn, and allowed to participate in public comment. After the allotted time, you will then be re-muted. Instructions on how to “Raise Your Hand” are available at: <https://support.zoom.us/hc/en-us/articles/205566129>, which is a webpage entitled “Raise Hand In Webinar.”
- By Phone. To comment by phone, please call on one of the above listed phone numbers. You will be prompted to “Raise Your Hand” by pressing STAR-NINE (“*9”) to request to speak when Public Comment is being taken on a eligible agenda item at the beginning of the meeting. Once it is your turn, you will be unmuted and allowed to make your comment. After the allotted time, you will be re-muted. Instructions of how to raise your hand by phone are available at: <https://support.zoom.us/hc/en-us/articles/201362663>, which is a webpage entitled “Joining a Meeting by Phone.”

If you have any questions about these protocols, please e-mail Juanito Rus, at jrus@oaklandca.gov.



OAKLAND POLICE COMMISSION

SPECIAL MEETING AGENDA

June 11, 2020
5:30 PM

I. Call to Order

Chair Regina Jackson

II. Roll Call and Determination of Quorum

Chair Regina Jackson

III. Public Comment on Closed Session Items

THE OAKLAND POLICE COMMISSION WILL ADJOURN TO CLOSED SESSION AND WILL REPORT ON ANY FINAL DECISIONS DURING THE POLICE COMMISSION'S OPEN SESSION MEETING AGENDA.

IV. Closed Session Closed Session

CONFERENCE WITH LEGAL COUNSEL— ANTICIPATED LITIGATION: 1 CASE - Govt. Code § 54956.9(d)(2)

PUBLIC EMPLOYEE EVALUATION – CPRA EXECUTIVE DIRECTOR

V. Report out of Closed Session

- a. The Commission will report on any actions taken during Closed Session, as required by law.

VI. Welcome, Purpose, and Open Forum/Public Comment (2 minutes per speaker)

Chair Regina Jackson will welcome public speakers. The purpose of the Oakland Police Commission is to oversee the Oakland Police Department's (OPD) policies, practices, and customs to meet or exceed national standards of constitutional policing, and to oversee the Community Police Review Agency (CPRA) which investigates police misconduct and recommends discipline.

VII. Update from Interim Police Chief

OPD Interim Chief Manheimer will provide an update on the Department. Topics discussed in the update may include crime statistics; a preview of topics which may be placed on a future agenda; responses to community member questions sent in advance to the Police Commission Chair; and specific topics requested in advance by Commissioners.

This is a recurring item. (Attachment 7).

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

- VIII. Mobile Assistance Community Responders of Oakland (MACRO) Report**
David Harris from Urban Strategies will present a report which recommends how to ensure that MACRO teams reflect the communities they are responding in. ***This is a new item.*** ([Attachment 8](#)).
- a. Discussion
 - b. Public Comment
 - c. Action, if any
- IX. Commission and CPRA Audits**
Oakland City Auditor Courtney Ruby will present the Police Commission and CPRA audits. ***This item was discussed on 1.23.20, 4.9.20, 4.23.20, and 5.28.20.*** ([Attachment 9](#)).
- a. Discussion
 - b. Public Comment
 - c. Action, if any
- X. Budget Discussion – Commission, CPRA, and OPD**
The Commission will discuss the proposed Commission, CPRA, and OPD mid-cycle budgets that are included in the City’s comprehensive budget. ***Budget items were discussed on 4.23.20, 5.14.20, and 5.28.20.*** ([Attachment 10](#)).
- a. Discussion
 - b. Public Comment
 - c. Action, if any
- XI. Measure LL Ballot Measure Initiative**
The Commission will provide an update on the status of the ballot measure regarding changes to Measure LL. ***This was discussed on 5.28.20.*** ([Attachment 11](#)).
- a. Discussion
 - b. Public Comment
 - c. Action, if any
- XII. Property Damage Report**
The Commission will discuss a report entitled Property Damage by Oakland Police that was prepared by students from the Goldman School of Public Policy . ***This is a new item.*** ([Attachment 12](#)).
- a. Discussion
 - b. Public Comment
 - c. Action, if any
- XIII. Path to Justice Pledge**
The Commission will discuss the Path to Justice Pledge and may vote on having the Chair write a letter of support. ***This is a new item.*** ([Attachment 13](#)).
- a. Discussion
 - b. Public Comment
 - c. Action, if any

XIV. Committee Reports

Representatives from Standing and Ad Hoc Committees will provide updates on their work. The Equipment Ad Hoc Committee will be presenting draft legislation and the Commission may vote on approving it for sending to the City Council. ***This is a recurring item. (Attachment 14).***

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

XV. Meeting Minutes Approval and Amendment to Minutes from September 13, 2018

The Commission will vote to approve minutes from May 14 and 28, 2020. The Commission will also discuss, and may vote to approve, an amendment to the minutes of September 13, 2018. ***This is a recurring item. (Attachment 15).***

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

XVI. 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. ***This is a recurring item. (Attachment 16).***

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

XVII. Adjournment



OAKLAND POLICE DEPARTMENT

455 7TH ST., OAKLAND, CA 94607 | ODP@OAKLANDPOLICE.COM

CRIME ANALYSIS

2020 COVID-19 Shelter-in-Place Crime Summary — Citywide

Updated 03 Jun., 2020

Robbery Before-and-After Comparison — 11 weeks

Robbery Type	30 Dec to 15 Mar	16 Mar to 31 May	% Change
Firearm	205	137	-33%
Knife	57	38	-33%
Strong Arm	302	183	-39%
Other Weapon	17	12	-29%
Carjacking	39	52	33%
Home Invasion	22	26	18%
Total	642	448	-30%

Gunfire Before-and-After Comparison — 11 Weeks

Shooting Type	30 Dec to 15 Mar	16 Mar to 31 May	% Change
Assault with a Firearm - 245(a)(2)	106	131	24%
Occupied Home or Car - 246	64	67	5%
Unoccupied Home or Car - 247(b)	59	77	31%
Subtotal	229	275	20%
Negligent Discharge - 246.3	142	186	31%
Grand Total	600	736	23%

ShotSpotter Activations Before-and-After Comparison — 11 Weeks

ShotSpotter Activations	30 Dec to 15 Mar	16 Mar to 31 May	% Change
ShotSpotter Activations	813	1,048	29%

Burglary Before-and-After Comparison — 11 Weeks

Burglary Type	30 Dec to 15 Mar	16 Mar to 31 May	% Change
Auto	Burglary comparisons are not yet available due to the delay in crime report processing.		
Residential			
Commercial			
Total			

This report is incident based. Crime totals reflect all charges listed in each incident.

Statistics are drawn from the Oakland Police Dept. database. They are unaudited and not used to figure the crime numbers reported to the FBI's National Incident-Based Reporting System (NIBRS). This report is run by the date the crimes occurred. Statistics can be affected by late reporting, the geocoding process, or the reclassification or unbounding of crimes. Because crime reporting and data entry can run behind, all crimes may not be recorded.

All data, except ShotSpotter activations, extracted via Coplink Analytics.
ShotSpotter activations extracted from ShotSpotter Investigator.



OAKLAND POLICE DEPARTMENT

155 7TH ST., OAKLAND, CA 94607 | OPDCRIMEANALYSIS@OAKLANDPOLICE.COM

CRIME ANALYSIS

2020 COVID-19 Shelter-in-Place Crime Summary — Citywide

Updated 03 Jun., 2020

Robbery Year-to-Year Comparison — 16 Mar to 24 May — 10 Weeks

Robbery Type	2019	2020	% Change
Firearm	153	101	-34%
Knife	22	31	41%
Strong Arm	239	164	-31%
Other Weapon	14	10	-29%
Carjacking	44	47	7%
Home Invasion	24	21	-13%
Total	496	374	-25%

Gunfire Year-to-Year Comparison — 16 Mar to 24 May — 10 Weeks

Shooting Type	2019	2020	% Change
Assault with a Firearm - 245(a)(2)	52	75	44%
Occupied Home or Car - 246	50	61	22%
Unoccupied Home or Car - 247(b)	31	34	10%
Subtotal	133	170	28%
Negligent Discharge - 246.3	146	150	3%
Grand Total	412	490	19%

ShotSpotter Year-to-Year Comparison — 16 Mar to 24 May — 10 Weeks

ShotSpotter Activations	2019	2020	% Change
ShotSpotter Activations	663	918	38%

Burglary Year-to-Year Comparison — 16 Mar to 24 May — 10 Weeks

Burglary Type	2019	2020	% Change
Auto	Burglary comparisons are not yet available due to the delay in crime report processing.		
Residential			
Commercial			
Total			

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CRIME ANALYSIS

2020 COVID-19 Shelter-in-Place Crime Summary — Citywide

Updated 03 Jun., 2020

Robbery Year-to-Year Comparison — 16 Mar to 31 May — 11 Weeks

Robbery Type	2019	2020	% Change
Firearm	171	106	-38%
Knife	23	34	48%
Strong Arm	272	178	-35%
Other Weapon	16	12	-25%
Carjacking	51	52	2%
Home Invasion	28	25	-11%
Total	561	407	-27%

Gunfire Year-to-Year Comparison — 16 Mar to 31 May — 11 Weeks

Shooting Type	2019	2020	% Change
Assault with a Firearm - 245(a)(2)	59	82	39%
Occupied Home or Car - 246	57	65	14%
Unoccupied Home or Car - 247(b)	35	35	0%
Subtotal	151	182	21%
Negligent Discharge - 246.3	161	169	5%
Grand Total	463	533	15%

ShotSpotter Year-to-Year Comparison — 16 Mar to 31 May — 11 Weeks

ShotSpotter Activations	2019	2020	% Change
ShotSpotter Activations	813	1,048	29%

Burglary Year-to-Year Comparison — 16 Mar to 31 May — 11 Weeks

Burglary Type	2019	2020	% Change
Auto	Burglary comparisons are not yet available due to the delay in crime report processing.		
Residential			
Commercial			
Total			

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CRIME ANALYSIS

2020 COVID-19 Shelter-in-Place Crime Summary — Citywide

Updated 03 Jun., 2020

Robbery Before-and-After Comparison — 10 weeks

Robbery Type	06 Jan to 15 Mar	16 Mar to 24 May	% Change
Firearm	189	129	-32%
Knife	54	34	-37%
Strong Arm	275	168	-39%
Other Weapon	15	10	-33%
Carjacking	37	47	27%
Home Invasion	19	22	16%
Total	589	410	-30%

Gunfire Before-and-After Comparison — 10 Weeks

Shooting Type	06 Jan to 15 Mar	16 Mar to 24 May	% Change
Assault with a Firearm - 245(a)(2)	98	118	20%
Occupied Home or Car - 246	52	62	19%
Unoccupied Home or Car - 247(b)	49	68	39%
Subtotal	199	248	25%
Negligent Discharge - 246.3	125	165	32%
Grand Total	523	661	26%

ShotSpotter Activations Before-and-After Comparison — 10 Weeks

ShotSpotter Activations	06 Jan to 15 Mar	16 Mar to 24 May	% Change
ShotSpotter Activations	663	918	38%

Burglary Before-and-After Comparison — 10 Weeks

Burglary Type	06 Jan to 15 Mar	16 Mar to 24 May	% Change
Auto	Burglary comparisons are not yet available due to the delay in crime report processing.		
Residential			
Commercial			
Total			

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CRIME ANALYSIS

Year to Date Crime Report 01 Jan. – 03 Jun., 2020

Part 1 Crimes <i>All totals include attempts except homicides.</i>	2019	2020	Percentage Change 2019 vs. 2020
Violent Crime Index (homicide, aggravated assault, rape, robbery)	2,395	2,347	-2%
Homicide – 187(a)PC	32	28	-13%
Homicide – All Other *	2	1	-50%
Aggravated Assault	1,154	1,214	5%
Assault with a firearm – 245(a)(2)PC	116	141	22%
Subtotal - Homicides + Firearm Assault	150	170	13%
Shooting occupied home or vehicle – 246PC	110	129	17%
Shooting unoccupied home or vehicle – 247(b)PC	56	62	11%
Non-firearm aggravated assaults	872	882	1%
Rape	84	89	6%
Robbery	1,125	1,016	-10%
Firearm	379	290	-23%
Knife	50	88	76%
Strong-arm	514	470	-9%
Other dangerous weapon	37	28	-24%
Residential robbery – 212.5(a)PC	44	44	0%
Carjacking – 215(a) PC	101	96	-5%
Burglary	5,545	4,689	-15%
Auto	4,485	3,666	-18%
Residential	734	534	-27%
Commercial	263	360	37%
Other (includes boats, aircraft, and so on)	52	71	37%
Unknown	11	58	427%
Motor Vehicle Theft	2,759	3,323	20%
Larceny	2,853	2,680	-6%
Arson	53	68	28%
Total	13,607	13,108	-4%

THIS REPORT IS HIERARCHY BASED. CRIME TOTALS REFLECT ONE OFFENSE (THE MOST SEVERE) PER INCIDENT.

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Year to Date Gunfire Summary 01 Jan. – 03 Jun., 2020

Citywide <i>All totals include attempts except homicides.</i>	YTD 2019	YTD 2020	YTD % Change 2019 vs. 2020
Homicide – 187(a)PC	32	28	-13%
Homicide – All Other *	2	1	-50%
Assault with a firearm – 245(a)(2)PC	116	141	22%
Subtotal - 187 + 245(a)(2)	150	170	13%
Shooting occupied home or vehicle – 246PC	110	129	17%
Shooting unoccupied home or vehicle – 247(b)PC	56	62	11%
Subtotal - 187 + 245(a)(2) + 246 + 247(b)	316	361	14%
Negligent discharge of a firearm – 246.3PC	300	292	-3%
Grand Total	616	653	6%

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CRIME ANALYSIS

Weekly Gunfire Summary 25 May — 31 May, 2020

Citywide <i>All totals include attempts except homicides.</i>	Weekly Total	YTD 2018	YTD 2019	YTD 2020	YTD % Change 2019 vs. 2020	3-Year YTD Average	YTD 2020 vs. 3-Year YTD Average
Homicide – 187(a)PC	4	22	31	26	-16%	26	-1%
Homicide – All Other *	-	6	2	1	-50%	3	-67%
Assault with a firearm – 245(a)(2)PC	6	107	111	138	24%	119	16%
Subtotal - 187 + 245(a)(2)	10	135	144	165	15%	148	11%
Shooting occupied home or vehicle – 246PC	3	101	107	126	18%	111	13%
Shooting unoccupied home or vehicle – 247(b)PC	1	29	54	60	11%	48	26%
Subtotal - 187 + 245(a)(2) + 246 + 247(b)	14	265	305	351	15%	307	14%
Negligent discharge of a firearm – 246.3PC	16	164	287	286	0%	246	16%
Grand Total	30	429	592	637	8%	553	15%

Area 1 <i>All totals include attempts except homicides.</i>	Weekly Total	YTD 2018	YTD 2019	YTD 2020	YTD % Change 2019 vs. 2020	3-Year YTD Average	YTD 2020 vs. 3-Year YTD Average
Homicide – 187(a)PC	2	3	7	5	-29%	5	0%
Homicide – All Other *	-	2	-	-	PNC	1	PNC
Assault with a firearm – 245(a)(2)PC	-	19	22	15	-32%	19	-20%
Subtotal - 187 + 245(a)(2)	2	24	29	20	-31%	24	-18%
Shooting occupied home or vehicle – 246PC	1	12	15	17	13%	15	16%
Shooting unoccupied home or vehicle – 247(b)PC	-	2	10	9	-10%	7	29%
Subtotal - 187 + 245(a)(2) + 246 + 247(b)	3	38	54	46	-15%	46	0%
Negligent discharge of a firearm – 246.3PC	2	15	30	29	-3%	25	18%
Grand Total	5	53	84	75	-11%	71	6%

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Weekly Gunfire Summary 25 May — 31 May, 2020

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Homicide – 187(a)PC	4	22	31	26	-16%	26	-1%
Homicide – All Other *	-	6	2	1	-50%	3	-67%
Assault with a firearm – 245(a)(2)PC	6	107	111	138	24%	119	16%
Subtotal - 187 + 245(a)(2)	10	135	144	165	15%	148	11%
Shooting occupied home or vehicle – 246PC	3	101	107	126	18%	111	13%
Shooting unoccupied home or vehicle – 247(b)PC	1	29	54	60	11%	48	26%
Subtotal - 187 + 245(a)(2) + 246 + 247(b)	14	265	305	351	15%	307	14%
Negligent discharge of a firearm – 246.3PC	16	164	287	286	0%	246	16%
Grand Total	30	429	592	637	8%	553	15%

Area 1 <i>All totals include attempts except homicides.</i>	Weekly Total	YTD 2018	YTD 2019	YTD 2020	YTD % Change 2019 vs. 2020	3-Year YTD Average	YTD 2020 vs. 3-Year YTD Average
Homicide – 187(a)PC	2	3	7	5	-29%	5	0%
Homicide – All Other *	-	2	-	-	PNC	1	PNC
Assault with a firearm – 245(a)(2)PC	-	19	22	15	-32%	19	-20%
Subtotal - 187 + 245(a)(2)	2	24	29	20	-31%	24	-18%
Shooting occupied home or vehicle – 246PC	1	12	15	17	13%	15	16%
Shooting unoccupied home or vehicle – 247(b)PC	-	2	10	9	-10%	7	29%
Subtotal - 187 + 245(a)(2) + 246 + 247(b)	3	38	54	46	-15%	46	0%
Negligent discharge of a firearm – 246.3PC	2	15	30	29	-3%	25	18%
Grand Total	5	53	84	75	-11%	71	6%

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CRIME ANALYSIS

Weekly Gunfire Summary 25 May — 31 May, 2020

Area 2 <i>All totals include attempts except homicides.</i>	Weekly Total	YTD 2018	YTD 2019	YTD 2020	YTD % Change 2019 vs. 2020	3-Year YTD Average	YTD 2020 vs. 3-Year YTD Average
Homicide – 187(a)PC	-	4	1	-	-100%	2	PNC
Homicide – All Other *	-	1	-	-	PNC	0	PNC
Assault with a firearm – 245(a)(2)PC	1	2	2	5	150%	3	67%
Subtotal - 187 + 245(a)(2)	1	7	3	5	67%	5	0%
Shooting occupied home or vehicle – 246PC	1	4	5	6	20%	5	20%
Shooting unoccupied home or vehicle – 247(b)PC	-	2	6	2	-67%	3	-40%
Subtotal - 187 + 245(a)(2) + 246 + 247(b)	2	13	14	13	-7%	13	-3%
Negligent discharge of a firearm – 246.3PC	-	10	9	5	-44%	8	-38%
Grand Total	2	23	23	18	-22%	21	-16%

Area 3 <i>All totals include attempts except homicides.</i>	Weekly Total	YTD 2018	YTD 2019	YTD 2020	YTD % Change 2019 vs. 2020	3-Year YTD Average	YTD 2020 vs. 3-Year YTD Average
Homicide – 187(a)PC	1	4	9	7	-22%	7	5%
Homicide – All Other *	-	3	-	-	PNC	1	PNC
Assault with a firearm – 245(a)(2)PC	2	12	21	26	24%	20	32%
Subtotal - 187 + 245(a)(2)	3	19	30	33	10%	27	21%
Shooting occupied home or vehicle – 246PC	-	11	11	23	109%	15	53%
Shooting unoccupied home or vehicle – 247(b)PC	-	5	10	14	40%	10	45%
Subtotal - 187 + 245(a)(2) + 246 + 247(b)	3	35	51	70	37%	52	35%
Negligent discharge of a firearm – 246.3PC	2	25	49	61	24%	45	36%
Grand Total	5	60	100	131	31%	97	35%

THIS REPORT IS HIERARCHY BASED. CRIME TOTALS REFLECT ONE OFFENSE (THE MOST SEVERE) PER INCIDENT.

These statistics are drawn from the Oakland Police Dept. database. They are unaudited and not used to figure the crime numbers reported to the FBI's Uniform Crime Reporting (UCR) program. This report is run by the date the crimes occurred. Statistics can be affected by late reporting, the geocoding process, or the reclassification or unfounding of crimes. Because crime reporting and data entry can run behind, all crimes may not be recorded.

* Justified, accidental, fetal, or manslaughter by negligence. Traffic collision fatalities are not included in this report.
PNC = Percentage not calculated — Percentage cannot be calculated.
All data extracted via Coplink Analytics.



OAKLAND POLICE DEPARTMENT

455 7th St., OAKLAND, CA 94607 | OPDCRIMEANALYSIS@OAKLANDNET.COM

CRIME ANALYSIS

Weekly Gunfire Summary 25 May — 31 May, 2020

Area 4 <i>All totals include attempts except homicides.</i>	Weekly Total	YTD 2018	YTD 2019	YTD 2020	YTD % Change 2019 vs. 2020	3-Year YTD Average	YTD 2020 vs. 3-Year YTD Average
Homicide – 187(a)PC	-	4	3	5	67%	4	25%
Homicide – All Other *	-	-	2	-	-100%	1	PNC
Assault with a firearm – 245(a)(2)PC	1	18	22	26	18%	22	18%
Subtotal - 187 + 245(a)(2)	1	22	27	31	15%	27	16%
Shooting occupied home or vehicle – 246PC	1	22	34	24	-29%	27	-10%
Shooting unoccupied home or vehicle – 247(b)PC	-	5	10	14	40%	10	45%
Subtotal - 187 + 245(a)(2) + 246 + 247(b)	2	49	71	69	-3%	63	10%
Negligent discharge of a firearm – 246.3PC	5	40	73	67	-8%	60	12%
Grand Total	7	89	144	136	-6%	123	11%

Area 5 <i>All totals include attempts except homicides.</i>	Weekly Total	YTD 2018	YTD 2019	YTD 2020	YTD % Change 2019 vs. 2020	3-Year YTD Average	YTD 2020 vs. 3-Year YTD Average
Homicide – 187(a)PC	1	7	11	9	-18%	9	0%
Homicide – All Other *	-	-	-	1	PNC	0	200%
Assault with a firearm – 245(a)(2)PC	2	53	41	62	51%	52	19%
Subtotal - 187 + 245(a)(2)	3	60	52	72	38%	61	17%
Shooting occupied home or vehicle – 246PC	-	52	41	53	29%	49	9%
Shooting unoccupied home or vehicle – 247(b)PC	1	15	17	20	18%	17	15%
Subtotal - 187 + 245(a)(2) + 246 + 247(b)	4	127	110	145	32%	127	14%
Negligent discharge of a firearm – 246.3PC	7	74	125	120	-4%	106	13%
Grand Total	11	201	235	265	13%	234	13%

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OAKLAND POLICE DEPARTMENT

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CRIME ANALYSIS

Weekly Gunfire Summary 25 May — 31 May, 2020

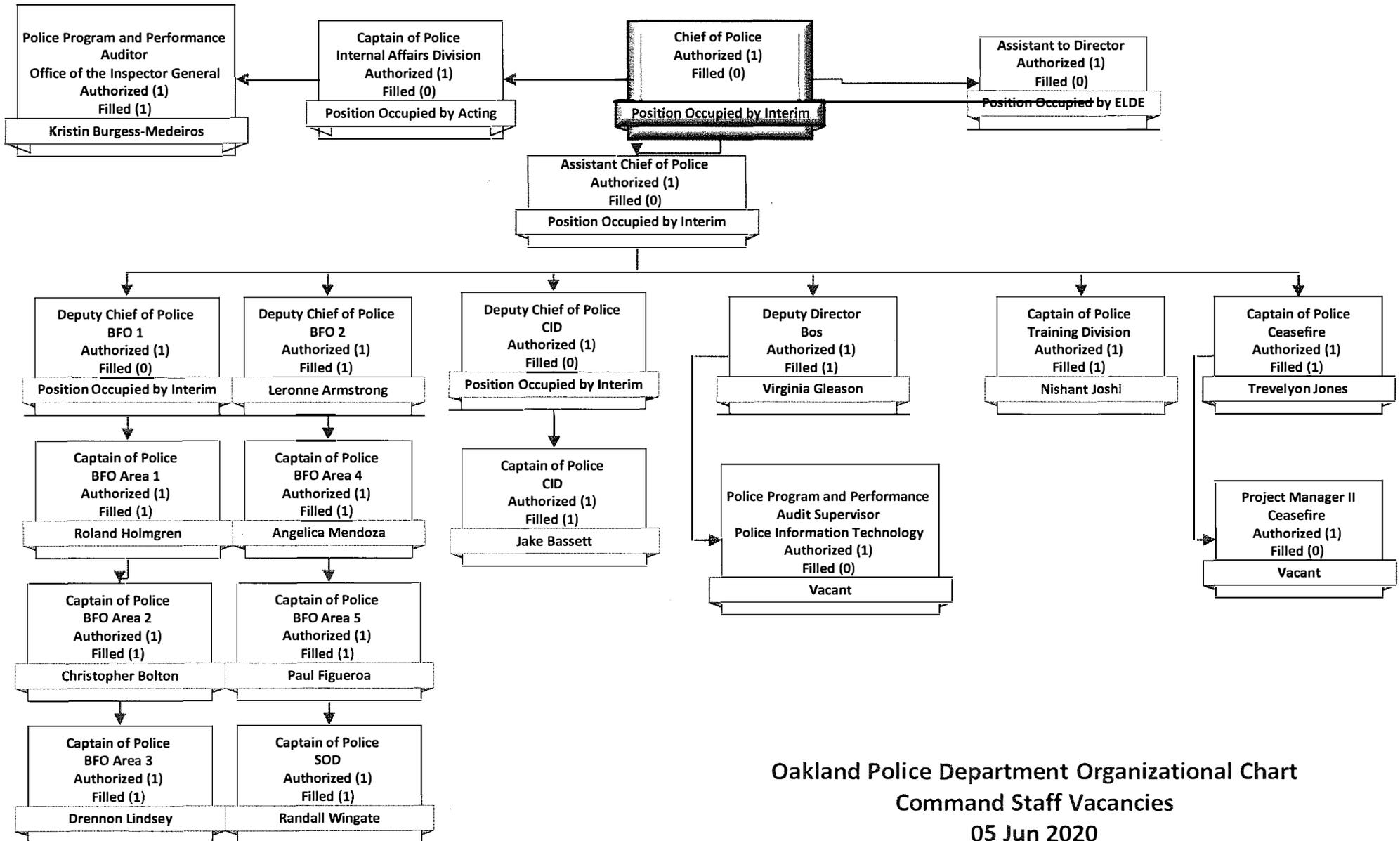
BFO 1 <i>All totals include attempts except homicides.</i>	Weekly Total	YTD 2018	YTD 2019	YTD 2020	YTD % Change 2019 vs. 2020	3-Year YTD Average	YTD 2020 vs. 3-Year YTD Average
Homicide – 187(a)PC	3	11	17	12	-29%	13	-10%
Homicide – All Other *	-	6	-	-	PNC	2	PNC
Assault with a firearm – 245(a)(2)PC	3	33	45	46	2%	41	11%
Subtotal - 187 + 245(a)(2)	6	50	62	58	-6%	57	2%
Shooting occupied home or vehicle – 246PC	2	27	31	46	48%	35	33%
Shooting unoccupied home or vehicle – 247(b)PC	-	9	26	25	-4%	20	25%
Subtotal - 187 + 245(a)(2) + 246 + 247(b)	8	86	119	129	8%	111	16%
Negligent discharge of a firearm – 246.3PC	4	50	88	95	8%	78	22%
Grand Total	12	136	207	224	8%	189	19%

BFO 2 <i>All totals include attempts except homicides.</i>	Weekly Total	YTD 2018	YTD 2019	YTD 2020	YTD % Change 2019 vs. 2020	3-Year YTD Average	YTD 2020 vs. 3-Year YTD Average
Homicide – 187(a)PC	1	11	14	14	0%	13	8%
Homicide – All Other *	-	-	2	1	-50%	1	0%
Assault with a firearm – 245(a)(2)PC	3	71	63	88	40%	74	19%
Subtotal - 187 + 245(a)(2)	4	82	79	103	30%	88	17%
Shooting occupied home or vehicle – 246PC	1	74	75	77	3%	75	2%
Shooting unoccupied home or vehicle – 247(b)PC	1	20	27	34	26%	27	26%
Subtotal - 187 + 245(a)(2) + 246 + 247(b)	6	176	181	214	18%	190	12%
Negligent discharge of a firearm – 246.3PC	12	114	198	187	-6%	166	12%
Grand Total	18	290	379	401	6%	357	12%

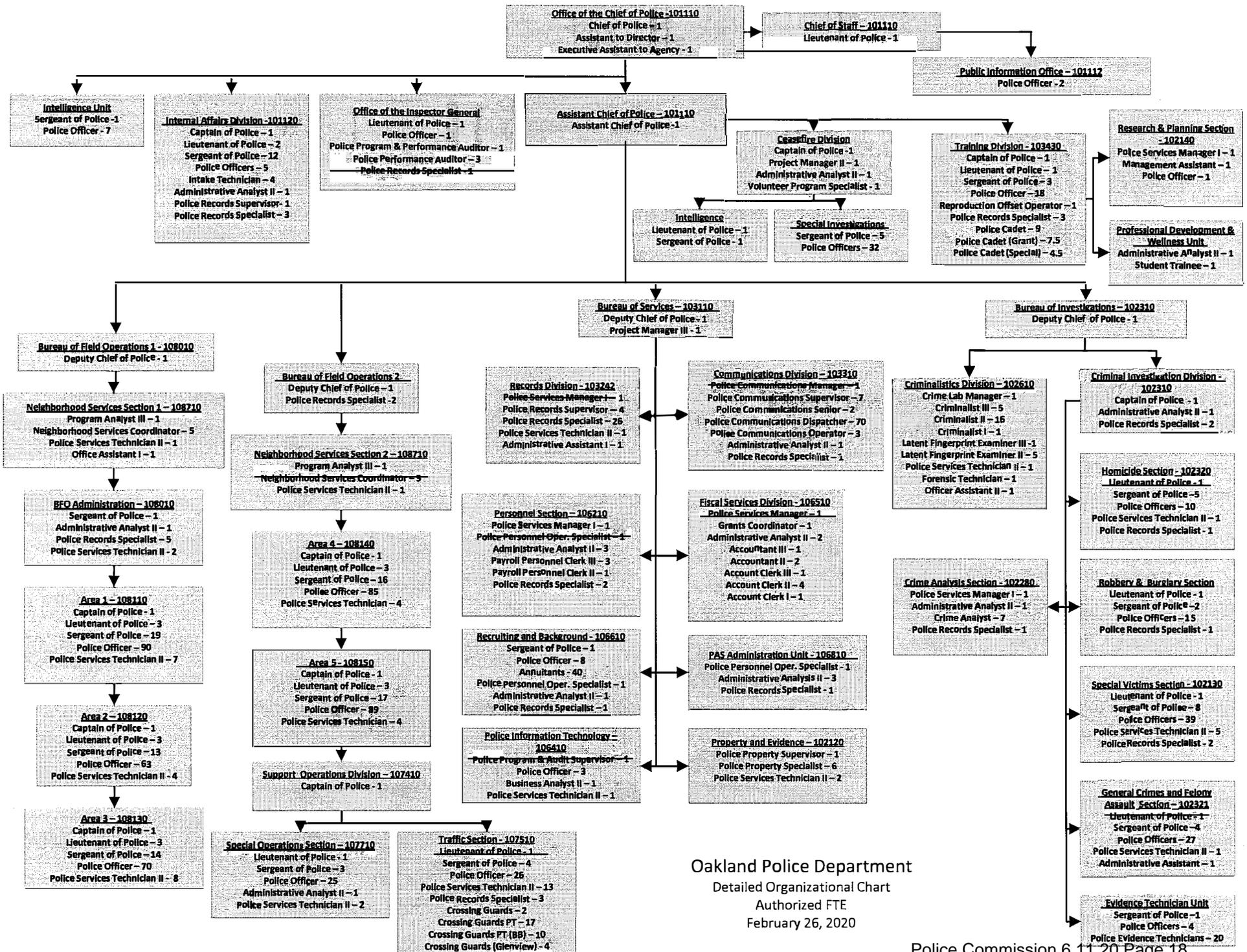
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* Justified, accidental, fatal, or manslaughter by negligence. Traffic collision fatalities are not included in this report.
PNC = Percentage not calculated — Percentage cannot be calculated.
All data extracted via Coplink Analytics.



Oakland Police Department Organizational Chart
 Command Staff Vacancies
 05 Jun 2020



Oakland Police Department
Detailed Organizational Chart
Authorized FTE
February 26, 2020

OAKLAND, CA

Mayor Libby Schaaf

-  Bans Chokeholds and Strangleholds 
-  Requires De-escalation 
-  Requires Warning Before Shooting 
-  Requires Exhaust All Alternatives Before Shooting 
-  Duty to Intervene 
-  Ban Shooting at Moving Vehicles 
-  Has Use of Force Continuum 
-  Requires Comprehensive Reporting 

Click  to learn more about these policies in this city.

**Mobile
Assistance
Community
Responders of
Oakland**

MACRO: Oakland's community healing alternative for some emergencies

In February 2019, our unhoused neighbors testified at an Oakland Police Commission hearing on policing in their communities. Many reported that their interactions with police officers were overwhelmingly negative and often resulted in involvement with the justice system. *"There are situations when we need to call someone, but we need an alternative."* Similar issues were raised in the extensive surveys and discussions leading to the establishment of the Oakland Department of Violence Prevention.

In June, a mobile intervention team in Eugene and Springfield, Oregon made a presentation in Oakland on their 30-year program. A mental health counselor and an EMT respond to 17% of all 911 calls – instead of police and fire.

In July, the Oakland City Council commissioned an implementation report by the Urban Strategies Council on creating a pilot project in Oakland to begin in July 2020.

Urban Strategies, community leaders, providers of mental health and unhoused services, and the Coalition for Police Accountability are designing a pilot project that reflects the unique communities, resources, and needs of Oakland. The pilot will respond to a broad range of non-criminal crises, including dispute resolution, non-emergency medical care, transportation to services, and problems related to homelessness, intoxication, disorientation, substance abuse, and mental illness.

Through December 2019, Urban Strategies is coordinating interviews, resource reviews, data collection and analysis, and surveys in over-policed communities. There will also be round-table discussions for input from unhoused neighbors, families affected by mental illness, residents in heavily-policed communities, first responders, and mental health professionals.

We can create a program that saves the city money, redirects police and fire resources to public safety priorities, and provides safe, appropriate assistance for people in non-criminal, non-violent situations.

For updates, to support the MACRO pilots, or invite a speaker, contact the Coalition for Police Accountability, annesjanks@gmail.com, (510) 213-2953.

More information on CAHOOTS, the Eugene, Oregon model: <https://bit.ly/2VP1DDn>



PERFORMANCE AUDIT OF THE OAKLAND POLICE COMMISSION AND THE COMMUNITY POLICE REVIEW AGENCY

CITY AUDITOR

Courtney Ruby, CPA, CFE

AUDIT TEAM

Assistant City Auditor, Mike Edmonds, CIA
Performance Audit Manager, Alessia Dempsey, CIA
Senior Performance Auditor, Mark Carnes

JUNE 1, 2020

Oakland's City Auditor is an elected official and works for, and reports to, the residents of Oakland. The Auditor's job is to provide oversight to the City's activities. The Auditor has the authority to access and audit City financial and administrative records, plus the policies and procedures of all City agencies and departments.

To make sure this work is done objectively and without bias, the City Auditor is not connected to any other City departments and has no day-to-day financial or accounting duties for the City of Oakland. This autonomy allows for independent analyses, ensuring tax dollars and other resources serve the public interest.

Audit Reports

Copies of audit reports are available at: www.OaklandAuditor.com
Alternate formats available upon request.

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Copias de nuestros informes de auditoría están disponibles en: www.OaklandAuditor.com
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--

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Courtney A. Ruby, CPA, CFE
City Auditor

(510) 238-3378
FAX (510) 238-7640
TDD (510) 238-3254
www.oaklandauditor.com

June 1, 2020

HONORABLE MAYOR
HONORABLE CITY COUNCIL
HONORABLE POLICE COMMISSION
COMMUNITY POLICE REVIEW AGENCY
HONORABLE CITY ATTORNEY
CITY ADMINISTRATOR
RESIDENTS OF OAKLAND
OAKLAND, CALIFORNIA

RE: PERFORMANCE AUDIT OF THE OAKLAND POLICE COMMISSION AND THE COMMUNITY POLICE REVIEW AGENCY

Dear Mayor Schaaf, President Kaplan, Members of the City Council, Chair Jackson, Members of the Police Commission, Director Alden, City Attorney Parker, City Administrator Reiskin, and Oakland Residents:

In 2016, a group of concerned residents, tired of waiting for the City to get police oversight right, proposed a ballot measure to create an independent police commission. A sex scandal involving multiple officers with a minor surfaced in May 2016, as the ballot language for Measure LL was being finalized by the City Council for the November 2016 election. This was just another example of a high-profile scandal plaguing Oakland Police Department (OPD) and the need for effective police oversight and accountability was once again, painfully clear.

Measure LL, passed by 83 percent of Oakland voters, creating a Police Commission (Commission) run by civilian commissioners to oversee the OPD and a Community Police Review Agency (Agency) to investigate complaints of police misconduct.

Honorable Mayor, Honorable City Council, Honorable Police Commission, Community Police Review Agency Director, Honorable City Attorney, City Administrator, and Oakland Residents
Performance Audit of the Oakland Police Commission and the Community Police Review Agency
June 1, 2020
Page 2

Measure LL requires the City Auditor to evaluate the Commission and Agency's progress in meeting its mandates, no later than two years after the first set of Commissioners are confirmed, which occurred in October 2017.

The overall objectives of the audit were to determine whether the Commission has provided effective oversight of the OPD and the Agency and whether both the Commission and the Agency complied with the requirements of the City Charter and the Oakland Municipal Code Sections 2.45 and 2.46. The audit includes 5 findings and 41 recommendations.

The audit scope includes the Commission's activities and meetings from December 2017 through December 31, 2019, and Agency investigations conducted from January 2018 to August 2019, and a significant matter that occurred in February 2020.

Since the Commission's inception, it has undertaken various activities related to its mission, however, the audit found more work is required for the Commission to be more effective. Oakland's Police Commission was created to be one of the most powerful police oversight bodies in the country, however, it must be effectively organized and properly supported to use its power to create lasting systemic change for the community and the Police Department. The pages that follow outline what has been done, what needs to be done, and the challenges the Commission has faced in meeting its mandate.

Additionally, the Commission must take great care to understand its role and responsibilities as a public oversight body and the City Council should work with the Commission, City Administration, and City Attorney to better define their respective roles. The Commission's greatest power is its ability to create effective policy, but it cannot do that without the proper organizational foundation and an unwavering commitment to prioritize the policies of greatest importance to our community's safety.

The audit also examines the sufficiency of the Agency's investigation process to ensure timely and comprehensive investigations, as prescribed by the Oakland City Charter and Oakland Municipal Code. While the audit notes significant deficiencies in the Agency's investigation processes, the good news is the Agency has embraced the audit recommendations with a sense of urgency and purpose and has already implemented more than half of the recommendations.

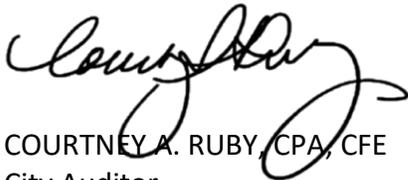
Lastly, as we release this report, I think it is important to acknowledge that our City, and cities across our nation are reeling from the recent deaths of Ahmaud Arbery, Breonna Taylor and George Floyd. Police violently took the lives of Mr. Floyd and Ms. Taylor. These tragedies illustrate the enormous power law enforcement officers are capable of wielding against our residents, who in many cases are unable to resist an officer's illegitimate use of

Honorable Mayor, Honorable City Council, Honorable Police Commission, Community Police Review Agency
Director, Honorable City Attorney, City Administrator, and Oakland Residents
Performance Audit of the Oakland Police Commission and the Community Police Review Agency
June 1, 2020
Page 3

power. Their deaths yet again, remind the leaders and residents of Oakland, about the need for effective police oversight to eliminate racial bias, profiling, and the illegitimate use of power.

Oakland and its residents have long had a sense of urgency when it comes to police accountability. Oakland must get it right. We acknowledge the Commission has a heavy lift, much responsibility to shoulder and the challenges they face as a new Commission are many. While this report shines a bright light on the areas in which the Commission and Agency fall short, they now have a roadmap from which to operate. It is my hope the Commission and the Agency embrace this report to deliver what our residents envisioned in passing Measure LL, endeavor to dive deeper into the policies and practices that are holding OPD back from meeting the Negotiated Settlement Agreement, and to realize a Police Department modeling the best in police accountability and transparency, while keeping all our residents safe.

Sincerely,

A handwritten signature in black ink, appearing to read 'Courtney Ruby', with a large, stylized flourish at the end.

COURTNEY A. RUBY, CPA, CFE
City Auditor

Table of Contents

Executive Summary	1
Introduction and Background	7
Objective, Scope, and Methodology	12
Statement of Compliance	14
Audit Results	15
Finding 1. The Commission’s actions have resulted in two changes to OPD’s policies through December 2019 and it has not fully implemented requirements of the City Charter and the Municipal Code	15
Finding 2. The Commission's powers and duties should be clarified	37
Finding 3. The Agency has not fully implemented City Charter and Municipal Code requirements.....	49
Finding 4. The Agency’s investigative processes are not formalized, and the Agency and the Commission have not adequately defined the type of oversight role it should provide	56
Finding 5. The City Council should consider amending several of the Commission’s City Charter and Municipal Code Requirements	65
Appendices	71
A. The Passage of Measure LL.....	71
B. City Charter Section 604(b) Powers and Duties of the Commission	74
C. Municipal Code Section 2.45.070 - Functions and Duties of the Commission	77
D. Municipal Code Section 2.46.030 - Functions and Duties of the Agency.....	82
E. Agency Timeline of event and changing roles of CPRB and the Agency.....	84
F. Definitions of Allegations.....	85
Police Commission and Community Police Review Agency Responses	87
Police Commission Response.....	88
Community Police Review Agency Response	96
Police Commission and Community Police Review Agency Response Matrix	105
City Administration Response Matrix	123
Office of the City Auditor Response to the Police Commission’s Response	126

Executive Summary

Introduction and Background

For decades, the Oakland Police Department (OPD) has been plagued by corruption, misconduct and high-profile scandals. The seriousness of these issues and the inadequate responses to them, eroded residents' confidence in OPD and ultimately resulted in federal oversight. In an effort to ensure constitutional policing and a police force the community trusts, residents came together and placed Measure LL on the November 2016 ballot to support the creation of a civilian Police Commission.

Measure LL was passed by 83 percent of Oakland voters creating the Oakland Police Commission (Commission) and the Community Police Review Agency (Agency). Measure LL provided the Commission with significant powers to oversee OPD policies, practices, and customs and ensure adherence to constitutional policing practices. The Agency is an investigative body, charged with looking into complaints of misconduct against OPD.

In July 2018, City Council enabled the implementation of this City Charter amendment by adding Chapters 2.45 and 2.46 to the Oakland Municipal Code (Municipal Code). Additionally, the Municipal Code required the creation of a civilian Office of the Inspector General to conduct audits or reviews of OPD's performance and adherence to constitutional policing practices to assist the Commission in fulfilling its oversight duties under the City Charter.

Since its inception, the Commission has undertaken various activities related to its mission such as hiring a new Agency Executive Director, holding meetings twice a month and meeting quorum consistently, attending mandated training, annually holding a meeting outside of City Hall, holding a retreat in September 2019, initiating work in 2019 to overhaul OPD's use of force policy in 2020, and attending a special meeting on legal rights of residents when dealing with police and OPD's practices of policing the homeless community hosted by a community group.

The Agency replaced the Community Police Review Board (CPRB), which had been in place for nearly 40 years. On December 15, 2017, pending business and all CPRB staff were transferred to the Agency. The Executive Director of the CPRB became the first Interim Director of the Agency and was succeeded by two more Interim Executive Directors until a permanent Executive Director joined the Agency in July 2019.

Executive Summary

Audit Findings and Recommendations

Finding 1. The Commission's actions have resulted in two changes to OPD's policies through December 2019 and it has not fully implemented requirements of the City Charter and the Municipal Code

The audit found that the Commission, through 2019, made two changes to OPD policies relating to stopping people on parole and reporting on the use of force. More recently, in January 2020, the Police Commission reviewed and approved another policy on when and how officers should use force. The Commission is also working on a comprehensive overhaul of OPD's use of force policy. In addition, the City Charter and the Municipal Code include approximately 105 requirements for the Commission to execute. The Commission has not fully implemented 13 key requirements and 23 additional requirements in the City Charter and Municipal Code including hiring an Inspector General, requesting annual reports from the Police Chief or semi-annual reports from the City Attorney, completing required training, establishing a process to evaluate the performance of the Chief of Police or the Agency Director, consistently complying with the California Brown Act, and formally reviewing OPD's budget.

The audit also revealed the Commission has not provided guidance to the Agency on how to prioritize its cases at a time when the Agency lacked consistent leadership or adequate staff to meet its caseload, nor has it established a process for reviewing and approving administrative closures or dismissals of Agency investigations, established a mediation program or developed written procedures to ensure compliance with OPD procedures for the release of audio and video tapes of Class I alleged offenses. Class I offenses include use of force, in-custody deaths, and profiling based on any of the protected classes.

The Commission's ability to fulfill all of its requirements has been limited by numerous factors. These challenges include: establishing a new organization, the lack of senior administrative staff, conflicting language in the Municipal Code which led to a stalemate in the hiring of the Inspector General, the lack of a formal process and structure in the City for establishing the Commission, a working relationship between the Commission and City Administration that needs improvement, and an insufficient structure to support the Commission from its inception.

To increase its effectiveness and ensure compliance with the City Charter and the Municipal Code, this section of the audit report contains eight recommendations for the Commission. The recommendations include adding a senior level staff person to assist the Commission in establishing a sufficient structure for focusing its work on key priorities and managing its day-to-day responsibilities, developing goals and objectives, a strategic plan, annual work plans, and policies and procedures to ensure agenda items are properly noticed and prioritized. Additionally, policies and procedures need to be developed for conducting all aspects of the Commission's

Executive Summary

oversight function including: defining the roles of the Chair, Vice-Chair and Committees, developing an effective process for reviewing OPD's policies and practices and prioritizing new policies and practices, monitoring training requirements, requesting and reviewing reports from the Chief of Police and the City Attorney, ensuring compliance with the Brown Act, providing guidance to the Agency on how to prioritize cases, establishing a mediation program, and releasing audio and video tapes of Class I alleged offenses.

An additional two recommendations are directed to the City Administration to develop a formal orientation program to ensure that new Commissioners and other oversight bodies are better prepared to assume their duties prior to being seated, and another recommendation is addressed to the Commission and the City Administration to help in improving their working relationship.

Finding 2. The Commission's Powers and Duties Should Be Clarified

The audit found that the Commission has involved itself in matters that limit its ability to address higher priority issues. For instance, the Commission has involved itself with administrative activities and has directed staff in the Agency and OPD. Additionally, the Commission has involved itself in areas that may not be consistent with its prescribed duties or are not the best use of its limited time and resources. Finally, the Commission has difficulty managing its meetings and has not adopted a code of conduct or a comprehensive social media policy. Clarifying the Commission's powers and duties will ultimately assist them to address their higher priorities.

Much of its inability to complete all its mandated duties stem from the Commission not fully understanding its roles and responsibilities as a public oversight body. This lack of understanding has led to the Commission inappropriately directing staff, involving itself in the contracting process, making disparaging comments to other Commissioners, City staff, the Commission's own legal counsel, and the public. Commissioners have also acted on matters outside their authority and addressed instances of perceived racial bias on a case-by-case basis, rather than focusing on the larger systemic issues of racial profiling facing our residents.

To address these issues, this section includes five recommendations directed to the Commission and another recommendation directed to the City Administration. The five recommendations directed to the Commission include: obtaining training on conducting and managing public meetings, ensuring agenda items are consistent with their mission, enforcing limits on public comments, and developing a written code of conduct and a comprehensive social media policy. The recommendation directed to the City Administration is to develop appropriate protocols for addressing instances in which Commissioners contact City staff directly.

Finding 3. The Agency has not fully implemented City Charter and Municipal Code requirements

The Oakland City Charter and the Municipal Code require the Agency to implement 39 key

Executive Summary

requirements intended to improve the Agency's investigations and to support the efforts of the Commission. The Agency has not fully implemented eight of these City Charter and Municipal Code requirements. It should be noted the Agency operated without a permanent Executive Director from December 2017 to June 2019. Additionally, the requirements of the new measure increased the workload of the new Agency.

Specifically, the Agency did not meet the City Charter's staffing requirements during our review period, has not completed investigations in compliance with timeframes outlined in the City Charter and State Law, has not always videotaped interviews of officers who allegedly committed Class I offenses, has not always received requested information from IAD and other OPD departments within the Charter mandated timeframes, needs to improve its processes for classifying and submitting administrative closures/dismissals to the Commission, and has not provided sufficient training to Agency staff. Additionally, the Agency's office is not visible to the public as the Municipal Code requires.

To address these issues, this section contains nine recommendations for the Agency and one recommendation for the City Administration. To ensure compliance with the Municipal Code regarding the Agency's office location, the City Administration and the Agency should work together to obtain space for the Agency that is consistent with the requirements specified in the Municipal Code.

To assist in fulfilling the requirements of the City Charter and the Municipal Code, the Agency should establish written goals and objectives regarding the timeliness of its investigations which should include a management reporting system to allow management to monitor the timeliness of investigations. The Agency should also develop written policies and procedures to ensure investigations are concluded in a timely manner, ensure all interviews with officers who allegedly committed Class I offenses are videotaped, establish criteria for defining administrative closures and begin to report all administrative closures to the Police Commission, and develop and implement a formal training program for all Agency staff.

Finding 4. The Agency's investigative processes are not formalized, and the Agency and the Commission have not adequately defined the type of oversight role it should provide

Quality Standards for Investigations by the Council of Inspectors General (Standards) require investigations to be conducted in a thorough, diligent, and complete manner. Investigations must be conducted in accordance with applicable laws, rules, regulations, and guidelines. Methods and techniques used in investigations must be appropriate for the individual circumstances and objectives of each case. Findings must be supported by adequate, accurate, and complete documentation in the case files and investigations must be executed in a timely, efficient, thorough, and legal manner.

Executive Summary

The Agency is required to investigate all public complaints, which include use of force, in-custody deaths, profiling based on any of the protected characteristics identified by federal, state, or local law, and First Amendment assemblies such as resident protests or marches. Additionally, the Agency must investigate all public complaints related to policies and procedures on federal court orders such as the Negotiated Settlement Agreement if directed by the Commission.

The Agency must also investigate any other possible misconduct or failure to act of an OPD sworn employee, whether it is or is not the subject of a public complaint, as directed by the Commission.

The audit found the Agency lacks a formal process for conducting investigations. Thus, the Agency's investigative processes are not clearly defined and documented. Consequently, staff are not adequately trained, and investigations are not conducted timely, and in accordance with best practices. Specifically, we noted the Agency has not:

- Formalized its complaint intake process;
- Documented its considerations for assigning staff to conduct investigations;
- Established formal planning processes for investigations;
- Documented requirements for investigations;
- Established a quality control system to ensure that its policies and procedures are followed; and
- Implemented a strong management information system to monitor the status of investigations and to provide statistical data on its performance.

To ensure efficient, effective, compliant, and consistent investigations, this section includes eight recommendations for the Agency. The recommendations include defining and documenting the overall processes necessary to undertake investigations, which include establishing policies and procedures for the intake process, establishing a formal process for assigning staff to an investigation, ensuring all job qualifications are met before hiring an investigator, establishing procedures for planning, reviewing and approving investigations before the formal investigation commences, standardizing investigation reports, and establishing quality review policies and procedures. Lastly, the Agency should work with the Commission to determine the investigative agency oversight model it should adopt.

Finding 5: The City Council should consider amending several of the Commission's City Charter and Municipal Code requirements

The City Council is considering amending Section 604 of the City Charter through a ballot measure to go before the voters in November 2020. During our audit, we identified several issues with the

Executive Summary

City Charter and the Municipal Code that the City Council should consider addressing in the new ballot measure. These issues include the process for removing the Chief of Police, the use of selection panels to nominate Commissioners, the Commission's authority, and whether the Commission has more requirements than a part-time oversight body can effectively fulfill.

This section recommends the City Council re-assess the City's process for removing the Chief of Police, debate the pros and cons of the various appointment methods used to select Commissioners, and consider strengthening the requirements of who can be a selection panel member in order to avoid potential conflicts of interest. The audit also recommends adding language to the proposed ballot measure to clearly identify the Commission's authority and responsibilities and prohibit the Commission from participating in administrative activities and directing staff below the Agency Director and the Chief of Police. Lastly, the audit recommends the City Council reassess the Commission's City Charter and the Municipal Code requirements to determine whether the Commission, which is comprised of part-time volunteers, can effectively address these requirements or whether the City Council should eliminate some of the requirements in the proposed City Charter amendment or in the Municipal Code.

The Commission, Agency, and City Administration's Response, and the Office of the City Auditor's Response

The last section of the audit report includes responses to the audit from the Commission, the Agency, and the City Administration. In addition, the Office of the City Auditor has provided clarification to the Commission's response at the end of this report.

Introduction and Background

Introduction

The Office of the City Auditor conducted an audit of the Oakland Police Commission (Commission) and the Oakland Community Police Review Agency (Agency) in accordance with the requirements of Measure LL, a civilian-initiated ballot measure. The questions on the Measure LL ballot were, “Shall Oakland’s City Charter be amended to establish: (1) a Police Commission of civilian commissioners to oversee the Police Department by reviewing and proposing changes to Department policies and procedures, requiring the Mayor to appoint any new Chief of Police from a list of candidates provided by the Commission, and having the authority to terminate the Chief of Police for cause; and (2) a Community Police Review Agency to investigate complaints of police misconduct and recommend discipline?” See Appendix A for the ballot measure language.

Measure LL was passed by 83 percent of the voters in November 2016 creating the Commission and the Agency. The Commission is a civilian oversight board to oversee the Oakland Police Department’s (OPD) policies, practices, and customs and ensure adherence to constitutional policing practices. The Agency is an investigative body, to investigate complaints of misconduct against OPD.

Measure LL added Section 604 to the Oakland City Charter (City Charter) establishing the Commission and the Agency. In July 2018, the City Council enabled the implementation of this City Charter amendment by adding Chapters 2.45 and 2.46 to the Oakland Municipal Code (Municipal Code). Additionally, the Municipal Code required the creation of a civilian Office of the Inspector General to conduct audits or reviews of OPD’s performance and adherence to constitutional policing practices and OPD’s policies and procedures, in order to help the Commission, fulfill its oversight duties under the City Charter.

The City Charter also mandates the Office of the City Auditor to conduct a performance and financial audit of the Commission and the Agency, no later than two (2) years after City Council has confirmed the first set of Commissioners and Alternates.

The overall audit objectives were to determine whether the Commission provided effective oversight of OPD and the Agency, and whether both the Commission and the Agency complied with the requirements of the City Charter and the Municipal Code. The audit also included a financial review of the Commission’s and the Agency’s budgets and expenses to determine whether costs were reasonable and appropriate.

Introduction and Background

Background

Police Commission

The Commission is comprised of nine unpaid volunteers from the community: seven regular members and two Alternates. The Mayor recommends three Commissioners and one Alternate and a selection panel recommends four Commissioners and one Alternate to the City Council for approval. The selection panel is comprised of nine community members appointed by each District Councilmember, the Councilmember At-Large, and the Mayor. On October 17, 2017, the City Council approved the Mayor's and the selection panel's first group of appointments to serve on the Commission. The Commission convened its first meeting in December 2017 and meets twice monthly at City Hall.

Commission's powers and duties specified by the City Attorney's Impartial Ballot Analysis

The City Charter and the Municipal Code grant the Commission certain powers and duties. The full-text of the powers and duties in the City Charter Section 604 (b) are shown in Appendix B and the full-text of the functions and duties of the Commission and the Agency in the Municipal Code Sections 2.45.070 and 2.46.030 are shown in Appendix C and Appendix D.

The City Attorney prepared an impartial legal analysis regarding the City Charter amendment showing the effect of the Measure on the existing law and the operation of Measure LL, which states:

1. "The measure would establish the Police Commission (Commission) to oversee the Police Department's policies and procedures, and a Community Police Review Agency (Agency) to investigate complaints of police misconduct and recommend discipline."
2. The Commission would, "Review the OPD's policies, procedures, and General Orders. The Commission may also propose changes, and approve or reject OPD's proposed changes, to those policies, procedures, and General Orders that govern use of force, profiling, and general assemblies. The Commission's proposed changes, and any rejections of the OPD's proposed changes would be subject to the City Council's review and approval. The Commission would be also required to conduct at least one public hearing a year on OPD's policies, procedures, and General Orders." It should be noted that the Charter also empowers the Commission to review or propose policies associated with those listed in federal court orders or federal court settlements, as long as those remain in effect. Moreover, the Charter also empowers the Commission to review and comment, at its discretion, on any of OPD's policies, procedures, and General Orders.

Introduction and Background

3. The Commission would decide on the discipline when the Chief of Police and the Agency disagree on findings and discipline. Specifically, the ballot analysis states, “If the Chief disagrees with the Agency’s findings and proposed discipline, the Chief would be required to prepare separate findings and proposed discipline. A three-member committee of the Commission would consider the Agency and the Chief’s recommendations and make a final decision, subject to the officer’s ability to file a grievance, and the City must allocate enough money to the Commission and the Agency to perform their required functions and duties.”

Additional powers and duties specified by the City Charter and Municipal Code

The City Charter specifies the authority to:

- Organize, reorganize, and oversee the Agency.
- Submit three Agency Director candidates to the City Administrator to hire, as well as the authority to hire or fire the Agency Director with the approval of the City Administrator.
- Issue subpoenas to compel the production of book, papers, and documents or testimony on matters pending before it.
- Remove the Chief of Police, either acting separately or jointly with the Mayor.
- Provide a list of four candidates to the Mayor to choose to permanently appoint a Chief of Police.
- Perform other functions and duties as required by the City Charter and the Municipal Code.

The Municipal Code adds responsibilities such as:

- Providing policy guidelines on case prioritization for the Agency.
- Soliciting and considering input from the public regarding the quality of their interactions with the Agency and the Commission.
- Requesting semi-annual reports from the City Attorney and an annual report from the Chief of Police.
- Establishing rules and procedures for the mediation of complaints.

Introduction and Background

Community Police Review Agency

The Agency was established in November 2016 to provide the community with an accessible forum to report cases of alleged police misconduct and offer independent civilian investigations of those complaints. On December 15, 2017, the Agency replaced the Community Police Review Board (CPRB), which had been in place for nearly 40 years. Pending business and all CPRB staff were transferred to the Agency.

The role of the CPRB and the Agency has evolved over time. The Executive Director of the CPRB became the first Interim Director of the Agency and was succeeded by two more Interim Executive Directors until a permanent Executive Director joined the Agency in July 2019. This transition from the CPRB to the new Agency increased the staff's workload, both in investigations and administrative and support capacities. See Appendix E for the Agency timeline of events and changing roles of CPRB and the Agency.

The Agency is currently comprised of an Executive Director, three intake technicians, one supervisor, one policy analyst and six investigators, three of which were newly hired (in October 2019). The Agency also has an Office Assistant II position.

The City Charter requires the Agency to:

- Receive, review, and prioritize all public complaints concerning the alleged misconduct or failure to act of all OPD sworn staff, including complaints from OPD's non-sworn staff.
- Investigate all public complaints related to use of force, in-custody deaths, profiling based on any of the protected characteristics identified by federal, state, or local law, First Amendment assemblies such as resident protests or marches, and policies and procedures on federal court orders such as the Negotiated Settlement Agreement(NSA).¹
- Investigate any other alleged misconduct or failure to act of OPD sworn staff, whether or not the sworn staff member is the subject of a public complaint, as directed by the Commission.

Office of the Inspector General

The civilian Office of the Inspector General was created in the Municipal Code on July 10, 2018. It has not been formed as of December 2019 (Please see Finding 1 for additional details).

¹ On January 3, 2003, the City entered into a Negotiated Settlement Agreement (NSA) requiring implementation of 51 tasks to promote police integrity and prevent conduct that deprives persons of their constitutional rights.

Introduction and Background

Budget

Exhibit 1 below summarizes the actual and budgeted expenditures and Full-Time Equivalent (FTE) staff² assigned to the Commission, the Agency, and the Inspector General for FY 2017-2018 through FY 2019-2020.

Exhibit 1 – Actual and Budgeted Expenditures for the Commission, the Inspector General, and the Agency

Department	FY2017-2018		FY2018-2019		FY2019-2020	
	FTE	Actuals	FTE	Actuals	FTE	Budgeted
Commission	1	\$3,570	1	\$108,345	1	\$552,412
Inspector General ³	0	\$ -	0	\$ -	2	\$659,765
Community Police Review Agency	13	\$2,110,933	13	\$2,314,225	14	\$2,889,821
Total	14	\$2,114,503	14	\$2,422,570	17	\$4,101,998

² Figures related to staffing are for budgeted Full-Time Equivalent (FTE) positions.

³ The Inspector General position has not been filled as of December 31, 2019.

Objective, Scope, and Methodology

Audit Objectives

The objectives of the audit were to:

- Determine whether the Commission provided effective oversight of the Oakland Police Department.
- Assess whether the Commission and the Agency adequately complied with the requirements of the Oakland City Charter and the Oakland Municipal Code Sections 2.45 and 2.46.
- Assess whether the Agency established sufficient controls to effectively manage its caseload of complaints to ensure timely and comprehensive investigations.
- Assess whether the Commission's and the Agency's costs are appropriate.
- Assess whether existing language in the City Charter and the Municipal Code, or proposed changes to the Charter and the Municipal Code should be revised.

Audit Scope

The audit scope included Commission activities and meetings from December 2017 through December 31, 2019, Agency investigations conducted from January 2018 to August 2019, and a significant matter that occurred in February 2020.

Methodology

1. Reviewed a sample of past Commission meetings, including reviewing meeting minutes and listening to videos totaling over 50 hours of Commission meetings.
2. Interviewed Commissioners and Agency personnel to gain an understanding of their roles and responsibilities, and to identify internal controls related to carrying out their respective roles.
3. Interviewed personnel from OPD, City Administrator's office, City Attorney's office, City Finance, outside Agency counsel, and former outside Commission counsel to gain an understanding of their roles in relation to the Commission and the Agency.
4. Reviewed a sample of 30 out of 81 Agency investigations to determine whether investigations were completed timely, consistently, and were properly approved.
5. Reviewed relevant sections of the City Charter, Municipal Code, National Association for Civilian Oversight of Law Enforcement Standards, Council of Inspectors General Standards, Standards and Guidelines for Internal Affairs, and other relevant rules and regulations.

Objective, Scope, and Methodology

6. Reviewed training logs to determine whether Commissioners complied with training requirements, as outlined in the City Charter and the Municipal Code.
7. Obtained and reviewed appropriate documentation to determine whether the Commission and the Agency complied with the City Charter and the Municipal Code.
8. Reviewed available reports and interviewed personnel from other jurisdictions with civilian police oversight bodies.
9. Surveyed 32 jurisdictions to determine how the members of their police oversight bodies are appointed.
10. Assessed existing language in the City Charter and the Municipal Code, as well as proposed City Charter amendments, to determine if additional revisions were warranted.
11. Reviewed *“Beyond Ethics: Establishing a Code of Conduct to Guide Your Council”* in the December 2019 issue of Western Cities Magazine and *“Making It Work: The Essentials of Council-Manager Relations”* published by the International City/County Management Association, to gain an understanding of codes of conduct and the creation of oversight bodies.
12. Reviewed the Ontario Human Rights Commission’s *“Policy on eliminating racial profiling in law enforcement”* to gain an understanding of the guiding principles on addressing racial profiling in law enforcement.

Statement of Compliance

Statement of Compliance with Government Auditing Standards

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Audit Results

Finding 1: The Commission's actions have resulted in two changes to OPD's policies through December 2019 and it has not fully implemented requirements of the City Charter and the Municipal Code

Summary

The City Charter grants the Commission powers to propose changes and approve or reject OPD's policies, procedures, customs, or General Orders that fall within categories such as the use of force, use of force review boards, or profiling based on any of the protected characteristics. Furthermore, the Charter authorizes the Commission to review and approve changes to OPD's policies, procedures, and General Orders associated with those listed in federal court orders or federal court settlements, as long as those remain in effect. Moreover, the Charter also empowers the Commission to review and comment, at its discretion, on any of OPD's policies, procedures, and General Orders.

Since the Commission was seated in late 2017, it has undertaken a number of activities related to its mission. The Commission, however, has only modified two of the Department's policies through December 2019 and completed another change in January 2020. In addition, the Commission has not fully implemented requirements in the City Charter and in the Municipal Code. For instance, the Commission has not hired an Inspector General, completed all required training, obtained required reports from the Chief of Police and the City Attorney, established a process to evaluate the Chief of Police and the Agency Director, consistently complied with the Brown Act, as well as other requirements specified in the City Charter and the Municipal Code. Thus, the Commission has not fully implemented all the City Charter requirements in the voter-approved measure and all the requirements the City Council adopted in the enabling ordinance.

The Commission's ability to meet its mandate has been limited by numerous factors including: the challenge of establishing a new organization, the lack of senior administrative staff, conflicting language in the Municipal Code which led to a stalemate in the hiring of the Inspector General, the lack of a formal process and structure in the City for establishing the Commission, a working relationship between the Commission and City Administration that needs improvement, and an insufficient structure to support the Commission from its inception. Specifically, the Commission needs to establish written goals and objectives, a strategic plan, annual work plans, meeting agendas structured to address its key functions, written policies and procedures for guiding its work, public reports assessing its performance, and a clear budget process.

The Commission's activities related to its mission

The Commission has undertaken various activities related to its mission:

Audit Results

- Hired a new Agency Executive Director
- Held meetings twice per month and met quorum consistently
- Received some of the required training
- Reviewed some administrative closures⁴
- Heard various presentations from OPD
- Dismissed and replaced the Interim Executive Director of the Agency
- Attended special meetings on legal rights of residents when dealing with police and on OPD's practices of policing the homeless community
- Adopted a limited social media policy
- Other miscellaneous actions

The Commission reviewed and approved two policies through 2019

As noted in the Introduction of the report, the City Charter enumerates the powers and duties of the Commission. One of the functions of the Commission is to review and propose changes and approve or reject OPD's policies, procedures, customs, or General Orders that fall within the categories as listed below:

- Use of force
- Use of force review boards
- Profiling based on any of the protected characteristics
- First Amendment assemblies⁵
- Policies and procedures on federal court orders such as the NSA
- Review and comment on all other OPD policies, procedures, and General Orders

Since being seated in late 2017 through December 2019, the Commission modified two of OPD's policies and procedures. The two policies relate to stopping people on parole and reporting on the use of force as discussed below. In January 2020, the Commission reviewed and approved

⁴ Administrative closures are cases that are received by the Agency or OPD but are not investigated because they are outside of the Commission's jurisdiction or it is evident upon initial review that the claim is unfounded.

⁵ Public protests or marches.

Audit Results

another policy on when and how officers should use force.

First policy

In July 2019, the City Council adopted OPD General Order R-02. This policy, authored by the Commission, relates to searches of individuals on supervised release or probation. The Commission heard directly from impacted communities, including those currently on parole and probation, and community advocates in developing this policy. This policy change modifies OPD's procedures to prohibit OPD officers from asking whether individuals stopped are on probation or parole.

Second policy

In July 2019, OPD presented the Commission with Special Order 9196 to modify the DGO K-03 'Use of Force' policy to address and clarify requirements for the proper reporting of use of force to satisfy task 24 and 25 of the NSA. The Commission made language changes to this Special Order. These changes address when an officer exhibits, or removes a gun from a holster, and/or points a firearm at another person. OPD compromised and accepted the language changes and presented the policy change to the Commission in October 2019. The Commission subsequently approved the modifications to the policy.

Third policy initiated in 2019

In August of 2019, Governor Newsom signed AB 392, effective January 1, 2020, which set forth clear intent on when and how force by police officers in the State should be used. Starting in 2020, the DGO K-03 policy would not have been in compliance with this new State Law. To ensure OPD complied with this requirement, OPD convened an ad hoc committee in October made up of Commissioners, Agency staff, Plaintiff's attorneys from the NSA, a community member, representatives from the City Attorney's office, and members of OPD's Executive Command and Training staff, to work on OPD's DGO K-03 Use of Force policy. This committee met six times to address the new State requirements for use of force. Further, this same ad hoc committee agreed on a two-step approach to first bring OPD's policy into compliance with State Law while simultaneously committing to continuing work on a major revision of the policy during 2020.

In December 2019, OPD presented the Commission with the Committee's revisions to the policy for Commission approval. Since the State Law went into effect on January 1, 2020, the revision to OPD's policy should have been approved before the end of the year. The Commission did not approve the revision. Instead, the Commission wanted to make additional edits put forth by community groups days before the Commission meeting. After attempting to make additional edits at a Commission meeting, the Commission moved the agenda item to the first meeting in January 2020—after the State Law became effective. The Commission approved this new policy

Audit Results

on January 9, 2020.

During 2019, while the Commission was working on Special Order 9196 and AB 392, they were also laying the ground work for a significant overhaul of OPD's Use of Force policy. The Commission states, they used "a "two-track" approach, the first to address and approve individual policy changes responsive to the NSA process or changes to the state law, and second to get involved deeper into the research on the overhaul and prepare for what would be at least "a year's worth of work."

Challenges in policymaking

It should be noted that the policy review and approval process can be very time consuming because the process often requires OPD to meet and confer with the Oakland Police Officer's Association, as well as consulting with the City Attorney's Office, and sometimes the federal monitor and the community to obtain input. In addition, the Commission must discuss and make all policy change decisions in a public meeting to be in compliance with the Brown Act.

Besides the above policy changes, OPD and the Agency have provided the Commission with a list of policies to consider addressing. In January 2019, OPD sent the Commission a list of all policies being considered for update. In February 2019, the Commission requested a narrative summary report on the Agency's priorities and recommendations based on the list of policies being considered for update. In March 2019, in response to the Commission's request, the Agency provided the Commission with a report highlighting policies the Commission should review and comment on. The report emphasized two policies the Commission should address as a high priority, including the handling of armed individuals found unconscious or unresponsive and body worn cameras.

The report also recommended an additional nine policies for the Commission to consider, including

- confiscation of weapons from felons,
- complaints against departmental personnel, and
- pursuit driving.

The Commission has discussed some of these policy changes but has not yet fully addressed them.

Audit Results

The Commission has implemented some City Charter and Municipal Code requirements, but it needs to fully implement additional requirements

The City Charter and the Municipal Code include approximately 105 requirements for the Commission to accomplish. The Commission has not fully implemented 13 key requirements and 23 additional requirements in the City Charter and the Municipal Code. Specifically, the Commission:

1. Has not hired an Inspector General because the Commission lacked the authority to hire;
2. Has completed some trainings, but not all required trainings;
3. Has not requested an annual report from the Chief of Police;
4. Has not requested the City Attorney to submit semi-annual reports;
5. Has not established a process for evaluating the performance of the Chief of Police and the Agency Executive Director;
6. Has not established a formal process for reviewing and commenting on the training OPD provides 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;
7. Has not established a process for reviewing and approving administrative closures and dismissal of cases, and has not formalized its process for re-opening cases;
8. Has not formalized the process for reviewing OPD's budget;
9. Has not consistently complied with the Brown Act;
10. Has not met outside of City Hall at least twice a year;
11. Has not provided the Agency with formal policy guidelines on how to prioritize cases;
12. Has not established a mediation program for complaints; and
13. Has not developed written procedures to ensure compliance with OPD procedures for the release of audio and video tapes of Class I offenses.⁶

⁶ Class I offenses are the most serious offenses for which an officer can be presumptively terminated on the first offense. Class I offenses include uses of force, in-custody deaths, and profiling based on any of the protected classes.

Audit Results

The Commission has not hired an Inspector General because the Commission lacked the authority to hire

The Municipal Code created an Office of the Inspector General to conduct audits to assess OPD's performance and adherence to constitutional policing practices. The Inspector General is also to audit or review OPD's policies and procedures, including patterns of non-compliance to assist the Commission in fulfilling its oversight duties.

The Inspector General is hired by and reports to the Commission. The Office of the Inspector General was to be established within 180 days after the Municipal Code went into effect (July 2018). The Commission has yet to hire the Inspector General position because it lacks the authority under the City Charter, without going through the City's Civil Service process.

The City Administration and third-party legal opinions place the Inspector General position under the purview of the City Administration and the City's Civil Service system. The legal opinion states that the City Administrator has sole and exclusive authority under the City Charter to develop the job description for the Inspector General and to initiate the process for securing approval of the position by the Civil Service Board. Further, the City Council is prohibited from interfering with the City Administrator's authorities and duties in that regard. The Commission, however, declined to move forward with the hiring process until it has full control of the position and its staff. This issue is further described in the section labeled, "The Commission's ability to meet its mandate has been limited by numerous factors."

Commissioners have received some training, but have not satisfied all the required training specified in the City Charter and the Municipal Code

The City Charter and the Municipal Code specify extensive training requirements for the Commissioners to complete. Within six (6) months of appointment, or as soon thereafter as possible, and apart from the first group of Commissioners and alternates, each Commissioner and alternate shall meet the requirements listed in the City Charter and the Municipal Code.

The City Charter and the Municipal Code require Commissioners to attend 27 separate training sessions listed below. The National Association for Civilian Oversight of Law Enforcement (NACOLE) highlights the importance of oversight agencies, including their Commission members, to take every opportunity to advance the knowledge and skills of those responsible for oversight.

As Exhibit 2 below shows, the Commissioners have not attended all required trainings.

Audit Results

Exhibit 2 – Required Trainings for Commissioners⁷

All Commissioners Completed	Some Commissioners Completed	No Commissioners Completed
<ul style="list-style-type: none"> • <i>California’s Public Records Act</i> • <i>City Charter Section 604 and Chapters 2.45 and 2.46 of the Municipal Code</i> • <i>Contracting Policies and Procedures (OMC 2.45.190(N))</i> 	<p><u>Fewer than 5 Commissioners have not completed</u></p> <ul style="list-style-type: none"> • <i>Orientation Regarding Department Operations, Policies, and Procedures (CC 604(c)(9))</i> • <i>Procedural Justice (CC 604(c)(9))</i> • <i>Constitutional Due Process</i> • <i>Administrative Hearing Procedure</i> • <i>Confidentiality of Personnel Records and Other Confidential Documents</i> • <i>Briefing on NSA and All Related Court Orders</i> • <i>Constitutional Civil Rights</i> • <i>Oakland’s Sunshine Ordinance</i> • <i>CA’s Brown Act</i> • <i>Complete the Department’s Implicit Bias Training</i> • <i>Participate in a OPD “Ride-Along”</i> <p><u>5 or more Commissioners have not completed</u></p> <ul style="list-style-type: none"> • <i>CA Political Reform Act</i> • <i>Conflict of Interest Code</i> • <i>CA’s Public Safety Officers Procedural Bill of Rights Act</i> 	<ul style="list-style-type: none"> • <i>Best Practices for Conducting Investigations</i> • <i>Conflict Resolution</i> • <i>NACOLE Standards</i> • <i>CA’s Meyers-Milias Brown Act and Public Administration of the Act</i> • <i>City Memorandum of Understanding with the Oakland Police Officer’s Association</i> • <i>City Civil Service Board</i> • <i>Oakland Police Academy Curriculum</i> • <i>Crisis Intervention Training</i> • <i>POST, Laws of Arrest & Search and Seizure</i> • <i>Racial Equity</i>

As Exhibit 2 above shows, 37 percent (or 10 out of 27) of the required trainings have not been completed by any Commissioners. Further, all Commissioners completed 11 percent (or 3 of the 27), of the required trainings. It should be noted that some trainings offered by City Administration are scheduled during the day when some of the Commissioners are unable to take time off from their regular jobs. Additionally, Commissioners report other trainings were not made available to them until 2020. Those trainings include the City Civil Service Board and the California Meyers-Milias Brown Act and Public Administration of the Act.

⁷ Testing included the four previous Commissioners who either resigned or their terms expired.

Audit Results

The Commission has not requested an annual report from the Chief of Police

Both the City Charter and the Municipal Code require the Commission to request an annual report from the Chief of Police. In addition, NACOLE suggests it is critical for a police oversight agency to present and analyze data from the Police Department annually. Although the City Charter does not list the type of information required of the Police Department, NACOLE recommends the following be included: police use of force, injuries to and deaths of persons in custody, all complaints and dispositions, stops, searches and arrest data that includes sufficient demographic data, and all criminal proceedings.

Although this item is on a pending list for the Commission to complete, it has not been addressed.

The Commission has not requested the City Attorney to submit semi-annual reports

The Municipal Code, under functions and duties, spells out minimally what the semi-annual reports from City Attorney are to include. These reports are to be presented to the Commission and the City Council. These reports should include:

- To the extent permitted by applicable law, the discipline decisions that were appealed in arbitration.
- Arbitration decisions or other related results.
- The ways in which the City Attorney has supported the police discipline process.
- Significant recent developments in police discipline.
- This semi-annual report shall not disclose any information in violation of State and local law regarding the confidentiality of personnel records.

The Commission has not requested these reports from the City Attorney. These reports are important for the Commission to gather and analyze data. According to NACOLE, gathering and analyzing data is critical in order for the oversight agency to be effective.

The Commission has not established a process for conducting annual evaluations of the Chief of Police and the Executive Director of the Agency

The City Charter requires the Commission to periodically conduct a performance review of the Agency Directors, while the Municipal Code requires the Commission to conduct an annual performance review of the Agency Director, and of the Chief of Police. Per the Municipal Code, the Commission shall determine the criteria and any other job performance expectations for evaluating the Agency Director's and the Chief of Police's job performance and communicate

Audit Results

those performance criteria and expectations to the Agency Director and the Chief of Police one full-year before conducting the evaluation. The Commission may, in its discretion, decide to solicit and consider as part of the evaluation, comments and observations from the City Administrator or other City staff, who are familiar with the Agency Director's or the Chief of Police's job performance. Responses to the Commission's request for comments and observations shall be strictly voluntary.

The Commission has not established a process for conducting evaluations of the Chief of Police or the Agency Director. In fact, the Commission has yet to finalize the criteria for evaluating the Chief of Police or the Executive Director of the Agency. It is important to set expectations and provide feedback on these critical positions. The Commission began to define the criteria for the evaluation of the Chief of Police and created a rough draft of the criteria in October 2019, but the Commission still has not finalized the criteria.

On February 20, 2020, the Commission, acting jointly with the Mayor, fired the Chief of Police without cause.

The Commission, as a body, did not formally review and comment on the education and training OPD provides its 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. In addition, the Commission did not prepare and deliver to the Mayor, City Administrator, and the Chief of Police, a proposed budget for providing the education and training on the management of job-related stress.

The Municipal Code requires the Commission to review and comment on the education and budget related to the training OPD provides its 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.

The Commission, however, has not satisfied this requirement. An Alternate Commissioner attended meetings that discussed the above issues, but the Commission did not issue a formal comment. We also noted that the Commission shared their concerns with City Council regarding a contracted counselor for OPD. This occurred almost three months after the City Council extended the counselor's contract.

The Commission has not established a process for reviewing and approving administrative closures and dismissal of cases, and has not formalized its process for re-opening cases

The Municipal Code requires the Commission to review the Agency's dismissal and/or

Audit Results

administrative closure of all complaints of misconduct involving Class I offenses, including any Agency investigative file regarding such complaints. Additionally, at the Commission's discretion and by five (5) affirmative votes, the Commission may direct the Agency to reopen the case and investigate the complaint.

NACOLE highlights the importance of gathering and analyzing data for effective agency oversight. This includes reviewing the number of complaints the oversight agency did not have jurisdiction to investigate, or cases where a finding could not be reached, as well as the number of complaints that were administratively closed and therefore not investigated.

The Commission does not have a documented process for approving administrative closures and/or dismissals and for re-opening cases. This process is critical to ensure all complaints of alleged misconduct involving Class I offenses receive adequate review. In fact, the Commission has not worked with the Agency to establish the criteria for which cases should be classified as administrative closures for its review and approval.

It should be noted that the term 'administrative closure' has no formal legal definition, nor is it defined in the City Charter. In addition, Agency staff explained the meaning of administrative closures changed over time, including when the CPRB was disbanded and the Agency was created. At one time, it represented investigations that were closed administratively without ever having been presented to the board for a hearing – akin to what is now sometimes described as a summary closure. Later, administrative closures came to mean investigations that were closed based on board deliberation of investigator recommendations and reports of investigation, as opposed to the few cases in which fact-finding hearings were still convened. Further, legal clarification is needed to define 'administrative closure' in order for the Agency to be able to comply with the requirements of the Measure.

The Commission has not formalized the process for reviewing OPD's budget

The City Charter states the Commission must review the Mayor's proposed budget to determine whether budgetary allocations for OPD are aligned with OPD's policies, procedures, customs, and General Orders.

The Commission has not reviewed and analyzed the Mayor's proposed budget to determine whether the budget is aligned with OPD's policies, procedures, customs, and General Orders. We noted, however, the Commission received a briefing on OPD's budget and asked questions during this presentation. The Commission however, did not provide an opinion as to whether the budget was aligned with OPD's policies, procedures, customs and General Orders.

The Commission has not consistently complied with the California Brown Act

State Law, the City Charter, and the Municipal Code require any legislative body to conduct its

Audit Results

meetings in compliance with all requirements of the California Brown Act (Act), California Government Code 54950, and Article II of Chapter 2.20 of the Oakland Municipal Code. The Brown Act promotes transparency and public participation in local government. The Act specifically requires that agendas be posted at least 72-hours before regular meetings. The Commission is prohibited from discussing or acting on any items not on the agenda. In addition, the Act requires the body to report out on actions taken during closed sessions. The Act also prohibits the use of “reply all” functions in electronic communication. This action, replying to all, represents a quorum if the email communication includes three or more Commissioners.

We have noted several cases when the Commissioners address issues that are not included on the agenda. For example, Commissioners discussed OPD’s purchase of a BearCat⁸ vehicle and made a motion prohibiting the City from purchasing this vehicle. The agenda item on which they made this motion was on OPD’s policy on the deployment of the BearCat. The decision whether to purchase the BearCat was not on the meeting agenda and the Commission’s discussion about the purchase of this vehicle was a violation of the Brown Act.

Other issues noted include emails to all Commissioners, even though the Commissioners have been warned about not sending emails to all Commissioners or hitting ‘reply all’ to emails sent to all Commissioners from a third-party.

The Commission, at one time, forbade their outside counsel from sitting in on closed session meetings. While not a Brown Act violation, it is not a prudent practice and may lead to the Commission violating State Law. The purpose of an attorney attending closed session meetings is to provide guidance on potential violations of applicable laws and regulations, including the Brown Act. The Commission hired their own legal counsel at the end of 2019, who attends closed session meetings and reports pertinent information to the City Attorney.

Furthermore, the previous outside counsel for the Commission warned Commissioners of Brown Act violations. In one instance, the outside counsel admonished the Commissioners a total of 10 times of potential Brown Act and Sunshine ordinance violations regarding agenda setting and making motions on items that were not on the agenda. The Commissioners told the outside counsel to “stop talking” twice during the meeting and ignored counsel’s words of caution. The Commission proceeded to pass a motion in complete disregard to the outside counsel’s advice that they were violating the Brown Act and the Sunshine ordinance.

⁸ BearCat refers to a ballistic engineered armored response counterattack truck. It is a wheeled armored personnel carrier designed for military and law enforcement use and is currently used by over 700 federal, state and local law enforcement agencies to respond to shooter scenarios, barricaded suspects, response and rescue, and high-risk warrants.

Audit Results

The Commission did not meet at least twice per year outside of City Hall

The City Charter and the Municipal Code require the Commission to convene at least two meetings per year outside of City Hall. The purpose of this requirement is to solicit community testimony and input on community policing, build trust between the community and OPD, and other similar and relevant subjects as determined by the Commission. These offsite meetings are to be designated as special meetings subject to the 10-day agenda notice requirement for purposes of Article II of Chapter 2.20 of the Oakland Municipal Code and include an agenda item titled "Community Roundtable." Since the Commission's inception, it has only convened one meeting each year in 2018 and 2019 outside City Hall that met the requirements specified in the Municipal Code. In 2019, a community group convened a special meeting, in which Commissioners attended, on the legal rights of residents when dealing with police and on OPD's practices of policing the homeless community. However, this meeting did not meet the requirements of the City Charter and Municipal Code.

As noted above, the purpose of the community meeting requirement is to solicit more community input. The Commission, however, does not have a formal plan to solicit more community participation. Specifically, it has not established clear goals and objectives for achieving more community participation or community outreach, identified specific steps to increase participation, or measured and reported on the effectiveness of its outreach efforts.

The Commission has not provided the Agency with formal policy guidelines on prioritizing cases

Per the Municipal Code, the Commission shall provide policy guidelines to the Agency Director for assistance in determining case prioritization. Guidelines for case prioritization should be established to ensure timely review of critical cases.

The Commission has not provided the Agency guidance on how to prioritize cases. Thus, the Commission has not provided the Agency with sufficient guidance during a time when the Agency has operated at less than full staffing and below the staffing requirements established in the City Charter.

The Commission has not established a mediation program for complaints

In association with the Agency Director and in consultation with the Chief of Police or the Chief's designee, the Commission shall establish rules and procedures for the mediation and resolution of complaints of misconduct. To the extent required by law, the City will provide the employee unions with notice of such proposed by-laws prior to implementation.

The Commission has not established a mediation program for complaints. Mediation would be

Audit Results

beneficial as a resource to ensure investigative resources are better allocated. By not screening cases for mediation, there is a missed opportunity for resolving some cases in a way that promotes civilian understanding and saves the Agency investigative time.

The Commission has not developed written procedures to ensure compliance with OPD procedures for the release of audio and video tapes of Class I alleged offenses

The Municipal Code requires the Commission to follow OPD policies and procedures regarding the release of videotape and audio tape recordings of alleged Class I violations committed by police officers. However, the Commission has not documented any such procedures.

Additionally, the Municipal Code requires the Agency to videotape the interviews of all subject officers who are alleged to have committed a Class I offense. The Commission is responsible for overseeing the Agency. The required videotaping, however, was not followed until July 2019. In fact, approximately 100 allegations of Class I offenses occurred during the audit period that should have been videotaped but were not. This issue is discussed further in Finding 3.

The Commission's ability to meet its mandate has been limited by numerous factors

The Commission's ability to meet its mandate has been limited by numerous factors. These factors include:

- The challenge of creating a new organization;
- The Commission lacks senior-level staff;
- Conflicting language in the City Charter and the Municipal Code have led to a stalemate in the hiring of the Inspector General;
- The City lacked a formal process and structure for establishing the Commission;
- The working relationship between the Commission and the City Administration needs improvement; and
- The Commission has not established a sufficient structure to focus its efforts on its key duties and responsibilities.

The Commission is a new organization experiencing organizational challenges

The Commission's first meeting was on December 13, 2017. As a new body, it needed to organize itself to fulfill its mission, including establishing the responsibilities of its Commissioners. New organizations typically experience growing pains in getting organized. It is usually the

Audit Results

responsibility of the leadership to provide direction, assign roles, and propose policies and procedures; however, the roles of the Commissioners, including its leaders are not defined. Additionally, it is important to note that the Commission has experienced a high turnover of dissatisfied Commissioners, which has contributed to its lack of progress.

The Commission lacks senior-level staff

The City Charter states that the City shall allocate a sufficient budget for the Commission, including the Agency, to perform its functions and duties as set forth in this section. The City Administration, however, did not provide adequate administrative support to the Commission. The Commission continues to be a part-time body without any senior administrative staff. With full-time careers and other responsibilities, Commissioners cannot be expected to manage the daily requirements of the Commission. City Administration assigned one administrative staff member in November 2018 to assist the Commission with duties such as agenda setting and the scheduling of trainings. Another staff member is a liaison between the City Administration and the Commission, and outside counsel supports the Commission during public meetings to ensure they receive guidance in complying with the California Brown Act and other regulations. However, the Commission lacks senior administrative staff to guide it in defining its mission, goals, and priorities to ensure full and timely compliance with the City Charter and the Municipal Code.

Conflicting language in the City Charter and the Municipal Code led to a stalemate in the hiring of the Inspector General

The Municipal Code established the Office of the Inspector General and assigned responsibility for hiring of the position to the Commission. The Oakland City Charter, however, establishes the City Administrator as the hiring authority. Thus, the City Charter and the Municipal Code were in conflict regarding the authority to hire the Inspector General.

To provide the Commission with hiring authority for this position, the City Council, in April 2019, approved a resolution directing the City Administrator to release the Inspector General job description as written by the Commission. The City Attorney did not approve this resolution as to its form and legality. Then, the City Attorney hired an outside attorney to opine on who has authority to hire the Inspector General. The outside attorney opined that the City Administrator has the authority for the City's hiring. Next, in July 2019, City Council passed a resolution updating the Municipal Code by granting the Commission the ability to contract with third parties. This change gave the Commission the ability to hire contractors to complete projects the Office of the Inspector General would be responsible for in the interim, while the City and the Commission worked to resolve this issue. The Commission, however, has not opted to move forward with hiring the Inspector General until it gains full-hiring authority for the position through a City Charter amendment.

Audit Results

The City lacked a formal process for establishing the Commission and other oversight bodies

The City of Oakland has not established formal processes for seating oversight bodies such as the Commission. As a result, the Commission was not sufficiently oriented to carrying out its important responsibilities. The Commissioners did not even have an opportunity to meet prior to being seated in December 2017.

The International City/County Management Association (ICMA) issued a comprehensive publication entitled “Making It Work: The Essentials of Council-Manager Relations” (publication). Although this publication is aimed at improving City Council-Manager relations, the publication is relevant to creating a successful working relationship between the Commission and the City Administration. The publication stresses the importance of an informative orientation program to help new council members (or Commissioners) adjust to their new roles and responsibilities. The publication also notes that an orientation program helps new council members establish effective working relationships with peers on the governing board and staff.

The publication also recognizes the importance of the City Administration in helping officials—especially the new ones to understand their role as it is not unusual for individuals to not have governance experience. Some of the Commissioners did not have policy-making or governance experience in their backgrounds. Thus, the City Administration can help to educate Commissioners on their role by creating an orientation program.

The publication addresses some of the key components of effective orientation programs to include:

- Meetings with the local government manager and other council appointees
- Orientation notebook
- Department presentations
- Organizational/departmental videos

The publication also includes topics to cover with council members that are relevant to the Commissioners. We have modified the text to include Commissioners instead of council members. These include, but are not limited to the following:

- Legal requirements and conflicts of interest
- Expectations regarding ethical conduct

Audit Results

- Provisions regarding sunshine laws or open meeting laws
- City norms, policies, procedures, and by-laws
- Meeting protocols (seating, use of technology on the dais, meeting etiquette, Robert's Rules of Order)
- Commissioners' roles regarding its own committees and serving on other boards and committees
- Media relations (including social media)
- Contact and communication with staff

The City, with assistance from the Commission, needs to develop a formal orientation program to assist newly-appointed Commissioners to assume their role. Moreover, the City should establish such a formal program for newly-elected officials and other oversight bodies in the City.

The working relationship between the Commission and City Administration needs improvement

The ICMA publication mentioned above notes that a productive and positive relationship between local government professional managers and elected officials results in greater translation of policy decisions into action. On the other hand, when elected policy makers and the manager do not work well together, it invariably ripples through the organization and impacts effectiveness at all levels—ultimately resulting in the public not being well-served.

Although the Commissioners are not elected officials, the nature of the relationship between the City Administration and the Commission are similar to the relationship between City Councils and City Managers. That is, the Commission has an oversight role that includes policy direction. On the other hand, the City Administration is charged with assisting the Commission in achieving its goals and objectives. Therefore, it is critical for the City Administration and the Commission to develop an effective working relationship, especially considering the important role that the Commission is charged.

The current relationship between the Commission and the City Administration needs improvement. For example, City staff complained that the Commission does not understand their role. As mentioned in Finding 2, Commissioners have tried to direct, or directed staff, below the Executive Director of the Agency or the Chief of Police. City staff have also complained about the Commission getting into matters that are beyond their prescribed duties.

We also observed that the Commission has refused to listen to the advice of the City Attorney's

Audit Results

Office on issues such as compliance with the Brown Act. Moreover, the Commission refused to allow the outside council hired by the City Attorney, to sit in on closed sessions because of a lack of trust. Finally, a member of the City Attorney's Office quit attending meetings because of a perceived lack of respect received from the Commission.

The Commission hired their own legal counsel at the end of 2019, who attends closed sessions and reports pertinent information to the City Attorney. This has improved the relationship between the Commission and the City Attorney.

The Commissioners have also expressed frustration with the City for not providing sufficient administrative support to carry out their duties, especially considering they are a part-time body. In addition, the Commission believes the City Administration is undermining their work and not providing timely information when requested.

The City Administration and the Commission need to repair their relationship. Without an improvement in their relationship, the trust level will remain low, policy direction will remain unclear, conflict over roles will continue to escalate, and a lack of clarity regarding organizational direction will continue, affecting the Commission's effectiveness and the public's confidence in the City.

To improve its relationship, the City Administration and the Commission should convene working sessions to discuss their differences, clarify their respective roles, understand respective boundaries, and develop some solutions to improve their working relationship. If matters cannot be resolved, the City should consider hiring a mediator to assist the City Administration and the Commission in working out their differences.

The Commission has not established a sufficient structure to focus its efforts on its key duties and responsibilities

The Commission has not established a sufficient organizational structure. Specifically, the Commission has not:

- Developed formal goals and objectives
- Developed a strategic plan
- Developed annual workplans
- Structured its meeting agendas around its core functions
- Developed sufficient policies and procedures, or by-laws, for carrying out its duties

Audit Results

- Developed a performance reporting system to assess and measures its progress
- Verified the City has provided an adequate budget to meet the mandates of the Commission and the Agency

The Commission has not established formal goals and objectives

NACOLE recommends any new civilian oversight agency clearly define its goals and what it hopes to accomplish to effectively carry out its mission.

The Commission has not established formal goals and objectives to measure whether police oversight activities are having positive effect on policing in Oakland. Without properly defining goals and objectives and documenting its strategy into an annual work plan and a strategic plan, the Commission is hindering its ability to be an effective oversight body.

At its September 2019 retreat, the Commission discussed several topics that could be developed into measurable goals and objectives. For instance, the Commission discussed information from the City of Oakland's Equity Indicators 2018 report,⁹ in which police response times, stops, and use of force showed troubling disparities by race. Improving OPD's performance in these areas could be an opportunity where the Commission could develop measurable goals and objectives.

The Commission lacks a strategic plan

A strategic plan assists an organization in providing a sense of direction and defining the activities to achieve stated goals and objectives. Other police oversight agencies, such as the cities of Portland and Seattle, have strategic plans.

Although the Commission has discussed a strategic plan, it has yet to formalize one. During its September 2019 retreat, mentioned above, the Commission identified areas of concern such as police response times, stops, and use of force, which showed troubling disparities by race. By establishing written goals and objectives to measure improvement, the Commission could then develop strategic initiatives, in consultation with OPD, to improve OPD's performance in these key areas.

The Commission lacks annual workplans

Annual work plans identify an organization's goals for the next year and strategies for achieving them. The importance of a work plan is that rather than a big, expansive vision statement, it focuses on attainable goals and sets a deadline for achieving them. It provides a concrete foundation on which to build the coming year. Annual work plans also provide transparency

⁹ Full report can be found <https://cao-94612.s3.amazonaws.com/documents/2018-Equity-Indicators-Full-Report.pdf>.

Audit Results

around the work to be accomplished.

The Commission has not established annual workplans.

The Commission needs to improve its agenda management practices

The Commission needs to structure their agenda around its key functions. Like the City Council and City Council committees, agendas should be planned months in advance, so staff can plan and prepare for these meetings.

The Commission's agenda setting process is haphazard. Frequently, Commission members put together the next meeting's agenda at the Commission meetings.

The Commission needs policies and procedures, or by-laws, for carrying out its duties

The Commission needs to define how it will carry out its duties. Some of these duties include, but are not limited to, providing feedback on OPD policies, procedures, and General Orders, making discipline decisions when OPD and the Agency do not agree on the results of investigations and complying with all City Charter and Municipal Code requirements.

The Commission has established limited policies and procedures defining how it is going to carry out its duties.

The Commission needs a process for assessing its performance

It is important to define and establish the mission and goals of an entity for successfully carrying out its responsibilities. This should go hand in hand with strategic planning to ensure that the work plan is in alignment with the entity's mission. Once these are established, there should be performance reporting to track and monitor progress.

The Commission includes information on its website regarding key activities undertaken. The Commission, however, has not formally established written goals and objectives, and has not established annual work plans and a strategic plan to achieve these goals and objectives. Without these critical pieces in place, the Commission cannot adequately define reporting metrics to monitor its performance.

The Commission has not established a clear budget process with the City to ensure adequate funds are budgeted to effectively operate the Commission and the Agency

The Municipal Code and the City Charter mandate that the City provide a sufficient budget for the Commission, including the Agency, to perform its functions and duties. The Commission has not established a clear process for submitting and reviewing their budget with the City. The

Audit Results

Commission formed an ad hoc budget committee in 2019 to develop the Commission's budget, but the Committee appeared to lack an understanding of the City's budget process and the resources needed to meet the oversight responsibilities of the Commission and the Agency.

Conclusion

The City Charter and the Municipal Code grant the Commission powers to propose changes and approve or reject OPD's policies, procedures, customs, or General Orders, that fall within categories such as the use of force, use of force review boards, or profiling based on any of the protected characteristics, First Amendment assemblies, or federal court orders such as the Negotiated Settlement Agreement. Through December 2019, the Commission reviewed and modified two policies and modified another one in 2020. Moreover, the Commission has not fully implemented requirements in the City Charter and the Municipal Code, and the Commission's ability to meet its mandate has been limited by numerous factors.

Recommendations

To increase its effectiveness and ensure compliance with the City Charter and the Municipal Code, the Commission should implement the following recommendations:

1. Propose to add a senior level staff to assist the Commission in implementing its annual work plan and strategic plan, in addition to managing the day to day responsibilities of the Commission.
2. Develop formal goals and objectives to measure whether the Commission is having a positive effect on policing in Oakland.
3. Develop a strategic plan that identifies what the Commission needs to do to achieve its goals and objectives, including implementing all City Charter and Municipal Code requirements and including a plan for outreach to the community.
4. Develop annual workplans to address its strategic plan goals.
5. Develop policies and procedures for its agenda management process, including compliance with the Brown Act and ensure agenda items are within its jurisdiction and are prioritized.
6. Develop policies and procedures, or by-laws, for conducting all aspects of the Commission's oversight function, including:
 - a. Establishing by-laws that govern how the Commission should operate, including defining the roles of the Chair, the Vice-Chair, and its committees.

Audit Results

- b. Developing an effective process to review OPD's policies, practices, customs, and General Orders, to identify and prioritize areas for improvement and prioritize new policies and practices.
 - c. Monitoring the training requirements of Commission members and consider providing some trainings online so that Commissioners can take them at their convenience
 - d. Requesting and reviewing reports from the Chief of Police and the City Attorney
 - e. Evaluating the Chief of Police and Agency Director at least annually
 - f. Reviewing and commenting on the education and training of OPD's sworn employees regarding the signs and symptoms of stress, drug abuse, alcoholism, and emotional health issues
 - g. Reviewing and approving administrative closures and dismissal of cases
 - h. Reviewing OPD's budget to ensure that it aligns with OPD's policies, procedures, customs, and General Orders
 - i. Ensuring full-compliance with the Brown Act
 - j. Meeting, as a body, at least twice per year outside of City Hall
 - k. Providing guidance to the Agency on how to prioritize cases
 - l. Establishing a mediation program for complaints
 - m. Releasing audio and video tapes of Class I alleged offenses
7. Prepare an annual report summarizing the Commission's progress in achieving its goals and objectives, as well as its progress in implementing its strategic plan and annual workplans. This information should be included on the Commission's website.
 8. Develop a budget proposal including sufficient resources to assist the Commission and Agency in carrying out duties.

To ensure new Commissioners and oversight bodies are prepared to assume their duties prior to being seated, the City Administration, with the assistance of the Commission, should:

9. Establish a formal orientation program which includes the following:
 - Meetings with the City Administrator and other Commissioners

Audit Results

- Orientation notebook
- Department presentations
- Organizational/departmental videos

The orientation program should also cover issues relevant to Commissioners such as:

- Legal requirements and conflicts of interest
- Expectations regarding ethical conduct
- Provisions regarding sunshine laws or open meeting laws
- City norms, policies, procedures, and by-laws
- Meeting protocols (seating, use of technology on the dais, meeting etiquette, Robert's Rules of Order)
- Commissioners' roles regarding its own committees and serving on other boards and committees
- Media relations (including social media)
- Contact and communication with staff

In addition, the City should assign a liaison to the Commission and other bodies to mentor them in the matters described above.

To improve the working relationship between the City Administration and the Commission, the City Administration and the Commission should:

10. Convene working sessions to discuss their differences, clarify their respective roles, understand respective boundaries, and develop some solutions to improve their working relationship. If matters cannot be resolved, the City should consider hiring a mediator to assist the City Administration and the Commission in working out their differences.

Audit Results

Finding 2: The Commission's Powers and Duties Should Be Clarified

Summary

The City Charter established the Commission to oversee the Oakland Police Department in order to ensure OPD's policies, practices, and customs conform to national standards of constitutional policing. As noted in Finding 1, the Commission has a mandate to review, modify, and approve OPD's policies, procedures, and General Orders. In its first two years, the Commission reviewed and approved two policy changes through December 2019 and approved another change in 2020. In addition, the Commission has yet to fully implement various City Charter and Municipal Code requirements. We also noted the Commission has not established a sufficient structure for focusing its work on key priorities such as establishing goals and objectives, strategic plans, annual workplans, structuring its meeting agendas around key priorities such as reviewing and commenting on OPD's policies, and developing policies and procedures or by-laws for carrying out its duties. Thus, the Commission has significant work to accomplish.

We also found the Commission has involved itself in other matters that limit its ability to address higher priority issues. For instance, the Commission has involved itself with administrative duties and has tried to direct staff in the Agency and OPD. Additionally, the Commission has involved itself in areas that may not be consistent with its prescribed duties or are not the best use of its limited time and resources.

Finally, the Commission has difficulty managing their meetings and has not adopted code of conduct or a comprehensive social media policy. Clarifying the Commission's powers and duties will ultimately assist them to address their higher priorities.

The Commission has engaged in administrative activities and directed OPD and Agency staff

City Charter Section 604 (a), states the Commission was established to oversee the Oakland Police Department in order to ensure that its policies, practices, and customs conform to national standards of constitutional policing. The Commission's administrative responsibilities are primarily limited to directing the Agency Director and the Chief of Police. Additionally, the Commission has the administrative power to adjudicate disputes between the Agency and Internal Affairs Division (IAD)¹⁰ by forming a disciplinary committee, and the authority to fire the

¹⁰ The Oakland Police Department Internal Affairs Division (IAD) investigates all complaints of alleged misconduct submitted by citizens. Citizen complaints related to alleged Class I offenses are conducted by IAD and the Agency concurrently.

Audit Results

Chief of Police and the Agency Director. Thus, the City Charter clearly established the Commission as an oversight body.

Although its primary role is oversight, the Commission has involved itself in administrative activities and, at times, directed staff below the Chief of Police and the Agency Director. Commissioners have also solicited bids from firms to conduct work for the Commission.

The Commission has solicited bids on at least three occasions

The Commission has solicited bids on at least three occasions. For example:

- A Commissioner solicited proposals from firms to hire an investigator to assist the Agency in one of its investigations.
- A Commissioner solicited bids to hire a firm to audit the Agency.
- A Commissioner solicited bids to hire a firm to investigate the case known as the Bey Case Review (Bey case). The Commissioner used a list of investigative firms provided by the plaintiffs.

The Commission should not be directly procuring or soliciting bids for contracts. Government procurement activities must adhere to strict federal, state and local regulations. Splitting responsibilities for preparing and awarding or authorizing procurement contracts is to ensure effective checks and balances in the procurement process to prevent errors, conflict of interest, or fraud and corruption.

It should be noted that the Commission for a period of time did not have administrative staff to perform some of these administrative duties and may have been unclear on how to properly proceed.

The Commissioners on multiple occasions directed OPD staff to attend meetings or perform other duties

The Commissioners on multiple occasions directed OPD staff to attend meetings or perform other duties. For instance:

- The Chair of the Commission directed two Deputy Chiefs of Police to attend a meeting with a family that had reported a missing family member. Specifically, in an email, a Commissioner notified two OPD Deputy Chiefs that the Commissioner was committed to be the liaison and would need to meet with the Deputy Chiefs to get up to speed on the case.

Audit Results

- The Commission directed an OPD Manager to attend a Commission meeting even though the Manager had planned to be on vacation.
- The Commission directed the Chief of Police to assign a specific Deputy Chief to be the liaison between OPD and the Commission after the Chief of Police had already assigned a different staff member to be the liaison. Although the Commission has the responsibility for evaluating the Chief of Police and can fire the Chief of Police, the Commission should not be directing the Chief of Police on how specific staff should be deployed. The Chief of Police, however, may feel pressure to comply with the Commission's directives because the Commission can fire the Chief of Police.

The Commission has no direct authority over Agency and OPD staff below the Agency Director and the Chief of Police and should not be reaching out directly to staff. If the City Council conducted these activities, they would be violating the City Charter, and could be subject to prosecution.

A publication by the International City/County Management Association (ICMA) addresses the issue of council members reaching out directly to staff. Specifically, the publication states, "One of the most common and challenging issues is when one or more elected officials 'end run' the manager in reaching out directly to staff." The publication further states that it is a fundamental principle of the council-manager form of government that council members will not direct staff other than through the manager.

Consistent with this principle, the Oakland City Charter Section 207 and 218 specifically prohibits the City Council from involving itself in administrative activities and directing City staff. Specifically, the City Charter states, "Neither the City Council nor any Council member shall give any orders to any City subordinate under the direction of the City Administrator or other such officers."

The ICMA provides guidance to address this issue. As mentioned in Finding 1, the City needs to have a strong orientation program to assist Commissioners in understanding their role, including that they should not be contacting staff directly. Furthermore, the City Administration needs to establish protocols for addressing situations in which Commissioners cross the line and communicate directly with City staff. These protocols include guidance on:

- Reminding staff to not respond to Commissioners without authorization and for notifying department officials when Commissioners contact staff directly
- Addressing situations when Commissioners contact staff directly
- Elevating the matter to the Commission, the City Council, or to the City Attorney

Audit Results

The provisions in the City Charter that prohibit the City Council from engaging in administrative activities and directing staff do not specifically apply to the Commission or other oversight bodies. Therefore, we recommend the City Council modify the City Charter to prohibit the Commission from interfering in OPD's and the Agency's administrative matters. The City Council should also modify the City Charter to prohibit the Commission from directing the staff below the Chief of Police and Agency Director. We have addressed this issue in Finding 5, Recommendation 39.

The Commission has taken actions that do not appear to be consistent with its authority

The Commission has taken actions that do not appear to be consistent with their authority. For instance:

- In May 2019, OPD requested the City Council's approval to use grant funds to purchase a Mobile Command vehicle and a BearCat vehicle. The City Council approved the purchase of the Mobile Command vehicle but did not approve the purchase of the BearCat. Instead, the City Council requested the Commission to review the policy on the use of the BearCat and other armored vehicles. Instead of reviewing the policy, the Commission passed a motion denying the purchase of the vehicle. The Commission also passed a motion to direct the Chief of Police to provide a list of all the grants (unrelated to the purchase of the BearCat), that OPD was going to apply for, so the Commission could review and approve them. The Commission passed these motions without discussing OPD's policy on deploying the BearCat, as the City Council had requested. Furthermore, the actions taken by the Commission are Brown Act violations (not properly noticed) and outside the scope of its authority. The Commission does not have the authority to deny the purchase of the BearCat or to determine which grants the City can apply for. This authority rests with the City Council. The Commission, as the City Council requested, should have worked with OPD to develop a policy on the use of the BearCat and other such armored vehicles.
- The Commission subpoenaed records related to the Pawlik investigation. This is a case that was investigated by both IAD and the Agency. Both entities generally reached the same conclusion exonerating the officers.¹¹ The Commission then subpoenaed documentation between IAD and the Agency with the purpose to investigate the Agency's and IAD's handling of their investigations. The Commission does not have the authority to investigate the Agency's and IAD's handling of their investigations. The Commission's role, as described in the City Charter, is to determine discipline when IAD and the Agency

¹¹ Although the Agency and IAD generally exonerated the officers, the Agency and the Chief did recommend sustaining two officers for inadequately supervising the incident. The Agency recommended that these two officers be demoted, while the Chief never reached the stage at which she would have recommended discipline.

Audit Results

disagree on findings and/or proposed discipline.

The Commission's powers and duties need clarification. We recommend the City Council should clarify and identify the Commission's authority and responsibilities, as well as those that are not consistent with its authority and responsibilities. We addressed this issue in Finding 5, Recommendation 40.

The Commission could make better use of its limited time and resources

We also identified other areas in which the Commission has involved itself in matters that may not be the best use of its limited time and resources. For instance:

- The owner of a night club complained at a Commission meeting regarding the security requirements and the permits at the night club. Based on the night club owner's complaint, the Commission discussed this issue for 16 minutes at a Commission meeting, asked OPD questions about the deployment of officers, and requested OPD to write a report on this issue to be presented at a later Commission meeting. Since this matter was not on the meeting agenda, the Commission violated the Brown Act by engaging in a discussion and involving City staff. Furthermore, this issue seems outside the Commission's role to oversee OPD's policies, procedures, and customs. The Commission seemingly addressed this issue because someone complained at a Commission meeting. A more appropriate action would have been to engage the City Administration and OPD on policies around the permitting of night clubs in the City.
- The Commission became involved in a missing persons case. A family of a missing person complained to the Commission about OPD's inaction locating the missing person. The Chair of the Commission directed OPD staff to attend a meeting with the missing person's family. One of the Commissioners also attended the meeting and as mentioned above, directly involved the Commission in the OPD's handling of this case. Although this was a tragic circumstance, the Commission's involvement in this matter is not entirely consistent with the Commission's role as established in the City Charter and the Municipal Code. A more appropriate action for the Commission to have taken would have been to review OPD's missing person's policy, not the specifics of the Bandabaila case, and direct the family to work with the City Administration or direct the Police Department to report back to the Commission on how the City was addressing this missing person's case.
- The Commission opened an investigation to determine if there is sufficient evidence to re-open multiple Agency investigations for the Bey Case. The original case was forwarded to the Community Police Review Board (CPRB) and to the IAD in 2007. Both agencies administratively closed the case because the complaint did not allege misconduct by any

Audit Results

specific Oakland police officer, rather it made a broad brushstroke allegation against the entire department for not solving a homicide case to the plaintiffs' satisfaction and the plaintiffs' main concern was the general investigation process being slow and not progressing after several years.

The plaintiffs filed another CPRB complaint in September 2011. CPRB forwarded the complaint to IAD. The complaint was re-opened, and no new allegations were mentioned or discovered. Both agencies administratively closed the complaint in 2012.

In November 2012, the CPRB sent a letter to the US Department of Justice (DOJ) recommending an investigation into the complaints by the plaintiffs to the DOJ's Civil Rights Division. The DOJ in 2013 chose not to launch an investigation.

In 2013, the plaintiffs contacted the Office of the Independent Monitor and Compliance Director who oversees OPD pursuant to the NSA. The Monitor's Office forwarded the complaint to IAD and IAD opened a new case. In August 2013, the case was closed as the investigator could not sustain findings against individual officers because the investigator did not have evidence of individual wrongdoing regarding the investigations of the 2004 murder of Waajid Bey and the 2005 attempted murder of John Bey. The investigator was unable to speak to officers associated with these investigations, as they were no longer employed by OPD and they did not respond to the investigator's requests for an interview.

Although the previous determination for administratively closing the case was determined to be appropriate, the 2013 investigation found OPD did not have proper policies and procedures in place to ensure the investigations were completed thoroughly and that proper documentation was retained to ensure follow up investigations could be completed. The CPRB sustained an allegation against the officers for non-performance of their duties; however, the subject officers were no longer employed by OPD. In 2013, the case was resubmitted to CPRB and CPRB administratively closed the case again in July 2014.

In 2014, plaintiffs contacted the Office of the Independent Monitor to express dissatisfaction with IAD's investigation and the Independent Monitor and Compliance Director assigned OPD to address the shortcomings in the investigation.

In March 2019, at the request of the plaintiffs, the Commission sent a letter to the Office of the Independent Monitor requesting an investigation into the substance of the plaintiffs' complaint.

The case has gone through State and Federal appellate courts and all appeals have been denied. The most recent judgement was issued by the United States District Court -

Audit Results

Northern District of California on July 30, 2019 and determined that the defendant (the City of Oakland) has satisfied its burden on summary judgement of demonstrating the absence of evidence on an essential element of the plaintiffs' claims, which related to racial and religious animus towards black Muslims.

Regardless of this extensive case history, the Commission contracted with a firm for \$49,999 to determine if there is sufficient evidence to re-open the case regarding instances of alleged racial and religious profiling. The Commission addressed this issue after the plaintiffs raised this matter in open forum at numerous Commission meetings. The Commission put the plaintiffs' complaint on at least 12 Commission meeting agendas.

It is a questionable use of City monies and time to review a matter that occurred 15 years ago and has been appropriately adjudicated. It is not clear what benefit the City will derive from this investigation and it could set a precedent for other complainants to request their cases be re-opened.

The Commissioners believe several of these matters are within their purview because these issues are related to racial profiling.

We believe the Commission should take a more global view in addressing racial profiling in law enforcement in Oakland. To provide a greater impact, they should establish principles to guide their work in addressing racial profiling. For example, the Ontario Human Rights Commission (OHRC) established the following principles for addressing racial profiling in law enforcement:

- **Acknowledgement:** Substantively acknowledging the reality of racial profiling, including the impact it has on individual and community well-being and trust in law enforcement, and recognizing the specific impact on Indigenous peoples and racialized communities and individuals
- **Engagement:** Active and regular engagement with diverse indigenous and racialized communities to obtain frank and open feedback on the lived experience of racial profiling and effective approaches to combatting it
- **Policy guidance:** Adopting and implementing all appropriate standards, guidelines, policies, and strict directives to address and end racial profiling in law enforcement
- **Data collection:** Implementing race data collection and analysis for identifying and reducing disparity, and managing performance

Audit Results

- **Monitoring and accountability:** Regularly monitoring racial profiling, and setting robust internal accountability mechanisms at the governance, management, and operational levels
- **Organizational change:** Implementing multi-faceted organizational change (for example, in relation to training, culture, hiring, incentive structures, etc.) consistent with the OHRC's guide, Human rights and policing
- **Multi-year action plan:** Forming anti-racist action plans featuring initiatives geared toward achieving short- and long-term targets for advancing all these principles

Following such an approach would provide the Commission with a more systematic approach for addressing racial profiling, rather than on a case-by-case approach. Furthermore, such an approach is more consistent with the Commission's mandate to review and modify OPD's policies.

The Commission needs to better control its meetings and adopt code of conduct and social media policies

In our review of Commission meetings, we noted that Commissioners have also made disparaging remarks to other Commissioners, the public, and City staff as described below:

- In a March 2019 meeting, several Commissioners became involved in a heated argument. Commissioner A believed that the discussion on the dais was going beyond the scope of the agenda item being discussed—which would be a Brown Act violation. The agenda item was on Standing and Ad Hoc Committee assignments. Commissioner B had concerns about the Standing Committee not meeting twice a month as Commissioner B felt the Committee had agreed upon. Commissioner A brought up that this discussion was beyond the scope of the agenda item. Commissioner A then asked for legal clarification. Commissioner B became combative and responded, "You're out of order." And "...you need to shut your mouth." As the discussion continued, Commissioner B again told Commissioner A to "Shut your mouth..." and then threatened Commissioner A by stating, "You've got one more time to disrespect me up here and you're going to see."
- During the same March 2019 meeting, the Alameda County Public Defender addressed the Commission regarding the policy change on traffic stops for people on probation and parole. In response to a Commissioner's comments that what the policy is addressing doesn't affect people who look like him and that it affects people that look like her, the Public Defender stated, "he is black and understands the negative impacts of being stopped by the police." This Commissioner responded, "Because you have the skin color of a black man, okay. But that don't mean you live like a black man."

Audit Results

- In other instances, Commissioners have been disrespectful to the Chief of Police and other OPD staff. For example, during her presentation on January 10, 2019, the Chief of Police states that her number one goal internally is to become fully staffed. Her number two goal is to take Oakland through an accreditation process called, “Commission on Accreditation for Law Enforcement Agencies” (CALEA). CALEA is the national gold standard for police accreditation. The Chief of Police’s plan was for OPD to complete this accreditation in 2020. However, the Chief of Police’s goal wasn’t received well by all Commissioners. Commissioner A commented “Getting an accredited validation from some place that I've never heard of doesn't really mean much to me. If you want validation, you should get it from the community you serve. Even if we're under the NSA, if you can get some accreditation from the community members and you can have community members come in here and say you know, they are a gold star agency, then that's impressive.”

The Commission has not adequately controlled its meetings and agendas

Robert’s Rules of Order, which is a guide for conducting meetings and making decisions, strongly encourage government bodies to follow structured guidelines including maintaining and following a strict agenda, using motions to discuss new items of business, and postponing motions that are not to be discussed further at the meeting. The guidelines provide structure to ensure more efficient and impactful work by the government body.

Over the last two years, the Commission meetings have averaged over four hours in length, with the meeting average length not improving over time. The Commission has not adequately planned their agendas. Specifically, we identified instances where agenda topics are not focused on priorities, such as its mandate to review and modify OPD’s policies and public comment time limits are not always enforced.

The Commission has not established a code of conduct

The Western Cities Magazine, published an article by the League of California Cities in December 2019, that stressed the importance of a code of conduct for oversight bodies and how to create one. Specifically, the article states:

“Many cities have adopted codes of ethics for their organizations and city councils, which is positive and appropriate. Some are taking the additional step to document how elected leaders and staff are to behave in carrying out their duties. These policies are called codes of conduct or council guidelines or norms. In such policies, the local government leadership sets the rules and expectations for how they govern the cities—and defining a civil and respectful governing culture consistent with best practices.”

Audit Results

The article also advises to avoid attempting to address every eventuality and to keep the code general and user friendly.

The following examples offer some typical elements to include in a code of conduct:

- Demonstrate honesty and integrity in every action and statement;
- Inspire public confidence in our city government;
- Work for the common good, not personal interest;
- Respect the proper roles of elected officials and city staff in ensuring open and effective government;
- Disagree agreeably and professionally (use appropriate language, tone, nonverbal gestures, etc.);
- Approach the business of governing in a professional manner—conduct business in a way that brings honor to the institution of government;
- Work together as a body, modeling teamwork and civility for our community;
- Work for a win-win—strive for consensus and seek common ground; and
- Honor “discussion” before “decisions”—delay making formal motions until initial discussions have taken place.

The article also addressed how the code of conduct is enforced—informally and/or formally—is just as important as the principles expressed in the code of conduct.

Although the Commission does not have a code of conduct, the City Charter gives authority to the City Council to remove members of the Commission for cause, after conducting a hearing, with at least six affirmative votes. The City Charter also gives the Commission the authority to remove a Commissioner. It may, with a majority vote, remove a Commissioner for the conviction of a felony, 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 the 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.

The Commission has a limited social media policy

All members that sit on Boards and Commissions represent the City and therefore must be

Audit Results

conscientious of how they present themselves in social media like Facebook and Twitter. The Public Ethics Commission's handbook for Board and Commission members states individual members "should not present their personal views or recommendations as representing the board or commission unless their respective board or commission has voted to approve such a position or action."

The current social media policy prepared by the Commission is very limited in scope and does not address the use of personal social media accounts. Maintaining a professional social media presence is important because Commissioners could make comments that could later hinder the independence and objectivity of Agency investigations.

Conclusion

The Commission has significant work to accomplish. We found, however, that the Commission has involved itself in other matters that limit its ability to address higher priority issues. For instance, the Commission has involved itself with administrative duties and has directed staff in the Agency and OPD. Additionally, the Commission has involved itself in areas that may not be consistent with its prescribed duties or are not the best use of its limited time and resources. Finally, the Commission needs to better control its meetings and should adopt a code of conduct and social media policies.

Recommendations

To address these issues, the Commission should implement the following recommendations:

11. Use a more systematic approach for addressing racial profiling in law enforcement in Oakland. This approach should include, but not be limited to, acknowledging racial profiling as a reality, engaging the communities affected, adopting policy guidance to address and end racial profiling, implementing data collection of race data to measure progress in reducing racial disparities in law enforcement and monitoring progress to assess whether new policies are having a positive effect on reducing racial profiling.
12. Obtain training on conducting and managing public meetings, including how to address public comments in general.
13. Ensure agenda items are consistent with the Commission's mission and enforce limits on public comments.
14. Develop a written code of conduct policy. This policy should address the desired behavior and values that the Commission should be promoting. The policy should also address enforcement of the policy, such as censure or removal from the Commission, if the Commissioners do not comply with the code of conduct.

Audit Results

15. Develop a comprehensive social media policy that explains restrictions on how Commissioners can use social media.

To address situations when Commissioners contact City staff directly, the City Administration should:

16. Develop the following protocols:

- Guidance for reminding staff to not respond to Commissioners without authorization and for notifying department officials of when Commissioners contact staff directly
- Guidance for addressing situations when Commissioners contact staff directly
- Guidance for elevating the matter to the Commission, the City Council, or to the City Attorney

Audit Results

Finding 3: The Agency has not fully implemented City Charter and Municipal Code requirements

Summary

The Oakland City Charter and the Municipal Code require the Community Police Review Agency (Agency) to implement 39 key requirements intended to improve the Agency's investigations and to support the efforts of the Commission. The Agency, however, has not fully implemented eight of these City Charter and Municipal Code requirements. It should be noted that the Agency operated without a permanent Executive Director from December 2017 to June 2019. However, during that time, the Agency operated with three Interim Executive Directors. The requirements of the new measure increased the workload on staff of the new Agency, both in investigations, as well as in administrative and support capacities, which may have contributed to these requirements not being implemented. Specifically, the Agency:

- Is not located in a space visible to the public as the Municipal Code requires;
- Did not meet the City Charter's staffing requirements;
- Has not completed investigations in accordance with timeframes outlined in the City Charter and State Law;
- Has not always videotaped interviews of officers who allegedly committed Class I offenses;
- Has not always received requested information from IAD and other OPD departments within 10 days;
- Has not always received notification of a complaint from IAD within 1 day;
- Needs to improve its processes for classifying and submitting administrative closures/dismissals to the Commission; and
- Has not provided sufficient training to Agency staff.

Thus, the Agency has not fully implemented all the City Charter requirements in the voter-approved measure and all the requirements that the City Council adopted in the enabling ordinance.

The Agency's office is not visible to the public, as the Municipal Code requires

The Municipal Code states that Agency staff should be located on the ground floor in an office that is visible and accessible by public transportation, to offer easy public access. The

Audit Results

Commission, in consultation with the Agency Director, determines the number of Agency staff who would work at such a location. The Municipal Code further states that the Agency's hours of operation are to be clearly posted on the office door and inside the office. Additionally, the address of this office location, hours of operation, and telephone number must be posted on the City and Agency's websites.

The Agency's office is not on a ground floor of a building visible to the public. The office is located on the 6th floor of 250 Frank H. Ogawa Plaza and is difficult to locate.

The purpose of the office location is to ensure that the Agency is more accessible to the public and easier for the public to report complaints. It is evident from the limited number of complaints directly reported to the Agency that the public is not fully aware of its existence. In our review of investigation files, 24 out of 30 investigations were submitted to IAD first and then forwarded to the Agency for parallel review. Thus, only 6 of 30 cases reviewed were submitted directly to the Agency.

Although the Agency is out of compliance with this provision of the Municipal Code, it has no control over the physical location of the Agency. Assignment of City property for specific uses is part of the City's overall space allocation plan and moving the Agency to a ground floor location requires Council approval.

The Agency also lacks an effective outreach program to encourage community awareness of its role. Specifically, the Agency has not established goals and objectives for increasing the number of complaints and accommodations that it receives directly from the public. Additionally, the Agency has not established an outreach plan that identifies activities it needs to perform to increase public awareness, and it has not developed monitoring tools to assess its progress in meeting these goals.

In early 2018, the Agency continued work that was begun under the CPRB, which conducted some outreach activities. The introduction of the CPRA App – which allows the public to file complaints electronically via the internet – was seen as an important step towards providing more public access to the complaint process. With the additional investigative and administrative staffing demands created by Oakland City Charter Section 604, and the hiring freeze imposed by the Commission in early 2018, the Agency lacked the capacity to conduct additional outreach activities or to formulate an extensive outreach plan.

The Agency did not meet the City Charter's staffing requirements

The City Charter requires the Agency to be staffed with one investigator for every hundred sworn officers. As of July 2018, OPD had 738 officers; thus, the Agency should have had at least seven investigators during FY2018-19.

Audit Results

The Agency, however, was staffed by only four or five investigators from January 2018 through September 2019. Thus, the Agency operated with three fewer investigators than required by the City Charter for approximately 21 months. In October 2019, the Agency hired three additional investigators and currently fulfills the mandate of the Charter.

The Commission also placed a hiring freeze on investigators until February 2019, which has contributed to staffing problems at the Agency. According to the Commission, they imposed this freeze because they did not want to hire additional investigators until a permanent Executive Director was hired.

The Agency has not completed investigations in accordance with the timeframes recommended in the City Charter and, in some instances, California State Law

The City Charter requires the Agency to make every reasonable effort to complete its investigations within 180 days from when the complaint is filed with the Agency. Additionally, subject to certain exceptions, Government Code Section 3304(d) (3304) states that no punitive action or denial of promotion against a peace officer may be taken if the investigation of the misconduct is not completed within one year.

Between January 2018 and August 2019, the Agency only completed 3 of 81 investigations, or 4 percent of investigations, within 180 days. In addition, the Agency did not complete 1 of 81 investigations, or 1 percent, within one calendar year as required by 3304. However, this case was not completed within the statutory deadline due to the firing of the Agency's Interim Executive Director, who was responsible for closing cases.

The Agency lacks adequate management controls to properly monitor the timeliness of investigations. For example, the initial testing completed, identified five cases not completed within one year. Upon further review, Agency management confirmed four of the five were completed within one calendar year. However, the information in the Agency's management information system was incomplete or inaccurate.

Furthermore, as of August 2019, the Agency had one other investigation that had not been completed within the required one-year timeframe. Thus, if any allegations are sustained, the City cannot discipline the officers. However, the Agency followed up on this case and confirmed that although the investigation missed the one-year timeframe, the allegations were not sustained against the officers. Regardless, the Agency was at risk that if the allegations had been sustained, the officers would not have been able to be disciplined and controls should be put in place to address these types of circumstances.

Audit Results

Staff conducting interviews did not videotape all interviews of subject officers who are alleged to have committed a Class I offense

The Municipal Code requires the Agency to videotape interviews of all subject officers who are alleged to have committed a Class I offense. This is because Class I offenses are serious offenses, such as excessive use of force or in-custody deaths, therefore videotaping the interview provides better evidence. Standards and Guidelines for Internal Affairs – U.S. Department of Justice state that video recordings are especially helpful to both human resources and management in cases where the interviewee is being recorded pointing to positions on a map, objects in a room, or otherwise physically recreating an event that cannot be properly described with words alone.

Both IAD and Agency staff conducting interviews did not begin videotaping interviews of officers alleged to have committed Class I offenses until the summer of 2019. According to staff, they were unaware of the Municipal Code requirement. Furthermore, the Agency often relied on interview recordings conducted by IAD, rather than conducting independent interviews. Per Agency staff, this is because a State Court ruling known as the Santa Ana rule, requires evidence to be turned over to the accused subject officers, if they are interviewed a second time for the same offense. This step significantly impairs the utility of those interviews and makes them more complicated to initiate. This ruling further hampers the Agency's investigations; therefore, the Agency sometimes relies on IAD to conduct the initial interviews.

However, in recent months, the Agency and IAD have been working together and the Agency staff now attend IAD's interviews for which complainants have alleged misconduct.

The Agency has not always received requested information from OPD in 10 days as the City Charter requires

The City Charter requires OPD to make every reasonable effort to respond to the Agency's request for files and records within 10 days. These files and records include necessary documentation to conduct a full investigation. The Agency has one year from the date the complaint is received to perform its investigation; therefore, it needs timely information from IAD to complete its investigations within the mandated timeframes.

However, we confirmed OPD did not provide information to the Agency within 10 business days for 3 of 30 investigations, or 10 percent of the investigations reviewed. Furthermore, we could not confirm whether OPD provided the Agency with information within 10 days, for 23 of the remaining 27 investigations, as the Agency did not provide a sufficient audit trail.

It should be noted that in recent months, the Agency and IAD have been working together to assist the Agency in obtaining more direct access to information and Agency staff report that the level of cooperation and coordination between the Agency and IAD has also improved.

Audit Results

The Agency has not always received complaints from IAD within one business day of receipt as the Municipal Code requires

The Municipal Code requires either OPD or the Agency to provide each other a copy of complaints within one business day of receipt. Most complaints are received from IAD and then forwarded to the Agency to conduct a parallel investigation. In 20 out of 30 cases reviewed or 67 percent, the Agency did not receive the complaint within one business day of it being filed with IAD. In one case reviewed, OPD did not provide the complaint to the Agency until 27 business days after the complaint was received.

The Agency has one year from the date the complaint is received; thus, it needs timely referrals from IAD, so it can complete its investigations within the mandated timeframes.

As noted above, Agency staff reported that the communication between IAD and the Agency has improved recently and IAD is providing complaints to the Agency in a timelier manner.

The Agency needs to improve its process for defining, classifying, and submitting administrative closures/dismissals to the Commission

The Municipal Code requires the Commission to review the Agency's dismissal and/or administrative closures of all complaints involving Class I offenses. The Commission, with five affirmative votes, may direct the Agency to reopen and investigate a closed complaint.

According to Agency staff, the previous Interim Executive Director did not submit administrative closures to the Commission. The Agency staff have also mentioned that the criteria on what constitutes an administrative closure is not clear. Thus, once clear criteria are defined, the Agency must submit cases not previously identified as administrative closures to the Commission.

It should be noted that the term administrative closure has no formal legal definition, nor is it defined in the City Charter. In addition, Agency staff explained the meaning of administrative closures has changed over time since the Measure was enacted and CPRB disbanded. At one time, it represented investigations that were closed administratively without ever having been presented to the board for a hearing – akin to what is now sometimes described as a summary closure. Later, administrative closure came to mean investigations that were closed based on board deliberation of investigator recommendations and reports of investigation, as opposed to the few cases in which fact-finding hearings were still convened. Further legal clarification is needed to define administrative closures in order for the Agency to be able to comply with the requirements of the Municipal Code.

Audit Results

The Agency has not provided sufficient training to staff as required by the Municipal Code

Oakland Municipal Code Section 2.46.030.C requires that all investigators receive necessary training in conducting fair and impartial investigations. NACOLE and the Quality Standards for Investigations by the Council of Inspectors General also stress the importance of training for investigators. NACOLE emphasizes the importance of providing a formal and regular training and development program to all agency staff. They further mention that being a successful practitioner of citizen oversight of law enforcement requires meeting certain qualification standards and receiving ongoing training and professional development.

However, the Agency lacks a formal training program for both intake technicians and investigators. Agency staff also reported that they had not received adequate training on topics such as investigative writing and interviewing techniques.

Providing necessary training is a critical step in the development of a strong investigative team, as the accuracy of investigations can have a significant impact on the involved officers, OPD, and the relationship with the public. As such, the Agency should develop an annual training plan that is based on performance and is sufficient for staff to undertake their respective responsibilities.

Conclusion

The City Charter and the Municipal Code outline various requirements for the Agency, however, many of these requirements have not been fully implemented. These include the location of the Agency's office, the timeliness of investigations, staffing, timely receipt of files and records from OPD, reporting of administrative closures, videotaping of Class I offenses, training for Agency staff, and creating an effective outreach program. Thus, the Agency has not fully implemented all the City Charter requirements in the voter-approved measure and all the requirements that the City Council adopted in the enabling ordinance.

Recommendations

To ensure compliance with the Municipal Code requirement regarding the Agency's office location, the City Administration and the Agency should:

17. Work together to obtain space for the Agency that is consistent with the requirements specified in the Municipal Code.

To assist in fulfilling the requirements of the City Charter and the Municipal Code, the Agency should:

18. Work with Human Resources to ensure that hiring lists are kept up-to-date to have sufficient candidates available for hiring when vacancies occur.

Audit Results

19. Establish written goals and objectives regarding the timeliness of their investigations. It should define the various aspects of the investigative process that need to be tracked. Further, it should develop management reporting systems to allow management to monitor the timeliness of investigations.
20. Develop written policies and procedures to ensure investigations are concluded in a timely manner.
21. Develop written policies and procedures to ensure all interviews with officers who allegedly committed Class I offenses are videotaped.
22. Develop written policies and procedures to ensure that investigators document the date that information is requested and received from OPD to track compliance with the 10-day requirement. Moreover, the Agency should work with OPD to receive information via direct access.
23. Develop written policies and procedures to ensure complaints are received timely from IAD, within 1 day of IAD's receipt.
24. Establish criteria for defining administrative closures and immediately begin reporting all administrative closures to the Commission on a regular basis.
25. Develop and implement a formal training program for all Agency staff.
26. Develop an outreach plan that includes written goals and objectives, outreach activities, and monitoring reports to assess its progress in reaching its outreach goals.

Audit Results

Finding 4: The Agency's investigative processes are not formalized, and the Agency and the Commission have not adequately defined the type of oversight role it should provide

Summary

Quality Standards for Investigations by the Council of Inspectors General (Standards) require investigations to be conducted in a thorough, diligent, and complete manner. Investigations must be conducted in accordance with applicable laws, rules, regulations, and guidelines. Methods and techniques used in investigations must be appropriate for the individual circumstances and objectives of each case. Findings must be supported by adequate, accurate, and complete documentation in the case file. Investigations must be executed in a timely, efficient, thorough, and legal manner.

The Agency lacks a formal process for conducting investigations. Thus, the Agency's investigative processes are not clearly defined and documented. Consequently, staff are not adequately trained, investigations are not conducted timely, and in accordance with best practices.

Specifically, we noted the Agency has not:

- Formalized its complaint intake process;
- Documented its considerations for assigning staff to conduct investigations;
- Established formal planning processes for investigations;
- Documented requirements for investigations;
- Established a quality control system to ensure that its policies and procedures are followed; and
- Implemented a strong management information system to monitor the status of investigations and provide statistical data on its performance.

The Agency was understaffed for almost two years. The Agency lacked a permanent Executive Director and at least two investigators during this time, making it difficult to define and document these processes.

Different types of police oversight investigative agencies exist. The Agency has modeled itself after the Community Police Review Board, which was primarily a review agency. The Agency needs to work with the Commission to define its role for the future.

Audit Results

Background

The Agency is required to investigate all public complaints, which include use of force, in-custody deaths, profiling based on any of the protected characteristics identified by federal, state, or local law, and First Amendment assemblies such as resident protests or marches. Additionally, the Agency must investigate policies and procedures on federal court orders such as the Negotiated Settlement Agreement if directed by the Commission.

The Agency must also investigate any other possible misconduct or failure to act of an OPD sworn employee, whether it is or is not the subject of a public complaint, as directed by the Commission.

Public complaints against sworn employees are received by IAD, or by the Agency, via email, walk-in, mail, telephone or web application. Most complaints are received by IAD and are forwarded to the Agency via email.

IAD and the Agency conduct parallel investigations and compare results once their respective investigations are complete. The City Charter requires the Agency to make every reasonable effort to complete investigations within 180 days from the filing of the complaint with the Agency. The Agency is required to submit the results of investigations to the Commission and the Chief of Police, within 30 days of the completion of an investigation.

If the Chief of Police agrees with the Agency's findings and proposed discipline, the subject officer is notified of the findings and intent to impose discipline, if applicable. If the Chief of Police and Agency disagree on findings, then they both must submit their findings and proposed discipline to the Commission's Disciplinary Committee, which is comprised of three Commissioners. The Discipline Committee convenes to review findings and propose discipline, based solely on the findings presented by the Agency and the Chief of Police. Officers have the right to appeal any final decision regarding discipline or termination to binding arbitration.

Agency investigations and staffing

The Agency is comprised of 13 full-time staff, including an Executive Director, hired in July 2019, three intake technicians, one supervisor, one policy analyst and six investigators, three of whom were hired in October 2019. The Agency also has an Office Assistant II position.

Agency staff has investigated and completed an estimated¹² 50 cases per year during the audit period under review. See Exhibit 3 below for the number of cases reviewed and completed by the Agency during Calendar Years 2018 and 2019 and Exhibit 4 shows the number of cases closed by

¹² The number of completed investigations in 2019 does not cover the full calendar year. The investigations completed between September and December 2019 were not counted, therefore auditors estimated an annual average of approximately 50 completed investigations per year.

Audit Results

intake.

Exhibit 3 – Number of Completed Investigations by Calendar Year

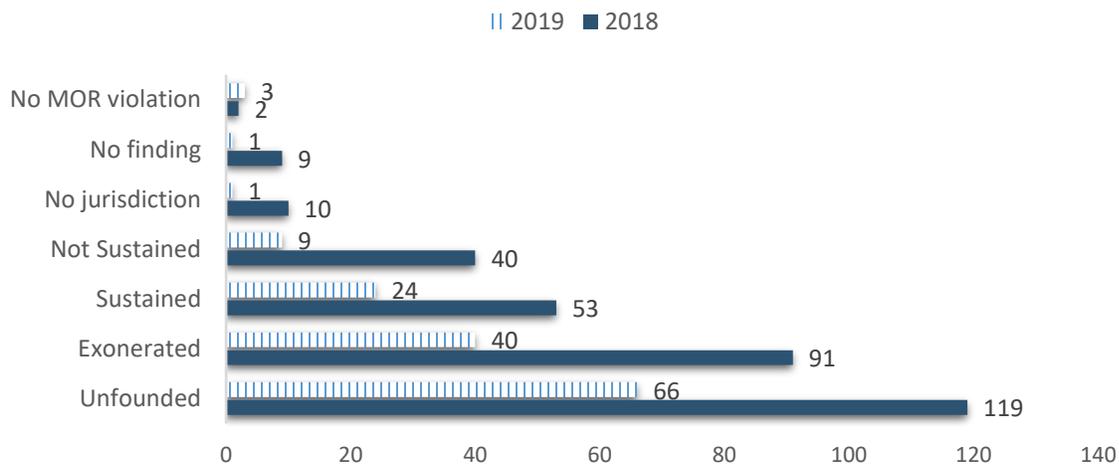
Calendar Year	Number of Completed Investigations
2018 (January through December)	51
2019 (January through August)	30

Exhibit 4 – Number of Cases Closed by Intake

Calendar Year	Number of Cases Closed by Intake
2018	Approximately 310
2019 (January through August)	Approximately 70

Exhibit 5 breaks down the closed complaints by type of finding. See Appendix F for the definition of each type of closure.

Exhibit 5 - Results of Closed Complaints



Audit Results

Each complaint may contain multiple allegations of misconduct. Exhibit 6 breaks down the number of allegations contained in each complaint for the two years under review.

Exhibit 6 - Closed Complaints by Allegation Type for Calendar Years 2018 & 2019 (January through August)		
Allegation Category – See Appendix F	2018	2019
Performance of duty	168	64
Use of force	60	41
Conduct towards others	44	19
Refusal/failure to provide name or refer complainant	11	2
Duties & responsibilities	10	1
Truthfulness	7	1
Obedience to laws – DUI/intoxication	4	12
Gifts/gratuities – soliciting/accepting	2	1
Complainant uncooperative	1	0
Custody of prisoner	11	0
Reports/Records	6	0
No MOR (Manual of Rules) ¹³	0	3
Obstruction to Internal Affairs process	0	1
Department property and equipment	0	1
Total Allegations	324	146
Total Number of Investigations or cases (multiple allegations may be reported in one completed complaint investigation)	51	30

¹³ Manual of Rules defines standards, a code of conduct, and ethics for the Oakland Police Department.

Audit Results

The Agency does not have a defined and formalized complaint intake system

After an agency receives a complaint, it gathers information from the complainant. This process is referred to as “intake.” An effective intake system assists in improving the efficiency and effectiveness of investigations. The primary goal of intake is to collect detailed, accurate information to facilitate assignment and prioritization of investigations and/or referral. Intake is the first line of review and can screen out investigations that are out of jurisdiction or otherwise do not require further investigation. Because intake is crucial to complaint-based investigations, it should be sustainably and effectively staffed.

The Agency’s intake process is not documented in its department policies and procedures. In addition, the role of the intake technician has been inconsistent. According to Agency staff, the previous Executive Director screened the complaints. Currently, the Agency’s intake technicians perform this task. Agency staff reported the intake process sometimes varies by intake staff. In addition, intake staff have not been adequately supervised and have not received sufficient training on conducting initial interviews.

The Agency does not have documented procedures for assigning staff to investigations

Standards require that individuals assigned to conduct investigative activities must collectively possess professional proficiency for the tasks required. These Standards also require investigators to be independent and free from personal impairments.

The Agency lacks a formal process for assigning staff to an investigation. Specifically, we found no evidence that the complexity of the investigation is considered when assigning an investigator or that the investigator is independent and free of any personal impairments related to the investigation prior to being assigned to a project. Thus, the Agency lacks adequate controls to ensure that investigators are qualified to perform the investigation and are independent and free of any personal impairments.

One of the Agency investigative staff does not have a background that is consistent with other investigators or with the requirements of the job. The job description requires three years of professional full-time paid experience in civil and criminal investigation or a related field. When hired, the investigator did not have this background.

The Agency lacks a formal planning process for its investigations

The Standards include guidelines for developing investigation plans with clear objectives to ensure that steps in an investigation are performed efficiently and effectively. NACOLE lists a set of core competencies for civilian oversight practitioners that includes adequate planning of investigations.

Audit Results

The Agency lacks a formal planning process for investigations. Written investigation plans with established objectives were not found in any of the case files we tested. Additionally, the case files lacked evidence of supervisory approval initiating the investigations. Without an approved investigation plan, the Agency lacks sufficient controls to ensure efficient and effective investigations.

The Agency lacks documentation requirements for its investigations

Standards and guidelines for Internal Affairs by the U.S. Department of Justice's Office of Community Oriented Policing Services, suggest having basic forms, such as an intake complaint form, and consistent formats for investigative narratives and documentation to ensure crucial information is included and adequate. Templates also show how investigators reached their final decision and may be used as legal defense. Standards and guidelines for Internal Affairs also strongly recommend the use of a chronological log that includes entries with dates, times, contact information of each person the investigator called, and any event that would evidence investigative due diligence. Logs allow supervisors to determine the effectiveness of their investigators and help other investigators take over the case if the original investigator is removed from the case.

The Agency lacks sufficient and consistent documentation in its investigative files. The Agency has not adopted standardized templates for use by their investigators during any of the phases of an investigation.

Furthermore, at the end of an investigation, investigators prepare a Final Report of Investigation (ROI), which states the final deposition for each allegation. The ROIs varied in content and format depending on the investigator. Uniform reports help ensure that reporting is consistent, and that critical information is not omitted.

Additionally, when reviewing each investigator's case file, the documentation and organization of each case file varied greatly by investigator. One investigator used the current management information system to keep a detailed audit trail of events pertaining to the case file, whereas another investigator maintained a chronological log via handwritten notes. In some case files, it was evident when certain information was requested and received from another department. In other case files, investigators did not include this information. Thus, the Agency's case files lacked sufficient information to determine whether turnaround standards with OPD and other departments were met.

The Agency lacks a formal quality review process for its investigations

The Standards recommend conducting and documenting supervisory reviews of case activities periodically to ensure that cases are progressing efficiently and effectively.

Audit Results

The Agency's investigation files, including the final reports of investigation do not include formal written approval from the Executive Director. The files also lack approvals or sign-offs indicating review by a Supervisor. Thus, the Agency cannot provide adequate assurance to ensure investigations are conducted efficiently, effectively, and in accordance with prescribed standards.

The Agency lacks an adequate management information system

The Standards recommend the investigation organization's management information system collect the data needed to assist management in performing its responsibilities, measuring its accomplishments, and responding to customers.

The Agency's management information system is inadequate. This system went live in 2018 with Version 1, with the expectation the Agency would revamp it the next year to meet additional demands; however, due to a lack of administrative support, the update did not occur, the platform used became outdated, and the system was never used as intended. Staff currently must enter information manually to obtain needed statistical data. The system also lacks complete and accurate information because investigators do not enter information consistently. Consequently, the Agency lacks adequate information to assess whether investigations are conducted timely, effectively, and in accordance with the City Charter, Municipal Code, State requirements, and prescribed standards.

The Commission and the Agency have not defined the type of oversight the Agency should provide

NACOLE reported that over the last several decades, issues of trust and accountability have moved to the forefront of community-police relations, and a great deal of resources have been devoted to enhancing police performance, including strengthening police accountability and oversight functions.

One such mechanism for increasing accountability is civilian oversight of law enforcement. This accountability tool uses non-sworn staff to review police conduct. In some jurisdictions, this is accomplished by allowing oversight practitioners to review, audit, or monitor complaint investigations conducted by police internal affair units. In other jurisdictions, this is done by allowing civilians to conduct independent investigations of allegations of misconduct against sworn officers. Some oversight mechanisms involve a combination of system analysis and complaint handling or review.

NACOLE recommends considering the type of oversight model that works best for each specific community, as there are advantages and weaknesses to each. Generally, an agency falls into one of three categories:

Audit Results

1. Conducts investigations – more independent, reduces bias, but most expensive model and requires specialized training.
2. Reviews or hears appeals of internal police investigations – focus on reviewing the quality of work done by IAD, may increase public trust in the process, least expensive model, but also less authority, less experience and less independence.
3. Audits or monitors police policy, training, and investigations, or conducts systemic investigations – robust public reporting, less expensive than full investigative model, but focus is on examining broad patterns instead of individual cases, significant expertise is required, and most auditors/monitors can only make recommendations instead of compelling law enforcement agencies to make systemic changes.

The Agency's current oversight model has not been defined since the Commission was established in 2017. The Agency still uses the investigative processes used by the Community Police Review Board, which results in an agency model that is a hybrid between a review agency and an investigative agency. From the case files reviewed, we noted that in some cases the Agency investigators conducted all aspects of an investigation, including their own interviews of police officers. In more than 20 percent of the cases reviewed, however, the investigators relied on interview notes and recordings by IAD. Performing independent investigations increases the level of objectivity and independence of the investigative process.

As noted earlier in the report, the Agency has been working with IAD in recent months to conduct live interviews together with their investigators. This will increase the Agency's involvement in cases and their ability to provide independent findings and recommendations.

Conclusion

The Agency lacks formal management systems to ensure efficient, effective, compliant, and consistent investigations. The Agency needs to implement the recommendations below to address the identified deficiencies in its investigative processes.

Recommendations

To ensure efficient, effective, compliant, and consistent investigations, the Agency should:

27. Define and document the overall processes necessary to undertake investigations, including establishing policies and procedures for the intake process.
28. Establish and document a formal process for assigning staff to an investigation that considers the complexity of the investigation, staff experience and background, and whether the investigator is independent and free from personal impairments.

Audit Results

29. Ensure all job qualifications are met before hiring an investigator, as the role of an investigator requires extensive experience and the ability to interpret applicable laws and regulations.
30. Establish procedures for the planning of investigations, including creating a standard investigation plan with clear objectives and methodology for the investigation. This plan should be reviewed and approved by the supervisor before the formal investigation commences.
31. Standardize reports to ensure consistency in how investigations are conducted and reported. In addition, the Executive Director should formally sign off on the final report of the investigation.
32. Establish policies and procedures that outline which phases of an investigation require quality review and how this will be documented.
33. Acquire a case management system to assist management in performing its responsibilities of case management and reporting, measuring its accomplishments, and responding to inquiries.
34. Work with the Commission to establish the preferred investigative agency oversight model.

Audit Results

Finding 5: The City Council Should Consider Amending Several of the Commission's City Charter and Municipal Code Requirements

Summary

The City Council is considering amending Sections 6.04 of the City Charter through a ballot measure that will go before the voters in November 2020. During our audit, we identified several issues with the City Charter and the Municipal Code that the City Council should consider addressing in the new ballot measure. For instance, the City Council should re-assess the City's process for removing the Chief of Police. In addition, the City Council is considering changes to the process for appointing Commissioners. Our audit found that the Mayor appoints members to the police oversight bodies in most jurisdictions we surveyed, and selection panels are not frequently used. Furthermore, the City Council should consider amending the City Charter, so it can review and approve Commission nominees individually, not as a slate. The City Council should also consider strengthening the language in regard to potential conflicts of interest of selection panel members. Additionally, the City Council should also more clearly define the role and authority of the Commission and prohibit the Commission from getting involved in administrative activities and directing staff. Finally, the City Council should consider removing non-essential requirements from the City Charter and the Municipal Code, as the Commission has more requirements than a part-time oversight body can handle.

The City Council is considering amending the City Charter

The City Council is considering amending Sections 604 of the City Charter through a ballot measure that will go before the voters in November 2020. During our audit of the Commission and the Agency, we identified several issues with the City Charter and the Municipal Code that the City Council should consider addressing in the new ballot measure.

The following are some key areas for the City Council to consider for modifying the City Charter and the Municipal Code.

The City Council should re-assess the City's process for removing the Chief of Police

The Municipal Code requires the Commission to evaluate the Chief of Police and authorizes the Commission to remove the Chief of Police for cause. In addition, the City Charter authorizes the Commission, acting jointly with the Mayor, to remove the Chief of Police without cause.

This authority is rare amongst other police oversight agencies. We found that police oversight agencies in the City and County of San Francisco, the City of Los Angeles, and the City and County of Honolulu have the authority to remove the Chief of Police. Unlike Oakland, the Chiefs of Police in these jurisdictions report directly to the police oversight body and do not report directly to

Audit Results

anyone else in the organization.

The Chief of Police of Oakland, on the other hand, has a multi-reporting relationship. The Chief of the Police reports to the Mayor, the City Administrator, the Commission, and the federal monitor and they all have the authority to remove the Chief of Police. We did not identify any other jurisdictions that have such a multi-reporting relationship, in which multiple parties also have the authority to remove the Chief of Police.

The removal of a Chief of Police can be very disruptive to a law enforcement agency, the City they serve, and to the public, especially in the short-term. The departure of key leadership often means the loss of valuable talent and institutional memory and can be costly to organizational momentum and mission. Moreover, such a change affects multiple stakeholders such as the City Council and the public. Therefore, it is essential that the removal of the Chief of Police be done with the utmost care and consideration, so that the process does not pose significant liability issues for the City.

In February 2020, the Commission, acting jointly with the Mayor, fired the Chief of Police without cause. As noted above, the City Charter authorizes the Commission, acting jointly with the Mayor, to remove the Chief of Police without cause.

Since the City Council is considering modifying the City Charter and the Municipal Code, this provides an opportunity for the City Council to re-evaluate the provisions regarding the removal of the Chief of Police.

We recommend that the City Council consider the following questions at a minimum:

1. Who should be vested with the authority to fire the Chief of Police for cause?
2. Who should be vested with the authority to fire the Chief of Police without cause?
3. What processes and controls should be put in place to ensure the actions taken to remove the Chief of Police do not pose significant liability issues for the City?

Oakland is one of the few jurisdictions to use selection panels to choose Commission members and several selection panel members have had potential conflicts of interest

Under the current City Charter, the Mayor nominates three Commissioners and an Alternate and a selection panel nominates four Commissioners and an Alternate, subject to City Council approval. The City Council, however, is considering eliminating the Mayor's selections to the Commission and giving the City Council responsibility for appointing all Commissioners, based on the recommendations of the selection panel.

Audit Results

The Mayor, in most of the jurisdictions surveyed, appoints members to the police oversight bodies. In these jurisdictions, the Mayor or the Mayor and the City Council or the Board of Supervisors are responsible for appointing members to most of the police oversight bodies we surveyed. Specifically, the Mayor appoints the members of the police oversight bodies in 16 jurisdictions surveyed. The Mayor was also involved with the selection process in 10 other jurisdictions. In these jurisdictions, the Mayor and the City Council, the Mayor and the Board of Supervisors, the Mayor and the Governor, or the Mayor and the electorate selected the members of the oversight bodies. Dallas was the only city in which the City Council was the only appointing authority. The City Manager selected the oversight body in two other cities.

The use of selection panels in other jurisdictions was rare in the 32 jurisdictions surveyed. Only five other jurisdictions, Portland, Miami, Orlando, Las Vegas, and Atlanta, use some version of a selection panel.

As it considers eliminating the Mayor's appointees to the Commission, the City Council should debate the pros and cons of the various appointment methods used to select Commissioners.

Additionally, the City Council confirms the selection panel nominees for the Commission. When more than one opening exists, the City Charter requires the City Council to approve or reject the slate of candidates nominated by the selection panel. We recommend the City Council consider amending the City Charter to allow the City Council to confirm selection panel nominees individually, not as a slate, to ensure each nominees' qualifications are adequately considered.

The City Council should also consider strengthening the language in regard to conflicts of interest of selection panel members. The City Charter prohibits current OPD employees from sitting on the selection panel. The Municipal Code prohibits any attorney who represents a person or entity with a pending claim or lawsuit against OPD, or an attorney who represented a person or entity that filed a claim or lawsuit against OPD and that claim was resolved during the previous year.

We identified potential conflicts of interest with some of the members of the selection panel that should be addressed in either the City Charter or the Municipal Code. We identified three out of the nine selection panel members may not be sufficiently independent. Specifically:

- One member worked for a firm that investigated several cases against OPD and is an attorney representing the plaintiffs in the NSA. In September 2019, this member filed an affidavit in federal court describing the lawsuit filed by the officers in the "Pawlik case" as a "collateral attack" on the federal reform efforts and an "affront" to the federal judiciary. Although the Municipal Code specifies that this individual should be prohibited from serving on the selection panel, the individual and all original members of the selection panel were grandfathered in and allowed to remain on the selection panel. This was due to the Municipal Code requirements being passed over a year after Measure LL was

Audit Results

passed. Therefore, an exception was granted to all original selection panel members. This individual, per the Municipal Code, clearly has a conflict of interest and should be removed from the selection panel. Moreover, the Municipal Code should be amended to eliminate the provision that exempted this individual to serve on the selection panel in the first place.

- One member worked for OPD in the past but is not a current employee. A former OPD employee may be conflicted as much as a current employee. Although this individual is no longer on the selection panel, the Code should be amended to prohibit both current and former OPD employees from serving on the selection panel.
- One member's spouse is a sworn officer in OPD. The City Charter prohibits current employees from serving on the selection panel. A spouse of a current or former employee may have pre-conceived notions about OPD that may also pose a potential conflict of interest. Thus, the City Charter should be modified to prohibit current and former OPD employees and their immediate family from serving on the selection panel.

The City Charter does not specifically prohibit the Commission from engaging in administrative activities and does not adequately define the Commission's authority

Finding 2 in this report points out that the Commission has involved itself in administrative matters and has directed City staff. The City Charter prohibits the City Council from involving itself in administrative matters and from directing City staff. These City Charter provisions, however, do not apply to the Commission and other oversight bodies.

The City Council should consider including language in the ballot measure that would mirror Sections 207 and 218 of the City Charter and prohibit the Commission from involving itself in administrative activities and from directing City staff. Honolulu's Charter specifically prohibits the Police Commission or any of its members from interfering in administrative matters of the Police Department.

Finding 2 also noted that the Commission has involved itself in matters outside their authority to oversee the OPD. Thus, the City Council should work with the City Attorney, City Administration, and the Commission to better define their respective roles in matters relating to OPD and should also consider proposing amendments to the City Charter that clarify the Commission's authority and responsibilities.

Audit Results

The Commission has more requirements than a part-time oversight body can effectively address

As addressed in Finding 1, the Commission has not complied with numerous requirements in the City Charter and the Municipal Code. Many of these requirements are too onerous for a part-time oversight body to effectively address. For instance, the City Charter states that the Commission must review the Mayor's proposed budget to determine whether budgetary allocations for the OPD are aligned with OPD's policies, procedures, customs and General Orders. As noted in Finding 1, the Commission has not reviewed the Mayor's proposed budget to determine whether the budget is aligned with OPD's policies, procedures, customs, and General Orders.

The City Council is responsible for reviewing and approving the City's budget and it is unclear how the Commission's review of OPD's budget would add additional value to the budget process.

Conclusion

The City Council is considering amending the City Charter and the Municipal Code. During our audit, we identified several issues the City Council should consider in developing new City Charter and Municipal Code language. These issues include the process for removing the Chief of Police, the use of selection panels to nominate Commissioners, better defining the Commission's authority, and whether the Commission has more City Charter and Municipal Code requirements than a part-time oversight body can effectively fulfill.

Recommendations

As it considers changes to the City Charter and the Municipal Code, the City Council should:

35. Consider the following questions in regard to the Commission's authority to fire the Chief of Police:

- Who should be vested with the authority to fire the Chief of Police for cause?
- Who should be vested with the authority to fire the Chief of Police without cause?
- What processes and controls should be put in place to ensure the actions taken to remove the Chief of Police do not pose significant liability issues for the City?

36. Debate the pros and cons of the various methods used to select Commissioners.

37. Consider revising the City Charter to allow the City Council to review and approve Commissioners individually, instead of a slate of candidates.

38. Consider amending the requirements for selection panel members to eliminate potential conflicts of interest and the Municipal Code should be amended to eliminate the provision that exempted members who were previously grandfathered onto the selection panel.

Audit Results

39. Develop language in the proposed ballot measure to prohibit the Commission from participating in administrative activities and directing staff.
40. Develop clarifying language, if needed, in the proposed ballot measure to clearly identify the Commission's authority and responsibilities.
41. Reassess the Commission's requirements from the City Charter and the Municipal Code to determine whether a Commission comprised of part-time volunteers can effectively address those requirements, or whether the City Council should eliminate requirements in the proposed City Charter amendment or in the Municipal Code.

Appendices

Appendix A – The passage of Measure LL

A **civilian police commission measure** was on the ballot for Oakland voters in Alameda County, California, on November 8, 2016. Measure LL¹⁴ was approved.

- A **yes** vote was a vote in favor of creating a Police Commission run by civilian commissioners to oversee the Oakland Police Department as well as a Community Police Review Agency to investigate complaints of police misconduct.
- A **no** vote was a vote against creating a Police Commission run by civilian commissioners to oversee the Oakland Police Department as well as a Community Police Review Agency to investigate complaints of police misconduct.

Ballot question

The following question appeared on the ballot:

Shall Oakland's City Charter be amended to establish: (1) a Police Commission of civilian commissioners to oversee the Police Department by reviewing and proposing changes to Department policies and procedures, requiring the Mayor to appoint any new Chief of Police from a list of candidates provided by the Commission, and having the authority to terminate the Chief of Police for cause; and (2) a Community Police Review Agency to investigate complaints of police misconduct and recommend discipline?

City Attorney's impartial analysis

The following impartial analysis of the measure was prepared by the office of the Oakland City Attorney:

Currently, the City Administrator supervises the Oakland Police Department ("OPD"). The Chief of Police ("Chief") is responsible for the OPD's day-to-day operations. The Chief investigates possible police misconduct, but the City Administrator must approve all suspensions of five or more days, fines, demotions or discharges. The City's Citizens' Police Review Board ("CPRB") investigates citizen complaints of police misconduct.

This measure would establish a Police Commission ("Commission") to oversee the Police Department's policies and procedures, and a Community Police Review Agency ("Agency") to investigate complaints of police misconduct and recommend discipline.

¹⁴ [https://ballotpedia.org/Oakland, California, Civilian Police Commission, Measure LL \(November 2016\)](https://ballotpedia.org/Oakland,_California,_Civilian_Police_Commission,_Measure_LL_(November_2016))

Appendices

The Commission would review the OPD's policies, procedures and General Orders. The Commission may also propose changes, and approve or reject the OPD's proposed changes, to those policies, procedures and General Orders that govern use of force, profiling, and general assemblies. The Commission's proposed changes, and any rejections of the OPD's proposed changes, would be subject to the City Council's review and approval. The Commission would also conduct at least one public hearing a year on OPD policies, procedures and General Orders. The Commission would consist of seven regular and two alternate members. The Mayor would nominate three regular Commissioners and one alternate, subject to the City Council's approval. At least one of the three appointees must be a retired judge or lawyer with trial experience in criminal law or police misconduct.

A nine-member Selection Panel would nominate four regular Commissioners and one alternate. Each member of the City Council and the Mayor would appoint one member to the Selection Panel. The Selection Panel's nominees would become members of the Commission, unless the City Council rejects all the panel's nominees.

Community Police Review Agency Currently, after investigating a complaint of police misconduct, the CPRB may recommend proposed discipline. The CPRB must submit any recommendations regarding discipline to the City Administrator, who must respond to the CPRB in writing and make the final decision. Under the proposed measure, the Commission would establish the Agency, which would receive and review all complaints of police misconduct. The Agency would be required to investigate all complaints involving use of force, in-custody deaths, profiling and public assemblies. The Commission could also direct the Agency to investigate other possible police misconduct. After completing its investigation of a complaint, the Agency would submit its findings and proposed discipline to the Commission and the Chief.

If the Chief agrees with the Agency's findings and proposed discipline, the Chief would notify the officer who is the subject of the complaint. If the Chief disagrees with the Agency's findings and proposed discipline, the Chief would be required to prepare separate findings and proposed discipline. A three-member committee of the Commission would consider the Agency's and the Chief's recommendations and make a final decision, subject to the officer's ability to file a grievance.

Budget and Staffing the City must allocate enough money to the Commission and the Agency so that they can perform their required functions and duties.

After the City Council confirms the first group of Commissioners, the CPRB's pending business would be transferred to the Commission and the Agency. The CPRB's Executive

Appendices

Director would become the Agency's Interim Director, and all other CPRB staff would become Agency staff.

—*Oakland City Attorney*

Appendices

Appendix B – City Charter Section 604(b) Powers and Duties of the Commission

The following are the Commission’s powers and duties listed in City Charter Section 604¹⁵(b):

1. Organize, reorganize and oversee the Agency.
2. Conduct public hearings at least once a year on Department policies, rules, practices, customs, and General Orders. The Commission shall determine which Department policies, rules, practices, customs, or General Orders shall be the subject of the hearing.
3. Consistent with state law and in accordance with Section 1207 of the City Charter, entitled “Oaths and Subpoenas,” issue subpoenas to compel the production of books, papers and documents and take testimony on any matter pending before it. If any person subpoenaed fails or refuses to appear or to produce required documents or to testify, the majority of the members of the Commission may find him in contempt and shall have power to take proceedings in that behalf provided by the general law of the State.
4. Propose changes, including modifications to the Department’s proposed changes, to any policy, procedure, custom, or General Order of the Department which governs use of force, use of force review boards, profiling based on any of the protected characteristics identified by federal, state, or local law, or First Amendment assemblies, or which contains elements expressly listed in federal court orders or federal court settlements which pertain to the Department and are in effect at the time this Charter Section 604 takes effect for so long as such federal court orders and settlements remain in effect. All such proposed changes and modifications shall be submitted to the City Council for approval or rejection. If the City Council does not approve, modify and approve, or reject the Commission's proposed changes or modifications within one hundred and twenty (120) days of the Commission's vote on the proposed changes, the changes or modifications will become final.
5. Approve or reject the Department’s proposed changes to all policies, procedures, customs, and General Orders of the Department which govern use of force, use of force review boards, profiling based on any of the protected characteristics identified by federal, state, or local law, or First Amendment assemblies, or which contains elements expressly listed in federal court orders or federal court settlements which pertain to the Department and are in effect at the time this Charter Section 604 takes effect for so long as such federal court orders and settlement remain in effect. If the Commission does not approve or reject the Department’s proposed changes within one hundred and twenty (120) days of

¹⁵ Full text of City Charter Section 604: [City Charter Section 604](#)

Appendices

the Department's submission of the proposed changes to the Commission, the Department's proposed changes will become final. If the Commission rejects the Department's proposed changes, notice of the Commission's rejection, together with the Department's proposed changes, shall be submitted to the City Council for review. If the City Council does not approve or reject the Commission's decision within one hundred and twenty (120) days of the Commission's vote on the Department's proposed changes, the Commission's decision will become final.

6. Review and comment, at its discretion, on all other policies, procedures, customs, and General Orders of the Department. All such comments shall be submitted to the Chief of Police who shall provide a written response to the Commission upon request.
7. Review the Mayor's proposed budget to determine whether budgetary allocations for the Department are aligned with the Department's policies, procedures, customs, and General Orders. The Commission shall conduct at least one public hearing on the Department budget per budget cycle and shall forward to the City Council any recommendations for change.
8. Require the Chief of Police to submit an annual report to the Commission regarding such matters as the Commission shall require.
9. Report at least once a year to the Mayor, the City Council, and to the public to the extent permissible by law, the information contained in the Chief's report in addition to such other matters as are relevant to the functions and duties of the Commission.
10. Acting separately or jointly with the Mayor, remove the Chief of Police by a vote of not less than five affirmative votes. If acting separately, the Commission may remove the Chief of Police only after adopting a finding or findings of cause, which shall be defined by City ordinance. The Commission must make its finding of just cause by no less than five affirmative votes. Upon removal, by the Commission, by the Mayor, or by the Mayor and the Commission acting jointly, or upon the notice of vacancy of the position of Chief of Police, the Mayor, in consultation with the Chair of the Commission, shall immediately appoint an Interim Chief of Police. Such appointment shall not exceed six (6) months in duration unless approved by a majority vote of the Commission. The Commission, with the assistance of the City Administrator, shall prepare and distribute a job announcement, and prepare a list of at least four candidates and transmit the names and relevant background materials to the Mayor. The Mayor shall appoint one person from this list or reject the list in its entirety and request a new list from the Commission. This provision shall not apply to any recruitment for the position of Chief of Police that is pending at the time of the Commission's first meeting.

Appendices

11. Send the Chairperson of the Commission or another Commissioner appointed by the Chairperson to serve as a non-voting member of any level one Oakland Police Force Review Board.
12. Perform such other functions and duties as may be prescribed by this Charter or by City ordinance.

Appendices

Appendix C – Municipal Code Section 2.45.070 - Functions and Duties of the Commission

The following are the functions and duties of the Commission listed in Section 2.45.070¹⁶ of the Municipal Code:

- A. In accord with the City's record retention schedule, maintain all electronic communications to, from and/or copied to any Commissioner or alternate regarding any matters within the Commission's jurisdiction, and provide such communications to the City upon request.
- B. Maintain the confidentiality of its business in accordance with state and local law, including without limitation, California Penal Code 832.7 and the California Public Records Act (Cal. Gov't Code sec. 6250, et seq.). A Commissioner's failure to maintain such confidentiality, whether or not intentional, may be considered "gross misconduct in office" for purposes of City Charter section 604(c)(10).
- C. 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 post-traumatic 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.
- D. 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.
- E. Notwithstanding section 2.29.020 of the Oakland Municipal Code and in accordance with section 604(b)(10) of the City Charter, have the authority to remove the Chief, without the approval of the Mayor, by a vote of not less than five (5) affirmative votes and only after finding cause. For purposes of removing the Chief, "cause" shall be defined as any of the following:
 - 1. Continuing, intentional, or willful failure or refusal to perform the duties and responsibilities of the Chief of Police as required by any employment agreement with the City, the City Charter, the City's governing laws and regulations, or any laws, rules or regulations of any governmental entity applicable to the Chief's employment by the City or to City operations, including without limitation, the inability to perform the

¹⁶ Full text of Municipal Code Chapter 2.45 - Oakland Police Commission: [Municipal Code Chapter 2.45](#)

Appendices

- duties and responsibilities of the Chief of Police as aforementioned as a result of alcoholism or drug addiction; or
2. Gross neglect of duties, material violation of any duty of loyalty to the City, or material violation of City or Department policy, including without limitation any policies or procedures pertaining to harassment and discrimination, after the Chief has received written warning of the neglect or violation and the Chief has failed to cure the neglect or violation within twenty (20) days; or
 3. Conviction by, or entry of a plea of guilty or nolo contendere, in a court of competent and final jurisdiction for (a) any crime involving moral turpitude, (b) any felony offense, (c) any crime which is likely to have a material adverse impact on the business operations or financial or other condition of the City, or (d) any crime which has resulted in imprisonment; or
 4. Failure or refusal to cooperate with any investigation involving employees of the Department; or
 5. Obstruction of any investigation of Department employee misconduct or criminal activity; or
 6. Refusal, which shall include ongoing failure, to administer or enforce any Department policy or procedure; or
 7. A material act of dishonesty, fraud, embezzlement, self-dealing, or other act of moral turpitude; or
 8. A material breach of confidentiality; or
 9. Loss of any professional license or other certification required by state or local law to perform the duties of the position of Chief of Police.
- F. Within two hundred and forty (240) days of the City Council's confirmation of the first group of Commissioners and alternates and on the anniversary of that date thereafter, notify the Chief regarding what information will be required in the Chief's annual report to the Commission which shall include, at a minimum, the following:
1. The number of complaints submitted to the Department's Internal Affairs Division (hereinafter, "IAD") together with a brief description of the nature of the complaints;
 2. The number of pending investigations in IAD, and the types of Misconduct that are being investigated;

Appendices

3. The number of investigations completed by IAD, and the results of the investigations;
4. The number of training sessions provided to Department sworn employees, and the subject matter of the training sessions;
5. Revisions made to Department policies;
6. The number and location of Department sworn employee-involved shootings;
7. The number of Executive Force Review Board or Force Review Board hearings, and the results;
8. A summary of the Department's monthly Use of Force Reports;
9. Number of Department sworn employees disciplined and the level of discipline imposed; and
10. The number of closed investigations which did not result in discipline of the subject officer.

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.

- G. Conduct an annual performance review of the Agency Director and of the Chief. The Commission shall determine the criteria for evaluating the Agency Director's and the Chief's job performance, and communicate those performance criteria, in addition to any other job performance expectations, to the Agency Director and the Chief one (1) full year before conducting any evaluation of their job performance. 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 Chief's job performance. Responses to the Commission's requests for comments and observations shall be strictly voluntary.
- H. 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.
- I. Request that the City Attorney submit semi-annual reports to the Commission and to City Council which shall include a listing and summary of:

Appendices

1. To the extent permitted by applicable law, the discipline decisions that were appealed to arbitration;
2. Arbitration decisions or other related results;
3. The ways in which it has supported the police discipline process; and
4. Significant recent developments in police discipline.

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 section 832.7.

- J. Provide policy guidelines to the Agency Director for assistance in determining case prioritization.
- K. Make available on its website, to the extent permitted by law:
 1. The Commission's annual report;
 2. The Chief's annual report;
 3. The Agency's reports;
 4. The Agency Director's monthly reports; and
 5. The Inspector General's annual report.

No information shall be distributed using any print media, or posted using any electronic media, in violation of state and local law regarding the confidentiality of personnel records, including but not limited to California Penal Code section 832.7.

- L. Direct the Agency to investigate a serious incident when requested by the Mayor, the City Administrator, and/or the City Council by an affirmative majority vote.
- M. Review the Agency's dismissal and/or administrative closure of all complaints of misconduct involving Class I offenses, including any Agency investigative file regarding such complaints, and, in its discretion and by five (5) affirmative votes, direct the Agency to reopen the case and investigate the complaint. For purposes of this subsection, the definition of "Class I offenses" shall be the same as the definition of "Class I offenses" in the Department's Discipline Policy.
- N. In association with the Agency Director and in consultation with the Chief or the Chief's designee, establish rules and procedures for the mediation and resolution of complaints of

Appendices

misconduct. To the extent required by law, the City will provide the employee unions with notice of such proposed by-laws prior to implementation.

- O. Receive 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.
- P. Review and comment on the Department's policy 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.
- Q. Solicit and consider input from members of the public regarding the quality of their interactions with the Agency and the Commission.
- R. The Department, through the City Administrator or his or her designee, shall report to the Commission on issues identified by the Commission through the Commission's Chair. The City Administrator, or his or her designee, shall attend in person unless impracticable, and shall be prepared to discuss and answer questions regarding the issues identified by the Commission.

(Ord. No. 13498, § 2, 7-10-2018)

Appendices

Appendix D – Municipal Code Section 2.46.030 - Functions and Duties of the Agency

In addition to the powers and duties prescribed in Section 604 of the Oakland City Charter, Section 2.46.030¹⁷ of the Municipal Code also lists the Agency's functions and duties. They are the following:

- A. Use the same complaint form as used by the Department in receiving all public complaints concerning alleged misconduct, including complaints from Department non-sworn employees. All complaints, wherever filed, shall be date-stamped and numbered sequentially. A copy of the numbered and date-stamped complaint shall be provided to the complainant and to the Department's Internal Affairs Division within one (1) business day of receipt.
- B. Make complaint forms available to the public by posting the forms and information about the complaint process on the Agency's website and by accepting the online filing of complaints and attachments via the Agency's website, and by making information about the complaint process available at other public locations to be determined by the Agency Director.
- C. Ensure that all investigators receive any necessary training in conducting fair and impartial investigations.
- D. Request the Commission to issue a subpoena, in accordance with City Charter section 604(b)(3), to compel a subject officer and any other sworn employee of the Department to fully cooperate with an Agency investigation. The Chief shall order all Department sworn employees subject to any subpoena issued by the Commission to comply with all requirements of the subpoena.
- E. Videotape the interviews of all Subject Officers who are alleged to have committed a Class I offense. For purposes of this subsection, the definition of "Class I offense" shall be the same as the definition of "Class I offense" in the Department's Discipline Policy.
- F. Request, without requiring, that the complainant(s) and witnesses of Class I allegations agree to be audiotaped or videotaped if, in the Agency's discretion, its investigation would benefit from such taping.
- G. In consultation with and upon the approval of the Commission, establish rules and procedures for the operation of its business including, but not limited to, procedures for the intake of complaints.

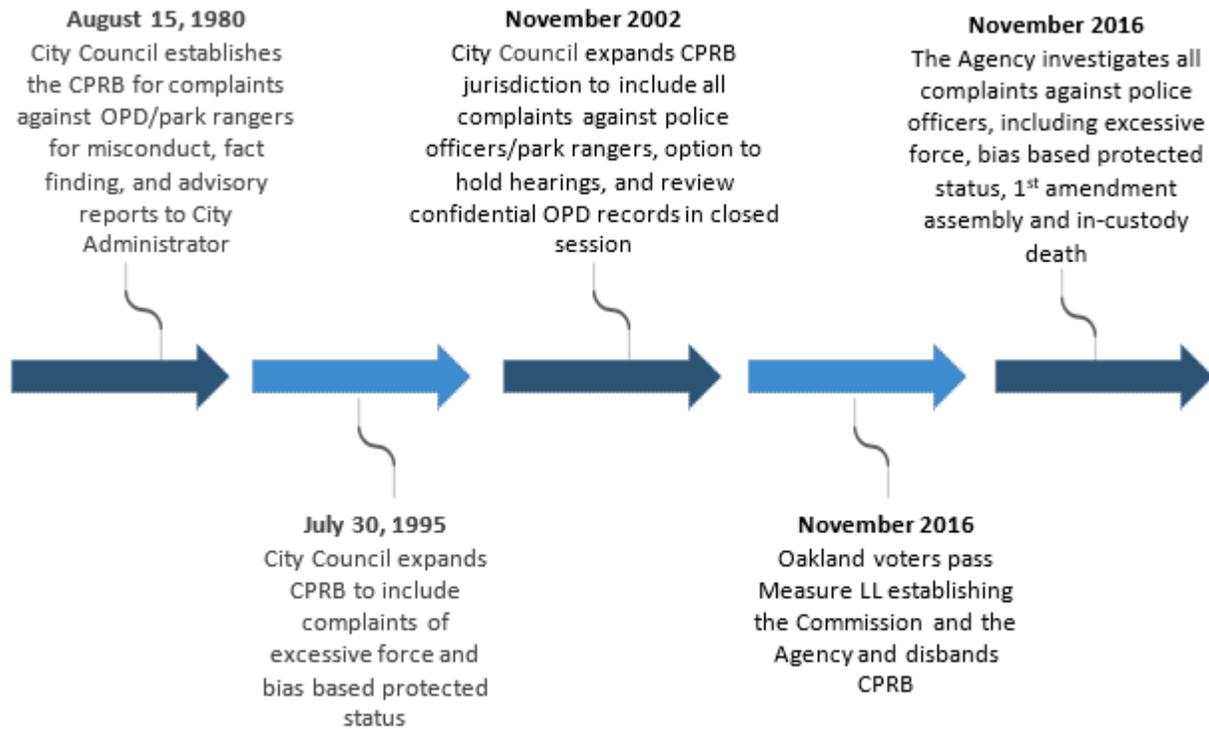
¹⁷ Full text of Municipal Code Chapter 2.46 - Community Police Review Agency: [Municipal Code Chapter 2.46](#)

Appendices

- H. No less than twice a year and as permitted by applicable law, issue a report to the Public Safety Committee which shall include the following information:
1. The number of complaints submitted to the Agency together with a brief description of the nature of the complaints and the identification of the Council District from which the complaint originated;
 2. The demographic profiles of the complainants to the extent that information exists or is voluntarily provided by the complainants;
 3. The number of the Agency's pending investigations, and the types of Misconduct that is being investigated;
 4. The number of investigations completed by the Agency, the results of the investigations, and the amount of time spent on the investigations;
 5. The number of Department sworn employees for whom sustained findings of misconduct were made and the level of discipline proposed;
 6. The number of closed investigations which did not result in sustained findings and/or discipline of the subject officer;
 7. The number of cases referred to mediation;
 8. The number of cases in which the Agency failed to meet (a) the one-hundred-and-eighty-day (180) goal specified by City Charter section 604(f)(3), and/or (b) the deadline specified by California Government Code section 3304; and
 9. The number of times a Department employee failed to comply with the Agency's request for an interview or for the production of documents, and the number of times a Department sworn employee failed to comply with a valid subpoena, and whether discipline was imposed for any such non-compliance.

Appendices

Appendix E – Agency Timeline of event and changing roles of CPRB and the Agency



Appendices

Appendix F – Definitions of Allegations

Sustained - the investigation revealed facts to support the finding of sustained as the investigation disclosed a preponderance of the evidence to prove the allegation made in the complaint.

Not Sustained - the investigation did not disclose sufficient evidence to determine whether the alleged conduct occurred.

Unfounded - the investigation disclosed sufficient evidence to determine the conduct did not occur.

Exonerated - the acts which provided the basis for the complaint did occur; however, the acts were justified, lawful and proper and not violations under law or departmental policy.

No jurisdiction - the complaint is out of jurisdiction. For example, the incident occurred with a non-City of Oakland Police Officer.

No finding - there was no finding. For example, the complainant requested to withdraw the complaint.

No MOR – No violation of OPD Manual of Rules (MOR). These are allegations that do not rise to the level of being violations of actual rules or orders.

(Ord. No. 13498, § 3, 7-10-2018)



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CITY OF OAKLAND



CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612
Police Commission

May 18, 2020

The Honorable Courtney A. Ruby
Oakland City Auditor
1 Frank Ogawa Plaza, 4th Floor
Oakland, CA 94612

RE: Joint Rebuttal Submissions

Dear City Auditor Ruby and Audit Team:

Enclosed herein please find a joint submission from the Oakland Police Commission (“Commission”) and the Community Police Review Agency (“Agency”), responding in full to the Office of the City Auditor’s April 24th Final Draft Audit Report (“Report”). Two letters address the Report’s findings and recommendations. In the first, the Commission addresses Report’s Findings 1, 2, and 5, as well as corresponding recommendations. Second, the Agency addresses Findings 3 and 4 and those recommendations. In the final enclosure, the Agency sets forth detailed responses to line items Number 17 through 34 in the accompanying matrix. As noted in remaining line items, the Commission will take up the remainder of the matrix for consideration at its next strategic retreat, which it details in the closing paragraph of its rebuttal letter.

Thank you for your time and attention.

/s/

Regina Jackson
Chair, Oakland Police Commission

/s/

John Alden
Executive Director, Oakland Community Police Review Agency

Enclosures (3): May 18, 2020 Rebuttal Letter from Oakland Police Commission
May 18, 2020 Rebuttal Letter from Oakland Community Police Review Agency
Response Matrix



CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612
Police Commission

May 18, 2020

The Honorable Courtney A. Ruby
Oakland City Auditor
1 Frank Ogawa Plaza, 4th Floor
Oakland, CA 94612

Dear City Auditor Ruby:

This is to provide the Auditor's Office ("Auditor") with the Police Commission's ("Commission") rebuttal to the Auditor's April 24 "final draft report." We are pleased the audit report acknowledges that the Commission took several successful steps toward satisfying the hundred-plus legal requirements the Auditor identifies.

①

In addition to *complying with requirements*, though, the Commission has also *exercised its authorities* in a manner that the Auditor fails to fully analyze. The Commission has focused since its inception on using its authority in furtherance of the voter's intent, as well as the principles and interests articulated City Council in Ordinance No 13498 ("Enabling Ordinance" or "Ordinance"):

- "In recent years, more and more municipal jurisdictions have involved citizens in their law enforcement review systems, and highly publicized incidents of alleged or actual police misconduct and the years-in-the-making widespread public outrage over police misconduct, especially communities of color, has brought the issue of civilian oversight to center stage in the United States";
- "In January 2003, the City entered into a Negotiated Settlement Agreement (hereinafter, NSA) with multiple plaintiffs who sued the City, alleging that Police Department officers violated plaintiffs' civil rights. Since implementation of the NSA, a federal monitoring team has audited - and continues to audit -the Department's progress in complying with each of the fifty-two (52) tasks identified in the NSA";
- "While some important progress has been made in recent years, public perception persists that the Department and the City do not adequately hold its officers accountable for misconduct, leading to an erosion of public trust in this process"; and
- "Maintaining public trust and confidence in the Police Department is essential for the Department to be able to provide the highest level of service to the community."

Despite these and related broad statements of purpose that set out ambitious goals for the Commission – no less than comprehensive reform of policing in Oakland – the Auditor spends most of the report criticizing almost every valid exercise of the Commission's existing Charter and

- ② Ordinance authorities in the first two years of its existence. The Auditor’s criticisms fail to account for the full span of the Commission’s work or the full scope of the Commission’s authority, including as follows:
- ③ • The Auditor makes numerous misleading statements about the Commission’s policymaking track record, while mischaracterizing or flatly omitting most of the Commission’s work that falls squarely within its policymaking authority.
 - ④ • The audit report blatantly mischaracterizes the Commission’s removal authority. The report suggests the Commission’s removal authority is rare amongst police commissions, but then acknowledges that San Francisco, Los Angeles, and Honolulu each grant their police commissions exclusive removal authority.¹ On Page 14, the audit report falsely states “On February 20, 2020, the Police Commission fired the Chief of Police without cause,² with the approval of the Mayor.” The Chief was jointly removed by the Police Commission and the Mayor, in conformance with the Charter.
 - ⑤ • The audit report fails to credit the Commission for partnering with community-focused non-profits to do cutting edge work around policing issues. Instead, the audit report dismisses each partnership solely as an alleged violation of contracting rules on Page 25 – staking out a position that contradicts the Office of the City Attorney’s (“City Attorney”) training and presentation materials.
 - ⑥ • The report criticizes the Commission for the steps it has taken to determine if there is enough evidence to re-open an investigation, an authority Oakland City Council granted the Commission in the Enabling Ordinance, pursuant to the Charter. As of this writing, it is our understanding that the City Attorney has signed off on a contract for services with Knox and Ross Law Group to take on this work.

A number of the Auditor’s key findings are summarily rebutted in that table on Page 6 of this letter.

- ⑦ Given the report’s focus on policymaking, the Auditor’s flawed findings about the Commission’s policy work are worth discussing at length. To start, the audit report misrepresents the Commission’s effort to address the missing persons case of then-19-year old Oakland resident Jonathan Bandabaila. The Commission repeatedly took issue with the Department’s failure to utilize its social media in the weeks and months following the disappearance of Jonathan to properly seek his return, while the Department reportedly used its social media accounts to seek the return of someone else’s missing pet. In October of 2019, the Commission agendized a discussion on “department policy on social media for missing and abducted persons.” At that meeting, one of the Commissioners, Commissioner Harris, briefed the Commission and the public on the Department’s General Orders regarding Missing Persons and Abducted Persons and sought

¹ On Page 50 of the report, the Auditor states: “Unlike Oakland, the Chiefs of Police in these jurisdictions report directly to the police oversight body and do not report directly to anyone else in the organization.”

² “Without cause” is a legal term that solely refers to the Charter provision that authorizes joint removal of the Chief by a vote of five members of the Commission and by the Mayor as a matter of their joint discretion, *i.e.*, without requiring any formal legal finding of cause as a precursor to removal.

input from the Department to better understand the Department's interpretation of its own policy. The Commission repeatedly noted during agendized discussions about this matter that the Department should update its policies. The Auditor states on Page 29: "Although this was an unfortunate circumstance, the Commission's involvement in this matter is not consistent with the Commission's role as established in the City Charter and the Municipal Code." To the contrary, Section 604(b)(6) grants the Commission authority to review and comment on all policies. Relatedly, OPD's manual of rules in force and effect during the first two years of the Commission's tenure places a standalone duty on the Chief and her designees to update the Department's General Orders and Policies. Yet the nuances of this dynamic – exchanges on policies between two entities responsible for changing them – fail to surface in the audit report.

8

The Commission's efforts to draft and propose new policies is similarly discredited, again without basis. Take the audit report's summary of the Commission's adoption of DGO R-02: newly restricting Oakland Police officers from asking stopped individuals whether they are on probation or parole. The report fails to credit the Commission's diligent, collaborative policy work alongside the Department or to credit individual Commissioners' community-driven efforts to seek engagement before adopting the new policy. In January, February, and March of 2019, the Commission reported its efforts to establish consensus among community stakeholders, grassroots advocates, outside experts, practitioners, and almost every single member of the executive staff of the OPD. Commissioner Prather reported back on the Commission's collaboration with OPD across multiple drafts. Commissioner Anderson worked with policy-oriented nonprofit advocacy groups and direct service organizations to redraft key legislative language in the policy. Commissioner Harris reached out to a group of people with life sentences who were released on parole and have re-acclimated, to ensure the Commission could host them, hear their voices personally, and examine the personal impact of treating police stops as extensions of the parole system.³ Once the Commission finalized its policy, the Department disputed the Commission's final version, which required the Commission to present its version alongside the Department's preferred version for the City Council to resolve. On July 9, 2019, Commissioner Anderson represented the Commission's version before the Oakland City Council, and the Council voted unanimously in support of the Commission's version of DGO R-2. Yet despite all of this policy drafting and consensus building, the audit report summarizes the Commission's half-year effort with three sentences; and none of these details are raised. None of the challenges or roadblocks the Commission successfully navigated appear in the audit report. The report states instead: "The Commission reviewed and approved two policies through 2019."

9

The audit report entirely neglects the Commission's year-long effort to review and overhaul the Department's Use of Force policies as whole. While the audit briefly discusses certain individual policy changes,⁴ those changes were independent of the ongoing overhaul of the entire policy. To

³ The Auditor has confirmed it reviewed the transcripts of these meetings. None of these details appear in the report, and instead, the Auditor inadequately summarizes the Commission's diligent work as "The Commission heard directly from impacted communities, including those currently on parole and probation, and community advocates in developing this policy."

⁴As Pages 8 and 9 of the audit report reflect, in August of 2019 at the urging of the Department, the Commission endorsed a policy change called "Special Order 9196," which addressed the deficiencies detailed in an August 2019 report issued by the Department's Inspector General. Then, in December 2019 and January 2020, the Commission passed an interim update to the Use of Force policy to account for the statewide changes it first helped to urge forward when it endorsed AB 392 in April 2019. In February 2020, the Commission responded to the Department's urgent

be clear: this broader goal is the most ambitious policy work the Commission could have possibly cut out for itself, which explains why a final overhaul was not “approved” in 2019. Use of Force changes affect several Department General Orders and Training Bulletins. One Commissioner described the overhaul as a “bear” in meeting transcripts, which he learned by connecting with professionals in the field and researching the particulars of other municipalities’ policies. The Department agreed with the Commission that the undertaking requires a considerable amount of time. Yet there is no mention whatsoever of this policy overhaul process in the audit.

The Commission’s Use of Force overhaul started as early as April of 2019, after the Commission sent a letter to the state legislature urging it to require statewide that police only use lethal force when legally necessary (known as AB 392). With AB 392 in process, the Commission decided to take on the major task of adjusting local policy so that Oakland’s requirements held its Department to higher standards than the new state requirements. Throughout 2019, developments related to the N.S.A. federal court settlement process created new concerns about points of Use of Force policy and by necessity changed the scope and nature of the overhaul. In August of 2019, the Department’s own Inspector General reported that potential misconduct was found in 45% of audited incidents. In every instance where the Department’s Inspector General determined that officers did not properly report Use of Force, the subject of the unreported force was reportedly either Hispanic or African American.⁵ In December of 2019, another incident was raised with respect to the Department’s alleged failure to deescalate a mentally ill individual, who instead was seemingly subject to excessive use of force despite not presenting a threat. These significant developments all occurred during the audit period, and the Charter authorizes the Commission to propose policies that address “elements” of the N.S.A. federal court settlement process, yet the N.S.A. process is barely mentioned in the audit report.⁶

Undaunted by the additional policy work, the Commission at each juncture responded with what Commissioner Prather called a “two track” approach, the first to address and approve individual policy changes responsive to the N.S.A. process or changes to state law, and the second “to get involved deeper into the research” on the overhaul and prepare for what would be at least “a year’s

demand to make additional changes to its Special Order 9196, which the Commission promptly approved.

⁵ A public speaker who is now a Commissioner, Vice Chair Henry Gage, detailed the report’s findings at the May 23, 2019 meeting. “Page 8, the IMT reviewed 71 use of force complaints, from August, September and November 2018. 71 reports, 67% involved the use of force against a black person. 35 of those events involved an officer pointing a weapon. Of those 35 events, excuse me, separate stat. Of those 35 events, 71% of that 35 involved pointing a weapon at a black person. Which, to me, says that it’s shameful, that after 16 years of federal oversight, the Oakland Police Department is still disproportionately using force against black people, but wait, it gets worse. “Page 9, the IMT noticed that in multiple instances, multiple officers worked in concert to control a subject, but reporting only identified a single officer as using force. Assisting officers were listed as witnesses, because they believed their actions were not reportable uses of force. Again, disturbing, after 16 years of federal oversight. Oh, but wait, it gets worse. Page 9, in approximately 10% of those 71 incidents, OPD personnel failed to activate their body cameras. In some cases, body cameras weren’t activated until after the use of force had occurred, after 16 years of federal oversight. What’s going on? But, wait, it gets worse. Because the IMT informed OPD, regarding this non-reporting of use of force and the initial response was to defend the processes that currently existed in the department and to question the, ‘identified problematic cases.’ Come on.”

⁶ Section 604(b)(4) of the Charter vests the Commission with the power to propose changes to any policy, procedure, custom, or General Order that contains “elements expressly listed in federal court orders or federal court settlements which pertain to the Department and are in effect at the time this Charter Section 604 takes effect for so long as such federal court orders and settlements remain in effect.”

worth of work.” By July 2019, the Use of Force ad hoc policy committee reported back to the Commission with a plan for its second track, the Use of Force overhaul, both to enlist research experts and to revise the entire policy, including in light of the details publicly reported by the federal court settlement process. The ad hoc committee met regularly in fall and early winter of 2019, within the reporting span the audit claims to review, to address individual Use of Force policy sections including core principles, defined terms, general considerations and policy, levels of force, levels of resistance, and de-escalation of force. Since then and through to today, the ad hoc has met on numerous occasions and reviewed every single section of the Department’s current Use of Force policy for revisions. By February and March of 2020, the Use of Force ad hoc committee prepared a public reporting process to announce new meetings and areas of sustained focus. In short, the Commission has done far more than review and approve a mere two policies.

10 As one final point worth rebutting, the audit report on Page 31 proposes that the Commission take a more “global view” of racial profiling in policing. This is an odd phrase, given that Oakland is a global city setting the pace on police oversight. The audit report recommends the Commission confine its oversight work to the Ontario, Canada Human Rights Commission’s guidelines to address racial profiling. The Ontario Human Rights Commission is not the Ontario Police Commission, and it has no experience with Oakland’s Police Department, not to mention its limited insight into the legal frameworks required by constitutional policing in American cities like Oakland. The Oakland Police Commission’s views on racial profiling are and will properly remain specific to the City of Oakland, to Oakland’s history, and to Oakland’s Police Department.

11 In closing, we appreciate the Auditor’s acknowledgement that a volunteer Commission subject to over one hundred legal requirements is already straining limited resources. This insight extends to the Auditor’s own matrix of proposed new requirements, many of which stem from a misunderstanding of this Commission’s work to date. Accordingly, the Commission will table full consideration of the Auditor’s priorities until our next off-site strategic retreat, pandemic permitting. At the retreat, we will consider the Auditor’s priorities and decide how best to strengthen internal governance, which is vital to ensure the Commission’s continued success in carrying out the vision set forth by the voters of Oakland and the Oakland City Council. For the time being, we will refocus on the matters of Commission business that we already committed to carrying out over time. We commend you for your work, thank you for this opportunity to reflect on ours, and look forward to our continued collaboration.

Sincerely,

/s/

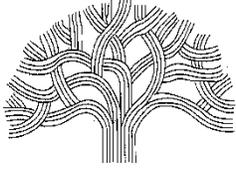
Chair Regina Jackson
Oakland Police Commission

Summarized Table of Disputes

12	The Auditor incorrectly alleges that the Chair of the Commission “directed” OPD “to write a report on [a complaint] to be presented at a later Commission meeting.”	The transcript at issue contradicts the Auditor’s allegation: <ul style="list-style-type: none"> From the dais, Chair Jackson to Deputy Chief Leronne Armstrong: “Can you provide any insight into this complaint or can you look into it and come back to us, so that we can sit down and try and resolve this as soon as possible?” D.C. Armstrong: “Leronne Armstrong, deputy for police. Yes, we can provide you an informational report. We’re very familiar with this location and so we could definitely provide an informational report.”
13	The Auditor incorrectly alleges “The Commission directed an OPD Manager to attend a Commission meeting even though the Manager had planned to be on vacation.”	This is false. The Commission first submitted a request for information in May of 2019. After reiterating the request for six months, the Commission agendaed the issue on October 10, 2019. On October 7, 2019, the Director in question insisted that the Commission should again delay the item by two weeks, as she had pre-scheduled a vacation. The Commission proceeded with the agenda item but expressly did not require the OPD Manager to attend.
14	The Auditor claims that the Commission fails to structure its agendas to address its core functions.	The Auditor has neglected to analyze crucial language in the Charter and the Enabling Ordinance, including in Section 604(b)(4) and (6), and the federal court settlement agreement expressly incorporated into Subsection (b)(4) and (5). These omissions discredit the Auditor’s interpretation of the Commission’s core functions.
15	“The Commission’s authority to evaluate and remove the Chief of Police is rare amongst other police oversight bodies.”	The Auditor elaborates on this misleading sentence, conceding that other cities in the region (<i>e.g.</i> , San Francisco, Los Angeles, Honolulu) grant their police commission identical or even more exclusive powers to remove their Chiefs of Police: “Unlike Oakland, the Chiefs of Police in these jurisdictions report directly to the police oversight body and do not report directly to anyone else in the organization.”
16	“The Commission should not be directly procuring or soliciting bids for contracts.”	The Commission exercises its purchasing authority in compliance with the City’s policies, as it has been directed to do. On September 12, 2019, the City Attorney trained the Commission on its new purchasing authority. The City Attorney advised that an “informal” bidding process is allowable for contracts between \$500 and \$49,999. The City Attorney also advised: “The CPRA Executive Director, on behalf of the Commission, may request the City Administrator to waive the informal competitive solicitation process up to 50,000.”

17	<p>The audit report mischaracterizes the Commission's subpoena to the CPRA regarding its review of the officer-involved shooting of Joshua Pawlik, stating: "There is a case that was investigated by both IAD and the Agency. Both entities generally reached the same conclusion exonerating the officers."</p>	<p>In February of 2019, the Compliance Monitor that oversees the N.S.A. found the Department's investigations into the shooting of Mr. Pawlik violated department policy.</p> <p>The independent monitoring team found and highlighted numerous errors in IAD's and the Agency's investigations, rejected IAD's principal conclusions, and faulted the Department's failure to enforce "responsible police practices."</p>
18	<p>"The Commission has not completed all required trainings."</p>	<p>While the Commission acknowledges that it must satisfy all of the required trainings, we are glad the Auditor has acknowledged the challenge posed by the City Administration's restrictions around after-hours trainings. The report confirms that trainings are only "scheduled during the day when some of the Commissioners are unable to take time from their regular jobs." We note also that the Commission has completed a number of trainings that are falsely reflected as not complete on Page 12 of the audit report, even though the Commission provided a correct, updated list of completed trainings to the audit team.</p>
19	<p>"The Commission has refused to allow the City Attorney to sit on closed session because of the lack of trust."</p>	<p>The Commission's counsel attends all closed sessions and enjoys a productive relationship with the City Attorney's Office.</p>
	<p>"The Commission has not established a code of conduct."</p>	<p>The Commission has bylaws that include provisions typically found in a code of conduct. Still, the Commission appreciates the advice and will renew our approach to governance during the next audit cycle, including by adopting a new code of conduct.</p>
20	<p>"[The Commission] did not provide an opinion as to whether the budget was aligned with OPD's policies, procedures, customs, and general orders."</p>	<p>In May of 2019, the Commission agenda'd a hearing on OPD's budget and invited the Chief. The Commission gave the Chief substantive feedback about the budget. Commissioner Prather noted that a budget is "a financial expression of the values of the department." He stated: "What I don't see here, sorry to use your term, Chief, is a transformative budget." Commissioner Prather then opined: "What I don't see here is a department that's committed to transformative change. And it needs to be reflected in this budget, and it gets short shrift at the end of the [Department's] PowerPoint. It talks about challenges and opportunities, but I think it starts from you, Chief. And your mandate on how this department needs to be run. It needs to be woven throughout this budget. In every PowerPoint, every time it's presented, it</p>

	needs to feel like the Department is committed to change.” The Commissioner’s full statement is available in a meeting transcript the auditor confirms it has reviewed. In response, the Chief expressly characterized the input as a “reprimand” and did not address any of these points.
21	“The Commission did not meet at least twice per year outside of City Hall.” The Commission held two off-site meetings in 2019, including a February 2019 community assembly at Taylor Memorial Church in Oakland and a December 2019 meeting at the East Oakland Youth Development Center.
22	“The Commission has not adequately controlled its meetings and agendas.” While the Commission will exercise greater control over speaker time, the Commission has controlled its agendas quite well, given the legal requirements it must satisfy and the vision set out by the voters of Oakland as well as the City Council.
23	“The Commission has not requested an annual report from the Chief of Police” and “The Commission did not request the City Attorney to submit semi-annual reports.” The Commission has sent out requests and acknowledges it will continue to request these annual reports.



CITY OF OAKLAND
COMMUNITY POLICE REVIEW AGENCY

250 FRANK H. OGAWA PLAZA * 6TH FL * Suite 6302 * OAKLAND, CA 94612 * 510-238-3159 * FAX 510-238-6834 * TTY 510-238-2007

May 18, 2020

The Honorable Courtney A. Ruby
Oakland City Auditor
1 Frank Ogawa Plaza, 4th Floor
Oakland, CA 94612

RE: CPRA Rebuttal Submission

Dear City Auditor Ruby and Audit Team:

Introduction

The City of Oakland Community Police Review Agency (CPRA) was created just over two years ago to undertake a bold revisioning of the Oakland police oversight system. During its first two years, the Commission has moved quickly to increase expectations for CPRA, secure new resources for CPRA, and add new leadership. Naturally, these changes take time to accomplish, and much more work needs to be done. While CPRA agrees with nearly all of the Auditor's findings with regards to the first 20 months of CPRA's performance, the Agency also sees significant accomplishments in that time. Fulfillment of the Auditor's recommendations, many of which are already completed, is a priority for CPRA and part of CPRA's overall commitment to accomplishing the vision of Measure LL.

Overview

CPRA is a work in progress.

CPRA's predecessor agency, the Civilian Police Review Board (CPRB), had a modest scope of work by comparison. The number of cases was low, sometimes only a few dozen in a year; the allegations usually were few in number within each case; and the allegations were made against a small number of officers in each case. CPRB investigators conducted relatively few interviews compared to the number completed by the Police Department in those same cases, placing the CPRB investigators in the position of reviewing the work of others in many cases, rather than investigating from scratch. The low number of cases enabled the Executive Director to

Courtney A. Ruby
 May 18, 2020
 Page 2 of 9

effectively supervise each case personally, leading to modest policies and procedures. In the police oversight field, this style of work, essentially double-checking the work of the Internal Affairs Division (IAD), is often referred to as a “review” model.

Since its inception in December of 2017 pursuant to Measure LL, CPRA has had to use the same modest resources available to CPRB to switch to an entirely different model. In this model, CPRA investigates a host of specific kinds of cases, as mandated by Charter, now numbering in the low hundreds in a year. The allegations are more complex and more numerous, and the number of officers at issue are significantly greater. CPRA investigators conduct more interviews than their CPRB predecessors, and must dig more deeply and independently into their cases than before. Rather than double-checking IAD work, CPRA now independently identifies violations and seeks discipline. CPRA’s reports are no longer merely advisory, as was the case under CPRB, but now serve as the foundation of police officer discipline litigation. In short, the Agency’s cases are now more complicated, more consequential, and more numerous, and thus require a more robust system of supervision, policy, and procedure than before. In the police oversight field, this model is often referred to as an “investigative” model.

The transition from CPRB’s review role to CPRA’s investigative role has been challenging. CPRA’s resources increased only modestly. Individual caseloads substantially increased. And in the first year and half, the Agency had three different Interim Executive Directors. The current permanent Executive Director, John Alden, came aboard one month prior to the close of the Auditor’s review of CPRA. Given this backdrop, the Auditor’s findings with regards to improvements at CPRA are to be expected. CPRA agrees with those findings in most regards, many of which have been accomplished in the roughly nine months since the close of the review period.

In addition, substantial achievements have been completed since that time. The monthly caseload is coming down, indicating that cases are being resolved faster. CPRA has sustained many cases, including some that are typically hard for civilian oversight agencies to investigate. Processes for managing CPRA’s caseload have substantially improved. These achievements indicate that CPRA is on the right track to successfully fulfill its mandate under the City Charter.

Agency Staffing

Many of the detailed responses to audit categories and specific facts contained in this Agency response are associated with staffing issues which have affected every part of the Agency’s operations and impacted its ability to perform both core and ancillary functions. The audit notes several of these factors when discussing specific identified deficiencies, however the Agency believes that the nature of these notations – spread amongst a number of specific identified deficiencies in Agency policies, procedures and core work - do not provide context for understanding the causes of these deficiencies or providing a viable path towards improvements. In December 2017, Oakland Charter Section 604 went into effect, and the Community Police Review Agency was formed from the existing staff of the previous Citizen’s Police Review Board. As noted above, this transition increased the workload on staff of the new Agency both in investigations as well as in administrative and support capacities.

Courtney A. Ruby
May 18, 2020
Page 3 of 9

Before this transition, the CPRB supervisory structure was entirely flat – all employees reported directly to the Executive Director – and most cases were directly supervised by the Executive Director. The significant increase in workload in 2018 required CPRA to transition to a more structured model of supervision. In order to address this issue, CPRA now has a mid-level supervisor, classified as a Complaint Investigator III, who supervises the investigative staff. CPRA has received authorization for, and is interviewing for, a second Complaint Investigator III to further assist with this mid-level supervision.

This transition also granted the new investigative Agency much greater power to positively determine findings and disciplinary recommendations arising from investigations of Officer misconduct by sworn members of the Oakland Police Department – on par with those of the Chief of Police and the Internal Affairs Department for the purposes of the investigations conducted by the Agency. These new powers and authorities also created additional administrative tasks associated with Agency investigations – including the need to arrive at disciplinary findings (as opposed to advisory recommendations), and the preparation of Skelly materials and other legal documentation of the investigation required to form part of the City’s official disciplinary packets for employee relations. In addition to the additional administrative tasks associated with every investigation, the Agency was also mandated under the Charter to investigate all complaints by members of the public in certain allegation categories, including use of force, profiling, and first amendment assembly; and findings for all City investigations of these categories require concurrence between the Agency and the Police Department. Therefore, not only did the administrative requirements of individual cases increase, the number of cases which the Agency was legally required to investigate also increased. In January 2018, all hiring within the Agency was frozen, further impacting the ability of existing staff to address the increased investigative demands created by the Charter change that mandated this additional work.

In addition to the increased investigative load, the Agency was tasked as the primary administrative support of the newly empaneled Oakland Police Commission – a body with vastly increased powers and range of operations over the previous Citizens Police Review Board. This administrative support included support of Commission meetings, agendas, minutes and training, as well as responsiveness to other Commission requests including in the areas of contracting, policy, interaction with other City offices, and support of Commission activities. From December 2017 until November 2018, the Agency was the exclusive channel for providing such administrative support. Beginning in November 2018, an Administrative Analyst II position was hired by the City Administrator’s Office to help support Commission activities, however the Agency continued to provide many support services. In the long run, further direct support for the Commission will be necessary.

In November 2018, the CPRA Interim Executive Director Anthony Finnell, who had transitioned to the Agency after heading the CPRB, was fired. In mid-December 2018, CPRA supervising Investigator III Karen Tom was appointed Acting Director. In May 2019, CPRA Acting Director Mike Nisperos was appointed, who served in that capacity for 3 months until the hiring of current Executive Director John Alden at the end of July, 2019. The numerous changes in Agency leadership created additional hurdles to standardizing procedures. Several institutional

Courtney A. Ruby
May 18, 2020
Page 4 of 9

controls which are cited in the City Auditor's preliminary audit draft as being deficient, including formalized mechanisms for assigning cases (for example based on case complexity), supervision of intake and investigators, staff training plans, and other operational elements which had been in place within the CPRB investigative structure and continued through the beginning of 2018 subsequently broke down through these multiple transitions, or were found inadequate to the new responsibilities of CPRA and thus were abandoned as new procedures were considered. While the Agency does not dispute many of the specific findings that these controls were not in place during the entirety of the evaluation period, these lapses are at least in part due to transitions in leadership and continuity of standardized practice through this period.

Of note, during the period analyzed, in addition to the hiring freeze detailed above, the Agency also had two members of staff (one intake technician and the Agency Policy Analyst) who took extended parental leave through the first half of 2019, and another investigator who resigned in late July 2019 prior to the hiring of additional investigative staff in September of that year under the new Director, just after the review period ended. Therefore, for considerable periods of time active Agency staffing was less than it had been as staff to the CPRB.

While none of these factors excuse lapses in investigatory controls or minimize the need to assure that such controls, additional training, and standardization of Agency practices are put into effect (many of which the Agency has implemented, and continues to develop), they provide broader context for the existence of those lapses - and are specific causes of several of them - as noted in the specific responses in this document, below, and accompanying recommendations matrix.

Agency Realm of Control

In addition to the staffing issues described above, CPRA has little or no independent control over some of the issues noted in the Auditor's report.

City Charter Section 604 establishing the Commission and Agency was created through a popular vote in the form of Measure LL, however some provisions of that legislation were crafted without concurrent identification of the resources required to bring the City into compliance with its provisions. So, for example, under section 604 the CPRA is required to occupy a public facing ground floor office location; however, assignment of City property to specific uses forms part of the City's overall space allocation plan and/or Council Approval of the purchase of additional property. The CPRA is out of compliance with this aspect of the Charter but exercises no independent control over decisions about where to locate the Agency's physical offices.

Likewise, the audit identifies the lack of an Agency outreach plan or continuing outreach activities. However, the Agency has no staff dedicated to outreach, nor any budget set aside for that purpose. All existing staff have completely occupied with completing charter-mandated tasks, leaving no bandwidth for outreach. Given the COVID financial crisis, additional resources for outreach in Fiscal Year (FY) '20-'21 appear unlikely. To properly address this deficiency, the

Courtney A. Ruby
May 18, 2020
Page 5 of 9

Agency must continue to work with other City leaders to secure additional staffing and resources specific to outreach in the future.

In addition to resource and physical plant issues, there are legal mandates that have also caused deficiencies but which the Agency cannot control. For example, current city ordinances discuss the handling of Agency “administrative closures,” and the degree to which the Oakland Police Commission is able to access and require additional investigation of cases so closed. However, “administrative closure” is a term with no legal definition in state law or City Charter and code. Likewise, aspects of the Charter language create bottlenecks to Agency processes and work-flow that require a charter amendment or additional legislation to address. For example, the Charter provision that only the Agency Executive Director is allowed access to “personnel records” is confusing, as state law defines all of CPRA’s case files as “personnel files” of police officers. This section has been interpreted to mean that only the Executive Director can access officers’ prior disciplinary history (which in most agencies is considered a mandatory step for line investigators), or attend meetings with the Police Department to reach concurrence on setting discipline in sustained cases, even in the most modest of cases. Agency efficiency is impaired by the confusion created by these well intentioned but, regrettably, poorly drafted policies, but has no independent way to address these impacts without further assistance from other parts of City Government.

As with the staffing issues discussed in the first section, issues that remain outside of direct Agency control do not by themselves change the City Auditor’s finding of deficiencies. However, this context does inform the appropriate remedies to address these findings. In addition to the above broad responses to the Audit, the CPRA has the following responses to specific findings. CPRA’s responses to specific recommendations (many of which are duplicative of the points made in the findings) are separately listed in the accompanying matrix.

AGENCY ACHIEVEMENTS

Since its creation, CPRA has had a number of significant achievements. Some are internal improvements to the agency structure and health. As detailed in responses to findings below, total staffing has improved and training programs are now underway for those staff. There are now explicit expectations for investigators around deadlines and investigative planning, forms and procedures to help structure their work, and enhanced oversight and tracking of their casework. The monthly caseload is coming down, as is time to completion of cases. CPRA now has, and continues to add, mid-level supervisors to help develop policy and streamline internal processes. Thanks to the Police Commission, leadership within the Agency has stabilized.

Other achievements are case-specific. Police officer personnel laws prohibit descriptions of the details of specific cases here. But CPRA’s statistical reports to the Police Commission since inception show significant accomplishments. For example, those reports show that CPRA often identifies allegations in cases that were not found by the Oakland Police Department in their initial review, including sustained claims of Fourth Amendment search and seizure violations, and police officer untruthfulness. Across police oversight, racial bias cases are almost never sustained, largely because they are difficult to prove. CPRA has not only sustained such a case,

Courtney A. Ruby
May 18, 2020
Page 6 of 9

but also secured Police Department concurrence in that matter. CPRA has sustained Use of Force violations, including in the most serious Level 1 Use of Force cases, which is also a rare result in oversight. Ultimately the quality of each investigation is the best measure of an oversight Agency's work, not the total number or kind of cases sustained. But these recent results show that CPRA is able to investigate the most complicated claims and, when justified by the facts, sustain discipline in those cases. For this reason, the public should be confident that CPRA can and will do the job well.

RESPONSE TO FINDING THREE

Several of the issues noted in Finding Three are not under the direct control of CPRA. Those include the findings that, during the review period in 2018-2019, CPRA:

- Is not located in a space visible to the public as the Municipal Code requires;
- Has not always received requested information from IAD and other OPD departments within 10 days;
- Has not always received notification of a complaint from IAD within 1 day;
- Needs to improve its processes for classifying and submitting administrative enclosures/dismissals to the Commission.

As noted above, allocation of office space is controlled by the City Administrator's Office, and depends on availability and budget. CPRA is eager to receive authorization for such space, and will continue to work with the City Administrator's Office on this issue.

As to information and complaints not received from OPD in a timely fashion, naturally such failures are ultimately up to the provider. CPRA now tracks such requests in each case, and communicates at both the staff and supervisory level with IAD and OPD in real time as delays occur. The information and complaints described can now be provided electronically to CPRA directly, so transmission time is no longer a factor in timely delivery.

Finally, the issue of "administrative closures" requires legislative action to resolve, and is thus outside of the direct control of CPRA. The Charter makes no mention of this phrase, nor does state law. Historically, under CPRB, there were times when this phrase was used to mean a case was closed without need of a hearing before the full Citizen Complaint Review Board. Today, under the current Charter, cases are only brought to the Police Commission's Disciplinary Committee for findings when the Police Chief and CPRA Director do not concur as to case resolution. Today, nearly all cases are resolved by reaching concurrence. If "administrative closure" were to mean all cases closed without need of a Discipline Committee, nearly every case would have to go to the Commission for approval of closure, swamping the Commission with hundreds of case closures annually. Thus, "administrative closure" does not even have a clear, sensible meaning within the current Charter process for resolving cases. CPRA is working closely with others in the City of Oakland on a ballot measure for fall 2020 that could set the stage for resolving this issue, but ultimately that relief must come from decision-makers outside of CPRA.

Courtney A. Ruby
May 18, 2020
Page 7 of 9

Several of the issues noted in Finding Three have been remedied since the Audit commenced. Those include that CPRA:

- Has not completed investigations in accordance with timeframes outlined in the City Charter and State Law;
- Has not always videotaped interviews of officers who allegedly committed Class 1 offenses;
- Has not provided sufficient training to Agency staff.
-

Since the audit period ended in August, 2019, CPRA has completed all cases within the timeframes dictated by state law. In addition, the total caseload has come down from nearly 140 cases pending at any one time to 84 cases pending, which also improves the speed of case resolution. CPRA is well on track to be able to meet the 180-day goal set in the Charter in the lion's share of cases in the future, provided that CPRA has adequate investigative staff and support. To the extent that two cases were closed late during the review period, those lapses occurred at a time that leadership was in transition, supervision of investigators was modest, internal controls were lacking, and the agency was understaffed. As described elsewhere in this response, CPRA has made great strides in securing leadership, improving supervision, creating internal controls, and augmenting staffing, such that failures to complete cases within the state's statute of limitations should never occur again.

All interviews of accused officers in Class 1 disciplinary cases are now videotaped. CPRA has videotaping equipment, and has provided all investigative staff training on how and when to use that equipment.

As to training, CPRA had a set of new hires in the fall of 2019, providing the opportunity to test a new training syllabus on those new hires. As those hires move forward to the completion of their probationary periods, CPRA will assess whether that training was successful, and how it might be improved moving forward for future hires. CPRA is now hiring for a Complaint Investigator III, which process will allow for additional staff to provide training to both Intake Technicians and Complaint Investigators.

A final sub-point within Finding Three is that CPRA "[d]oes not meet the City Charter's staffing requirements." In this regard, CPRA has made great strides. In the fall of 2019, just after the evaluation period ended, CPRA hired three more Complaint Investigator IIs. CPRA also began the process of securing approval for an additional Complaint Investigator III in 2019, received approval for such a hire in early 2020, and is interviewing candidates now (May 2020). Full staffing should be accomplished in the summer of 2020.

RESPONSE TO FINDING FOUR

An overarching issue in Finding Four, as the Auditor observes, is what sort of agency CPRA should be: an investigative agency, or a review agency? CPRA and the Police Commission have discussed this issue since the close of the review period, and reached consensus that CPRA

Courtney A. Ruby
May 18, 2020
Page 8 of 9

should strive to achieve the investigative model as much as possible. In this regard, CPRA concurs with most of the Auditor's points in Finding Four.

In Finding Four, the Auditor noted that CPRA had not formalized its complaint intake process. Since the review period ended, CPRA has given Intake Technicians much more detailed instructions about identifying allegations, requesting evidence, and how and when to memorialize and organize the results. Moving forward, CPRA seeks to hire an additional Complaint Investigator III to assist with supervision, including creation of enhanced structure for Intake Technicians.

The Auditor also noted that CPRA had not documented its considerations for assigning staff to conduct investigations. This may be one of the few points with respect to which CPRA and the Auditor have some disagreement. Each case is unique, and so are the skill sets of each investigator. All Complaint Investigator IIs should have similar baseline skills, but naturally some may speak different languages other than English, have greater skill with specific kinds of cases, or be better at achieving rapport with certain kinds of complainants. Understanding how these soft skills match, or do not match, specific cases is difficult to quantify in a routinized way. Likewise, caseloads and deadlines vary from investigator to investigator, and sometimes assigned cases take unexpected turns. Supervisors in this field must develop the human touch of assessing how these varied factors make one or another investigator best suited to specific cases. The following three sub-points listed in Finding Four have been addressed since the Auditor's review period. The Auditor noted in those three points that CPRA had not:

- Established formal planning processes for investigations;
- Documented requirements for investigations; and
- Established a quality control system to ensure that its policies and procedures are followed.

CPRA now requires Complaint Investigators to complete an investigative plan within the first week in which they are assigned the case. CPRA has a standard investigate plan template for this purpose, listing key requirements in each case. Each investigator customizes their plan for each case and submits that plan to their supervisor for approval. This process prompts each investigator to discuss with their supervisor a strategy for gathering and assessing the evidence relevant to the allegations in their case, and doing so expeditiously. These investigative plans also provide a yardstick against which the timeliness and thoroughness of the investigator's work is assessed at the end of the investigation.

These investigative plans are in keeping with a series of new case management policies and procedures at CPRA. CPRA now has deadlines for key steps in cases for both Intake Technicians and Complaint Investigators, forms and procedures for documenting 3304 (statute of limitations) calculation and proof, and standardize report forms that include a signature line for the Investigator and Executive Director. The standardization of final reports is especially helpful in assessing the work of investigators in a neutral way across all incumbents within the job

Courtney A. Ruby
May 18, 2020
Page 9 of 9

classification, and ensuring thorough, complete final products. These policies, among others, have substantially increased supervision, evaluation, and auditing of casework.

In addition, CPRA agrees with the Auditor that having investigators complete their own interviews of key officers, rather than merely relying on those conducted by IAD, is essential in completing high quality investigations. CPRA now starts cases earlier, giving the Agency more time to complete such interviews, and encourages CPRA staff to conduct their own interviews whenever possible. To facilitate this, CPRA has provided additional interview technique training to investigators, has required investigators to assess which interviews they might want to conduct themselves as part of their investigative plan, and has trained investigators on techniques for complying with recent state law changes regarding second interviews of officers so as to encourage second interviews as a viable tool for investigators.

Finally, the Auditor found that CPRA had not implemented a strong management information system to monitor the status of investigations and to provide statistical data on its performance. CPRA agrees that the database project, as it stood during the review period, was not yet adequate to monitor the status of investigations. Since that time, CPRA has renewed its engagement with the City of Oakland Information Technology Department on this issue to improve the database, especially tools in that database for tracking case progress.

CONCLUSION

CPRA has made great strides in its first two years. While the Auditor is correct that CPRA still had not completed eight of the Charter's requirements by August, 2019, the Auditor also found that the Agency completed another 31 Charter requirements in those first two years. Nearly all of the Agency's remaining eight tasks, as identified by the Auditor, have been completed since the audit period ended in August, 2019. CPRA has made tremendous progress in caseload, staffing, management, and policies and procedures. And the Agency has even managed to sustain difficult, complex cases during that time. Overall, CPRA is progressing well given the tremendous challenges involved in transitioning from CPRB to CPRA.

Sincerely,



John Alden
Executive Director
Community Police Review Agency

Enclosure: Auditor's Matrix



Office of the City Auditor

City of Oakland Performance Audit of the Oakland Police Commission & the Community Police Review Agency (CPRA) Management's Response

	City Auditor's Recommendations	Management Action Plan	Responsible Party	Target Date to Complete
1	<p>To increase its effectiveness and ensure compliance with the City Charter and the Municipal Code, the Commission should implement the following recommendations:</p> <ol style="list-style-type: none"> 1. Propose to add a senior level staff to assist the Commission in implementing its annual work plan and strategic plan, in addition to managing the day to day responsibilities of the Commission. 2. Develop formal goals and objectives to measure whether the Commission is having a positive effect on policing in Oakland. 3. Develop a strategic plan that identifies what the Commission needs to do to achieve its goals and objectives, including implementing all City Charter and Municipal Code requirements and including a plan for outreach to the community. 	<p>Items 1-5, 7, and 8 will come up for consideration at Commission's next off-site strategic retreat.</p>	<p>Commission</p> <p>Commission</p> <p>Commission</p>	<p>Consideration of items 1-5, 7, and 8 in process</p>



CITY OF OAKLAND

Office of the City Auditor

City of Oakland Performance Audit of the Oakland Police Commission & the Community Police Review Agency (CPRA) Management’s Response

	<ul style="list-style-type: none"> 4. Develop annual workplans to address its strategic plan goals. 5. Develop policies and procedures for its agenda management process, including compliance with the Brown Act and ensure agenda items are within its jurisdiction and are prioritized based on importance. 6. Develop policies and procedures, or by-laws, for conducting all aspects of the Commission’s oversight function including: <ul style="list-style-type: none"> a. Establishing by-laws that govern how the Commission should operate including defining the roles of the Chair, the Vice-Chair, and its committees b. Developing an effective process to review OPD’s policies, practices, customs, and general orders to identify and prioritize areas for improvement. In addition, prioritize new policies and practices c. Monitoring the training requirements of Commission members and consider providing some trainings online so that 		<p>Commission</p> <p>Commission</p> <p>See Rebuttal</p>	
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Office of the City Auditor

**City of Oakland Performance Audit of the Oakland Police
Commission & the Community Police Review Agency (CPRA)
Management's Response**

	<p>Commissioners can take them at their convenience</p> <ul style="list-style-type: none"> d. Requesting and reviewing reports from the Chief of Police and the City Attorney e. Evaluating the Chief of Police and Agency Director at least annually f. Reviewing and commenting on the education and training of OPD's sworn employees regarding the signs and symptoms of stress, drug abuse, alcoholism, and emotional health issues g. Reviewing and approving administrative closures and dismissal of cases h. Reviewing OPD's budget to ensure that it aligns with OPD's policies, procedures, customs, and general orders i. Ensuring full-compliance with the Brown Act j. Meeting, as a body, at least twice per year outside of City Hall 			
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Office of the City Auditor

**City of Oakland Performance Audit of the Oakland Police
Commission & the Community Police Review Agency (CPRA)
Management’s Response**

	<ul style="list-style-type: none"> • Department presentations • Organizational/departmental videos <p>The orientation program should also cover issues relevant to Commissioners such as:</p> <ul style="list-style-type: none"> • Legal requirements and conflicts of interest • Expectations regarding ethical conduct • Provisions regarding sunshine laws or open meeting laws • City norms, policies, procedures, and by-laws • Meeting protocols (seating, use of technology on the dais, meeting etiquette, Robert’s Rules of Order) • Commissioners’ roles regarding its own committees and serving on other boards and committees • Media relations (including social media) • Contact and Communication with staff <p>In addition, the City should assign a liaison to the Commission and other bodies to mentor them in the matters described above.</p>			
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Office of the City Auditor

City of Oakland Performance Audit of the Oakland Police Commission & the Community Police Review Agency (CPRA) Management's Response

	<p>To improve the working relationship between the City Administration and the Police Commission, the City Administration and the Commission should:</p> <p>10. Convene working sessions to discuss their differences, clarify their respective roles, understand respective boundaries, and develop some solutions to improve their working relationship. If matters cannot be resolved, the City should consider hiring a mediator to assist the City Administration and the Commission in working out their differences.</p>		<p>City Administration and Commission</p>	
2	<p>To address these issues, the Commission should implement the following recommendations:</p> <p>11. Use a more systematic approach for addressing racial profiling in law enforcement in Oakland. This approach should include, but not be limited to acknowledging racial profiling as a reality, engaging the communities affected, adopting policy guidance to address and end racial profiling, implementing data collection of race data to measure progress in reducing racial-disparities in law and monitoring progress to assess</p>		<p>See Rebuttal</p>	



Office of the City Auditor

City of Oakland Performance Audit of the Oakland Police Commission & the Community Police Review Agency (CPRA) Management's Response

	<p>whether new policies are having a positive effect on reducing racial profiling.</p> <p>12. Obtain training on conducting and managing public meetings, including how to address public comments in general.</p> <p>13. Ensure agenda items are consistent with the Commission's mission and enforce limits on public comments.</p> <p>14. Develop a written code of conduct policy. This policy should address the desired behavior and values that the Commission should be promoting. The policy should also address the enforcement of the policy such as censure or removal from the Commission if the Commissioners do not comply with the code of conduct.</p> <p>15. Develop a comprehensive social media policy that explains restrictions on how Commissioners can use social media.</p> <p>To address situations when Commissioners contact City staff directly, the City Administration should:</p> <p>16. Develop the following protocols:</p> <ul style="list-style-type: none"> • Guidance reminding staff to not respond to Commissioners without authorization and for notifying 		<p>See Rebuttal</p> <p>See Rebuttal</p> <p>See Rebuttal</p> <p>See Rebuttal</p> <p>See Rebuttal</p>	
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Office of the City Auditor

**City of Oakland Performance Audit of the Oakland Police
Commission & the Community Police Review Agency (CPRA)
Management's Response**

	<p>department officials of when Commissioners contact staff directly</p> <ul style="list-style-type: none"> • Guidance addressing situations when Commissioners contact staff directly • Guidance elevating the matter to the Commission, the City Council, or to the City Attorney 			
<p>3</p>	<p>To ensure compliance with the Municipal Code requirement regarding the Agency's office location, the City Administration and the Agency should:</p> <p>17. Work together to obtain space for the Agency that is consistent with the requirements specified in the Municipal Code.</p> <p>To assist in fulfilling the requirements of the City Charter and the Municipal Code, the Agency should:</p> <p>18. Work with Human Resources to ensure that hiring lists are kept up-to-date to have sufficient candidates available for hiring when vacancies occur.</p>	<p>17. Agreed. CPRA looks forward to working with the City Administrator's Office to locate suitable office space.</p> <p>18. Agreed. CPRA now maintains current lists for the Complaint Investigator II and Complaint Investigator III positions. These lists will be updated regularly, and as frequently as the City of Oakland Civil Service Rules</p>	<p>City Administrator's Office</p> <p>CPRA in conjunction with Human Resources Management.</p>	<p>Completed</p>



Office of the City Auditor

City of Oakland Performance Audit of the Oakland Police Commission & the Community Police Review Agency (CPRA) Management's Response

	<p>19. Establish written goals and objectives regarding the timeliness of their investigations. It should define the various aspects of the investigative process that need to be tracked. Finally, it should develop management reporting systems to allow management to monitor the timeliness of investigations.</p>	<p>allow. CPRA shares the classification of Intake Technician with the Police Department, and in the future will work with the Police Department on keeping that list current, also.</p> <p>19. Agreed. Since this audit was conducted, CPRA instituted written deadlines for the work of Intake Technicians and Complaint Investigators. These deadlines include separate dates for completion of key tasks, such as ordering documents, intake summaries, investigative plans, and investigative reports, among other tasks. These deadlines are monitored through reports and submission of key documents up to supervisors, and feedback in performance evaluations.</p>	<p>CPRA</p>	<p>Completed</p>
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Office of the City Auditor

**City of Oakland Performance Audit of the Oakland Police
Commission & the Community Police Review Agency (CPRA)
Management's Response**

	<p>20. Develop written policies and procedures to ensure investigations are concluded in a timely manner.</p>	<p>20. Agreed. As noted in #19, Intake Technicians and Complaint Investigators have been instructed in writing to meet specific deadlines for specific steps in the investigative process. These include creation of an investigative plan at the inception of a Complaint Investigator's work on a case so they can create a strategy for prioritizing cases and allegations within cases, and strategies for timely gathering of the relevant evidence.</p>	<p>CPRA</p>	<p>Completed</p>
	<p>21. Develop written policies and procedures to ensure all interviews with officers who allegedly committed Class I offenses are videotaped.</p>	<p>21. Agreed. All Complaint Investigators have been instructed in writing to videotape interviews in Class I cases. CPRA also has videotaping equipment, and has instructed Investigators as to how to use that equipment and store the resulting recording.</p>	<p>CPRA</p>	<p>Completed</p>



CITY OF OAKLAND

Office of the City Auditor

City of Oakland Performance Audit of the Oakland Police Commission & the Community Police Review Agency (CPRA) Management’s Response

	<p>22. Develop policies and procedures to ensure that investigators document the date that information is requested and received from OPD to track compliance with the 10-day requirement. Moreover, the Agency should work with OPD to receive information via direct access.</p>	<p>22. Agreed. All Intake Technicians and Complaint Investigators now track requests made to OPD in their files, and also track when the documents are received. Staff are instructed to escalate failure to provide documents in a timely fashion to supervisors, who in turn alert senior staff at OPD to the failure. OPD and IAD now have a secure electronic delivery mechanism for most documents, which speeds delivery and facilitates tracking.</p>	<p>CPRA</p>	<p>Completed</p>
	<p>23. Develop policies and procedures to ensure complaints are received timely from IAD, within 1 day of IAD’s receipt.</p>	<p>23. Agreed. CPRA now has an electronic transmission mechanism for instantaneous receipt of complaints directly from IAD. All that remains is for IAD to transmit them.</p>	<p>IAD</p>	<p>CPRA work completed.</p>



Office of the City Auditor

City of Oakland Performance Audit of the Oakland Police
Commission & the Community Police Review Agency (CPRA)
Management's Response

	<p>24. Establish criteria for defining administrative closures and immediately begin reporting all administrative closures to the Police Commission on a regular basis.</p>	<p>24. Agreed. The term “administrative closure” has no clear meaning given the work flow described in Charter Section 604. CPRA has worked with the City Council and others to facilitate a ballot measure in fall 2020 that would eliminate the need for the term “administrative closure.” Once the ballot measure has appeared on the ballot – or it is confirmed it will not be placed on the ballot – CPRA will work with other City agencies to present follow-up legislation either eliminating the use of this term, or giving it a meaning that fits within the structure of the City Charter.</p>	<p>CPRA in conjunction with City Council and Office of the City Attorney</p>	<p>Early 2021</p>
	<p>25. Develop and implement a formal training program for all Agency staff.</p>	<p>25. Agreed. CPRA implemented a training program for a set of new Complaint Investigators in the fall of 2019. As these Complaint Investigators progress to</p>	<p>CPRA</p>	<p>First Iteration Completed. CPRA will continue to improve this product.</p>



CITY OF OAKLAND

Office of the City Auditor

City of Oakland Performance Audit of the Oakland Police Commission & the Community Police Review Agency (CPRA) Management's Response

	<p>26. Develop an outreach plan that includes written goals and objectives, outreach activities, and monitoring reports to assess its progress in reaching its outreach goals.</p>	<p>completion of their probationary periods, CPRA will assess whether that training program should be continued or modified.</p> <p>26. Agreed. Within the current CPRA staffing structure, there are insufficient personnel to conduct outreach. CPRA requested funding for outreach personnel in their original FY 20/21 budget proposal. Given the financial shortfalls caused by COVID, funding for such a position is uncertain. The outreach plan described here will not be accomplishable until FY 21/22 if additional staffing cannot be secured in FY 20/21.</p>	<p>CPRA</p>	<p>Late 2021, depending on budget allocations for FY '21-'22.</p>
<p>4</p>	<p>To ensure efficient, effective, compliant, and consistent investigations, the Agency should:</p>			



Office of the City Auditor

City of Oakland Performance Audit of the Oakland Police Commission & the Community Police Review Agency (CPRA) Management's Response

	<p>27. Define and document the overall processes necessary to undertake investigations, including establishing policies and procedures for the intake process.</p> <p>28. Establish and document a formal process for assigning staff to an investigation that considers the complexity of the investigation, staff experience and background, and whether the investigator is independent and free from personal impairments.</p>	<p>27. Agreed. CPRA is currently hiring for an additional Complaint Investigator III to oversee, define, and document the intake process. CPRA has created a first iteration of policies and procedures for both investigations and intake through performance expectations, and will be refining those as they are tested this calendar year.</p> <p>28. Disagree. The assignment of cases to individual investigators is complex, and depends heavily on matching individual skills to the unique complexities of each case. Overall the assignment process is a soft skill art, not a process susceptible to hard routinization as suggested here.</p>	<p>CPRA</p> <p>CPRA</p>	<p>Late 2020.</p>
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Office of the City Auditor

City of Oakland Performance Audit of the Oakland Police Commission & the Community Police Review Agency (CPRA) Management's Response

	<p>29. Agency management should ensure all job qualifications are met before hiring an investigator, as the role of an investigator requires extensive experience and the ability to interpret applicable laws and regulations.</p> <p>30. Establish procedures for the planning of investigations, including creating a standard investigation plan with clear objectives and methodology for the investigation. This plan should be reviewed and approved by the Supervisor before the formal investigation commences.</p> <p>31. Standardize reports to ensure consistency in how investigations are conducted and reported. In addition, the Executive Director should formally sign off on the final report of the investigation.</p>	<p>29. Agreed, within the rules set forth in the civil service system.</p> <p>30. Agreed. CPRA has recently created a requirement that Complaint Investigators create investigative plans for each case. This calendar year, CPRA will assess which plans were the most effective as we refine standardized investigative plans moving forward.</p> <p>31. Agreed. CPRA has created a standardized report structure and begun using it across all investigations. That form includes a signature line for the Executive Director and also the assigned Complaint Investigator.</p>	<p>CPRA and Human Resources Management.</p> <p>CPRA</p> <p>CPRA</p>	<p>Completed.</p> <p>Completed.</p> <p>Completed.</p>
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Office of the City Auditor

**City of Oakland Performance Audit of the Oakland Police
Commission & the Community Police Review Agency (CPRA)
Management's Response**

	<p>32. Establish policies and procedures that outline which phases of an investigation require quality review and how this will be documented.</p> <p>33. Management should acquire a case management system to assist management in performing its responsibilities of case management and reporting, measuring its accomplishments, and responding to inquiries.</p> <p>34. Work with the Commission to establish the preferred investigative agency oversight model.</p>	<p>32. Agreed. CPRA has already implemented supervisory review at the initial screening, intake summary, investigative plan, and report writing stages of the investigation. The intake summary, investigative plan, and final report are all documented, which assists with quality control.</p> <p>33. Agreed. CPRA continues to work with IT to improve the existing CPRA database in this regard.</p> <p>34. Agreed. CPRA has reached a consensus with the Commission that CPRA should move towards the investigative model.</p>	<p>CPRA</p> <p>CPRA and Information Technology.</p> <p>CPRA and the Police Commission.</p>	<p>Completed.</p> <p>Mid-2021.</p> <p>Completed.</p>
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CITY OF OAKLAND

Office of the City Auditor

City of Oakland Performance Audit of the Oakland Police Commission & the Community Police Review Agency (CPRA) Management’s Response

5	<p>As it considers changes to the City Charter and the Municipal Code, the City Council should:</p> <p>35. Consider the following questions in regard to the Commission’s authority to fire the Chief of Police:</p> <ul style="list-style-type: none"> • Who should be vested with the authority to fire the Chief of Police for cause? • Who should be vested with the authority to fire the Chief of Police without cause? • What processes and controls should be put in place to ensure the actions taken to remove the Chief of Police are fair to all concerned and do not pose significant liability issues for the City? <p>36. Debate the pros and cons of the various methods used to select Commissioners.</p> <p>37. Consider revising the City Charter to allow the City Council to review and approve Commissioners individually, instead of a slate of candidates.</p> <p>38. Consider amending the requirements for selection panel members to eliminate potential conflicts of interest and the</p>		See Rebuttal	
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Office of the City Auditor

**City of Oakland Performance Audit of the Oakland Police
Commission & the Community Police Review Agency (CPRA)
Management's Response**

	<p>Municipal Code should be amended to eliminate the provision that exempted members who were previously grandfathered onto the selection panel.</p> <p>39. Develop language in the proposed ballot measure to prohibit the Commission from participating in administrative activities and directing staff.</p> <p>40. Develop clarifying language, if needed, in the proposed ballot measure to clearly identify the Commission's authority and responsibilities.</p> <p>41. Reassess the Commission's requirements from the City Charter and the Municipal Code to determine whether a Commission comprised of part-time volunteers can effectively address those requirements or whether the City Council should eliminate requirements in the proposed City Charter amendment or in the Municipal Code.</p>			
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City Administration's Response

City Auditor's Recommendations	Management Action Plan	Responsible Party	Target Date to Complete
To ensure new Commissioners and oversight bodies are prepared to assume their duties prior to being seated, the City Administration, with the assistance of the Commission, should:			
<p>9. Establish a formal orientation program which includes the following:</p> <ul style="list-style-type: none"> • Meetings with the local government manager and other Commissioners • Orientation notebook • Department presentations • Organizational/departmental videos 	<p><u>Agreement</u></p> <p>Staff will work with the Mayor's Office in developing a formal orientation program.</p>	<p>City Administrator's Office in conjunction with the Mayor's Office.</p>	<p>June 2021</p>
<p>The orientation program should also cover issues relevant to Commissioners such as:</p> <ul style="list-style-type: none"> • Legal requirements and conflicts of interest • Expectations regarding ethical conduct • Provisions regarding sunshine laws or open meeting laws • City norms, policies, procedures, and by-laws • Meeting protocols (seating, use of technology on the dais, meeting etiquette, Robert's Rules of Order) • Commissioners' roles regarding its own committees and serving on other boards and committees • Media relations (including social media) • Contact and Communication with staff 	<p><u>Agreement</u></p> <p>This will require coordination with the Mayor's Office, City Attorney's Office, Public Ethics staff and board liaisons to complete the Auditor's recommendations in developing a training program for all board/commission members.</p>	<p>City Administrator's Office in conjunction with the Mayor's Office, City Attorney's Office, Public Ethics Commission, board/commission liaisons.</p>	<p>June 2021</p>

City Administration's responses to: MATRIX - Performance Audit of Police Commission and CPRA

City Auditor's Recommendations	Management Action Plan	Responsible Party	Target Date to Complete
In addition, the City should assign a liaison to the Commission and other bodies to mentor them in the matters described above.	<p><u>Agreement</u></p> <p>The City currently assigns a staff liaison to each of the boards and commissions; however, a formalized program with regular or annual meetings may be required.</p>	City Administrator's Office in conjunction with the Mayor's Office.	June 2021
To improve the working relationship between the City Administration and the Police Commission, the City Administration and the Commission should:			
10. Convene working sessions to discuss their differences, clarify their respective roles, understand respective boundaries, and develop some solutions to improve their working relationship. If matters cannot be resolved, the City should consider hiring a mediator to assist the City Administration and the Commission in working out their differences.	<p><u>Agreement</u></p> <p>The Administration will invite the Chair and Vice Chair of the Commission to schedule regular meetings with the City Administrator and liaison to the Police Commission.</p>	City Administrator's Office in conjunction with the Chair and Vice Chair of the Commission.	July 2020 target date to schedule next meeting.

City Administration's responses to: MATRIX - Performance Audit of Police Commission and CPRA

City Auditor's Recommendations	Management Action Plan	Responsible Party	Target Date to Complete
To address situations when Commissioners contact City staff directly, the City Administration should:			
16. Develop the following protocols: <ul style="list-style-type: none"> • Guidance reminding staff to not respond to Commissioners without authorization and for notifying department officials of when Commissioners contact staff directly • Guidance addressing situations when Commissioners contact staff directly • Guidance elevating the matter to the Commission, the City Council, or to the City Attorney 	<u>Agreement</u> Staff in the City Administrator's Office will develop an Administrative Instruction following the recommendations by the City Auditor's Office.	City Administrator's Office.	June 2021
To ensure compliance with the Municipal Code requirement regarding the Agency's office location, the City Administration and the Agency should:			
17. Work together to obtain space for the Agency that is consistent with the requirements specified in the Municipal Code.	<u>Agreement</u> City Administration recognizes this recommendation and is working to address space issues for the entire organization in the Civic Center.	City Administrator's Office and Public Works Department.	To be determined. Completion will depend on available funding and physical space as staff works to address relocating departments to maximize usage of the Civic Center complex.

City Auditor's Response to the Police Commission's Response

To provide clarity and perspective, we are responding to the Oakland Police Commission's (Commission) rebuttal to the Office of the City Auditor's (Office) report. First, we would like to point out we strongly disagree with the tone and the misleading or inaccurate statements in the Commission's response. The misleading and inaccurate statements are addressed in our response below. We also would like to point out that the Office made a few clarifying changes to the report, in response to the Commission's comments, and in a few instances, we provide more context on the Commission's performance. These changes are described below.

Before we address the Commission's response, we would like to emphasize several key points. First, the audit was conducted in full compliance with Generally Accepted Government Auditing Standards (GAGAS), including rigorously gathering and reviewing evidence to support all the audit report's findings and conclusions. Additionally, the Office follows a laborious internal report review process to ensure the evidence obtained supports the audit's findings and conclusions before the report is publicly released.

Secondly, the Office's vetting of the audit report's findings was extensive. In late February to early April, we held meetings to go over the audit findings with the Commission, the Agency, the City Administrator's Office, the City Attorney's Office, and the Oakland Police Department. With the Commissioners, the Office held four separate meetings, totaling approximately 15 hours to obtain their input on the report. As a result of these meetings, we made significant modifications to the report and issued three separate draft reports. On April 24, 2020, the Office transmitted the final confidential draft report to the Commissioners and requested a written response to the final draft report, *The Oakland Police Commission and Community Police Review Agency Performance Audit*. On April 27, the Office extended an offer to the Chair of the Commission to meet later in the week to discuss the report again. The Chair of the Commission, however, did not take advantage of this opportunity to discuss the report further.

The purpose of discussing the above process is to highlight that the Commission was given ample opportunity to raise concerns about issues raised in the audit and to provide documentation to support any suggested changes to the report.

Below are the Office's comments on the issues raised in the Commission's response. The numbers below correspond with the numbers in the margin of the Commission's response.

1. In its response, the Commission states, "the Commission has exercised its authorities in a manner that the Auditor fails to fully analyze."

The Commission's comment "the Commission has also exercised its authorities in a manner that the Auditor fails to fully analyze" is not a surprise and we discussed the Commission's authority in depth during our briefings with Commissioners and again at the exit conference. After the initial briefings with the Commissioners, we took great care to correct the report where necessary. We also provided the City Attorney with the draft report to ensure the audit report accurately reflects the Commission's authority per the City Charter and the Municipal Code.

2. In its response, the Commission states, "The Auditor's criticisms fail to account for the full span of the Commission's work or the full scope of the Commission's authority."

In order to accomplish the objectives of the mandated audit, as defined in Measure LL, the Office of the City Auditor executed a comprehensive audit plan to determine whether the Commission has provided effective oversight of the Oakland Police Department and the Agency and whether both the Commission and the Agency complied with the requirements of the City Charter and the Oakland Municipal Code Sections 2.45 and 2.46. To assess compliance, the Office of the City Auditor, evaluated the Commission's work performance against specific requirements in the City Charter and the Oakland Municipal Code Sections 2.45 and 2.46, for an audit period no later than two (2) years after City Council has confirmed the first set of Commissioners and Alternates, as required by the City Charter. As noted above, we also consulted with the City Attorney to accurately reflect the Commission's authority per the City Charter and the Municipal Code.

3. The Commission's response states, "The Auditor makes misleading statements about the Commission's policymaking track record, while mischaracterizing or flatly omitting most of the Commission's work that falls flatly within its policymaking authority."

We disagree with this comment. The report is clear on the policymaking work that the Commission has accomplished. The Commission's work resulted in two policy changes in its first two years of existence and added another in January 2020. At the same time, it did not implement a number of requirements specified in the Charter and the Municipal

Code. We have added a paragraph on page 19 of the report to recognize the work the Commission initiated in 2019 related to a major revision of OPD's use of force policy in 2020.

4. The Commission's response states, "The audit report blatantly mischaracterizes the Commission's removal authority. The Commission's response also criticizes the report's language that the Commission's removal authority is rare but acknowledges that San Francisco, Los Angeles, and Honolulu each grant their police commission's exclusive removal authority. Furthermore, the Commission's response states, on page 14, the audit report falsely states, On February 20, 2020, the Police Commission fired the Chief of Police without cause, with the approval of the Mayor. The Chief was jointly removed by the Police Commission and the Mayor, in conformance with the Charter."

We disagree with most of the Commission's comments on this issue. The Commission's authority to remove the Chief of Police is rare amongst other police oversight bodies. An official from the National Association of Civilian Oversight of Law Enforcement (NACOLE) confirmed to us that the authority to remove the Chief of Police is rare amongst civilian oversight bodies. Additionally, we provided information on several police oversight bodies that do have the authority to remove the Chief of Police. These include San Francisco, Los Angeles, and Honolulu. In these other jurisdictions, however, the Police Chief reports directly to the civilian oversight body, unlike Oakland, where the Chief of Police has a multiple-reporting relationship.

In regards to the comment that the audit report falsely states that the Commission fired the Chief of Police without cause, with the approval of the Mayor. We have changed the report to state "On February 20, 2020, the Commission, acting jointly with the Mayor, fired the Chief of Police without cause."

5. The Commission's response states, "The audit report fails to credit the Commission for partnering with community-focused non-profits. Instead, the report dismisses each partnership as an alleged violation of contracting rules on Page 25—staking out a position that contradicts the Office of the City Attorney's training and presentation materials."

The Commission's comments on this matter miss the point. We are not questioning the Commission's contracting authority that was granted the Commission. The audit report pointed out that the Commission has involved itself in administrative activities. That is, it solicited bids on three separate contracts. As the report pointed out, the Commission

should not be directly procuring or soliciting bids for contracts. Government procurement activities must adhere to strict federal, state, and local regulations. Splitting responsibilities for preparing and awarding or authorizing procurement contracts is to ensure effective checks and balances in the procurement process to prevent errors, conflict of interest or fraud and corruption.

6. The report criticizes the Commission for the steps it has taken to determine if there is enough evidence to re-open an investigation (the Bey case).

In the report, we did question the Commission's decision to spend \$50,000 to re-open this investigation and we still continue to question the Commission's decision on this matter. Specifically, we stated, "It is a questionable use of City monies and time to review a matter that occurred 15 years ago and has been appropriately adjudicated. It is not clear what benefit the City will derive from this investigation and it could set a precedent for other complaints to be re-opened." The Commission addressed this issue after the plaintiffs raised this matter in open forum at numerous Commission meetings. The Commission put the plaintiffs' complaint on at least 12 Commission meeting agendas.

7. The Commission's response states, "The audit report misrepresents the Commission's effort to address the missing persons case of then-19-year old Oakland resident, Jonathan Bandabaila. The Commission repeatedly took issue with the Department's failure to utilize its social media in the weeks and months following the disappearance of Jonathan to properly seek his return, while the Department reportedly used its social media accounts to seek the return of someone else's missing pet. In October of 2019, the Commission agendized a discussion on "department policy on social media for missing and abducted persons." At that meeting, one of the Commissioners, Commissioner Harris, briefed the Commission and the public on the Department's General Orders regarding Missing Persons and Abducted Persons and sought input from the Department to better understand the Department's interpretation of its own policy. The Auditor states on Page 29: Although this was an unfortunate circumstance, the Commission's involvement in this matter is not consistent with the Commission's role as established in the City Charter and the Municipal Code. To the contrary, Section 604(b)(6) grants the Commission authority to review and comment on all policies. Relatedly, OPD's manual of rules in force and effect during the first two years of the Commission's tenure places a standalone duty on the Chief and her designees to update the Department's General Orders and Policies. Yet the nuances of this dynamic –

exchanges on policies between two entities responsible for changing them – fail to surface in the audit report.”

The Commission’s involvement in this matter is not entirely consistent with the Commission’s role as established in the City Charter and the Municipal Code. A more appropriate action for the Commission to have taken would have been to review OPD’s missing person’s policy, not the specifics of the Bandabaila case, and direct the family to work with the City Administration or direct the Police Department to report back to the Commission on how the City was addressing this missing person’s case. The Commission’s response states they were engaged in a policy discussion on the department policy on social media for missing and abducted persons at the Commission’s October 2019 meeting. We found there was very limited discussion on the general missing and abducted persons OPD policy, instead, it was used to ask specific questions about the Bandabaila case, and the social media policy was barely mentioned at the meeting, even though that was the item on the agenda for the meeting.

As we state in the report, the Commission certainly can and should ask OPD how it is addressing this missing person case, this is a heartbreaking loss for this family and our community, however, once the Commission started directing OPD staff to attend meetings, and Commissioners attended meetings, the Commission directly involved itself in OPD’s handling of the case.

Section 604(b)(6) grants the Commission the authority to review and comment on all policies. The City Charter Section 604 (b)(6) does not however, grant the Commission the authority to review the handling of a specific case. The Office consulted with the City Attorney’s office in clarifying the Commission’s authority granted under section 604(b)(6).

8. On page 3 of its response, the Commission’s response states, “The Commission’s efforts to draft and propose new policies is similarly discredited, again without basis.”

This response mischaracterizes the report’s statements. On pages 17 and 18 of the report, we described the policy changes the Commission approved and on page 19, we described the challenges associated with the policy review process. Specifically, the report states, “It should be noted that the policy review and approval process can be very time consuming because the process often requires OPD to meet and confer with the Oakland Police Officer’s Association, as well as consulting with the City Attorney’s

Office and sometimes the federal monitor and the community to obtain input. In addition, the Commission must discuss and make all policy decisions in a public meeting to be in compliance with the Brown Act.”

9. The Commission’s response criticizes the report for not providing information on its efforts to reform OPD’s use of force policies.

We have added a sentence on page 18 and a paragraph on page 19 of the report to recognize the work the Commission initiated in 2019 related to a major revision of OPD’s use of force policy in 2020.

10. The Commission’s response criticizes the report for including an example from the Ontario Human Rights Commission. Specifically, the Commission’s response states, “The Ontario Human Rights Commission is not the Ontario Police Commission, and it has no experience with the Oakland Police Department, not to mention its limited insight into the legal frameworks required by constitutional policing in American cities like Oakland. The Oakland Police Commission’s views on racial profiling are and properly remain specific to the City of Oakland, to Oakland’s history, and to Oakland Police Department.”

The Commission’s response completely misses the point raised on page 45 of the report. The Ontario Human Rights Commission (OHRC) established principles for addressing racial profiling in law enforcement. The significance of this example is that it provides a process for more systematically addressing racial profiling in law enforcement rather than using a case-by-case approach as noted in the audit report. Most notably, the OHRC’s approach relies on policy guidance, data collection, and monitoring and accountability to create organizational change.

11. The Commission’s response refers to the audit recommendations as requirements and is vague as to whether it intends to address them. First, our recommendations are not requirements but recommendations that provide a roadmap to improve its performance. The Commission needs to implement these recommendations to increase its effectiveness in overseeing OPD and the Agency and to fully comply with the City Charter and Municipal Code. The audit recommendations are comprehensive in nature and address the areas the Commission needs to focus on to be more effective and to comply with the City Charter and Municipal Code. In order to achieve compliance, the Commission must first establish an accountable and effective organizational structure capable of managing the Commission’s day-to-day responsibilities, meeting the requirements of a public body transacting the people’s business in the public, and

meeting its larger City Charter and Municipal Code mandates effectively and timely. The audit clearly outlines recommendations to meet this end.

The Office of the City Auditor is the independent oversight function of the City, as such, auditees are responsible for implementing audit recommendations, and the City Auditor performs follow-up audits to determine if recommendations have been implemented. Unfortunately, the Commission fails to understand the authority of the Office of the City Auditor and has lost sight that Measure LL requires a performance and financial audit to directly inform the residents of Oakland and the City's leadership of the current performance of the Commission and CPRA, no later than two (2) years after City Council has confirmed the first set of Commissioners and Alternates. Regardless, we expect the Commission to provide a completed recommendation matrix to the City Auditor's Office no later than 45 days after the report issuance. The matrix will be published on the City Auditor's website with the complete audit report.

12. The Commission's response states, "The Auditor incorrectly alleges that the Chair of the Commission 'directed' OPD to write a report on (a complaint) to be presented at a later Commission meeting."

We have corrected the report to reflect that the Commission "requested" OPD to write a report. The issue raised in this example on page 43 of the report is that the Commission could make better use of its limited time and resources. As noted in the report, a night club owner complained at a Commission meeting. Based on the night club owner's complaint, the Commission discussed this issue for 16 minutes at a Commission meeting and then requested OPD to write a report on this matter. We concluded that a more appropriate discussion would have been to engage OPD on the policies around the permitting of night clubs in the City. When we discussed this matter with the Commissioners during our initial audit briefings, they informed us they felt this was an instance of racial profiling, and therefore it was appropriate for them to allocate more time to this issue. However, as the report notes, the item was not agendaized, therefore the discussion was a Brown Act violation. Moreover, the Commission and the public would be better served by systematically addressing racial profiling in law enforcement in Oakland, rather than using a case-by-case approach.

13. The Commission's response states that it did not direct an OPD manager to attend a Commission meeting even though the Manager had planned to be on vacation. The Commission's response states, "The Commission first submitted a request for information in May 2019. After reiterating the request for six months, the Commission

agendized the issue on October 10, 2019. On October 7, 2019, the Director in question insisted that the Commission should again delay the item by two weeks, as she had pre-scheduled a vacation. The Commission preceded with the agenda item but expressly did not require the OPD Manager to attend.”

The Commission’s comment is misleading and does not provide the full details of this matter. The meeting was originally planned for October 24, 2019, but the Commission changed the meeting date to October 10, 2019, the week before the meeting date. Since the OPD Manager was presenting the report to the Commission, placing this item on the agenda the week before the meeting, effectively forced the OPD Manager to cancel her vacation plans to attend the meeting. This example also highlights the haphazard manner in which the Commission places items on the agenda as stated on page 34 of the report. This item should have been scheduled several months in advance, instead of a week before the meeting.

14. The Commission’s response disputes the report’s claim that the Commission fails to structure its agendas to address its core functions.

As noted on page 34, “The Commission’s agenda setting process is haphazard. Frequently, the Commission puts together the next meetings agendas at the Commission’s meetings.”

15. The Commission’s response again criticizes the report comment, “The Commission’s authority to remove the Chief of Police is rare.”

As stated in the audit report and Note 5 above, the Police Commission’s authority to remove the Chief of Police is rare amongst other police oversight bodies. An official from the National Association of Civilian Oversight of Law Enforcement (NACOLE) confirmed to us that it is rare amongst civilian oversight bodies. Additionally, we provided information on several police oversight bodies that do have the authority to remove the Chief of Police. These include San Francisco, Los Angeles, and Honolulu. In these other jurisdictions, however, the Police Chief reports directly to the civilian oversight body, unlike Oakland, where the Chief of Police has a multiple-reporting relationship.

16. The Commission’s response states, “the Commission exercises its purchasing authority in compliance with City policies.”

The Commission's comments on this matter miss the point. We are not questioning the Commission's contracting authority granted to the Police Commission. The audit report pointed out that the Commission has involved itself in administrative activities. That is, it solicited bids on three separate contracts. As the report pointed out, the Commission should not be *directly* procuring or soliciting bids for contracts. Government procurement activities must adhere to strict federal, state, and local regulations. Splitting responsibilities for preparing and awarding or authorizing procurement contracts is to ensure effective checks and balances in the procurement process to prevent errors, conflict of interest or fraud and corruption.

17. The Commission states, "the audit report mischaracterizes the Commission's subpoena to CPRA regarding its review of the officer-involved shooting of Joshua Pawlik."

We disagree that we mischaracterized the Commission's subpoena of CPRA records. The report stated, "The Police Commission then subpoenaed documentation between IAD and the Agency with the purpose to investigate the Agency's handling of their investigations. The Commission does not have the authority to investigate the Agency's and the IAD's handling of their investigations. The Commission's role, as described in the City Charter, is to determine discipline when IAD and the Agency disagree on findings and/or proposed discipline."

18. In its response, the Commission notes it, "has completed a number of trainings that are falsely reflected as not completed on Page 12 of the audit report, even though the Commission provided a correct, updated list of completed trainings to the audit team."

As stated in the audit report, the Commissioners have not satisfied training requirements specified in the City Charter and the Municipal Code. Specifically, through December 31, 2019, none of the Commissioners completed 10 of 27 required training sessions. Furthermore, all Commissioners completed only 3 of 27 required training sessions. Also, the Chair of the Commission did not provide us an updated list of completed trainings to the audit team. The Chair of the Commission provided us with list of trainings that were not offered until 2020, not a list of trainings completed. We acknowledged that fact on page 22 as follows: "Commissioners reported that other trainings were not made available to them until 2020. These trainings include the City Civil Service Board and the California Meyers-Milias Brown Act and the Public Administration of the Act."

19. The Commission is disputing our statement in the report that, “the Commission has refused to allow the City Attorney to sit in on closed session because of the lack of trust.”

The Commission did prohibit the former outside counsel hired by the City Attorney from attending a closed session. At the end of 2019, the Commission hired its own legal counsel. On page 26 of the report we stated, “The Commission hired its own legal counsel at the end of 2019, who attends closed sessions and reports pertinent information to the City Attorney.” On page 32 of the report, we also noted the following: “The Commission hired their own legal counsel in 2019, who now attends closed sessions and reports pertinent information to the City Attorney. This has improved the relationship between the Commission and the City Attorney”.

20. The Commission’s comment seems to indicate that the Commission addressed the City Charter requirement to review the Mayor’s proposed budget to determine whether budgetary allocations for the Department are aligned with the Department’s policies, procedures, customs, and General Orders.

We disagree. The report states in Finding 1, “The Commission has not reviewed and analyzed the Mayor’s proposed budget to determine whether the budget is aligned with OPD’s policies, procedures, customs, and general orders. On page 26 of the report, we noted the Commission received a briefing on OPD’s budget and asked questions during this presentation. The Commission, however, did not provide an opinion as to whether the budget was aligned with OPD’s policies, procedures, customs and general orders.” Furthermore, the Commission’s comments that the budget “is not transformative” does not provide sufficient direction to better align OPD’s budget allocations with specific policies, procedures, customs, and General Orders. Moreover, we have not received any evidence that the Commission provided any recommendations to the City Council to better align OPD’s budget allocations with Department policies procedures, customs, and General Orders as the City Charter requires.

21. The Commission is disputing our statement that it did not meet at least twice per year outside City Hall as the Municipal Code requires.

We disagree with the Commission’s contention that they satisfied this requirement. On page 27, the report states, “The offsite meetings are to be designated as special meetings subject to the 10-day agenda notice requirement for purposes of Article II of

Chapter 2.20 of the Oakland Municipal Code and include an agenda entitled 'Community Roundtable.'" In 2018 and 2019, the Commission convened only one meeting each year outside City Hall that met the requirements specified in the Municipal Code. In 2019, a community group convened a special meeting, in which the Commissioners attended, on the legal rights of residences when dealing with police and on OPD's practices of policing the homeless community. However, this meeting did not meet the requirements of the City Charter and the Municipal Code."

22. Although the Commission seems to acknowledge that it can improve control over speaker time, it states that it has controlled its agendas quite well.

We disagree. As noted on page 34, "The Commission's agenda setting process is haphazard. Frequently, the Commission puts together the next meetings agendas at the Commission's meetings."

23. The City Charter requires the Commission to request an annual report from the Chief of Police and semi-annual reports from the City Attorney. In its response, the Commission reported that it has sent out requests for these reports.

We have not received any documentation from the Commission that it has formally requested these reports. As a point of clarification, the City Charter specifically requires the Commission to not only request an annual report from the Chief of Police, but to notify the Chief regarding what information will be required in the Chief's annual report to the Commission. We have not received evidence that the Commission provided the Chief of Police with clear direction on the information to be included in the annual report.



AGENDA REPORT

TO: Police Commission

FROM: John Alden
Executive Director, CPRA

SUBJECT: Overview of CPRA-IG-Commission
Budgeting

DATE: June 8, 2020

The funds allocated for the Police Commission, Inspector General, and CPRA are considered a single budget within the City of Oakland, totaling just over \$4 million dollars per fiscal year in FY '19-'20 and '20-'21. The lion's share of expenses, over \$3 million, are for personnel.

CPRA personnel number eight Investigators (the mandatory minimum required by Charter at this time), three Intake Technicians, the Policy Analyst, and the Executive Director, for a total of 13 current positions. An additional Administrative Assistant position is vacant and remains frozen as a result of budget cutbacks due to COVID. The Inspector General is budgeted for two positions – the Inspector General and one staff member – but those positions remain vacant. Finally, the Commission has one Administrative Analyst position, which is currently filled. Thus the budgeted oversight personnel under the Commission number 17 staff, one of which is a vacant, frozen position. CPRA staff have suggested, and the Police Commission approved, requesting more staff in FY '20-21, but those additions have not moved forward because of COVID budget shortfalls.

At last count, the Commission's available funds for 2019-2020 for discretionary spending – primarily Contract Contingencies like outside contractors - was over \$1 million, accounting for nearly all of the Commission's budget after staff expenses and office space and supplies. At last count, a substantial portion of those funds – about \$650,000 – remained available this fiscal year. This substantial sum is the result of the City Council kindly allowing salary savings from the unfilled Inspector General positions to be moved into discretionary spending to augment the Commission's power to hire contractors. Thus, in future years when the Inspector General positions are filled, much less discretionary spending will be available.

Attached as Exhibit A is the originally approved FY '19-'20 budget, before the re-allocation of Inspector General funding. Of course, the FY '20-'21 budget is now before the City Council for consideration, and remains nearly the same as FY '19-'20 except for the one frozen position noted above.

Attached as Exhibit B is a recent summary of committed and available discretionary funding.

Attached as Exhibit C is a summation of the CPRA proposal to add positions in FY '20-'21, which has not moved forward past the Police Commission because of COVID budget shortfalls.

Police Commission FY 2019-20 Adopted Departmental Budget
 (Highlighted Items are expenditure specific and cannot be changed)

	Current
66111 - Police Commission	
Personnel	\$ 146,320.00
52211 - Stationery and Office Supplies	\$ -
52212 - Minor Furniture and Office Equipment (No Asset Number Not Capitalized)	\$ -
52213 - Minor Computer Hardware and Software (No Asset Number Not Capitalized)	\$ -
52614 - Books	\$ -
52911 - Bottled Water and Food for Human Consumption	\$ -
52919 - Supplies: Miscellaneous and Commodities	\$ -
53116 - Telephone	\$ -
53219 - Rental: Miscellaneous	\$ -
53312 - Public Relations	\$ -
53314 - Advertising and Promotion	\$ -
53611 - Postage and Mailing	\$ -
53719 - Miscellaneous Services	\$ -
54011 - Contract Contingencies (Budgetary Only)	\$ 103,000.00
54511 - Legal Fees	\$ 281,136.00
55111 - Non-City Vehicle Rentals	
55112 - Commercial Transportation	\$ -
55114 - Per Diem and Lodging	\$ -
55119 - Miscellaneous Travel Expenditures (Tips Parking)	\$ -
55212 - Registration and Tuition	
ISF	\$ 21,956.00
66211 - Community Police Review Agency	
48727 - Other Revenue: Other Income	
Personnel	\$ 2,399,550.00
52211 - Stationery and Office Supplies	\$ 20,000.00
52212 - Minor Furniture and Office Equipment (No Asset Number Not Capitalized)	\$ 3,000.00
52213 - Minor Computer Hardware and Software (No Asset Number Not Capitalized)	\$ 3,750.00
52614 - Books	\$ 1,200.00
52911 - Bottled Water and Food for Human Consumption	\$ 3,500.00
52919 - Supplies: Miscellaneous and Commodities	

53116 - Telephone	\$	6,000.00
53219 - Rental: Miscellaneous		
53312 - Public Relations	\$	10,000.00
53314 - Advertising and Promotion	\$	3,500.00
53611 - Postage and Mailing	\$	5,000.00
53719 - Miscellaneous Services	\$	12,000.00
54011 - Contract Contingencies (Budgetary Only)	\$	246,000.00
54511 - Legal Fees		
54722 - Advertising: Classified		
54919 - Services: Miscellaneous Contract		
55111 - Non-City Vehicle Rentals		
55112 - Commercial Transportation	\$	9,000.00
55114 - Per Diem and Lodging	\$	15,250.00
55119 - Miscellaneous Travel Expenditures (Tips Parking)		
55212 - Registration and Tuition	\$	15,650.00
55219 - Miscellaneous Educational Expenditures	\$	15,000.00
55312 - Memberships: City		
ISF	\$	121,421.00
66311 - Inspector General		
Personnel	\$	649,204.00
ISF	\$	10,561.00
Grand Total	\$	4,101,998.00

EXHIBIT B

2019-2020 Discretionary Spending Balances**Available FY 2019-20 Budgetary Allocations including Carryforward:**

Police Commission Budgeted Funds	\$103,000
CPRA Budgeted Funds	\$246,000
IG 2019-20 Salary Savings Transferred by City Council to Contracts	\$546,204
Carryforward from FY 2018-19	\$178,929

Available FY 2019-20 Budget Authority **\$1,074,133**

Expenditures Approved by the Commission or Expended by CPRA this Fiscal Year to date:

CPRA Investigative Expenses (estimated)	\$30,000
Commission Retreat – Walker Group	\$15,000
Bey Investigation	\$49,999
Raheem Outreach Proposal	\$40,000
OBOA Investigation Contract	\$150,000
Mason Group	\$49,999
Outreach for Commission and CPRA (Gia Irlando)	\$40,000
Subtotal:	\$374,998

Potential Future Expenditures to Budget:

Outreach Expenses for Public Meetings, especially Use of Force	\$45,000
Subtotal:	\$45,000

Total Previously Discussed and Potential Expenditures **\$419,998**

Remainder: **\$654,135**



OAKLAND POLICE COMMISSION

Agenda Report

Subject:	Information Regarding Staffing Requests for Oakland Police Commission and Community Police Review Agency
Date:	March 5, 2020
Prepared by:	Juanito Rus, CPRA Policy Analyst
Approved by:	John Alden, CPRA Executive Director

Action Requested:

Receive information, and provide direction, regarding potential additions and changes in staffing for the Oakland Police Commission and Community Police Review Agency.

Summary

The Community Police Review Agency is currently preparing a budget request for the FY 2020/21 mid-year budget cycle on behalf of the Agency, the Police Commission, and the Office of the Inspector General. As part of the request, the Agency proposes several changes and additions to both Agency and Commission budgeted staff to adequately address with new initiatives and increased workflow both in investigations and operations. These proposals include two (2) requested changes to positions already being processed through the City's Human Resources and Budget Departments, as well the addition of four (4) new positions specifically tasked with support of Commission and Agency operations and initiatives.

Staffing changes already in progress for the Community Police Review Agency:

- 1) Conversion of open Investigator II position to a supervising Investigator III;
- 2) Conversion of open Office Assistant I position to an Administrative Analyst II.

New staffing requests for the Community Police Review Agency and Oakland Police Commission:

- 1) Addition of one (1) Administrative Analyst II to serve as CPRA Outreach Coordinator;
- 2) Addition of one (1) CPRA Receptionist;
- 3) Addition of one (1) Assistant to the Director to support the CPRA Executive Director;
- 4) Addition of one (1) Assistant to the Director to directly support the Oakland Police Commission.

Background:

In November 2016, the voters of Oakland passed Measure LL, adding section 604 to the City Charter – thereby creating a new Oakland Police Commission and Community Police Review Agency (CPRA), and sunseting the prior Citizen’s Police Review Board (CPRB). Collectively, the changes introduced through the creation of this new police oversight structure introduced significant additional work beyond that which had been required under the CPRB structure. This increased workload encompassed both additional demands for administrative support of a more powerful civilian oversight body in the form of the Police Commission; and a large increase in both the number of required investigations and the complexity of administrative documentation related to these investigations for the Commission’s investigative agency the CPRA.

In 2019, the CPRA welcomed a new Executive Director, and was able to hire three (3) new line investigators, bringing its staffing closer in line with the required staffing under Measure LL of one investigator per 100 sworn members of the Oakland Police Department. However, this increased line investigative capacity did little to address the equally impacted areas of Commission support and operational support to investigations within the Agency.

Therefore, the CPRA recommends that the Commission consider a package of staffing related requests of the City of Oakland as part of the mid-year budget revision for fiscal year 2020/21. These requests include both two (2) revisions to the job classifications associated with current Agency vacancies – which are already being processed through the City’s HR Department, as well as four (4) additional positions specifically designed to address specific administrative support needs of both the Commission and the CPRA.

Proposed Changes/Additions to Staffing of Police Commission and CPRA:

The Community Police Review Agency has developed a list of proposals for new and revised positions within the Police Commission and CPRA staffing in order to address both the increased investigative caseloads and administrative requirements related to CPRA investigations created by the changes to the City Charter embedded in Measure LL, and additional operational support for Commission activities and community engagement.

Add/Deletes Currently in Progress:

Two of the proposed changes to CPRA staffing can be accomplished through the reclassification of existing vacant positions within the Agency without need to wait for the annual budget process. One of these changes has already been approved by the City’s budget and HR departments, and the CPRA expects to move forward with hiring for these positions in the Summer of 2020.

1. Conversion of Open Investigator II to Investigator III.

The CPRA currently has one (1) vacant Investigator II (line investigator) position. The Agency has requested that this position be upgraded to an Investigator III position in order to provide an additional supervisor in the investigations group who will be tasked with supervision of the Intake process. CPRA investigations currently count on one (1) supervising Investigator III to coordinate all investigations, both those in intake, and those which have been assigned to agency investigators. Given the increased investigative caseloads and administrative requirements related to CPRA investigations, the Agency believes that a second supervisor to oversee the intake process, assist in the preparation investigative case files, and mentor intake technicians is vital if Agency investigations are to be completed in the 180-day time frame specified in City Charter section 604 (Measure LL). This change has been approved, and CPRA is now moving to fill the position.

2. Conversion of CPRA Administrative Support Assignment from Office Assistant I – Administrative Analyst II

Within the organizational structure the CPRA inherited from the former Community Police Review Board (CPRB), the Agency counted on one (1) full-time administrative support person, Verdene Klasse, who was classified as an Office Assistant II under the City's civil service structure. That classification was inappropriate for the job duties assigned to that individual given the position's wide-ranging responsibilities and extensive handling of confidential personnel files; and the Agency had been working to upgrade the classification to an Administrative Analyst II – which more closely matches the position's assigned duties. With the vacancy created by Ms.Klasse's passing in December 2019, the Agency has proceeded with the request for a reclassification of the position prior to hiring replacement staff, and that change is currently with the City's Human Resources Department.

New Staffing Requests (CPRA & Commission):

In addition to the reclassification of existing vacancies within the CPRA to better align staffing to Agency work flows, the CPRA recommends the creation of four (4) additional positions to provide administrative support to Commission and Agency initiatives.

1. Add: CPRA Administrative Analyst II (AP106) – Outreach Coordinator

During the February 27, 2020 meeting of the Oakland Police Commission, the CPRA Executive Director was instructed to engage an outside contractor to revise the Agency's outreach strategy and introduce a new set of outreach materials with the understanding that these efforts would eventually be continued by a full-time member of the CPRA staff dedicated to community outreach. Because the Agency does not

currently have the staffing capacity to maintain this initiative, it will require the addition of a dedicated staff member – an assignment which would be classified within the City's civil service structure as an Administrative Analyst II (Classification AP106). The CPRA requests that the Commission prioritize the request for this position in order to further the goals outlined in that February 27th meeting.

2. Add: CPRA Receptionist (SS170)

As currently staffed, the CPRA also has no full-time staff dedicated to reception. Agency staff – especially Intake Technicians – are expected to answer incoming phone calls and greet and accommodate individuals who walk into the CPRA offices to file a complaint or for any other reason. Increased administrative tasks given CPRA's increased workload also impede Investigators' focus on investigative tasks. However, given the increased demands on existing investigative staff due to the additional requirements under Measure LL, the balancing of investigative duties with the reception function has compromised the Agency's ability to complete all work in a timely manner. The CPRA therefore requests that the Commission request the addition of a full-time Receptionist (civil service classification SS170) to receive visitors, answer phones, and assist with other routine administrative tasks.

3. Add: Two (2) Assistant to the Director (EM118) positions, one for the Police Commission and one for the Executive Director of the Community Police Review Agency

Both the Police Commission and Executive Director of the CPRA are required to perform extensive duties outside of normal City business hours and often require flexible staff assistance of a type which is difficult to provide under most standard City of Oakland civil service job classifications. Many of these tasks also require a high level of discretion, a knowledge of City policies and structures (especially contracting), and supervision of support staff such as Administrative Analysts. Moreover, CPRA is slated to lose its Policy Analyst position, which under Measure LL will transition to the Inspector General's Office, leaving CPRA with even less support. A lead support figure, akin to a Chief of Staff, are essential to supporting the new duties of the Commission and the CPRA.

Within the City's employment structure there is one job classification which the CPRA believes could appropriately fulfil these staffing needs in both instances. The Assistant to the Director (EM118) job classification is exempt from the regulations of the Civil Service Board and receives direction on an at-will basis from a department head or Personnel Director. The position is also exempt from overtime compensation per the Fair Labor Standards Act (FLSA) Administrative exemption criteria, and so allows for a degree of flexibility around hours and assignments that would be more restricted under most City clerical staff classifications. It also captures the high level of training and expertise commensurate with a Chief of Staff.

Conclusion

The CPRA requests that the Personnel Committee of the Oakland Police Commission review the two (2) modifications of CPRA job classifications described above. Further, the Personnel Committee should consider supporting the four (4) additional staffing recommendations for the CPRA and the Commission highlighted in this report, and provide any other direction as to staffing changes implicated in the budget process.

Revenues

Sections	FY19-20 Biennial Revenue Budget	FY20-21 Midcycle Revenue Budget
101110 - Office of Chief: Administration	12,000	12,000
14 - Service Charges	12,000	12,000
102130 - Special Victims Section	5,812	5,812
14 - Service Charges	5,812	5,812
102610 - Criminalistics	114,123	114,123
17 - Miscellaneous Revenue	114,123	114,123
103242 - Records and Warrants	200,750	200,750
11 - Licenses & Permits	750	750
14 - Service Charges	200,000	200,000
106510 - Budget Accounting	1,621,413	1,673,617
14 - Service Charges	1,621,413	1,673,617
106610 - Background and Recruiting	9,350	9,350
14 - Service Charges	9,350	9,350
107410 - Support Operations	264,000	267,000
14 - Service Charges	264,000	267,000
107510 - Traffic Operations	1,293,367	1,325,867
11 - Licenses & Permits	160,000	160,000
14 - Service Charges	1,133,367	1,165,867
107710 - Special Operations	5,867,355	2,867,355
12 - Fines & Penalties	28,700	28,700
14 - Service Charges	5,828,655	2,828,655
16 - Grants & Subsidies	10,000	10,000
108010 - District Command Administration	58,162	2,478
18 - Interfund Transfers	58,162	2,478
Grand Total	9,446,332	6,478,352

Expenitures

Sections	FY19-20 Biennial Budget	Proposed FY20-21 Midcycle Budget
101110 - Office of Chief: Administration	22,492,126	21,484,179
01 - Civilian Salaries	71,764	211,563
03 - Civilian Retirement	29,567	92,453
04 - Civilian Fringe Benefits	25,893	74,848
05 - Sworn Salaries	718,005	735,956
06 - Sworn Overtime	9,230	9,460
07 - Sworn Retirement	355,831	394,897
08 - Sworn Fringe Benefits	267,887	263,396
09 - Allowances & Premiums	39,080	39,875
10 - Misc. Personnel Adjustments	596,051	1,454,646
11 - Services & Supplies	2,013,976	1,713,976
12 - Contract Services	347,281	197,281
13 - Travel & Education	9,500	9,500
14 - Internal Services & Work Orders	17,945,137	16,279,087
15 - Capital Acquistions	4,762	4,762
19 - Operating Transfers	58,162	2,479
101112 - Public Information	716,167	554,994
01 - Civilian Salaries	101,743	0
03 - Civilian Retirement	41,918	0
04 - Civilian Fringe Benefits	36,709	0
05 - Sworn Salaries	247,376	253,560
06 - Sworn Overtime	10,250	10,510
07 - Sworn Retirement	125,686	139,392
08 - Sworn Fringe Benefits	92,294	90,748
09 - Allowances & Premiums	20,042	20,297
11 - Services & Supplies	3,000	3,000
14 - Internal Services & Work Orders	37,149	37,487
101120 - Internal Affairs	6,944,276	7,207,470
01 - Civilian Salaries	626,594	648,829
02 - Civilian Overtime	10,000	10,000
03 - Civilian Retirement	260,720	286,280
04 - Civilian Fringe Benefits	226,079	229,563
05 - Sworn Salaries	2,712,600	2,780,407
06 - Sworn Overtime	51,250	52,540
07 - Sworn Retirement	1,384,395	1,536,128
08 - Sworn Fringe Benefits	1,012,080	995,099
09 - Allowances & Premiums	239,163	243,788
11 - Services & Supplies	31,150	31,150
12 - Contract Services	15,360	15,360
14 - Internal Services & Work Orders	374,885	378,326

Expenitures

Sections	FY19-20 Biennial Budget	Proposed FY20-21 Midcycle Budget
101130 - Office of the Inspector General	1,596,162	1,658,758
01 - Civilian Salaries	483,951	501,113
02 - Civilian Overtime	5,000	5,000
03 - Civilian Retirement	199,436	219,040
04 - Civilian Fringe Benefits	174,612	177,291
05 - Sworn Salaries	288,749	295,968
07 - Sworn Retirement	148,966	165,321
08 - Sworn Fringe Benefits	107,731	105,925
09 - Allowances & Premiums	28,317	28,950
11 - Services & Supplies	28,000	28,000
12 - Contract Services	50,000	50,000
14 - Internal Services & Work Orders	81,400	82,150
101140 - Intelligence Unit	2,177,838	2,258,960
05 - Sworn Salaries	997,192	1,022,120
06 - Sworn Overtime	20,500	21,020
07 - Sworn Retirement	534,033	592,358
08 - Sworn Fringe Benefits	372,048	365,813
09 - Allowances & Premiums	139,051	141,650
11 - Services & Supplies	8,000	8,000
14 - Internal Services & Work Orders	107,014	107,999
102120 - Property and Evidence	1,487,777	1,651,199
01 - Civilian Salaries	528,092	606,942
02 - Civilian Overtime	40,000	40,000
03 - Civilian Retirement	221,359	269,361
04 - Civilian Fringe Benefits	190,530	214,734
05 - Sworn Salaries	142,707	146,274
07 - Sworn Retirement	77,682	86,168
08 - Sworn Fringe Benefits	53,245	52,351
09 - Allowances & Premiums	31,766	32,463
11 - Services & Supplies	147,383	147,383
14 - Internal Services & Work Orders	55,013	55,523
102130 - Special Victims Section	11,145,299	11,531,597
01 - Civilian Salaries	251,656	260,573
03 - Civilian Retirement	105,800	116,159
04 - Civilian Fringe Benefits	90,795	92,189
05 - Sworn Salaries	4,408,784	4,519,002
06 - Sworn Overtime	384,380	393,990
07 - Sworn Retirement	2,340,024	2,596,546
08 - Sworn Fringe Benefits	1,644,911	1,617,348
09 - Allowances & Premiums	575,134	587,507
10 - Misc. Personnel Adjustments	775,000	775,000
11 - Services & Supplies	32,000	32,000
12 - Contract Services	49,750	49,750
14 - Internal Services & Work Orders	487,065	491,533

Expenitures

Sections	FY19-20 Biennial Budget	Proposed FY20-21 Midcycle Budget
102140 - Research, Planning and Crime Analysis	747,581	778,142
01 - Civilian Salaries	246,964	255,718
03 - Civilian Retirement	101,749	111,749
04 - Civilian Fringe Benefits	89,104	90,470
05 - Sworn Salaries	123,688	126,780
07 - Sworn Retirement	66,749	74,079
08 - Sworn Fringe Benefits	46,147	45,374
09 - Allowances & Premiums	18,331	18,759
11 - Services & Supplies	5,850	5,850
12 - Contract Services	10,000	10,000
13 - Travel & Education		39,363
14 - Internal Services & Work Orders	38,999	0
102280 - Crime Analysis Section	1,301,185	1,381,803
01 - Civilian Salaries	608,932	630,514
03 - Civilian Retirement	253,329	278,227
04 - Civilian Fringe Benefits	219,695	223,074
06 - Sworn Overtime	53,846	83,810
09 - Allowances & Premiums	5,949	6,161
11 - Services & Supplies	95,000	95,000
12 - Contract Services	1,000	1,000
14 - Internal Services & Work Orders	63,434	64,017
102310 - Criminal Investigation	6,370,570	6,379,255
01 - Civilian Salaries	1,855,666	1,793,568
02 - Civilian Overtime	15,000	15,000
03 - Civilian Retirement	784,342	803,541
04 - Civilian Fringe Benefits	669,533	634,544
05 - Sworn Salaries	1,041,451	1,067,486
07 - Sworn Retirement	577,075	640,231
08 - Sworn Fringe Benefits	388,563	382,051
09 - Allowances & Premiums	253,522	254,623
11 - Services & Supplies	294,346	294,346
12 - Contract Services	171,000	171,000
13 - Travel & Education	15,000	15,000
14 - Internal Services & Work Orders	305,072	307,865
102320 - Homicide	5,751,961	5,827,061
01 - Civilian Salaries	118,726	60,877
02 - Civilian Overtime	50,000	50,000
03 - Civilian Retirement	49,527	26,656
04 - Civilian Fringe Benefits	42,837	21,538
05 - Sworn Salaries	2,082,114	2,134,162
06 - Sworn Overtime	1,115,000	1,130,380
07 - Sworn Retirement	1,074,838	1,192,627
08 - Sworn Fringe Benefits	776,835	763,808
09 - Allowances & Premiums	206,270	209,038
14 - Internal Services & Work Orders	235,814	237,975

Expenitures

Sections	FY19-20 Biennial Budget	Proposed FY20-21 Midcycle Budget
102321 - Misdemeanor Crimes and Task Forces	8,862,880	9,082,236
01 - Civilian Salaries	117,572	60,877
03 - Civilian Retirement	48,536	26,656
04 - Civilian Fringe Benefits	42,420	21,538
05 - Sworn Salaries	3,967,998	4,067,192
06 - Sworn Overtime	307,500	315,190
07 - Sworn Retirement	2,049,107	2,273,621
08 - Sworn Fringe Benefits	1,480,449	1,455,637
09 - Allowances & Premiums	392,046	399,769
14 - Internal Services & Work Orders	438,080	442,105
17 - Overhead Allocations	19,172	19,651
102330 - Robbery and Burglary Section	5,113,152	5,302,508
01 - Civilian Salaries	58,786	60,877
03 - Civilian Retirement	24,268	26,656
04 - Civilian Fringe Benefits	21,210	21,538
05 - Sworn Salaries	2,257,570	2,314,007
06 - Sworn Overtime	230,630	236,400
07 - Sworn Retirement	1,178,981	1,308,105
08 - Sworn Fringe Benefits	842,292	828,177
09 - Allowances & Premiums	251,015	256,069
14 - Internal Services & Work Orders	248,400	250,679
102341 - ID Unit	1,497,146	1,555,558
01 - Civilian Salaries	332,325	344,075
03 - Civilian Retirement	139,395	153,060
04 - Civilian Fringe Benefits	119,895	121,730
05 - Sworn Salaries	380,884	390,405
07 - Sworn Retirement	201,238	223,331
08 - Sworn Fringe Benefits	142,108	139,726
09 - Allowances & Premiums	53,304	54,544
11 - Services & Supplies	2,500	2,500
12 - Contract Services	50,000	50,000
14 - Internal Services & Work Orders	75,497	76,187
102350 - Youth and School Services Section	1,941,474	2,013,619
01 - Civilian Salaries	178,666	185,009
03 - Civilian Retirement	75,300	82,668
04 - Civilian Fringe Benefits	64,464	65,456
05 - Sworn Salaries	718,586	736,549
06 - Sworn Overtime	128,130	131,330
07 - Sworn Retirement	357,993	397,173
08 - Sworn Fringe Benefits	268,105	263,610
09 - Allowances & Premiums	47,202	47,913
11 - Services & Supplies	7,300	7,300
14 - Internal Services & Work Orders	95,728	96,611

Expenitures

Sections	FY19-20 Biennial Budget	Proposed FY20-21 Midcycle Budget
102610 - Criminalistics	6,395,059	6,663,336
01 - Civilian Salaries	3,196,027	3,309,307
02 - Civilian Overtime	16,250	16,250
03 - Civilian Retirement	1,344,759	1,476,810
04 - Civilian Fringe Benefits	1,153,132	1,170,849
09 - Allowances & Premiums	69,312	71,490
11 - Services & Supplies	145,020	145,020
12 - Contract Services	137,623	137,623
14 - Internal Services & Work Orders	332,936	335,987
103110 - Bureau of Services: Administration	1,022,183	1,063,375
01 - Civilian Salaries	305,297	316,124
03 - Civilian Retirement	118,036	129,567
04 - Civilian Fringe Benefits	103,363	104,976
05 - Sworn Salaries	236,232	242,138
07 - Sworn Retirement	111,593	123,859
08 - Sworn Fringe Benefits	88,137	86,661
09 - Allowances & Premiums	2,370	2,370
14 - Internal Services & Work Orders	57,155	57,680
103242 - Records and Warrants	3,978,585	4,140,278
01 - Civilian Salaries	1,947,577	2,016,690
02 - Civilian Overtime	237,500	237,500
03 - Civilian Retirement	813,015	892,678
04 - Civilian Fringe Benefits	702,683	713,508
09 - Allowances & Premiums	38,556	38,833
11 - Services & Supplies	35,200	35,200
12 - Contract Services	5,000	5,000
14 - Internal Services & Work Orders	197,354	199,169
16 - Debt Payments	1,700	1,700
103310 - Communications	15,728,963	16,320,527
01 - Civilian Salaries	7,708,053	7,950,209
02 - Civilian Overtime	612,500	612,500
03 - Civilian Retirement	3,272,833	3,579,683
04 - Civilian Fringe Benefits	2,781,044	2,812,809
09 - Allowances & Premiums	298,934	304,559
10 - Misc. Personnel Adjustments	127,387	127,387
11 - Services & Supplies	42,627	38,875
12 - Contract Services	42,000	42,000
14 - Internal Services & Work Orders	798,327	805,642
17 - Overhead Allocations	45,258	46,863

Expenitures

Sections	FY19-20 Biennial Budget	Proposed FY20-21 Midcycle Budget
103430 - Training Unit	19,181,511	19,507,470
01 - Civilian Salaries	514,851	533,083
02 - Civilian Overtime	20,000	20,000
03 - Civilian Retirement	104,504	114,037
04 - Civilian Fringe Benefits	95,622	97,396
05 - Sworn Salaries	6,589,102	6,753,822
06 - Sworn Overtime	2,286,200	2,343,370
07 - Sworn Retirement	1,755,836	1,936,084
08 - Sworn Fringe Benefits	2,099,644	2,123,315
09 - Allowances & Premiums	567,382	577,816
10 - Misc. Personnel Adjustments	652,129	290,125
11 - Services & Supplies	1,213,500	485,500
12 - Contract Services	2,079,438	3,131,438
13 - Travel & Education	420,000	311,000
14 - Internal Services & Work Orders	783,303	790,484
106210 - Police Personnel	2,254,850	2,079,532
01 - Civilian Salaries	912,028	873,859
03 - Civilian Retirement	381,888	388,072
04 - Civilian Fringe Benefits	329,059	309,179
06 - Sworn Overtime	17,940	18,390
09 - Allowances & Premiums	16,258	15,546
11 - Services & Supplies	51,800	51,450
12 - Contract Services	357,000	232,000
13 - Travel & Education	57,500	57,500
14 - Internal Services & Work Orders	95,008	95,878
17 - Overhead Allocations	36,369	37,658
106410 - Police Information Tech	2,870,442	2,997,646
01 - Civilian Salaries	266,739	276,190
03 - Civilian Retirement	110,392	121,234
04 - Civilian Fringe Benefits	96,238	97,713
05 - Sworn Salaries	371,064	380,340
06 - Sworn Overtime	20,500	21,020
07 - Sworn Retirement	191,527	212,558
08 - Sworn Fringe Benefits	138,441	136,122
09 - Allowances & Premiums	37,643	38,498
11 - Services & Supplies	183,550	183,550
12 - Contract Services	385,000	660,000
13 - Travel & Education	990,000	790,000
14 - Internal Services & Work Orders	66,471	67,088
17 - Overhead Allocations	12,877	13,333

Expenitures

Sections	FY19-20 Biennial Budget	Proposed FY20-21 Midcycle Budget
106510 - Budget Accounting	2,136,515	1,950,766
01 - Civilian Salaries	981,122	870,316
02 - Civilian Overtime	2,500	2,500
03 - Civilian Retirement	406,469	382,633
04 - Civilian Fringe Benefits	353,997	307,921
09 - Allowances & Premiums	5,457	5,279
11 - Services & Supplies	4,285	4,285
12 - Contract Services	243,325	237,038
14 - Internal Services & Work Orders	111,443	111,929
17 - Overhead Allocations	22,917	23,865
18 - Other Expenditures and Disbursements	5,000	5,000
106610 - Background and Recruiting	3,497,873	3,297,959
01 - Civilian Salaries	235,950	244,322
03 - Civilian Retirement	100,903	110,787
04 - Civilian Fringe Benefits	85,131	86,444
05 - Sworn Salaries	1,098,849	1,126,318
06 - Sworn Overtime	410,000	420,260
07 - Sworn Retirement	560,881	622,278
08 - Sworn Fringe Benefits	409,977	403,105
09 - Allowances & Premiums	105,526	107,477
11 - Services & Supplies	3,150	3,150
12 - Contract Services	345,000	30,000
14 - Internal Services & Work Orders	142,506	143,818
106810 - PAS Administration	1,032,227	905,231
01 - Civilian Salaries	513,461	436,977
02 - Civilian Overtime	5,000	5,000
03 - Civilian Retirement	214,049	193,637
04 - Civilian Fringe Benefits	185,256	154,612
09 - Allowances & Premiums	8,808	8,857
10 - Misc. Personnel Adjustments	47,666	47,666
11 - Services & Supplies	4,500	4,500
14 - Internal Services & Work Orders	53,487	53,982
107410 - Support Operations	1,347,507	1,393,845
02 - Civilian Overtime	50,000	50,000
05 - Sworn Salaries	544,361	557,970
06 - Sworn Overtime	164,000	168,100
07 - Sworn Retirement	277,999	308,500
08 - Sworn Fringe Benefits	203,099	199,697
09 - Allowances & Premiums	47,128	48,121
11 - Services & Supplies	2,500	2,500
14 - Internal Services & Work Orders	58,420	58,957

Expenitures

Sections	FY19-20 Biennial Budget	Proposed FY20-21 Midcycle Budget
107510 - Traffic Operations	11,773,191	12,272,895
01 - Civilian Salaries	2,131,726	2,250,836
02 - Civilian Overtime	34,938	34,938
03 - Civilian Retirement	532,350	555,840
04 - Civilian Fringe Benefits	475,569	465,321
05 - Sworn Salaries	3,598,651	3,688,612
06 - Sworn Overtime	123,010	126,090
07 - Sworn Retirement	1,895,611	2,103,509
08 - Sworn Fringe Benefits	1,342,648	1,320,142
09 - Allowances & Premiums	628,229	636,950
10 - Misc. Personnel Adjustments	0	65,685
11 - Services & Supplies	32,626	32,507
12 - Contract Services	120,545	106,354
14 - Internal Services & Work Orders	655,921	660,447
16 - Debt Payments	1,700	1,700
17 - Overhead Allocations	199,667	223,964
107710 - Special Operations	11,784,082	12,174,240
01 - Civilian Salaries	224,384	232,327
02 - Civilian Overtime	137,458	137,458
03 - Civilian Retirement	94,401	103,630
04 - Civilian Fringe Benefits	80,954	82,198
05 - Sworn Salaries	3,519,092	3,607,065
06 - Sworn Overtime	3,303,320	3,435,530
07 - Sworn Retirement	1,856,462	2,059,731
08 - Sworn Fringe Benefits	1,312,970	1,290,957
09 - Allowances & Premiums	435,584	444,369
11 - Services & Supplies	365,391	324,442
12 - Contract Services	66,000	65,000
14 - Internal Services & Work Orders	378,066	381,533
15 - Capital Acquistions	10,000	10,000
108010 - District Command Administration	1,618,115	2,319,129
01 - Civilian Salaries	543,126	562,417
03 - Civilian Retirement	226,033	248,205
04 - Civilian Fringe Benefits	195,960	198,985
05 - Sworn Salaries	378,939	388,412
06 - Sworn Overtime	35,880	36,780
07 - Sworn Retirement	187,568	208,124
08 - Sworn Fringe Benefits	141,382	139,012
09 - Allowances & Premiums	26,331	26,724
10 - Misc. Personnel Adjustments	(700,865)	(31,091)
11 - Services & Supplies	430,034	386,837
13 - Travel & Education	45,000	45,000
14 - Internal Services & Work Orders	108,727	109,724

Expenitures

Sections	FY19-20 Biennial Budget	Proposed FY20-21 Midcycle Budget
108110 - District Area 1	30,989,504	32,094,434
01 - Civilian Salaries	325,800	337,326
03 - Civilian Retirement	137,289	150,727
04 - Civilian Fringe Benefits	117,543	119,343
05 - Sworn Salaries	13,949,759	14,279,337
06 - Sworn Overtime	1,076,250	1,103,160
07 - Sworn Retirement	7,202,099	7,981,822
08 - Sworn Fringe Benefits	5,204,659	5,110,571
09 - Allowances & Premiums	1,381,309	1,409,636
11 - Services & Supplies	13,000	13,000
14 - Internal Services & Work Orders	1,575,086	1,589,512
17 - Overhead Allocations	6,710	0
108120 - District Area 2	22,180,149	23,062,497
01 - Civilian Salaries	252,643	261,593
03 - Civilian Retirement	106,722	117,162
04 - Civilian Fringe Benefits	91,154	92,551
05 - Sworn Salaries	9,855,735	10,102,126
06 - Sworn Overtime	1,076,250	1,189,704
07 - Sworn Retirement	5,074,259	5,630,660
08 - Sworn Fringe Benefits	3,677,190	3,615,546
09 - Allowances & Premiums	952,391	972,048
11 - Services & Supplies	13,000	13,000
14 - Internal Services & Work Orders	1,057,207	1,066,891
17 - Overhead Allocations	23,598	1,216
108130 - District Area 3	23,647,599	24,387,547
01 - Civilian Salaries	303,275	251,955
03 - Civilian Retirement	128,092	112,890
04 - Civilian Fringe Benefits	109,422	89,143
05 - Sworn Salaries	10,505,060	10,767,692
06 - Sworn Overtime	1,076,250	1,103,160
07 - Sworn Retirement	5,407,061	5,999,951
08 - Sworn Fringe Benefits	3,919,475	3,853,761
09 - Allowances & Premiums	1,009,680	1,026,411
11 - Services & Supplies	13,000	13,000
14 - Internal Services & Work Orders	1,158,964	1,169,584
17 - Overhead Allocations	17,320	0

Expenitures

Sections	FY19-20 Biennial Budget	Proposed FY20-21 Midcycle Budget
108140 - District Area 4	28,470,554	29,276,496
01 - Civilian Salaries	255,989	134,171
03 - Civilian Retirement	108,495	59,692
04 - Civilian Fringe Benefits	92,359	47,469
05 - Sworn Salaries	12,421,562	12,751,254
06 - Sworn Overtime	1,076,250	1,103,160
07 - Sworn Retirement	6,382,160	7,092,008
08 - Sworn Fringe Benefits	4,634,503	4,563,675
09 - Allowances & Premiums	1,164,844	1,184,394
11 - Services & Supplies	1,009,689	1,009,689
14 - Internal Services & Work Orders	1,317,652	1,329,721
17 - Overhead Allocations	7,051	1,263
108150 - District Area 5	29,267,472	30,233,269
01 - Civilian Salaries	435,642	389,015
03 - Civilian Retirement	184,685	174,997
04 - Civilian Fringe Benefits	157,182	137,633
05 - Sworn Salaries	13,227,063	13,557,743
06 - Sworn Overtime	1,076,250	1,103,160
07 - Sworn Retirement	6,716,773	7,453,444
08 - Sworn Fringe Benefits	4,935,043	4,852,312
09 - Allowances & Premiums	1,076,578	1,096,972
11 - Services & Supplies	13,000	13,000
14 - Internal Services & Work Orders	1,441,773	1,454,993
17 - Overhead Allocations	3,483	0
108630 - Ceasefire	11,559,617	12,138,394
01 - Civilian Salaries	241,350	344,605
03 - Civilian Retirement	99,436	150,593
04 - Civilian Fringe Benefits	87,080	121,924
05 - Sworn Salaries	4,980,471	5,104,976
06 - Sworn Overtime	410,000	420,250
07 - Sworn Retirement	2,499,268	2,773,342
08 - Sworn Fringe Benefits	1,858,209	1,827,066
09 - Allowances & Premiums	337,124	343,623
11 - Services & Supplies	205,678	205,276
12 - Contract Services	175,000	175,000
13 - Travel & Education	40,000	40,000
14 - Internal Services & Work Orders	626,001	631,739

Expenitures

Sections	FY19-20 Biennial Budget	Proposed FY20-21 Midcycle Budget
108710 - Neighborhood Services Section 1	1,156,655	1,203,192
01 - Civilian Salaries	573,929	594,265
02 - Civilian Overtime	7,500	7,500
03 - Civilian Retirement	230,147	252,655
04 - Civilian Fringe Benefits	200,266	203,372
09 - Allowances & Premiums	7,528	7,561
11 - Services & Supplies	70,500	70,500
12 - Contract Services	2,000	2,000
13 - Travel & Education	5,000	5,000
14 - Internal Services & Work Orders	59,785	60,339
108820 - Neighborhood Services Section 2	1,073,823	798,505
01 - Civilian Salaries	555,469	395,999
02 - Civilian Overtime	7,500	7,500
03 - Civilian Retirement	232,274	176,532
04 - Civilian Fringe Benefits	200,409	140,110
09 - Allowances & Premiums	8,307	7,965
11 - Services & Supplies	12,000	12,000
14 - Internal Services & Work Orders	57,864	58,399
Grand Total	311,112,070	318,947,902



CITY OF OAKLAND

CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

Police Commission

June 01, 2020

Re: Resolution to Amend City Charter Section 604 (Police Commission)

Dear Oakland City Council,

Circa May 23, 2020, the Oakland Police Commission (“Commission”) received two updated draft resolutions proposing to amend City Charter Section 604. The first draft (hereinafter “Resolution One”) is sponsored by Council President Kaplan, Council President Pro Tempore Kalb, Councilmember Gallo, and Councilmember Taylor. Resolution One proposes a variety of substantive changes. The second draft (hereinafter “Resolution Two”) is sponsored by Council President Kaplan, Council President Pro Tempore Kalb, and Councilmember Gallo. Resolution Two proposes a limited selection of changes, the creation of the Office of the Inspector General (OIG), and language empowering the Commission to hire independent legal counsel. During our May 28, 2020 meeting, the Commission reviewed both resolutions. We used Resolution One as a reference document for our debate, as it most closely comports with the opinions previously expressed by the Commission in our April 27, 2020 Opinion Letter.

We suggest the following edits be made to Resolution One, and we submit our opinion on this draft legislation for your review and comment. Items included in Resolution One that are not the subject of discussion in this opinion letter can be considered to have the support of the Commission.

[1] Section 604, Subsection (a)(4)

It is our opinion that audits of the Commission be conducted at no less than a three-year cycle. A two-year cycle is insufficient time for the Commission to participate in the audit process, receive a final report and recommendations, and take action on recommendations. Additional time would serve to assist the Commission in adapting its operations when auditors present their findings.

[2] Section 604, Subsection (a)(5)

Current language: “The City Administration shall not exercise any managerial authority over Commissioners or their designated staff, and shall not initiate an investigation for the purpose of removing a Commissioner.”

Suggested language: **“The City Administration shall not exercise any managerial authority over Commissioners or their designated staff, and shall not initiate an investigation of a Commissioner unless required by law or collective bargaining agreement.”**

It is our opinion that the phrase “...initiate an investigation for the purpose of removing a

Commissioner.” invites abuse. The current language would permit the City Administration to investigate a Commissioner as long as there is no explicit statement that such an investigation is for the purposes of removal. The proposed replacement language removes this unenforceable standard. We support the language added to section 604(c)(10) that empowers the Public Ethics Commission to investigate allegations against Commissioners.

[3] Section 604, Subsection (b)(5)

Resolution Two contains the following language, hereinafter referred to as the “exigency provision”:

The Chief of Police may, on a temporary basis and without Commission approval, make changes to policies, procedures, customs, or General Orders of the Department that are necessary to respond to exigent circumstances related to public safety. If such unilateral changes otherwise require Commission approval under this section 604(b)(5), the Department shall provide notice to the Chair of the Commission within forty-eight (48) hours of making such changes and such changes shall expire sixty (60) days from when they take effect unless approved by the Commission or the City Council.

It is our opinion that the abovementioned exigency provision should be removed. This language invites abuse, and provides the Chief of Police with the ability to avoid Commission and Council oversight if “emergency” policy changes are made on a rolling basis. We do not believe that the Chief should hold this power, or that this power is necessary for public safety. In the history of the Commission, we have had one policy that required change on an emergency basis. This policy, (a use of force reporting policy proposed by former Chief Kirkpatrick, and approved by the Commission) created unanticipated backlog for patrol officers due to report writing requirements. The Department timely identified the issue, presented a proposed amendment to the Commission, and the Commission approved the amendment. This is the appropriate process for emergency policy changes. The Commission strongly opposes the creation of an unnecessary “policy exigency”.

[4] Section 604, Subsections (c)(1) and (2)

It is our opinion that language setting forth eligibility requirements for Commissioners should remain in the Charter. Resolution One deletes language that prevents current police officers, current City employees, former Department sworn employees, and current or former police union officials from serving as Commissioners. In its place, Resolution One provides the Council with the ability to determine, by ordinance, qualifying and disqualifying characteristics for Commissioners. This language raises the specter of (1) a mayoral appointment of a police officer or union official to serve as a Commissioner, and (2) a future Council changing Commissioner eligibility in ways that are inconsistent with the intent of this Charter revision – to preserve and protect the Commission’s independence as a police oversight authority.

It is our opinion that the following phrase should be deleted from subsection (c)1: “Commissioners shall ... not be issued and shall not display, wear, or carry badges that identify themselves as Commissioners.”

This language is unnecessary and does not belong in the City Charter. All use of identification in any form by all Commissioners has been appropriate and to suggest otherwise is highly inappropriate.¹

¹ The March 02, 2020 agenda of the Public Ethics Commission, under Attachment 9, contains a February 18, 2020 letter

Impersonation of a peace officer is a crime. There is no evidence that any Commissioner has ever attempted to act with the authority of a peace officer. This issue has been brought to public attention because San Francisco Police Officers claimed that a Commissioner “flashed a badge” at them during an incident in San Francisco. This incident was investigated and the Oakland Public Ethics Commission exonerated the accused Commissioner after review of evidence, which included police body camera footage. We respectfully request that Council refrain from continuing to reference this unfounded allegation against a volunteer Commissioner.

[5] Section 604, Subsection (e)(4)

It is our opinion that the staff of the Community Police Review Agency (CPRA) should consist of no fewer than one line investigator for every seventy (70) sworn officers in the Department. This recommendation is made following consultation with the CPRA Executive Director, who has noted in prior meetings of the Commission that he lacks sufficient staff to engage in on-call responses to high-level allegations of police misconduct. Sufficient staffing of the Agency is an ongoing concern for the Commission. Please note that at the time of this writing, the Agency has no ability to send on-call investigators to the scene if police misconduct occurs during the ongoing demonstrations related to George Floyd’s death by Minneapolis police.

[6] Section 604, Subsection (e)(6)

It is our opinion that the Commission’s Inspector General (OIG) should be an at-will employee, similar to the Executive Director of the CPRA. The Inspector General is not and should not be tasked with audits or reviews of the Commission, given this, the proposed requirement that cause be given for dismissal of the OIG (but not the CPRA Executive Director) is baffling. The Commission must be empowered to select and remove senior staff as necessary for the Commission to conduct its business.

[7] Section 604, Subsection (f)(2)

We strongly support the language added to provide access to Department personnel records. We note that the CPRA has previously struggled with the current Charter language that restricts personnel records access to the Executive Director. We are pleased to note that this bottleneck has been remedied, and that explicit authority to review personnel records is provided to the Commission itself.

[8] Section 604, Subsection (g)(5)

The Commission proposes that the following language be inserted into subsection (g)(5), replacing the language present in Resolution One:

The Commission on its own motion may convene a Discipline Committee for cases when either or both the Agency Director or the Department have not completed an investigation within two hundred and fifty (250) days of the filing of a complaint or when the evidence upon which the findings of either the Department or CPRA do not include required body worn camera footage of the incident in question. The Commission shall adopt additional qualifying criteria for convening a Discipline Committee within its own

addressed to Commissioner Harris. The letter states in relevant part: “PEC Staff found no evidence of the use of your Commissioner badge for the purpose of inducing or coercing staff at the school to allow you to enter the school.”

bylaws. The Discipline Committee may require the Agency to further investigate the complaint by notifying the Agency Director, in writing, of the specific issues that need further investigation. The Commission may convene such a Discipline Committee by a vote of no fewer than five (5) affirmative votes.

Conclusion

| Thank you for your consideration of the Commission's comments and edits of Resolution One.

Very truly yours,

Regina Jackson
Chair, Oakland Police Commission



CITY OF OAKLAND

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Police Commission

June 01, 2020

Re: Supplemental Opinion & Dissent

Dear Oakland City Council,

During the May 28, 2020 meeting of the Oakland Police Commission (Commission) the Commission reviewed two draft resolutions proposing to amend City Charter Section 604. The Commission's majority opinion is expressed in the Commission Opinion Letter dated June 01, 2020. We join in that opinion, except as to the language proposed by the Commission for Section 604, subsection (g)(5), to which we write in dissent.

Background

Circa May 23, 2020, the Oakland Police Commission ("Commission") received two updated draft resolutions proposing to amend City Charter Section 604. The first draft (hereinafter "Resolution One") is sponsored by Council President Kaplan, Council President Pro Tempore Kalb, Councilmember Gallo, and Councilmember Taylor. Resolution One proposes a variety of substantive changes. The second draft (hereinafter "Resolution Two") is sponsored by Council President Kaplan, Council President Pro Tempore Kalb, and Councilmember Gallo. Resolution Two proposes a limited selection of changes, the creation of the Office of the Inspector General (OIG), and language empowering the Commission to hire independent legal counsel. As noted in the majority opinion, the Commission used Resolution One as a reference document for our debate, as it most closely comports with the opinions previously expressed by the Commission in the Commission's April 27, 2020 Opinion Letter.

The original language of Section 604, subsection (g)(5) in Resolution One reads as follows:

The Commission may review the findings and discipline in any investigation of Level 1 use of force, sexual misconduct and untruthfulness, even if the Chief and the Agency agreed on the findings and discipline. The Commission shall conduct such review solely for the purposes of facilitating the Commission's oversight of the Agency, for formulating Agency policy and for making policy recommendations to the Department. The Commission may conduct such review only after the findings are no longer subject to review or modification by a Discipline Committee. The Commission shall not have the authority to reject or modify any findings or discipline. The Commission may delegate its authority to conduct the review described in this Section 604(g)(5) to the Inspector General. Nothing in this Section 604(g)(5) shall limit or modify the authority of a convened Discipline Committee as described in Section

604(g)(2).

The Commission's majority opinion proposes that Section 604, subsection (g)(5) of Resolution One read as follows:

The Commission on its own motion may convene a Discipline Committee for cases when either or both the Agency Director or the Department have not completed an investigation within two hundred and fifty (250) days of the filing of a complaint or when the evidence upon which the findings of either the Department or CPRA do not include required body worn camera footage of the incident in question. The Commission shall adopt additional qualifying criteria for convening a Discipline Committee within its own bylaws. The Discipline Committee may require the Agency to further investigate the complaint by notifying the Agency Director, in writing, of the specific issues that need further investigation. The Commission may convene such a Discipline Committee by a vote of no fewer than five (5) affirmative votes.

Argument

We write in dissent to the majority opinion, and urge Council to preserve the original language of Section 604, subsection (g)(5) as written in Resolution One.

Overview of the Current Disciplinary Framework

Under current law and policy, allegations of police misconduct are subject to investigation by the Internal Affairs Division (IAD) of the Oakland Police Department (OPD) and by the Community Police Review Agency (CPRA). These agencies are mandated to investigate the most serious categories of complaints, and retain limited discretion to administratively close other categories of complaints without a full investigation.¹

Per policy, IAD investigations must be completed, reviewed, and approved within 180 days, and in cases with a sustained finding, the discipline recommendation process must be completed within 30 days of the sustained finding.² CPRA is required by Charter to "make every reasonable effort" to complete its investigations within 180 days, and within 30 days of completion, the Director must issue written findings and proposed discipline to the Commission and the Chief of Police.³

The creation of this dual-track investigation protocol was a direct response to the perception that IAD was unable to conduct impartial investigations. Under the current Charter, CPRA serves as a check, protecting against the potential for IAD to conduct a biased investigation. CPRA's investigatory mandate is designed to produce independently-reached findings and proposed discipline.

This disciplinary framework is analogous to opposing attorneys during litigation. If IAD and CPRA reach similar findings, the Chief of Police will send the subject officer notice of intent to impose

¹ Oakland Police Department General Order M-03: Complaints Against Department Personnel, Section IV: Preliminary Inquiry, and Section VI: Investigation of Complaints [OPD Mandates]; Oakland City Charter, Section 604(f)(1) [CPRA Mandates].

² Oakland Police Department General Order M-03: Complaints Against Department Personnel, Section V: Due Dates And Timelines.

³ Oakland City Charter, Section 604(f)(3).

discipline. In essence, the “parties” have reached an appropriate “settlement”. If IAD and CPRA disagree, each agency submits their investigative files to a Commission Discipline Committee (DC). The DC, by design, acts like a judicial authority; it resolves any dispute between the agencies, and makes a final determination on proposed discipline.

Impartial Adjudicators Cannot Direct Investigative Activities

The framework discussed above creates a quasi-adversarial system where IAD’s findings are presented against CPRA’s findings, and the DC acts as the trier of fact. In order to act as an impartial adjudicator, the DC cannot be permitted to direct anyone to conduct investigative activities. The DC must rely only on the record presented by IAD and CPRA when reaching disciplinary decisions. A reasonable analogy is that of an appellate judge. Appellate courts rely on the record presented to it. It cannot order parties to conduct investigative activities. Doing so would be unconstitutional, as the judge would be assuming the investigatory role properly assigned to a party.

Furthermore, allowing a DC to take on an investigatory role is a dangerous position for a volunteer commission to assume without a substantial restructuring of Commission operations, qualifications, and training. To place this responsibility on the Commission, as currently formed and operated, would be crippling.

Lastly, in the context of police discipline, a DC that can direct further investigative activities invites additional jeopardy on procedural due process grounds. Attorneys for police officers will be able to justifiably question the propriety of a DC’s order for investigations or the propriety of a DC failing to conduct additional investigations. If a DC orders further investigation in one matter, but not in a similarly-situated matter, a competent attorney would challenge the DC’s ultimate decision on grounds of disparate treatment. This jeopardy can be entirely avoided by retaining the current framework, and positioning the DC to act as an impartial adjudicator only.

Commission Oversight of CPRA Can Be Effectively Accomplished by Other Means

Other commissioners and members of the public have referenced the Pawlik litigation as evidence that a DC must be empowered to direct the Agency to conduct certain investigative activities. In that matter, IAD and CPRA initially reached similar findings, but IAD’s findings were rescinded and reissued per the order of Oakland’s Federal Monitor, creating a dispute between the agencies that triggered the creation of a DC. Many members of the public perceived this series of events as evidence that in order to avoid the potential for future CPRA/IAD concurrence, the Commission must be empowered to direct further investigation by CPRA. This argument is wrong.

If a suspect commits a crime, and the district attorney fails to present key evidence that would convict the suspect, the appropriate remedy is to replace the district attorney with a competent substitute. As noted above, it would be wildly inappropriate for a trier of fact to direct the district attorney to conduct additional investigations and bring the materials forward for trial. In the Pawlik matter, the Commission noted concerns with the investigations conducted by both IAD and CPRA. The Commission has since dismissed the prior Director of CPRA and hired a competent substitute with clear direction to reform the CPRA. This is the appropriate remedy.

The current language of Section 604, subsection (g)(5) in Resolution One provides the Commission with necessary authority to review the work product of the CPRA, and determine whether the current Director is proposing discipline that is in-line with Commission expectations. If he fails to do so, the current language provides the Commission with the oversight access it needs to identify such a problem, and remedy it by providing direction to the current Director, or by seeking a suitable

replacement.

The Proposed Replacement Language is Fatally Flawed

The proposed replacement language contains a fatal flaw. Complex disciplinary matters take time to investigate. If the Commission forms a DC because it believes the investigation is taking too long, that DC will likely receive an investigatory file that is incomplete. Attempting to rely on an incomplete investigation to impose discipline invites litigation, and places the Commission and the City into a compromised position that would be likely impossible to defend. Police oversight is already complex and litigious and adopting the proposed replacement language would unnecessarily expose the Commission and City to legal liability.

Conclusion

For the foregoing reasons, we dissent from the Commission's June 01, 2020 Opinion Letter, and urge Council to preserve Section 604(g)(5) as currently drafted in Resolution One.

Henry Gage III, Esq., Police Commission Vice Chair
hgage@oaklandcommission.org

Edwin Prather, Esq., Police Commissioner
eprather@oaklandcommission.org

SPRING 2020

Property Damage by Oakland Police



Report by Amy Ferguson, Jesus Chavarin-Rivas, and Marcia Garcia

GOLDMAN SCHOOL
OF
PUBLIC POLICY
UNIVERSITY OF CALIFORNIA BERKELEY

Acknowledgements

We want to begin by thanking the staff at the Community Police Review Agency and the Oakland Police Commission for bringing this topic into the forefront and for all of their support. In particular, we thank John Alden, Regina Jackson, Chrissie Love, and Juanito Rus for their time and guidance.

We also thank staff from the Oakland City Attorney's Office, Oakland Police Department, International Association of Chiefs of Police- Center for Police Research and Policy, as well as students and professors from the Goldman School of Public Policy for taking the time to speak with us and for helping inform this report.

Lastly, we would like to thank Professor Meredith Sadin, our advisor for this project, for all her feedback, recommendations, and encouragement. Our team truly appreciates all the time and guidance she provided throughout this process.

Photo credit: Cover photo by Michael Short. Accessed from

<https://www.sfgate.com/crime/article/Oakland-police-more-likely-to-stop-black-people-8216695.php#photo-9937596>.

Table of Contents

Acknowledgements	2
Table of Contents	3
Executive Summary	3
Definitions and Acronyms	7
Introduction	8
Legal Framework	9
Existing Policy and Research	12
Methodology	12
Quantitative Analysis of Claims Data (Oakland)	14
Key Findings	14
#1: The City Attorney's Office received on average 50 claims a year with an average prayer amount of \$3,798.	14
#2: Claimants are more likely to be compensated for vehicle related property damage and will receive a higher settlement if they file a lawsuit.	16
#3: The majority of submitted OPD related property damage claims in Oakland are from lower median income zip codes and communities of color.	18
Overview of Claims Process in Oakland	20
City Comparison	22
Chicago	25
Los Angeles	26
New York City	26
Limitations and Recommendations	30
Limitations	30
Recommendations	30
Conclusion	32
Appendix	33
Oakland City Attorney Cause Codes	33
Chicago Police Department Claims Notification Procedures	38
Bibliography	41

Executive Summary

On June 3, 2015, an armed individual suspected of shoplifting entered Leo Lech's residency in Greenwood Village, Colorado. After an hours-long standstill, law enforcement forced the suspect out of the home by using explosives, high-caliber ammunition, and a battering ram mounted on a military-style armored vehicle driven through Lech's house.^{1 2} Despite completely destroying Lech's home, the city offered \$5,000 in compensation, which did not cover the full cost of the damage to their property.³ Mr. Lech filed a lawsuit and in the fall of 2019, a federal appeals court ruled that the police cannot be responsible for property damage caused in the process of making an arrest.⁴

While this particular incident occurred in Greenwood Village, Colorado, the episode highlights the extent of authority and leeway police departments across the country possess as it pertains to property damage. This report analyzes data from 2009 - 2019 to understand how property damage impacts the residents of the City of Oakland. The report looks at the number of requests for compensation made and the amount residents were ultimately paid. It further analyzes whether the impact of property damage disproportionately affects certain neighborhoods, and conducts a comparative analysis across other cities and their respective processes.

Analyzing the settlements and lawsuits from this 11 year period, the report finds that the city averages 50 claims a year with an average compensation request of \$3,798 per claim. About 57% of the requests are due to property damage caused by Oakland Police Department vehicles while the remaining claims are non-vehicle related property damage, which include damage to a person's doors, fences, kitchen windows, and locks.

Our research looked at the legal framework and found that most of the current legislation holds police departments immune from liability. But, as Institute for Justice Attorney Jeffrey Redfern states, "If the government requires a piece of property to be destroyed, then the government should pay for it—that's just as true

¹ Bobby Allyn, "Police Owe Nothing To Man Whose Home They Blew Up, Appeals Court Says," *NPR*, October, 30, 2019, <https://www.npr.org/2019/10/30/774788611/police-owe-nothing-to-man-whose-home-they-blew-up-appeals-court-says>.

² Andrew Wilmer, "Homeowners Appeal to U.S. Supreme Court in House-Destruction Case," Institute for Justice, March, 11, 2020, <https://ij.org/press-release/homeowners-appeal-to-u-s-supreme-court-in-house-destruction-case/>.

³ *Ibid.*

⁴ Bobby Allyn, "Police Owe Nothing To Man Whose Home They Blew Up, Appeals Court Says," *NPR*, October, 30, 2019, <https://www.npr.org/2019/10/30/774788611/police-owe-nothing-to-man-whose-home-they-blew-up-appeals-court-says>.

regardless of whether the people doing the destroying are the local school board or the local police.”⁵

Considering that most of the current case law does not hold police departments responsible for property damage, our team initially expected that the majority of the cases would be denied. The research indicates that this is partly the case. Approximately 40% of requested claims are approved by the City Attorney's Office and an additional 8% of cases resulted in lawsuits against the city. Of those cases that are litigated, 71% are settled. There were considerable discrepancies in compensation between cases resolved at the City Attorney's Office and those settled in court, with the average settlements of \$3,247 versus \$18,911 respectively, and most of the approved cases were for vehicle-related incidents.

A crucial part of the analysis was determining whether all communities are impacted equally. Fifty-nine percent of the property damage reported came from areas with higher proportion of minorities and from households with lower median income. The findings indicate that households with less resources are disproportionately impacted by property damage.

One of the biggest findings from this report is that further research is needed to better understand how the City of Oakland compares with other cities. However, despite the limited research, there are proactive steps the City of Oakland can take to increase awareness for residents about potential recourse for property damage, increase accessibility to file claims, and work on ensuring equitable treatment by the Oakland Police Department. The recommendations from this report follow this framework of awareness, accessibility, and equity:

Awareness

The research team defined awareness as how residents learned about their right to file a claim and the process to do so. This could be improved by:

- Decreasing learning costs for residents by providing outreach materials and placing the information prominently on the Oakland Police Department's website.
- Standardizing the process for police officers requiring them to provide claims process information for damage caused during execution of search warrants.
- Further research: The City of Oakland could work with residents and advocacy groups to better understand what are the learning costs to filing claims.

⁵ Andrew Wilmer, "Homeowners Appeal to U.S. Supreme Court in House-Destruction Case," Institute for Justice, March, 11, 2020, <https://ij.org/press-release/homeowners-appeal-to-u-s-supreme-court-in-house-destruction-case/>.

Accessibility

The research team defined accessibility as ease of filing a claim and transparency of the city's claim process. Suggestions for improvement include:

- Creating an online portal for submission of claims like Los Angeles and New York City.
- Creating an annual report similar to New York City's one, which is available online and open to the public, to measure progress made by the City of Oakland.
- Further research: The City of Oakland could work with residents and advocacy groups to better understand existing barriers to filing claims and gather direct input.

Equity

The research team defined equity as whether police departments treat different communities fairly and there are not disparities among those most impacted. Improving these efforts can include:

- Creating and providing formal training on minimizing damage in low-income and minority neighborhoods.
- Encouraging community input to ensure implemented changes are able to meet the needs of Oakland residents.
- Further research: The team was not able to analyze denial reasons, which could provide further information regarding denials.

Definitions and Acronyms

Claimant: The individual who files the claim.

Community Police Review Agency (CPRA): Established in 2017, the CPRA's mission is to improve police services to the Oakland Community by increasing understanding between community members and police officers. It aims to do this by receiving complaints, conducting parallel investigations to the Oakland Police Department, and providing insight to policy perspectives.

Oakland Police Commission: In 2016, Oakland voters passed Measure LL, establishing the Oakland Police Commission. Its purpose is to oversee the Oakland Police Department's policies, practices, and customs to meet national standards of constitutional policing and to oversee the Community Police Review Agency. The Police Commission is comprised of seven regular and two alternate members. All commissioners are Oakland residents and serve in a volunteer capacity.

Oakland Police Department (OPD): Law enforcement agency responsible for policing the city of Oakland, California. As of July 31, 2018, the OPD consisted of 738 sworn officers.⁶

Prayer Amount: Amount requested on claim form for reimbursement of damages.

Property Damage: Injury to real or personal property through another's negligence, willful destruction or by some act of nature. In lawsuits for damages caused by negligence or a willful act, property damage is distinguished from personal injury. May include harm to an automobile, a fence, a tree, a home or any other possession. The amount of recovery for property damage may be established by evidence of replacement value, cost of repairs, loss of use until repaired or replaced or, in the case of heirlooms or personal items, by subjective testimony as to sentimental value.⁷

Real Property: Land and anything affixed to the land, including man-made structures.⁸

Settlement Amount: Amount provided to claimant as part of the claim settlement.

Tort Claim: Written statement of a request for damages or relief.

⁶ Anne E. Kirkpatrick, "Monthly Police Staffing Report," City of Oakland, August 15, 2018, <http://www2.oaklandnet.com/oakcal/groups/police/documents/report/oak071502.pdf>.

⁷ Law.com, Legal Dictionary. "Property Damage," <https://dictionary.law.com/Default.aspx?selected=1646>

⁸ Ken LaMance, "Legal Definition of Real Property." LegalMatch Law Library, May 2, 2013, <https://www.legalmatch.com/law-library/article/legal-definition-of-real-property.html>.

Introduction

In the Fall of 2019, representatives from the Oakland Police Commission and the Community Police Review Agency reported that the City of Oakland was receiving a high number of complaints from individuals about damaged or lost property during the process of police stops, searches, pursuits of suspects, and vehicular accidents. Both entities requested a joint report to explore the issue, and a research team from the Goldman School of Public Policy at the University of California at Berkeley undertook the analysis in order to better understand the extent of the problem.

The city's process for handling damage to property by police is for the affected party to file a tort claim with the Office of the City Attorney. Claimants typically have six months to one year to file, depending on the type of damage, and the City Attorney returns a decision within forty-five days. In each case, the city investigates the issue and determines whether to pay a settlement amount or deny the claim. If the city denies the claim, the claimant can choose whether to bring a lawsuit. According to state legislation, a claimant must first file a claim before they can bring a lawsuit, unless they believe they have been subjected to a Civil Rights violation.⁹

This report explores three main research objectives:

1. Quantify the extent of lost and damaged property due to police activity for the private citizens of Oakland.
2. Determine the amount of compensation and settlements paid out by the City of Oakland as well as the amount of claims that are never compensated.
3. Identify whether all residents are impacted the same or if there are specific communities disproportionately impacted by property damages caused by OPD.

A secondary objective of this report is to compare how the City of Oakland compares with other cities. Many states have laws protecting police departments and cities from property damage in the course of police activity, though some do provide protections for residents. An examination of best practices in other cities can shed light on how Oakland can better serve its residents through compensation when police damage their property through no fault of their own.

Also factoring into this issue is existing case law, much of which protects police and cities from liability in cases of police property damage. Perhaps due to this precedent, there is not a lot of research or policy on this issue. The research team did not find a standard policy on how to deal with property damage in police policy clearinghouses, and a researcher from the International Association of Chiefs of

⁹ Jerry Ho, Office of the City Attorney, Oakland, CA, interview, March 18, 2020.

Police Center for Police Research and Policy stated that “there is not a lot of information on this topic.”¹⁰

Legal Framework

There are existing California codes to determine how to handle claims against the police department as well as case law that has set precedents for how to interpret the liability of the police department and city. The common thread among current case law in California provides police departments immunity from liability for property damage in the course of police activity.

The main legislation that governs the claims process is the California Tort Claims Act of 1963. The Act, or Government Code §§ 810-996.6¹¹, outlines how claimants must file claims against government entities. Filing a claim allows the government to investigate the incident and provides an opportunity to reach a settlement without proceeding to a lawsuit. If the claimant does wish to bring a lawsuit against the city, they must first file a claim. The exception to this rule is if a claimant alleges that there has been a Civil Rights violation, in which case they can proceed directly to a lawsuit. Civil Rights violations are not covered under the California Tort Claims Act.

The time period for most claims, including damage to personal property, is six months from the date of the incident. Damage to real property (which includes structures on a piece of land) must be filed in a claim within one year.

Consistent with case law, police are generally not liable for tort claims. In *Antique Arts Corp. v Torrance* (1974), the court decided that the Tort Claims Act “shows legislative intent to immunize the police function from tort liability from the inception of its exercise to the point of arrest.”¹² In this case, a store owned by Antique Arts Corp. activated a silent alarm during a robbery. The police took a little over ten minutes to arrive on the scene. Antique Arts Corp. sued for the delay, but the court found immunity for the police in the California Tort Claims act.¹³

In *Customer Co. v. Sacramento* (1995), a case of property damage by police was brought to the California Supreme Court for the first time. A man suspected of stealing a car was pursued by police until he reached a liquor store, within which he barricaded himself. Police fired tear gas into the store in the course of the pursuit,

¹⁰ Gabrielle Isaza, Research Associate, Research Associate, IACP / UC Center for Police Research and Policy, University of Cincinnati, email, March 9, 2020.

¹¹ Sacramento County Public Law Library, “Claims Against the Government,” brochure, April 2019, <https://saclaw.org/wp-content/uploads/claims-against-the-government.pdf>.

¹² Matthew J. Orebic,, Deputy City Attorney for City of Berkeley, “Police Civil Liability Lawsuits in California,” League of California Cities, July 23, 2014.

¹³ “Antique Arts Corporation v. City of Torrance,” FindLaw, Accessed May 11, 2020, <https://caselaw.findlaw.com/ca-court-of-appeal/1827871.html>.

though the suspect did not have a weapon. The tear gas caused \$360,000 in damages as the store had to throw away the inventory and close for eleven days.

The court found the police not liable for the property damage in the course of their pursuit. The plaintiff had argued for liability under the “just compensation” clause in the Fifth Amendment of the U.S. Constitution¹⁴ (as well as under the state constitution), which states that “private property should not be taken for public use without just compensation.” However, the ruling found that clause to be applicable to public works projects and unwise to enforce for police activity. Justice Ronald M. George wrote that finding the police liable for damage during their pursuit “might well deter law enforcement officers from acting swiftly and effectively to protect public safety in emergency situations.”¹⁵

Judges in multiple cases in different states have interpreted the “takings” clause to not apply to property damage by police.¹⁶ They do not consider destruction of property to be a “use” for which the property was taken. As such lawsuits have not compensated victims, their only option is in the tort claims process, which may or may not find the city liable.

In *Liston v. County of Riverside* (1997)¹⁷, the Fourth Amendment¹⁸ was invoked. This amendment protects against unreasonable searches and seizures. In this case, the plaintiff alleged that police officers executing a search warrant trashed their home, emptying out drawers and closets. The court found that this was not unreasonable destruction and that “it might be a violation of the Fourth Amendment to prolong the search to clean up once the search is over.” The court also found that California

¹⁴ “Fifth Amendment,” Legal Information Institute, Cornell Law School, Accessed May 11, 2020, https://www.law.cornell.edu/constitution/fifth_amendment. The Fifth Amendment states: “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

¹⁵ Maura Dolan, “Government Held Immune From Police Damage Costs : Supreme Court: State justices say the Constitution does not require reimbursement for losses suffered at hands of officers in pursuit of suspects. A Sacramento store had sought \$300,000 for tear-gas damage,” Los Angeles Times, June 13, 1995, <https://www.latimes.com/archives/la-xpm-1995-06-13-mn-12645-story.html>.

¹⁶ C. Wayne Owen Jr., “Everyone Benefits, Everyone Pays: Does the Fifth Amendment Mandate Compensation When Property is Damaged During the Course of Police Activities?,” 9 Wm. & Mary Bill Rts. J. 277 (2000), <https://scholarship.law.wm.edu/wmboj/vol9/iss1/16>.

¹⁷ Matthew J. Orebic, Deputy City Attorney for City of Berkeley, “Police Civil Liability Lawsuits in California,” League of California Cities, July 23, 2014.

¹⁸ “Fourth Amendment,” Legal Information Institute, Cornell Law School, Accessed May 11, 2020, https://www.law.cornell.edu/constitution/fourth_amendment. The Fourth Amendment states: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

Government Code 821.6 gives police officers immunity for any property damage caused during the procedure of executing a search warrant.

Many police property damage cases involve destruction of a front door while executing a search warrant. Police often bust down a door in this process. For a low-income household, having a non-functioning front door can be an expensive repair that leaves a household vulnerable in the interim. However, California Government Code 1531 protects police and the city from liability in this situation.

In many other states, case law similarly protects police officers from liability in the course of police activity (see Tennessee¹⁹). However, some states have laws that consider the government responsible. Minnesota requires just compensation for damage created during the execution of a search warrant or in pursuit of a suspect.²⁰ Texas also provides just compensation for police activity.

In Colorado, in *Lech v. City of Greenwood Village* (2019), the city was found not responsible for a house destroyed while police were pursuing a suspect who barricaded himself inside an innocent party's home. The police used explosives, high-caliber ammunition, and a battering ram. The Institute for Justice, a public interest law firm, asked the U.S. Supreme Court to hear the case in March 2020.²¹



Court exhibit /Federal court filings from Lech v. City of Greenwood Village (2019), photo shared from Institute for Justice

¹⁹ Sidney Hemsley, "Damages Police Do to Buildings in the Process of Searches in Exigent Circumstances," Municipal Technical Advisory Service, Institute for Public Service, University of Tennessee, reviewed June 21, 2017, <https://www.mtas.tennessee.edu/knowledgebase/damages-police-do-buildings-process-searches-exigent-circumstances>.

²⁰ "2019 Minnesota Statutes: 626.74 Compensation For Damage Caused By Peace Officers In Performing Law Enforcement Duties," Minnesota Legislature, 2019, <https://www.revisor.mn.gov/statutes/cite/626.74>.

²¹ Andrew Wimer, "Homeowners Appeal to U.S. Supreme Court in House-Destruction Case," Institute for Justice, March 11, 2020, <https://ij.org/press-release/homeowners-appeal-to-u-s-supreme-court-in-house-destruction-case/>.

Existing Policy and Research

Despite the existence of high-profile cases related to property damage, there is very limited research and police policy on property damage.

Oakland PD does have a policy that considers property damage in the context of misconduct allegations. If a resident's property is damaged sufficiently, a supervisor and/or Internal Affairs will investigate the issue. If the resident does not think misconduct occurred but requests reimbursement, there is no action taken for misconduct, and the resident is referred to the Office of the City Attorney.²² Officers are meant to share information for follow-up with the resident at the time of the damage.²³

However, there does not appear to be a policy standard on how police should approach potential property damage. The following policy clearinghouses were searched and not found to have a discrete, focused policy on property damage by police:

- California's Peace Officer Standards and Training
- International Association of Chiefs of Police, Center for Police Research and Policy
- Obama's 21st Century Policing Task Force final report
- National Police Foundation
- Police Executive Research Forum
- Portland State University Hatfield School of Government Criminal Justice Policy Research Institute
- Radford University Center of Police Practice, Policy, and Research
- Rand Corporation

Methodology

The first stage consisted of analyzing the data from two datasets obtained from the City Attorney's office: OPD property claims from 2009 - 2019 and OPD Lawsuits from 2009 - 2019. After reviewing all the categories for claims, the team decided to focus on these four categories:

- City Vehicle Against Another Vehicle
- City OPD Vehicle: Suspect Chase/Property Damage
- Police: Non/vehicle Related Property Loss
- Police Conduct: Chase/Property Damage

²² Captain Nishant Joshi, Training Division, Oakland Police Department, email, April 30, 2020.

²³ Jerry Ho, Office of the City Attorney, Oakland, CA, interview, March 18, 2020.

Using this data, the team focused on lost and damaged property by police and excluded several other types of claims that may or may not have been included in the data.²⁴ The excluded types of cases were:

- Claims and lawsuits related to police towing and personal injury, important issues but left out to minimize scope.
- Claims for civil rights violations, which are resolved by the Equal Employment Investigations and Compliance Department, not OPD.
- Property seized during encampment evictions since the property is collected by Public Works Staff, not OPD.

To address the question of equity, the team focused on determining whether claims are distributed in an equitable manner and whether communities with fewer financial resources are impacted by property damage more or less. In order to find out, claims were analyzed across zip codes where property loss or damage occurred. Given the focus on the City of Oakland, zip codes outside the city limit were excluded. The claims were then mapped to determine which zip codes reported more claims, and we added median income and race demographics from the 5-year estimates from the American Community Survey 2018 data to overlay on our maps with the claims. The goal was to determine any trends in the data to find out if certain zip codes filed more claims and are disproportionately impacted. These communities might find it more challenging to cover the expenses without the support of the city.

During the second stage of the analysis, the team reviewed the process for filing a claim. The research team interviewed one of the investigators at the City Attorney's office to gain a better understanding of the information provided to residents and the internal process for tort claims. Additionally, the team reviewed the websites for the six cities and compared the methods for filing a claim, the information provided, and languages available for claimants. The goal was to understand the process for residents and ease of submission.

In the third stage of the process, the research team conducted a literature review on property damage caused by police departments in six major cities to better understand how each city handles property damage claims: Chicago, Denver²⁵, Houston, Los Angeles, New York City, and San Francisco.

²⁴ The team excluded an outlier claim of \$1,000,000. This claim was found to be not representative of the sample and would affect the validity of results.

²⁵ Denver is the location of the aforementioned high-profile case of *Lech v. City of Greenwood* (2019).

Quantitative Analysis of Claims Data (Oakland)

Key Findings

#1: The City Attorney's Office received on average 50 claims a year with an average prayer amount of \$3,798.

In the time period reviewed, 2009 – 2019, the City Attorney's Office received a total of 545 claims. The majority, about 57% of the claims, were due to damage related to vehicle damage. These incidents included police officers rear-ending the claimant's car, car collisions, and OPD vehicles hitting claimant's cars while chasing a suspect. The remaining claims were other types of property damage like harm to claimant's homes, doors, fences, kitchen windows, and locks during police encounters.

Figure 2 shows that 2009 was an outlier with 92 claims, and most years average 50 claims a year. In this same time frame, 59 lawsuits were filed, or an average of five a year. Unfortunately, without much data on other cities, it is challenging to state how the City of Oakland compares.

Figure 2: Number of Claims 2009 - 2019

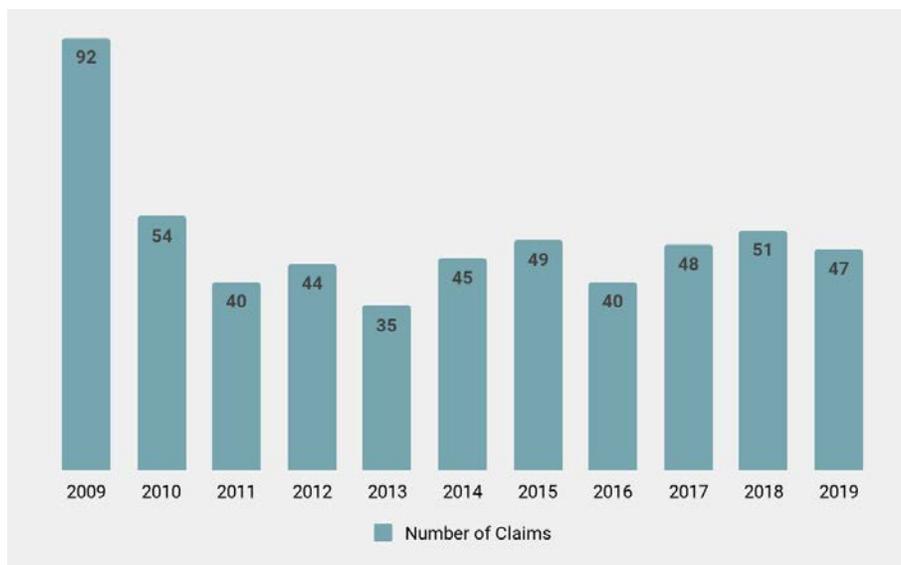


Figure 3: Number of Lawsuits 2009 - 2019

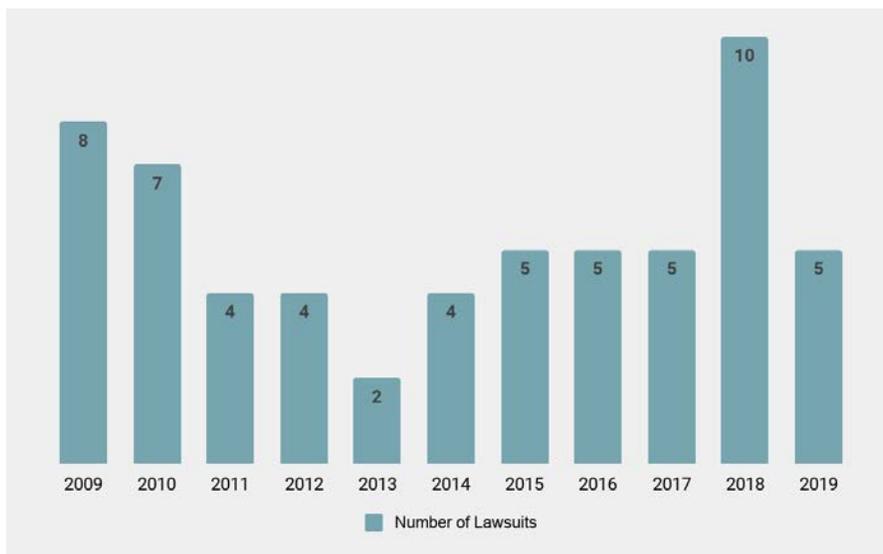
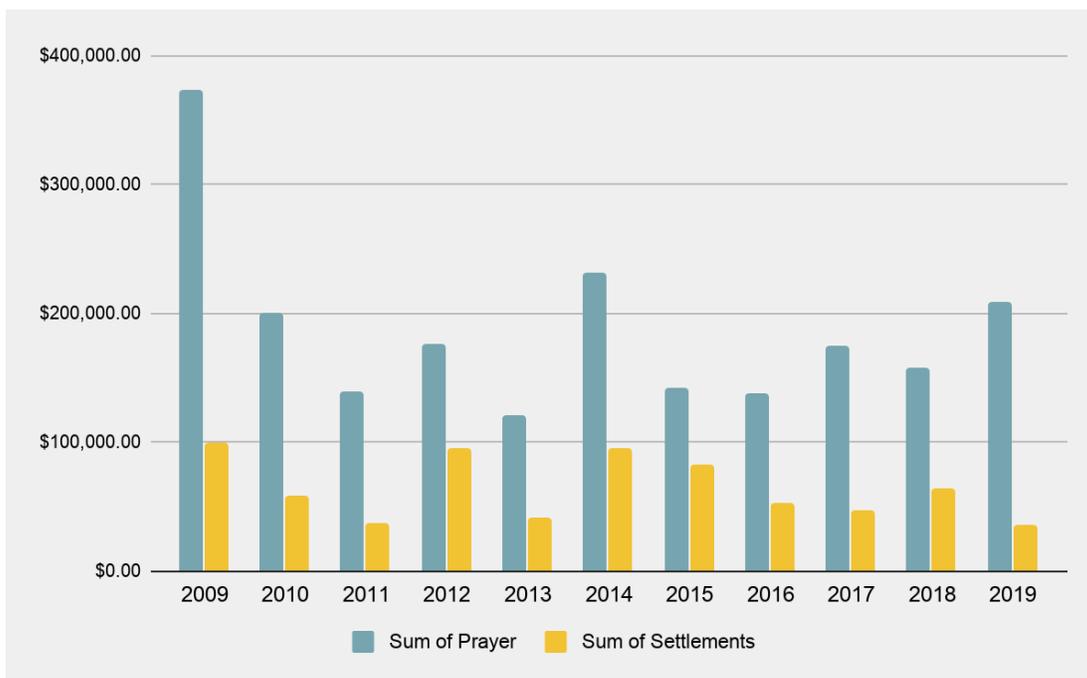


Figure 4 (below) illustrates the amount of compensation requested, or prayer, by year compared to the amount paid out. This chart only includes data from the claims, it does not include lawsuit cases. On average, the settlement paid to claimants was a third of the amount requested.

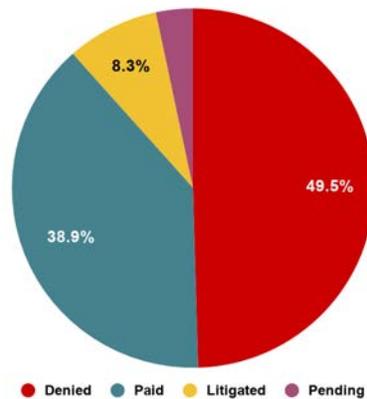
Figure 4: Sum of Prayer and Settlements Paid, 2009 - 2019



#2: Claimants are more likely to be compensated for vehicle related property damage and will receive a higher settlement if they file a lawsuit.

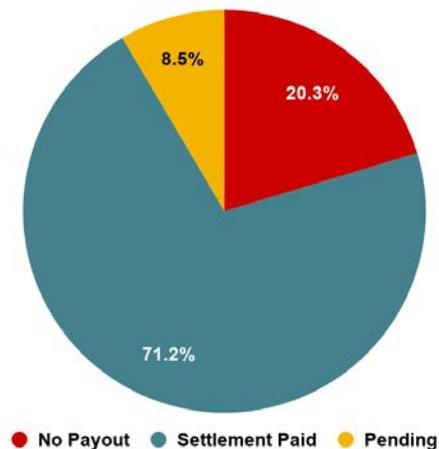
About 40% of claimants are able to resolve their claims with the City Attorney's office and they receive an average settlement amount of \$3,247. For those that are able to resolve their cases with the City Attorney's Office, the data finds that they will receive a settlement close to the average prayer amount of \$3,798.

Figure 5: Claim Dispositions, 2009 - 2019



However, those that are denied and opt to file lawsuits, the compensation jumps to \$18,911. While the compensation is higher, it is important to note that lawsuits take two to three years to go from a claim to a resolved lawsuit, meaning the financial burden on an individual can last years before it is resolved. If the claimant is able to file a lawsuit, they are more likely to receive a settlement. Figure 6 illustrates that the majority of the lawsuits, 71%, receive a payout.

Figure 6: Lawsuit Dispositions, 2009 - 2019



The majority of claims that receive a settlement are for vehicle-related property damage. In the data (as shown below on Table 1), 73% of claims and 95% of lawsuits that received compensation were related to a vehicle-related incident. The high approval of these claims and lawsuits could be due to the fact that documenting damage from a police vehicle incident is easier than documenting damage to personal property. It could also be due to the fact that car insurance companies will sometimes file claims on behalf of claimants and the firms might have more time and resources to follow through with a lawsuit.

Regardless of the reason, the data indicates that there are additional barriers for claimants seeking compensation for real property damage. The data the research team had accessed did not include denial reasons and further research is needed to determine whether the denials from personal property damage are due to barriers in the claims process or due to the legal structure.

Lastly, while there are some cases that are approved, there is still a large percentage of Oakland residents who are never compensated for the property damage they experienced. In the timeframe reviewed, 270 cases were denied, a loss of \$988,994.56 for these community members

Table 1: Basic Statistics for Claims and Lawsuits from 2009 - 2019

	Claims	Lawsuits
Total Number	545	59
Average Prayer Amount	\$3,798	Not Available
Total Prayer Amount	\$2,066,264.57	Not Available
Total Settlements Paid	212 (39%)	42 (71%)
Average Settlement Amount	\$3,247.65	\$18,911.52
Payouts related to vehicle damage	154 (73%)	40 (95%)
Total Denied Claims	270 (50%)	12 (20%)
Total Settlements Amount	\$708,537.56	\$794,283.70

#3: The majority of submitted OPD related property damage claims in Oakland²⁶ are from lower median income zip codes and communities of color.

Income Findings

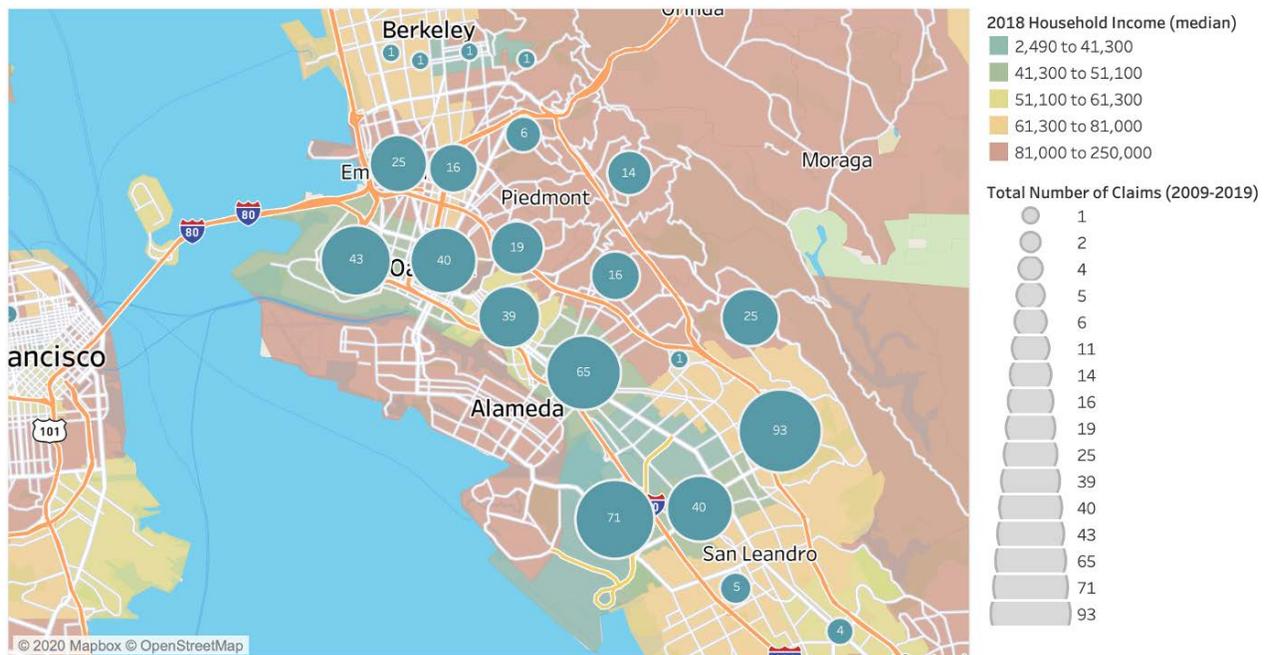
- 59% are from zip codes with median incomes between \$30,000-\$60,000.
- 30% are from zip codes with median incomes between \$60,000-\$90,000.
- 11% are from zip codes with a median income of \$90,000 or more.

Demographic Findings

- Based off of the demographic distribution of the top five zip codes submitting claims, most of their occupants are comprised of non-white individuals.
- Four out of the five zip codes with the least amount of claims submitted have a population that is mainly white.

For reference, please refer to the map and table below.

Map 1: Total Claims by 2018 Median Household Income and Zip Code



Map based on Longitude (generated) and Latitude (generated). Size shows details about Total Number of Claims (2009-2019). The marks are labeled by Total Number of Claims (2009-2019). Details are shown for Zip Code. Map coloring shows 2018 Household Income (median) by Zip Code. The view is filtered on Total Number of Claims (2009-2019), which excludes * Removed

²⁶ There were 516 OPD related property damage claims in Oakland from 2009-2019.

Table 2: Total OPD Property Damage Claims by Zip Code, Median Income, and Racial Demographics, 2009 - 2019

Zip Code (Oakland Only)	Total OPD Property Damage Claims	Median Income (2018)	White %	Hispanic or Latino %	Black or African American %	Asian %
94605	93	\$69,087	17.5%	24.2%	43.5%	6.4%
94621	71	\$38,591	3.8%	60.4%	30.0%	2.5%
94601	65	\$46,830	9.7%	50.2%	18.8%	17.0%
94607	43	\$50,149	22.2%	14.0%	31.6%	26.7%
94603	40	\$50,742	4.0%	57.8%	28.8%	5.4%
94612	40	\$51,006	31.3%	9.6%	26.5%	26.5%
94606	39	\$53,108	20.4%	20.4%	17.8%	36.0%
94608	25	\$82,753	40.5%	12.7%	24.0%	15.4%
94619	25	\$85,855	33.6%	17.3%	21.9%	19.3%
94610	19	\$96,681	51.6%	11.2%	16.1%	14.5%
94602	16	\$90,661	40.8%	16.9%	14.1%	20.3%
94609	16	\$80,026	44.8%	12.6%	23.3%	11.2%
94611	14	\$124,483	63.9%	6.8%	6.3%	15.2%
94618	6	\$156,116	68.6%	8.4%	3.3%	12.6%
94578	4	\$58,120	15.7%	35.8%	19.0%	25.6%

Research shows that individuals who are most likely to experience high rates of crime and heavy police presence in their communities are those who have limited resources and social capital.²⁷

²⁷ Nancy La Vigne et al., "How Do People in High-Crime, Low-Income Communities View the Police?," Urban Institute, February 2017, https://www.urban.org/sites/default/files/publication/88476/how_do_people_in_high-crime_view_the_police.pdf.

Given that police interactions are typically higher in areas with limited economic opportunity, the rate of submitted property damage claims due to police activity in Oakland, for the most part, may disproportionately affect these areas.

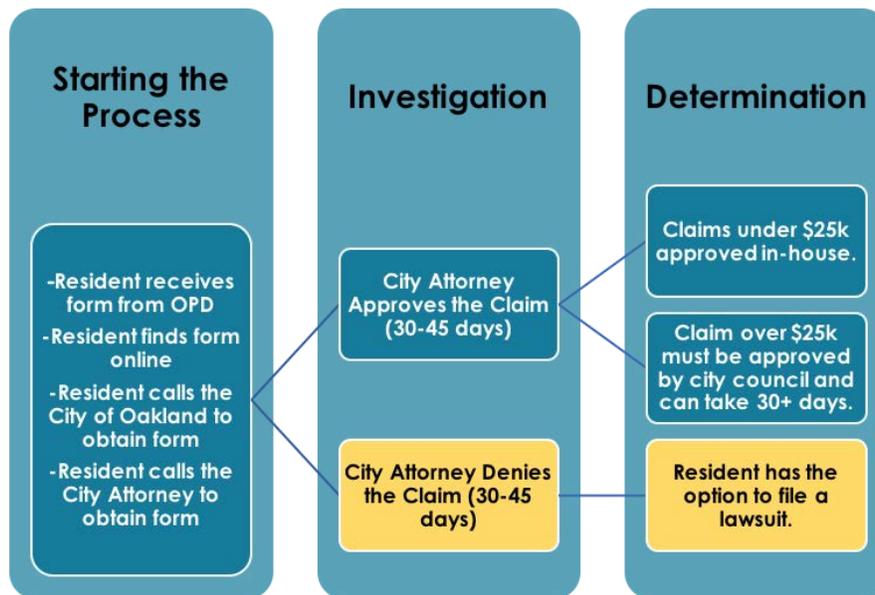
As evidenced by the claims data, property damage due to police activity is greater in lower income and non-white neighborhoods. Lower income communities, who are impacted the most by an increase in police presence, are filling out the majority of claim submissions.

Overview of Claims Process in Oakland

Claims filed can vary widely depending on the incident. An example of a claim may include vehicle related accidents, incidents of property damage due to OPD pursuit of a suspect, incidents of property damage during a search warrant, injury due to falls or trips, or damages to smaller items like damage to an officer cell phone. Regardless of the type of incident, the claim must be filed with the City of Oakland's City Attorney's office. While the claims can vary, the top three categories reported include: car accidents, incidents at a person's residence while pursuing a suspect or responding to a call, or while executing a search warrant.

The claimants must file a claim within six months of the incident for most cases and within a year if there was damage to real property (such as a house or structure). Late claims may be accepted in certain circumstances if the individuals file a petition with the court. Examples of extensions granted include if someone was in jail within the last six months or incapacitated for a long period of time.

Figure 1 on the next page illustrates the different stages of the claims process. Clients can begin the process in multiple manners. The clients can receive the form from an officer during the initial intake, they can find the forms online in four languages (English, Spanish, Chinese, and Vietnamese), they can call the City of Oakland for the form, or call the City Attorney's office. For most incidents, the client is provided with information directly after the incident on the best method of filing a complaint. If clients need assistance with the process or translation support, they can contact the City Attorney's office for support and access to translation services.

Figure 1: Oakland Claim Process

The second stage is the investigation, which takes between 30-45 days, and there is no expedited process. The City Attorney's Office only has one in-house investigator and the city contracts with a secondary firm to provide two to five investigators to help with the caseload. Claims can be assigned to one investigator or multiple investigators. The investigation may vary depending on the case, but the typical process is for the investigator to reach out to the client to acknowledge receipt of the claim. The investigator will review the evidence and information provided by the client and will work on verifying the incident in-house, usually by reviewing internal documents. While most cases are resolved within 45 days, delays can happen if the investigators do not have the information they need.

The last stage is the determination. If a settlement is approved, the City Attorney's office is able to approve the payout of claims under \$25,000. For those claims above that amount, they must be approved by the city council, which meets every two weeks. These payments must be written into a city resolution so a payout would take a minimum of 30 days.

For cases that are denied, claimants always have the right to appeal and file a lawsuit. Lawsuits must be filled within six months of the denial letter, which includes information about filing an appeal or lawsuit.

City Comparison

After conversations with representatives of the CPRA and staff at the Goldman School of Public Policy, the research team focused on researching six major cities to compare with the City of Oakland: Chicago, Denver, Houston, Los Angeles, New York City, and San Francisco. Each of these cities was chosen due to their larger sized police departments. Additionally, San Francisco was chosen due to its proximity to Oakland and Denver because of the recent high-profile court case. Early on in the research, it became evident that most cities are not tracking property damage. The only data accessible on property damage was for the City of Oakland and New York City. The other cities only provide information on worker's compensation claims and do not have data on property damage claims.

Instead, the focus shifted towards analyzing how each of these cities allow residents to file claims, the instructions for claimants, whether forms are available in multiple languages, and whether online submission and tracking are available. The following section includes the overview of the claim submission process for these six cities as well as best practice examples from Chicago, Los Angeles, and New York City.

When evaluating the cities, the research team decided to focus on three pillars: awareness, accessibility, and equity.

Awareness:

The first step in the claims process, and arguably the most important one, is making sure residents have adequate information about initiating a claim. This report explored the specific process for the City of Oakland. As discussed in the previous section, Oakland residents have four ways to obtain the forms to file a claim:

- The resident receive the form directly from the Oakland Police Department
- The resident goes online to the City Attorney's office to download the form
- The resident calls the City of Oakland to obtain the form via mail, email, or picked up on site
- The resident calls the City Attorney's Office to obtain the form via mail, email, or picked up on site

The first way of obtaining the form is by receiving directly from the police officer, which is the ideal option because the burden is placed on the city employee. The last three options place the burden of overcoming the learning costs on the claimant and will inevitably leave some claimants at a disadvantage.

For claimants with access to technology, information on the city's website is a good way of obtaining information. In this review, all the cities provided information on

their city's website about the claims process, how to file a claim, and access to the forms (if the city had a form available).

Accessibility:

Another important factor is how manageable it is for claimants to obtain forms, submit them, and whether there is the option of tracking their claim online. Our review found that not all cities provide a form for claims, as both Denver and Houston instruct claimants to write a letter with information about the property damage. Additionally, New York City and Chicago also offer multiple forms depending on the type of claim filed.

Only Los Angeles has an online submission form, while New York City has the option for electronic submissions of forms through the portal eClaim. The City of Oakland, while it does not have an online portal, does allow claimants to email the form while the rest of the cities require the claimants mail or drop off the form in person.²⁸

Lastly, only the City of Chicago allows claimants to monitor the status of their claim online. In Chicago, the claim must pass an administrative review by the Office of the City Clerk. This process verifies that the claim form was correctly filled out and has all the necessary attachments. If passed, the Office of the City Clerk will subsequently introduce the claim to the City Council/Committee on Finance at their monthly meeting. At this time, the claim will be assigned a number that the claimant can use to track its status. While this option is mostly likely due to the fact that a claim can take several months to pass through the City Council, it does provide claimants with additional information throughout the process. All other cities reviewed for this report require that the claimant follow up directly with the investigator for updates on their claim.

Equity:

The last factor assessed was equity. Our team specifically focused on language accessibility. Both the City of San Francisco and the City of Oakland were the only cities that provide the claims forms in multiple languages. The City of Oakland provides the form in four languages (English, Spanish, Chinese and Vietnamese) and the City of San Francisco in six languages (the same as Oakland plus Russian and Tagalog).

The City of Oakland's website can also be translated to Spanish, an option not available for the City of San Francisco's website. Houston, Chicago, and New York City have the Google extension on their websites which allows the page to be translated

²⁸ During COVID-19, the Oakland City Attorney's Office accepted service of lawsuits by email from March 17, 2020 and April 7, 2020.

into multiple languages, and thus allowing non-English speakers access to important information about the claims process and other city resources.

Table 3: City Comparison of Claim Process Information

	Awareness	Accessibility			Equity	
City	Instructions online	Paper Form	Online Form	Online tracking	Language-Form	Language-Website
Oakland	Yes	Yes	No form, option to email	No	English, Spanish, Chinese, & Vietnamese	English and Spanish
Chicago	Yes	Yes, 2; property and auto	No	Yes	English	Multiple options
Denver	Yes	No form	No	No	No form	English only
Houston	Yes	No form	No	No	No form	Multiple options
Los Angeles	Yes	Yes	Yes	No	English	English only
New York City	Yes	Yes, 3; property, auto, & water damage	Option to upload form to eClaim system	No	English	Multiple options
San Francisco	Yes	Yes	No	No	English, Chinese, Vietnamese, Tagalog, Russian, & Spanish	English only

The next section will also highlight best practices from the three specific cities: Chicago, Los Angeles, and New York City. These cities have notable methods of handling the claims processes for property damage.

Chicago

In 2016, the Office of Inspector General (OIG) in the City of Chicago released a report concerning the claims analysis and risk management occurring in Chicago. The OIG was concerned that the City was paying tens of millions of dollars annually in avoidable claims, including property damage by police. The report determined that the City lacked the ability to analyze claims trends across a wide variety of claim types and did not have a comprehensive risk management program found in comparable cities elsewhere in the United States.

To decrease claims and liability, the OIG recommended the City invest in a comprehensive risk management approach that would reduce the number and severity of personal injuries and property damage to the public and employees, and reduce the cost of claims, settlements, and judgements against the City.²⁹ Without a risk management program in the City, Chicago could not analyze all their claims to reveal trends, nor could it take a proactive approach to reduce the frequency and severity of events leading to claims. The OIG report further noted that responsibility for undertaking risk and claims related activity was too fragmented. Responsibility in handling claims was distributed between the City Council/Committee on Finance, the Department of Finance, and the Department of Law. The shared responsibilities made it difficult to obtain and analyze accurate claims data, since the data needed for a comprehensive analysis resided in different forms and databases.

To begin to address these shortfalls, the OIG suggested the City create a Chief Risk Officer or an equivalent office endowed with sufficient authority and resources to drive a risk management culture City-wide.³⁰ OIG recommended the role included public reporting requirements, robust data analysis, routine communication and collaboration with departments, and a periodic review by the City Council.

In 2019, in response to this report, the City of Chicago created a cross-departmental risk management working group, including project management support.³¹ The Office of Risk Management was established and Chicago hired its first Chief Risk

²⁹ Office of Inspector General, City of Chicago, "OIG Advisory Suggests the City Embrace Comprehensive Risk Analysis to Address Millions in Claims Payments," June 30, 2016, <https://igchicago.org/2016/06/30/oig-advisory-suggests-the-city-embrace-comprehensive-risk-analysis-to-address-millions-in-claims-payments/>.

³⁰ Ibid.

³¹ Ibid.

Officer. The initial focus of this office is to reduce vehicular accidents, damage to property, workplace accidents, and lawsuits concerning police practices.

Chicago Police Department

If Chicago Police Department members are alleged to be involved in a property damage incident they must contact the City Claims Notification Program. Per a 2012 directive issued to Chicago Police Department members, the City Claims Notification Program was developed to address accidental property damages caused by the Chicago Police Department during official business. These claims can include property-damage automobile accidents, damage caused during the execution of search warrants, and similar occurrences.³² The specific procedures Chicago Police Department members must follow can be found in the appendix of this report.

Los Angeles

In the review of cities, only one city offered an online submission form. Residents from the City of Los Angeles can submit forms by mail, in person, and through the online form submission process. Residents can access the form through the City Clerk's website and the City Attorney's website. Claimants are able to submit verifications, sign the form electronically, and can save and return to the application form at a more convenient time.

The availability of an online form allows residents to apply without needing to print or request paper copies, can speed the filing process, and can ensure that they are able to complete the form on their own time. Unfortunately, the form and the information on the websites for the City of Los Angeles is only provided in English, which creates a burden for non-English speakers. Despite this limitation, the online submission form allows for greater flexibility and could be potentially beneficial for the residents of Oakland.

New York City

The New York City Police Department (NYPD) consists of the largest police force in the United States. As of fiscal year (FY) 2018, more than 38,000 sworn officers were employed by the NYPD.³³ Given the NYPD's size and array of specialized services,

³² Chicago Police Department, "City Claims Notification Program," October 10, 2012, http://directives.chicagopolice.org/CPDSergeantsExam_2019/directives/data/a7a57be2-12bd533f-2dc12-bd53-401d133a71933ee9.html.

³³ Mark-Viverito and Vanessa Gibson, "Report of the Finance Division on the Fiscal 2018 Preliminary Budget and the Fiscal 2017 Preliminary Mayor's Management Report for the New York Police Department," The Council of the City of New York, March 14, 2017, <http://council.nyc.gov/budget/wp-content/uploads/sites/54/2017/03/056-NYPD.pdf>.

NYC has been inundated with tort claims made against the police department. This includes, but is not limited to, allegations of excessive force, civil rights violations, personal injury, and property damage claims. In order to better serve its residents, NYC has taken steps to better address and prevent these claims. In recent years, NYC has performed a detailed analysis of its historical claims and uses the results to proactively try to identify and settle potential claims.

The following section outlines the City's claims process, including its electronic filing system and new data-driven analytical tool. Additionally, for comparison purposes, property damage claims data specific to the NYPD is also provided. NYC was chosen as our case study given their active role in mitigating and reporting property damage claims due to police activity.

eClaim-System

In addition to personal delivery and mailing, NYC permits individuals to electronically submit a notice of claim form through the City's eClaim filing system. According to the Comptroller's Office, the eClaim system allows for more flexibility and a faster claim processing time. It allows for a quick filing of a claim with no postage expenses or handling costs. Anyone with access to internet and a computer can file a claim at anytime using the system.³⁴

Claim Stat

In 1994, the New York Police Department (NYPD) debuted CompStat, a tool that allows the department to identify and combat crime trends. With this tool, spikes in crimes are identified through comparative statistics and addressed using targeted enforcement. CompStat is credited with helping drive down New York crime rates from record highs in the 1990s to historic lows by introducing a new level of accountability, and by providing a new set of performance metrics to judge their efforts.³⁵ CompStat relies on four components: timely and accurate information, rapid deployment of resources, effective tactics, and persistent follow-up. It is important to note that CompStat has been criticized for being too focused on the numbers. Critics argue that it has led to abusive police practices and a manipulation of the figures, as a result of the added pressure to make the department look good.³⁶

³⁴ Office of the New York City Comptroller Scott M. Stringer, "EClaim FAQs," May 2020, <https://comptroller.nyc.gov/services/for-the-public/claims/eclaim-faqs/>.

³⁵ Office of the New York City Comptroller Scott M. Stringer, "ClaimStat 2.0: Reducing Claims and Protecting New Yorkers," February 10, 2017, <https://comptroller.nyc.gov/reports/claimstat/reports/claimstat-2-0-reducing-claims-and-protecting-new-yorkers/>.

³⁶ Joseph L. Giacalone and Alex S. Vitale, "When Policing Stats Do More Harm Than Good," USA Today, February 10, 2017, <https://www.usatoday.com/story/opinion/policing/spotlight/2017/02/09/compstat-computer-police-policing-the-usa-community/97568874/>.

In 2014, inspired by CompStat, the NYC Comptroller’s Office debuted ClaimStat. ClaimStat is a data-driven analysis of claims against NYC used to identify patterns and practices that lead to lawsuits.³⁷ It features publicly accessible interactive maps of claims locations and alerts about claims activity trends. ClaimStat provides a way for the City to review claims data in real time, identify claim filing trends that are costly, and implement policies and best practices to alleviate risk. It incentivizes a more analytical approach to claims costs due to their expenses to the public and because claims can serve as an indication that institutions are failing to serve the public properly.³⁸ Similar to Compstat, ClaimStat gives the City the tools and information they need to measure their success.³⁹

Recognizing the benefits of using real time data, the Comptroller’s Office and the NYPD entered into an agreement to share claims information in real time that same year. Today, the NYPD and the Comptroller’s Office have regular meetings and a joint workgroup to analyze claims data.

NYPD Property Damage Claim Data

The City of New York Office of the Comptroller publishes an annual report detailing claims filed against NYC, while examining trends by claim type across City agencies. The property damage claim data below was pulled from NYC claims reports and illustrates the magnitude and cost of damaged property caused by the NYPD from FY 2009-2018. From FY 2009 to FY 2018, the number of tort claims filed, settled, and paid out for property damage due to police action all decreased. According to the NYC Comptroller’s Office, ClaimStat has been a useful tool in limiting the city’s financial exposure and reducing the number of claims filed against the city.⁴⁰

Table 4: Number of Tort Claims (FYs 2009-2018)- Property Damage (Police Action)⁴¹

2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
299	309	378	365	362	341	302	226	228	202

³⁷ Office of the New York City Comptroller Scott M. Stringer, “ClaimStat 2.0: Reducing Claims and Protecting New Yorkers,” February 10, 2017, <https://comptroller.nyc.gov/reports/claimstat/reports/claimstat-2-0-reducing-claims-and-protecting-new-yorkers/>.

³⁸ Office of the New York City Comptroller Scott M. Stringer, “Annual Claims Report FY 2018,” April 15, 2019, <https://comptroller.nyc.gov/reports/annual-claims-report/>.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ NYC defines a claim of property damage by police action as vehicles or other personal property that is allegedly stolen, damaged, sold, or destroyed while in police custody.

**Table 5: Number of Tort Claim Settlements & Judgments by Claim Type
FYs 2009–2018 - Property Damage (Police Action)**

2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
62	45	45	48	48	35	26	18	14	11

**Table 6: Dollar Amount of Tort Claim Settlements & Judgments by Claim Type FYs
2009–2018- Property Damage (Police Action)**

2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
\$120,248	\$513,676	\$140,899	\$170,059	\$388,101	\$102,697	\$71,487	\$56,155	\$32,139	\$38,643

Table 7: Number of NYPD Tort Claims- Motor Vehicle (Property Damage)⁴²

2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
NA	NA	NA	NA	NA	NA	934	1,009	949	957

Comparison: Oakland and New York City

Considering that NYC is the only city publishing claims data on property damage by police, it is our sole comparison city to Oakland. Taking into account their population difference, below is the rate of claims submitted (per 100,000 residents) between the two cities from 2015-2018.

Table 8: Rate of claims submitted (per 100,000 residents)

	2015	2016	2017	2018
Oakland	11.72	9.50	11.32	11.89
New York City	14.60	14.57	13.95	13.80

From 2015-2018, Oakland residents had a OPD related property damage claim submission rate of 9-11 claims per 100,000 residents. In this same time frame, New York City residents had an NYPD related property damage claim submission rate of 13-14 claims per 100,000 residents.

⁴² NYC defines a claim of motor vehicle damage as vehicles or other personal property that is allegedly damaged in accidents with City-owned vehicles.

While it may be helpful to compare Oakland and New York City, ultimately additional research is needed to better understand why the rate of claims are similar. Qualitative and quantitative research, such as interviews and surveys, could be done as well in Oakland, New York, and other cities to determine whether communities feel that police departments and city compensation are meeting their needs.

Limitations and Recommendations

Limitations

By commissioning this research, CPRA and the Police Commission have taken a first step towards understanding the scope of property damage by police and its effect on residents. In Oakland, as in many other major cities, this issue is underreported on and under-analyzed. There is limited data and benchmarks in other cities, which can make it difficult to determine how Oakland compares.

To limit the scope of this project, this research is focused on vehicle damage and damage to real property. It excludes personal injury claims, which may not involve property damage, and towing and red zone ticket violations, which may involve an outside company and not be solely attributable to police. It also excludes incidents not managed by the Office of the City Attorney, such as encampment sweeps for unhoused residents (managed by the Public Works department), and Civil Rights violations (managed by the Equal Employment Investigations and Compliance Department).

By analyzing data on zip codes where claims have been filed, this research identifies disparities in incidents by neighborhood. However, the claims form that residents file asks for the zip code where the damage occurred, but if the incident happened in a vehicle, it may not list the zip code where they reside. Therefore, The zip code data therefore may not provide a complete analysis of who is most affected by this issue.

Feedback from community members could be vital in understanding barriers to filing claims and how to eliminate them. A focus group could address whether some are unaware of the tort claims process and potential for reimbursement, some may decline to complete a claims file because the process was too complicated or took too long, or whether other structural barriers exist.

Recommendations

As the CPRA and Police Commission begin to wrangle the scope of this issue, suggestions for how to improve the process are salient. We have found that

improvements can be suggested along the lines of awareness, accessibility, and equity.

A first step towards improving the handling of property damage by city police is improving awareness of options for residents whose property has been damaged. This can be done through providing outreach materials and decreasing learning costs for residents. Some materials exist, but are not readily available on the website for the Office of the City Attorney.⁴³ The Oakland Police Department can also place information about the claims process prominently on their website.

Another point to increase awareness is during the search warrant process. Though OPD typically informs residents of the claims process when property damage is done, in the case of property damage while executing a search warrant, OPD do not consistently notify the homeowners of the claims process.⁴⁴ OPD can standardize the process by requiring officers to notify residents of the tort claims process for any damage done while executing a search warrant.

Beyond awareness of options, the tort claims process must be accessible. In line with Los Angeles and New York City, Oakland should have an online portal for submission of claims. This should include translation and tracking in multiple languages. Information on Oakland's handling of property damage should also be widely accessible. Similar to New York City, Oakland should provide annual reports online and open to the public, to measure any progress made.

Finally, care should be taken to ensure this issue does not harm Oaklanders in an inequitable manner. As it was found that claims tend to be filed more often in middle to low income, majority non-white neighborhoods, there is some evidence that these neighborhoods are being disproportionately subjected to property damage by police. OPD should create a formal training on minimizing damage in low-income and minority neighborhoods. The Police Commission should continue to encourage community input to ensure implemented changes are able to meet the needs of Oakland residents.

As a dearth of information was found on this issue, further research is needed for the City of Oakland to improve its management of the claims process. Focus groups with residents and advocacy groups could be held to better understand barriers to filing claims. These could also investigate the psychological costs of going through the claims process. Further research is also needed to understand why claims are denied.

⁴³ "City of Oakland Claims Information," City of Oakland, <http://www2.oaklandnet.com/oak/groups/hrm/documents/translatreddocument/oak031161.pdf>.

⁴⁴ Jerry Ho, Office of the City Attorney, Oakland, CA, interview, March 18, 2020.

Conclusion

Through this report we attempted to address the magnitude, costs, and disparities of property damage due to police action in the City of Oakland.

In our research, we determined that from 2009-2019 Oakland's City Attorney's Office received 545 tort claims relating to property damage due to police activity, with a majority relating to damage caused by OPD vehicles. Out of the 545 claims, about half were denied, 38% were paid out, 8% were litigated, and 3% are still pending.

While we could not gather income and race demographics from the claims data, we were able to obtain the zip code data of the location of the incidents. By cross referencing this information with the American Community Survey, we determined the income and race for the affected zip codes. This data allowed us to learn that the majority of the OPD related property damage claims are from lower-income communities. Specifically, 59% of tort claims came from Oakland zip codes with median incomes between \$30,000-\$60,000, with the top five zip codes submitting claims being mainly comprised of non-white individuals.

Additionally, in order to provide possible best practices and comparisons to the City of Oakland, we investigated six major cities: Chicago, Denver, Houston, Los Angeles, New York City, and San Francisco. Ultimately, we discovered that New York City was the lone city working to mitigate the number of claims through data-driven analysis, while actively publishing annual data.

Although property damage due to police action does not appear to be a prioritized topic for most of these cities, in our report we attempt to provide recommendations that promote the well-being of the residents of Oakland.

We suggest that the City of Oakland use this report as a catalyst to invest more time and resources in improving resident awareness, accessibility, and equity in the tort claim process.

Appendix

Oakland City Attorney Cause Codes

Oakland City Attorney's Office Cause Code Listing

Group	Code	Description
#	#	Blank
*	*	Unknown
01	01	Lien Claims
01	0101	Liens: Weeds
01	0102	Liens: Mandatory Garbage
01	0103	Liens: Clean Up/Board Up
02	02	City Vehicle
02	0201	City Vehicle Against Another Vehicle
02	0202	City Vehicle vs. Pedestrian
02	0203	City Vehicle vs. Motorcycle
02	0204	City Vehicle vs. Bicycle
02	0205	City Vehicle vs. Stationary Object
02	0206	OFD-Personal Vehicles on City Business
02	0242	City OPD Vehicle: Suspect Chase/Prop Dmg.
02	0243	City OPD Vehicle: Suspect Chase/Injury
02	0244	City OPD Vehicle: Susp. Chase/Wrongful De
03	03	Breach of Contract
03	0301	Breach of Contract: General
03	0302	Breach of Contract: Stop Notices
04	04	Code Enforcement
04	0401	Code Enforcement: Zoning Violations
04	0402	Code Enforcement: Weapon Confiscation
04	0403	Code Enforce: Alcohol Beverage Control
04	0404	Code Enforce: Building Code Violations
04	0405	Code Enforcement: Health & Safety Codes
04	0406	Code Enforcement: Toxic Waste
04	0407	Code Enforcement: Drug Nuisance
04	0408	Code Enforcement: Other Nuisance
04	0409	Code Enforcement: Gang Abatement
04	0410	Code Enforcement: Receivership
04	0411	Code Enforcement: Vehicle Seizure
04	0412	Code Enforcement: Vehicle Abatement
04	0413	Code Enforcement: Illegal Dumping
04	0414	Code Enforcement - Blight Abatement
04	0415	Code Enforcement: Animal Nuisance
04	0416	Code Enforcement: Prostitution Abatement
04	0417	Code Enforcement: Minimum Wage Ordinance

Printed : 05/17/2017 04:15 PM

Oakland City Attorney's Office

Page 1

Oakland City Attorney's Office
Cause Code Listing

Group	Code	Description
04	0418	Code Enforcement: Tenant Protection Ord.
05	05	Collections/Bankruptcy
05	0501	Collections: Damage to City Property
05	0502	Collections: Licenses/Taxes
05	0503	Collections: Loans
05	0504	Collections/Bankruptcy: Other
05	0505	Collections/Probate
05	0506	Collections: Mandatory Garbage
05	0507	Collections: Training Costs/Sign-In Bonus
05	0508	Collections: Excess Litter Fees
06	06	Personnel/Labor
06	0610	Personnel/Labor: Compensation & Benefits
06	0612	Personnel/Labor: Promotional Examination
06	0615	Personnel/Labor: Post-Termination Compen
06	0620	Personnel/Labor: A.D.A. / Discrimination
06	0625	Personnel/Labor: Whistleblower
06	0626	Personnel/Labor:Constitutional Claims
06	0627	Personnel/Labor: Defamation
06	0628	Personnel/Labor: Re-employment (USERRA)
06	0630	Personnel/Labor: Employment Discriminati
06	0631	Personnel/Labor: Sexual Harrassment
06	0641	Personnel/Labor: Grievance- Suspension
06	0642	Personnel/Labor: Grievance-Termination
06	0643	Personnel/Labor: Grievance - Other
06	0644	Personnel/Labor: Grievance-Lay Off & RIF
06	0650	Personnel/Labor: Policy Disputes
06	0655	Personnel/Labor: FSLA
06	0660	Personnel/Labor: Wrongful Termination
06	0665	Personnel/Labor: PERB
06	0670	Personnel/Labor: Retirement
06	0675	Personnel/Labor: FML/PDA
06	0680	Personnel/Labor:Contract Review & Interp
06	0685	Personnel/Labor:TRO to Protect Employees
06	0690	Personnel/Labor:Interest Arb/Police&Fire
07	07	Claims Due to City-hired Contractors
07	0700	Claims Due to City-hired Contractors
08	08	Dangerous Condition

Printed : 05/17/2017 04:15 PM
Oakland City Attorney's Office

Page 2

Oakland City Attorney's Office
Cause Code Listing

Group	Code	Description
08	0810	Dangerous Condition: City Buildings
08	0820	Dangerous Condition: Park Fac./Sports
08	0821	Dangerous Condition: - Grounds/Medians
08	0822	Dangerous Condition: OPR-Rec. Centers
08	0823	Dangerous Condition: OPR - Golf Courses
08	0824	Dangerous Condition: - Trees
08	0825	Dangerous Condition: OPR - Fairyland
08	0830	Dangerous Condition: Streets-holes, etc.
08	0832	Dangerous Condition: Streets-Trip & Fall
08	0833	Danger. Cond.-Street Design/Signs/Lights
08	0834	Danger. Cond.: Ramps/ Curb Iron/ Manhole
08	0840	Dangerous Condition: Sidewalks
08	0841	Dangerous Cond.: Sidewalks: Trip & Falls
08	0851	Dangerous Condition: Sewers & Floods
08	0852	Dangerous Condition: Storm Drain
08	0860	Dangerous Cond.: Operations-Maintenance
08	0870	Dangerous Cond: Environmental Violation
08	0880	Dang. Cond.: Inverse Non Sewer/Drains
08	0881	Dang. Cond.: Inverse Sewers
08	0882	Dang. Cond.: Inverse Storm Drains
09	09	Police: Misc.
09	0910	Police: Jail or Property Room
09	0920	Police-Non/vehicle Related Property Loss
09	0926	Police Conduct - Carijama Festival
09	0929	Police: Non-Force Civil Rights
09	0930	Police: Conduct - Non-force
09	0931	Police: Force - Non-Civil Rights
09	0932	Police: Force - Civil Rights
09	0933	Police: Force - Wrongful Death
09	0934	Police: Force - Shooting Non-Fatality
09	0935	Police: Non-Force - Wrongful Death
09	0936	Police Conduct - Strip Search
09	0940	Police: Towing - Red Zone, Tickets, etc.
09	0941	Police Conduct: Canine Unit incidents
09	0942	Police Conduct: Chase/Property Damage
09	0943	Police Conduct: Chase/Personal Injury
10	10	Citations

Printed : 05/17/2017 04:15 PM
Oakland City Attorney's Office

Page 3

Oakland City Attorney's Office
Cause Code Listing

Group	Code	Description
10	1010	Citations: Parking & Tow Disputes
10	1020	Citations: Traffic
11	1100	Fire Dept.: Fire Response Related Dmgs.
12	12	Eviction/Unlawful Detainer
12	1201	Eviction/Unlawful Detainer: Rent
12	1202	Eviction/Unlawful Det.: Redetermination
12	1203	Eviction/Unlawful Detainer: Drugs
12	1204	Eviction/Unlawful Det.:Unauthorized Gues
12	1205	Eviction/Unlawful Detainer:Utility Theft
12	1206	Eviction/Unlawful Detainer: Weapons
13	1300	Rent Arbitration
13	1301	Rent Control
13	1302	Just Cause Eviction
14	14	City Govt.
14	1401	City Govt.: Charter
14	1402	City Govt.: Municipal Code
14	1403	City Govt.: Ordinance
14	1404	City Govt.: Resolution
14	1405	City Govt.: Policy
14	1406	City Govt.: Administrative Hearings
14	1407	City Govt.: Land Use/Planning
14	1408	City Govt.: Conflict of Interest
14	1409	City Govt.: Constitutional Law
14	1411	City Govt.: Eminent Domain
14	1412	City Govt.: Municipal Finance
14	1413	City Govt.: Brown Act
14	1414	City Govt.: Anti-Predatory Lending
14	1490	City Govt.: Other
15	15	Records/Evidence
15	1501	Records: Public Records Act
15	1502	Records: Pitchess Motion
15	1503	Records: Subpoena
15	1504	Records: Preservation of Evidence
16	1600	City Employee Negligence or Misconduct
95	9500	Non-case Specific Expenses (NCSE)
96	9600	CITY NOT INVOLVED
97	9700	Misc: Loma Prieta Earthquake - 1989

Printed : 05/17/2017 04:15 PM
Oakland City Attorney's Office

Page 4

Oakland City Attorney's Office
Cause Code Listing

Group	Code	Description
98	9800	Misc.: Oakland Hills Firestorm - 1991
99	9900	Misc.

Chicago Police Department Claims Notification Procedures

 Chicago Police Department CITY CLAIMS NOTIFICATION PROGRAM		Special Order S03-10	
			
ISSUE DATE:	10 October 2012	EFFECTIVE DATE:	10 October 2012
RESCINDS:	19 December 2002 version		
INDEX CATEGORY:	Field Operations		

I. PURPOSE

This directive:

- A. continues the City Claims Notification Program.
- B. introduces the electronic notification procedure using the Department of Law, City Claims Unit email address: cityclaimsnotificationprogram@cityofchicago.org.

II. GENERAL INFORMATION

The City Claims Notification Program was developed to address **accidental** property damages caused by the Chicago Police Department during official business. These claims can include property-damage automobile accidents, accidental destruction of animals, damage caused during the execution of search warrants, and similar occurrences. The notification procedures set forth below shall be completed in instances where a property claim is likely to be filed against the City of Chicago.

NOTE: Personal injury claims are **NOT** included in this program.

III. PROCEDURES

- A. Department Members Responsibilities
When a Department member is involved in an incident resulting in accidental damage to property, that member will:
 1. notify and request that a supervisor report to the scene.
 2. ensure that all required documentation is completed in a timely manner, with the responding supervisor's name included in the narrative section of the related case, supplementary, or traffic crash report. Members will ensure that a phone number for the affected party is included on the corresponding report.
 3. if a City Claims Notification should be made:
 - a. submit all completed reports to the assigned supervisor for approval and notification.

NOTE: Any time a City Claims Notification is made, the incident must be recorded on the appropriate report (e.g., Traffic Crash Report, Department Vehicle Traffic Crash or Damage Report, General Offense Case Report, Supplementary Report). Notifications cannot be made without proper documentation.
 - b. advise affected parties that a City claims adjuster will contact them by telephone, usually within twenty-four hours.

B. Supervisors Responsibilities

When a supervisor is called to the scene of accidental damage, the supervisor will:

1. determine if a City Claims Notification should be made. If a claim should be made, the supervisor will:
 - a. receive all completed reports from the Department members involved in the incident and sign the reports, electronically or otherwise, indicating approval;
 - b. complete supervisory sections, if applicable, of all reports related to the incident;
 - c. complete a [City Claims Notification form \(CPD-11.719\)](#);
 - d. submit completed reports and the [City Claims Notification form](#) to the station supervisor of the district of occurrence for approval.
2. in cases of exigent circumstances or hardship to the affected party, such as a damaged door to a residence, and the required case reports will not be completed for several hours, the supervisor will complete a [City Claims Notification form](#) and make an immediate notification to the station supervisor of the district of occurrence.

C. Station Supervisor Responsibilities

When the station supervisor in the district of occurrence is notified that a City Claims Notification should be made, the station supervisor will:

1. receive all pertinent reports from the assigned supervisor and review for completeness,
2. sign the City Claims Notification form indicating approval,
3. during business hours, contact the Department of Law, City Claims Unit and:
 - a. inform the call-taker that there is a City Claims Notification,
 - b. give the call-taker the information recorded on the City Claims Notification form, and
 - c. record the call-takers name and the time of notification on the City Claims Notification form.
 - d. digitally scan all pertinent reports and email to: cityclaimsnotificationprogram@cityofchicago.org.
 - e. fax all reports along with the City Claims Notification form to the Department of Law, City Claims Unit .
4. after business hours, on weekends, or during Holidays, digitally scan all pertinent reports including a cover sheet containing a callback telephone number and email to: cityclaimsnotificationprogram@cityofchicago.org. When the City Claims Adjuster returns the call:
 - a. inform the caller that there is a City Claims Notification;
 - b. record the callers name and the time of contact on the City Claims Notification form.
 - c. fax all reports along with the City Claims Notification form to the Department of Law, City Claims Unit .

-
5. after being notified by a supervisor that exigent circumstances or specific hardship to the affected party exist in a case, make an immediate notification to the Department of Law, City Claims Unit . Notifications of this nature will not be delayed while waiting for the appropriate case reports to be completed.
 6. notify the district commander that a City Claims Notification has been made by forwarding a copy of the City Claims Notification form and all related reports to the district commander's office. If the district commander's signature is required on any related reports, indicate this by checking the box marked "yes" next to the question, "Is the District Commanders Approval Required?" on the City Claims Notification form.

NOTE: For reports that require the signature of an exempt commanding officer, and the exempt commanding officer is not be available to sign the report, the station supervisor will email and fax the unapproved report.

D. District Commander Responsibilities
District commanders will:

1. establish a unit-level procedure to retain the City Claims Notification forms and related reports, approved for incidents occurring within their district, consistent with Department records retention requirements.
2. review the submitted City Claims Notification form for completeness. If the City Claims Notification form indicates that the district commanders further approval is necessary, sign his or her name to those reports, indicating approval, and fax the approved report to the Department of Law, City Claims Unit .

IV. CITY CLAIMS ADJUSTORS

Once a City Claims Notification has been received by the Department of Law, City Claims Unit, an adjustor will be assigned to evaluate the claim. Citizens' questions regarding a claim will be directed to the Department of Law, City Claims Unit during normal business hours.

Authenticated by: JKH

Garry F. McCarthy
Superintendent of Police

12-108 TRH

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Sign the Path to Justice Pledge

Officials who sign the Path to Justice Pledge commit to support policies that:

- End police brutality and killings by restricting the use of force, creating non-lethal response teams, and demilitarizing police forces.
- Hold law enforcement accountable by creating committees for oversight with subpoena powers, and eliminating exceptions for law enforcement such as qualified immunity

Please provide a link to a social media post or press release as proof of a public statement in support of the Path to Justice Pledge.

Official Position or Title*

Name *

First Name

Last Name

Email *

City*

State*

Link to Proof of Public Statement*

SIGN UP

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CITY OF OAKLAND

CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

Police Commission

To: Oakland Police Commission
 From: Equipment Policy Ad Hoc Committee
 Date: 07 June 2020
 RE: Police Equipment Policy

Dear Colleagues on the Oakland Police Commission and Members of the Public,

RECOMMENDATION

The Equipment Policy Ad Hoc Committee (Committee) requests that the Oakland Police Commission (Commission) waive further policy development requirements, endorse the proposed draft ordinance regulating the acquisition and use of controlled equipment by the Oakland Police Department, and forward the draft ordinance to City Council with a request for immediate adoption.

BACKGROUND

In October 2019 Henry Gage III (then a member of the public) introduced a draft ordinance to regulate the Oakland Police Department's acquisition and use of militarized equipment. This draft ordinance was the result of many hours of diligent work by community advocates who want to ensure that the tools and tactics deployed by the police are subject to appropriate oversight, and reasonable checks and balances.

The Commission tabled discussion of this draft until November 2019. During a November 14, 2019 meeting the Commission created an ad hoc committee to manage the creation of this draft legislation, and to make recommendations to the Commission for further action. This ad hoc is comprised of Vice Chair Gage, Alternate Commissioner David Jordan, and Alternate Commissioner Chris Brown.

The Committee met with community advocates, elected officials, and police department staff to discuss the proposed ordinance, gather policy feedback, hear practical concerns about implementation, and review proposed amendments. Community advocates organized and produced a townhall on militarized policing, and recorded testimony from Oakland residents. These meetings guided the development of working drafts, which were first presented to the Police Commission for review and comment during the Commission's November 14, 2019 meeting. Discussion on updated drafts were continued on a number of occasions, and some feedback has been received from Commissioners and members of the public.

In response to the growing COVID-19 pandemic, and in recognition of the need for immediate resource realignment, in April 2020 the Committee recommended that work on the proposed ordinance be temporarily suspended. In a few short weeks, circumstances have changed dramatically. The Oakland Police Department, supported by a host of mutual aid partners, has been video recorded using teargas, armored vehicles, riot equipment, and flashbangs against non-violent demonstrators. The Committee has deemed that the need for immediate regulation requires that this ordinance be submitted for consideration by the Commission.

LEGISLATIVE SUMMARY

This legislation is being offered to regulate the Oakland Police Department ability to acquire and use certain categories of equipment. The structure created by this legislation models the Oakland Surveillance Ordinance in terms of workflow and it models California Assembly Bill 3131, a prior attempt to establish statewide requirements for the regulation of military equipment,¹ in terms of subject matter.

The primary concepts of the proposed Ordinance are as follows:

1. Controlled Equipment Use Policies and Controlled Equipment Impact Reports must be reviewed and adopted before the use of Controlled Equipment may be authorized.
2. Requires the Police Department to submit Controlled Equipment Use Policies and Controlled Equipment Impact Reports to the Police Commission for review and recommendation.
3. Requires the Police Commission to review submissions at a public hearing and determine whether such submissions warrant a recommendation to Council for adoption or rejection.
4. Requires the City Council to ratify or reverse the Police Commission's recommendations following the Commission's review of Controlled Equipment Use Policies.
5. Requires the Police Department to submit an annual report describing the use of authorized Controlled Equipment during the year prior.
6. Requires the Police Commission to review the annual Controlled Equipment report, determine whether covered equipment has complied with the standards for approval, and recommend renewal or modification of Use Policies, or the revocation of authorization for use.
7. Requires the City Council to ratify or reverse the Police Commission's recommendations following the Commission's review of the Controlled Equipment annual report.

ANALYSIS

The acquisition and use of military equipment adversely affects the public's safety and welfare, and creates severe and continuing risks to civil rights, civil liberties, and the physical and psychological well-being of the public. Legally enforceable safeguards, including transparency, oversight, and accountability measures, must be in place to protect the public's welfare, safety, civil rights, and civil liberties before certain categories of equipment are funded, acquired, or used.

In his 2016 book, To Protect and Serve, former Seattle Police Chief Norm Stamper notes that:

“Although there is a time and a place for military-like tactics, weaponry, and equipment, it's indisputable that the nation's police have often misused and abused the 'military approach.' In many jurisdictions there seems to be a 'boys with toys' mentality; if you have these 'toys' on hand, you want to use them, 'play' with them. And where personal and organizational discipline is lacking, people get hurt, cops and citizens alike.”²

The Oakland Police Commission is the institution best suited to ensure that the Police Department's acquisition and use of military equipment is subject to close oversight. By adopting the proposed ordinance, the City of Oakland can create a procedure to determine the necessity and use of equipment that, if misused or abused, will likely cause irreparable harm.

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¹ This bill passed the Legislature, but was vetoed by then-Governor Jerry Brown

² Norm Stamper, To Protect and Serve: How to Fix America's Police 83, (2016)

CONCLUSION

For questions regarding this report, please email Vice Chair Henry Gage, at:

hgage@oaklandcommission.org.

Sincerely,

Henry Gage III
Vice Chair, Oakland Police Commission

Oakland Police Commission
11 June 2020
Item: _____

DRAFT ORDINANCE ON ACQUISITION AND USE OF CONTROLLED EQUIPMENT

WHEREAS, the City Council finds that the acquisition of military and militaristic equipment and its deployment in Oakland can adversely impact the public's safety and welfare, including introducing significant risks to civil rights, civil liberties, and physical and psychological well-being, and incurring significant financial costs; and

WHEREAS, the Law Enforcement Equipment Acquisition Working Group created by President Barack Obama in Executive Order 13688 (later rescinded by President Donald Trump) recommended requiring "local civilian government (non-police) review of and authorization for law enforcement agencies' request for or acquisition of controlled equipment," and that such review included detailed justification for the acquisition and collecting information on and reporting on its use; and

WHEREAS, the City Council finds that the public has a right to know about any funding, acquisition, or use of military or militaristic equipment by the City of Oakland, as well as a right to participate in any City decision to fund, acquire, or use such equipment; and

WHEREAS, the City Council finds that decisions regarding whether and how military or militaristic equipment is funded, acquired, or used should give strong consideration to the public's welfare, safety, civil rights, and civil liberties, and should be based on meaningful public input; and

WHEREAS, several studies indicate that police departments in the United States that acquire military-grade equipment are more likely to use violence and are no more successful in reducing crime than those that acquire less such equipment;¹ and

WHEREAS, the City Council finds that legally enforceable safeguards, including transparency, oversight, and accountability measures, must be in place to protect the public's welfare, safety, civil rights, and civil liberties before military or militaristic equipment is funded, acquired, or used; and

WHEREAS, the City Council finds that the lack of a public forum to discuss the acquisition of military or militaristic equipment jeopardizes the relationship police have with the community, which can be undermined when law enforcement is seen as an occupying force rather than a public safety service; and

WHEREAS, the City Council finds that if military or militaristic equipment is acquired, reporting measures must be adopted that empower the City Council and public to verify that mandated civil rights safeguards have been strictly adhere to.

¹ Jonathan Mummolo, "Militarization fails to enhance police safety or reduce crime but may harm police reputation," *Proceedings of the National Academy of Sciences*, September 11, 2018 (37) 9181-9186; Casey Delehanty, Jack Mewhirter, Ryan Welch and Jason Wilks, "Militarization and police violence: The case of the 1033 program," *Research and Politics*, April-June 2017, 1-7; and Edward Lawson Jr., "Police Militarization and the Use of Lethal Force," *Political Research Quarterly*, 2018, 1-13.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Name of Ordinance.

(A) This Ordinance shall be known as the Police Equipment and Community Safety Ordinance.

SECTION 2. Definitions.

(A) **“Controlled Equipment”** means equipment that is military or militaristic in nature, or is likely to be perceived as military or militaristic in nature, and includes, but is not limited to, all of the following:

- (1) Special-purpose wheeled vehicles that are built or modified to provide ballistic protection to their occupants, such as mine-resistant ambush protected (MRAP) vehicles or armored personnel carriers.
 - (a) Police versions of standard patrol vehicles are specifically excluded from this section.
- (2) Multi-purpose wheeled vehicles that are built to operate both on-road and off-road, such as a high mobility multipurpose wheeled vehicle (HMMWV), commonly referred to as a Humvee, a two and one-half-ton truck, or a five-ton truck, or vehicles built or modified to use a breaching or entry apparatus as an attachment.
 - (a) Unarmored all-terrain vehicles (ATVs) and motorized dirt bikes are specifically excluded from this section.
- (3) Tracked vehicles that are built or modified to provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion.
- (4) Weapon-bearing aircraft, vessels, or vehicles of any kind, whether manned or unmanned.
- (5) Breaching apparatus designed to provide rapid entry into a building or through a secured doorway, including equipment that is mechanical, such as a battering ram, equipment that is ballistic, such as a slug, or equipment that is explosive in nature.
- (6) Firearms of .50 caliber or greater.
- (7) Ammunition of .50 caliber or greater.
- (8) Specialized firearms and associated ammunition of less than .50 caliber, as defined in Sections 30510 and 30515 of the California Penal Code.
- (9) Projectile launch platforms, such as 40mm projectile launchers, “bean bag” or specialty impact munition (“SIM”) weapons, and “riot guns” used to disperse chemical agents.
- (10) Any knife designed to be attached to the muzzle of a rifle, shotgun, or long gun for purposes of hand-to-hand combat.
- (11) Explosives, pyrotechnics, such as “flashbang” grenades and explosive breaching tools, and chemical weapons such as “teargas” and “pepper balls”.
- (12) Crowd-control equipment, such as riot batons, riot helmets, and riot shields, but excluding service-issued telescopic or fixed-length straight batons.
- (13) Active area denial weapons, such as the Taser Shockwave, microwave weapons, water cannons, and the Long-Range Acoustic Device (LRAD).

- (a) Only LRAD use as an area denial tool shall trigger the reporting requirements of this ordinance.
- (14) Any other equipment as determined by the City Council to require additional oversight.
- (B) **"City"** means any department, agency, bureau, and/or subordinate division of the City of Oakland as provided by Chapter 2.29 of the Oakland Municipal Code.
- (C) **"City Staff"** means City personnel authorized by the City Administrator or designee to seek City Council approval of the acquisition of Controlled Equipment in conformance with this Ordinance.
- (D) **"Controlled Equipment Impact Statement"** means a publicly released, written document that includes, at a minimum, all of the following:
- (1) **Description:** A description of each type of Controlled Equipment, the quantity sought, its capabilities, expected lifespan, intended uses and effects, and how it works, including product descriptions from the manufacturer of the Controlled Equipment.
 - (2) **Purpose:** The purposes and reasons for which the Oakland Police Department (hereinafter, "Police Department") proposes to use each type of Controlled Equipment.
 - (3) **Fiscal Cost:** The fiscal cost of each type of Controlled Equipment, including the initial costs of obtaining the equipment, the estimated or anticipated costs of each proposed use, the estimated or anticipated costs of potential adverse impacts, and the estimated or anticipated annual, ongoing costs of the equipment, including operating, training, transportation, storage, maintenance, and upgrade costs.
 - (4) **Impact:** An assessment specifically identifying any potential impacts that the use of Controlled Equipment might have on the welfare, safety, civil rights, and civil liberties of the public, and what specific affirmative measures will be implemented to safeguard the public from potential adverse impacts.
 - (5) **Mitigations:** Specific, affirmative technical and procedural measures that will be implemented to safeguard the public from such impacts.
 - (6) **Alternatives:** Alternative method or methods by which the Police Department can accomplish the purposes for which the Controlled Equipment is proposed to be used, the annual costs of alternative method or methods, and the potential impacts of alternative method or methods on the welfare, safety, civil rights, and civil liberties of the public.
 - (7) **Location:** The location(s) it may be used, using general descriptive terms.
 - (8) **Third Party Dependence:** Whether use or maintenance of the Controlled Equipment will require the engagement of third-party service providers.
 - (9) **Track Record:** A summary of the experience (if any) other entities, especially government entities have had with the proposed Controlled Equipment, including, if available, quantitative information about the effectiveness of the Controlled Equipment in achieving its stated purpose in other jurisdictions, and any known adverse information about the Controlled Equipment (such as unanticipated costs, failures, or civil rights and civil liberties abuses).

- (E) **“Controlled Equipment Use Policy”** means a publicly released, legally enforceable written document governing the use of Controlled Equipment by the Oakland Police Department that addresses, at a minimum, all of the following:
- (1) Purpose: The specific purpose or purposes that each type of Controlled Equipment is intended to achieve.
 - (2) Authorized Use: The specific uses of Controlled Equipment that are authorized, and rules and processes required prior to such use.
 - (3) Prohibited Uses: A non-exclusive list of uses that are not authorized.
 - (4) Training: The course of training that must be completed before any officer, agent, or employee of the Police Department is allowed to use each specific type of Controlled Equipment.
 - (5) Auditing and Oversight: The mechanisms to ensure compliance with the Controlled Equipment Use Policy, including which independent persons or entities have oversight authority, and what legally enforceable sanctions are put in place for violations of the policy.
 - (6) Transparency: The procedures by which members of the public may register complaints or concerns or submit questions about the use of each specific type of Controlled Equipment, and how the Police Department will ensure that each complaint, concern, or question receives a response in a timely manner.
- (F) **"Police Area"** refers to each of the geographic districts assigned to a police commander and as such districts are amended from time to time.

SECTION 3. Acquisition and Use of Controlled Equipment.

- (A) Restrictions Prior to Submission and Approval
- (1) The Oakland Police Department shall submit to the Oakland Police Commission (hereinafter “Police Commission”) a Controlled Equipment Impact Report and a Controlled Equipment Use Policy prior to engaging in any of the following:
 - (a) Requesting the transfer of Controlled Equipment pursuant to Section 2576a of Title 10 of the United States Code.
 - (b) Seeking funds for Controlled Equipment, including, but not limited to, applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.
 - (c) Acquiring Controlled Equipment either permanently or temporarily, including by borrowing or leasing.
 - (d) Collaborating with another law enforcement agency, such as commanding, controlling, or otherwise directing that agency or its personnel, in the deployment or other use of Controlled Equipment within Oakland.
 - (e) Using any new or existing Controlled Equipment for a purpose, in a manner, or by a person not previously approved by the governing body pursuant to this Ordinance.
 - (f) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of, Controlled Equipment.

- (2) The funding, acquisition, or use of Controlled Equipment by the Police Department shall not be permitted without the review and recommendation, by the Police Commission, and approval, by City Council, of a Controlled Equipment Impact Report and a Controlled Equipment Use Policy submitted pursuant to this Ordinance.
 - (a) The Chair of the Police Commission, in consultation with the Vice Chair, may provide limited approval, in writing, for the Department to solicit funding for Controlled Equipment prior to the submission of a Controlled Equipment Impact Report and a Controlled Equipment Use Policy.
 - (b) Controlled Equipment purchased under the exception provided by this subsection shall not be used unless a Controlled Equipment Impact Report and Controlled Equipment Use Policy is subsequently submitted to the Police Commission for review and subsequently approved by City Council, pursuant to the general requirements of this section.

(B) Submission to Police Commission

- (1) When seeking the review and recommendation of the Police Commission, the Police Department shall submit to the Police Commission a Controlled Equipment Impact Report and a Controlled Equipment Use Policy.
- (2) At least 15 days prior to any public hearing concerning the Controlled Equipment at issue, the Department shall publish the Controlled Equipment Impact Report and Controlled Equipment Use Policy for public review. Publishing to the Department's website shall satisfy the requirements of this subsection.
- (3) In order to facilitate public participation, Controlled Equipment Impact Reports and Controlled Equipment Use Policies shall be made publicly available on the Department's website for as long as the Controlled Equipment is proposed or approved for use.
- (4) The Police Commission shall consider Controlled Equipment Impact Reports and Controlled Equipment Use Policies as an agenda item for review at an open session of a regularly noticed meeting.

(C) Criteria for Police Commission Recommendations

- (1) The Police Commission shall only recommend approval of a request to fund, acquire, or use Controlled Equipment pursuant to this chapter if it determines all of the following:
 - (a) The Controlled Equipment is needed despite available alternatives.
 - (b) The Controlled Equipment Use Policy will safeguard the public's welfare, safety, civil rights, and civil liberties.
 - (c) The use of Controlled Equipment will not be used based on race, national origin, religion, sexual orientation, gender, gender identity, political viewpoint, or disability, or disproportionately impact any community or group.
 - (d) The use of Controlled Equipment is the most cost-effective option among all available alternatives.
- (2) If the submitted Controlled Equipment Impact Report identifies a risk of potential adverse effects on the public's welfare, safety, civil rights, or civil liberties, a recommendation for approval for the funding, acquisition, or use of

Controlled Equipment by the Police Commission pursuant to this Ordinance shall not be deemed an acquiescence to those effects, but instead an acknowledgment of the risk of those effects and the need to avoid them proactively.

- (E) Police Commission Review Required Before City Council Consideration of Approval.
- (1) The Police Commission shall recommend that the City Council adopt, modify, or reject the proposed Controlled Equipment Use Policy.
 - (a) If the Police Commission proposes that the Controlled Equipment Use Policy be modified, the Police Commission shall propose such modifications to City Staff. City Staff shall present such modifications or notice of rejection to City Council when subsequently seeking City Council approval pursuant to this Ordinance.
 - (b) Failure by the Police Commission to make its recommendation on a proposal within ninety (90) days of submission shall enable City Staff to proceed to the City Council for approval of the proposal.
- (F) Police Commission Review of Prior Recommendations
- (1) The Police Commission shall review any recommendation that it has adopted pursuant to this Ordinance approving the funding, acquisition, or use of Controlled Equipment at least annually and vote on whether to recommend renewal of the approval.
 - (2) A Police Commission recommendation to City Council that a prior approval be revoked shall be presented to Council for immediate consideration. If City Council has not reviewed and taken action on a Police Commission recommendation that a prior approval be revoked within four (4) City Council meetings from when the item was initially scheduled for City Council consideration, the City shall cease its use of the Controlled Equipment.
- (G) Review Process for Previously-Acquired Equipment
- (1) The Police Department shall have one year from the date of passage of this Ordinance to submit Controlled Equipment Use Policies and Controlled Equipment Impact Statements for approval pursuant to this Ordinance if the Department wishes to continue the use of Controlled Equipment acquired prior to the passage of this Ordinance. The Department shall cease the use of Controlled Equipment acquired prior to the date of passage of this ordinance if, after one year, no approval, pursuant to the requirements of this Ordinance, has been granted.
 - (2) In order to ensure that the review of previously-acquired Controlled Equipment is appropriately prioritized, the Police Department shall provide a prioritized ranking of Controlled Equipment possessed and/or used by the City, and the Police Commission shall consider this ranking in determining order in which previously-acquired Controlled Equipment is agendized for review.
- (H) City Council Review Process
- (1) After the Police Commission Notification and Review requirements have been met, City Staff seeking City Council approval shall schedule for City Council

- consideration a package containing the Controlled Equipment Impact Report, Controlled Equipment Use Policy, and Police Commission recommendations, at least fifteen (15) days prior to a public meeting.
- (2) The City Council shall only approve a proposed Controlled Equipment Impact Report and proposed Controlled Equipment Use Policy after first considering the recommendation of the Police Commission, and subsequently making a determination that the City's interest in community safety outweighs the potential adverse affects of using Controlled Equipment.
 - (3) For approval of existing Controlled Equipment for which the Police Commission has failed to make a recommendation within ninety (90) days as provided by this Section, if the City Council has not reviewed and approved such item within four (4) City Council meetings from when the item was initially scheduled for City Council consideration, the City shall cease its use of the Controlled Equipment until such review and approval occurs.

SECTION 4. Reports on the Use of Controlled Equipment.

(A) Annual Report on Controlled Equipment

- (1) The Oakland Police Department shall submit to the Police Commission an annual report on Controlled Equipment to the Police Commission within one year of approval, and annually thereafter for as long as the Controlled Equipment is available for use. The annual report shall be provided no later than March 15th of each year, unless the Police Commission advises the Police Department that an alternate date is preferred. The Police Department shall make each annual report required by this section publicly available on its website for as long as the Controlled Equipment is available for use. The annual report shall, at a minimum, include the following information for the immediately preceding calendar year:
 - (a) Production descriptions and specifications for Controlled Equipment and inventory numbers of each type of Controlled Equipment in the Police Department's possession.
 - (b) A summary of how Controlled Equipment was used.
 - (c) If applicable, a statement of whether any uses of Controlled Equipment were conducted in combination with judicial warrants.
 - (d) A summary of any complaints or concerns received concerning Controlled Equipment.
 - (e) The results of any internal audits, any information about violations of Controlled Equipment Use Policies, and any actions taken in response.
 - (f) The estimated annual cost for each type of Controlled Equipment, including acquisition, personnel, training, transportation, maintenance, storage, upgrade, and other ongoing costs, and from what source funds will be provided for Controlled Equipment in the calendar year following submission of the annual report.
- (2) Within 60 days of the Police Department submitting and publicly releasing an annual report pursuant to this section, the Police Commission shall place the report as an agenda item for an open session of a regular meeting. After review and approval by the Police Commission, City Staff shall submit the annual report to City Council.

(C) Compliance & Revocation of Approval

- (1) The Police Commission shall determine, based on the annual report submitted pursuant to Section 4, whether each type of Controlled Equipment identified in that report has complied with the standards for approval set forth in Section 3. If the Police Commission determines that any Controlled Equipment identified in the annual report has not complied with the standards for approval set forth in Section 3, the Police Commission shall either recommend revocation of the authorization for that piece of Controlled Equipment or modify the Controlled Equipment Use Policy in a manner that will resolve the lack of compliance. Recommendations for revocations pursuant to this section shall be forwarded to City Council in accordance with the approval process in Section 3.

SECTION 5. Enforcement.**(A) Remedies for Violations of this Ordinance**

- (1) Any violation of this Ordinance, or of a Controlled Equipment Use Policy promulgated under this Ordinance, constitutes an injury and any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in the Superior Court of the State of California to enforce this Ordinance. An action instituted under this paragraph shall be brought against the respective city department, and the City of Oakland, and, if necessary to effectuate compliance with this Ordinance or a Controlled Equipment Use Policy, any other governmental agency with possession, custody, or control of Controlled Equipment subject to this Ordinance, to the extent permitted by law.
- (2) Any person who has been subjected to the use of Controlled Equipment in violation of this Ordinance may institute proceedings in the Superior Court of the State of California against the City of Oakland and shall be entitled to recover actual damages (but not less than liquidated damages of one thousand dollars (\$1,000.00) or one hundred dollars (\$100.00) per day for each day of violation, whichever is greater).
- (3) A court shall award costs and reasonable attorneys' fees to the plaintiff who is the prevailing party in an action brought under subpart (1) or (2) above.
- (4) Violations of this Ordinance by a city employee may result in consequences that may include retraining, suspension, or termination, subject to due process requirements.

SECTION 6. Transparency.**(A) Disclosure Requirements**

- (1) It shall be unlawful for the City to enter into any Controlled Equipment-related contract or other agreement that conflicts with the provisions of this Ordinance, and any conflicting provisions in such future contracts or agreements, including but not limited to non-disclosure agreements, shall be deemed void and legally unenforceable.
- (2) To the extent permitted by law, the City shall publicly disclose all of its Controlled Equipment-related contracts, including any and all related non-disclosure agreements, if any, regardless of any contract terms to the contrary.

SECTION 7. Whistleblower Protections.**(A) Protections Against Retaliation**

- (1) Neither the City nor anyone acting on behalf of the City may take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment, including but not limited to discriminating with respect to compensation, terms and conditions of employment, access to information, restrictions on due process rights, or civil or criminal liability, because:
 - (a) The employee or applicant was perceived to, about to, or assisted in any lawful disclosure of information concerning the funding, acquisition, or use of Controlled Equipment based upon a good faith belief that the disclosure evidenced a violation of this Ordinance; or
 - (b) The employee or applicant was perceived to, about to, or assisted or participated in any proceeding or action to carry out the purposes of this Ordinance.
 - (c) It shall be grounds for disciplinary action for a city employee or anyone else acting on behalf of the city to retaliate against another city employee or applicant who makes a good-faith complaint that there has been a failure to comply with any Controlled Equipment Use Policy or administrative instruction promulgated under this Ordinance.
 - (d) Any employee or applicant who is injured by a violation of this Section may institute a proceeding for monetary damages and injunctive relief against the city in any court of competent jurisdiction.



OAKLAND POLICE COMMISSION

SPECIAL MEETING MINUTES - DRAFT

May 14, 2020
5:30 PM

I. Call to Order

Chair Regina Jackson

The meeting started at 5:33 pm.

II. Roll Call and Determination of Quorum

Chair Regina Jackson

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

Alternate Commissioners Present: David Jordan (*arrived during item VI*)

Commissioners Excused: Henry Gage, III

Alternate Commissioners Absent: Chris Brown

Counsel for this meeting: Conor Kennedy and Nitasha Sawhney

III. Public Comment on Closed Session Items

No public comments were provided on this item.

The Commission adjourned to closed session. The open session section of the meeting commenced at 6:32 pm.

IV. Closed Session Closed Session

CONFERENCE WITH LEGAL COUNSEL— ANTICIPATED LITIGATION: 1 CASE - Govt. Code § 54956.9(d)(2)

V. Report out of Closed Session

CONFERENCE WITH LEGAL COUNSEL— ANTICIPATED LITIGATION: 1 CASE - Govt. Code § 54956.9(d)(2)

There were no reportable actions on this item.

VI. Welcome, Purpose, and Open Forum/Public Comment

All public comments were received during Open Forum.

Comments were provided by the following public speakers:

Lorelei Bosserman

Assata Olugbala

Rashidah Grinage

Michele Lazaneo

Anne Janks
Mr. Bandabaila
Needa Bee
Aiyahna Johnson
Aki Young
Cathy Leonard

Written comments were submitted by:
Mary Vail

VII. Update from Interim Police Chief

OPD Interim Chief Manheimer provided an update on the Department. Topics discussed included crime rates during the stay-at-home order.

No action was taken on this item.

VIII. Police Commission and CPRA Budgets Update

The Commission provided updates on the CPRA and Commission budgets for the mid-cycle of FY 19-21.

No action was taken on this item.

IX. Review of the Impact to Date of the Revised OPD R-02 Supervised Release Searches Policy

OPD presented a report on the impact to date of the revised R-02 Supervised Release Searches policy.

No action was taken on this item.

X. Peace Officer Standards and Training (POST) Training Announcement for Commissioners

OPD presented information on and discuss the plan for POST training for the Commission.

No action was taken on this item.

XI. Annual Report Update

The Commission voted to approve the annual report that was included with the agenda.

A motion was made by José Dorado, seconded by Ginale Harris, to approve the annual report that was included with the agenda. The motion carried by the following vote:

Aye: Anderson, Dorado, Harris, Jackson, Prather, and Smith
No: 0

XII. Bey Case Contract Update

The Bey Case Ad Hoc Committee provided an update on the status of the contract for investigative services with the Knox & Ross Law Group.

No action was taken on this item.

XIII. Commission Retreat

The Commission discussed potential dates, format, presenters, location, and cost for a retreat.

No action was taken on this item.

XIV. Committee Reports

Representatives from Standing and Ad Hoc Committees provided updates on their work. **Outreach** – there was a community policing meeting on May 13th which the Director of the department of Violence Prevention, Guillermo Cespedes, participated in; **Use of Force** – the ad hoc met on April 30th and May 7th and reviewed policy content and training bulletins, in addition to model policies of other agencies; **Litigation** – a new ad hoc was formed to address the issues in the former Chief’s claim; **OPD Chief Search** – should have an updated job description for the Chief position soon.

No action was taken on this item.

XV. Meeting Minutes Approval

The Commission voted to approve minutes from April 23 and 27, 2020.

A motion was made by José Dorado, seconded by Edwin Prather, to approve the April 23, 2020 minutes. The motion carried by the following vote:

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

No: 0

A second motion was made by José Dorado, seconded by Edwin Prather, to approve the April 27, 2020 minutes. The motion carried by the following vote:

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

No: 0

XVI. Agenda Setting and Prioritization of Upcoming Agenda Items

The Commission engaged in a working session to discuss and determine agenda items for the upcoming Commission meeting: discipline disparity report; ballot measure for updates to Measure LL; and amendment to minutes from September 13, 2018.

XVII. Adjournment

A motion was made by Ginale Harris, seconded by Regina Jackson, to adjourn the meeting at 9:55 pm. The motion carried by the following vote:

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

No: 0



OAKLAND POLICE COMMISSION

SPECIAL MEETING MINUTES - DRAFT

May 28, 2020
5:30 PM

I. Call to Order

Chair Regina Jackson

The meeting started at 5:33 pm.

II. Roll Call and Determination of Quorum

Chair Regina Jackson

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

Alternate Commissioners Present: Chris Brown and David Jordan (*arrived during item VI*)

Commissioners Excused: Edwin Prather (*participated in closed session*)

Counsel for this meeting: Conor Kennedy and Nitasha Sawhney

III. Public Comment on Closed Session Items

Comments were provided by the following public speakers:

Assata Olugbala

Jocelyn Ryder

The Commission adjourned to closed session. The open session section of the meeting commenced at 6:36 pm.

IV. Closed Session Closed Session

CONFERENCE WITH LEGAL COUNSEL— ANTICIPATED LITIGATION: 1 CASE - Govt. Code § 54956.9(d)(2)

V. Report out of Closed Session

CONFERENCE WITH LEGAL COUNSEL— ANTICIPATED LITIGATION: 1 CASE - Govt. Code § 54956.9(d)(2)

There were no reportable actions on this item.

VI. Welcome, Purpose, and Open Forum/Public Comment

Comments were provided by the following public speakers:

Mariano Contreras

Michele Lazaneo

Jim Chanin

Gene Hazzard

Pamela Price

Larry White
Iris Starr
Rashidah Grinage
Anne Janks
Laura Redmond
Lorelei Bosserman
Reisa Jaffe
Angie Noel
Assata Olugbala
Terri McWilliams
Jean Moses
Carla Pena
John Lindsay-Poland
Melanie Davis
Ayanna Akagawa
Neela Miri
Lasandra Owens

VII. Update from Interim Police Chief

OPD Interim Chief Manheimer provided an update on Department activities including crime statistics.

Comments were provided by the following public speakers:

Anne Janks
Laura Redmond
Michele Lazaneo
Assata Olugbala
Reisa Jaffe
Gene Hazzard
John Lindsay-Poland

No action was taken on this item.

VIII. Update on City Auditor's Commission and CPRA Audits

The Commission provided an update on the status of the Police Commission and CPRA audits that are being conducted by the City Auditor's office.

Comments were provided by the following public speakers:

Reisa Jaffe
Gene Hazzard
Assata Olugbala
Rashidah Grinage
Larry White

No action was taken on this item.

IX. Report on and Review of CPRA Pending Cases, Completed Investigations, Staffing, and Recent Activities

Executive Director John Alden reported on the Agency's pending cases, completed investigations, staffing, and recent activities.

No public comments were provided on this item.

No action was taken on this item.

X. Commission Discussion of, and Possible Action On, City Administration's Proposed Budget of May 26, 2020

The Commission discussed the proposed City budget that was released on May 26, 2020.

Comments were provided by the following public speakers:

Reisa Jaffe

Assata Olugbala

Manuel (no last name given)

No action was taken on this item.

XI. OPD Discipline Disparity Report

The Commission discussed the recent OPD Discipline Disparity Report and status of the RFP for the Oakland Black Officers Association (OBOA) investigation contract.

Comments were provided by the following public speakers:

Jocelyn Ryder

Reisa Jaffe

Assata Olugbala

No action was taken on this item.

XII. Measure LL Ballot Measure Initiative

The Commission provided an update on the status of the ballot measure regarding changes to Measure LL.

Comments were provided by the following public speakers:

Jim Chanin

Rashidah Grinage

Assata Olugbala

Larry White

A motion was made by Ginale Harris, seconded by Tara Anderson, to strike the text that was added in the first version of a draft resolution amending City Charter section 604(b)(5) in the Supplemental Attachment to the meeting agenda which states "The Chief of Police may, on a temporary basis and without Commission approval, make changes to policies, procedures, customs, or General Orders of the Department that are necessary to

respond to exigent circumstances related to public safety. If such unilateral changes otherwise require Commission approval under this section 604(b)(5), the Department shall provide notice to the Chair of the Commission within forty-eight (48) hours of making such changes and such changes shall expire sixty (60) days from when they take effect unless approved by the Commission or the City Council.” The motion carried by the following vote:

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

No: 0

A motion was made by Henry Gage, III, seconded by Regina Jackson, to extend the meeting to 11:00 pm. The motion carried by the following vote:

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

No: Smith

A second motion was made by José Dorado, seconded by Regina Jackson, to extend the meeting by 30 minutes. The motion carried by the following vote:

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

No: 0

A third motion was made by Henry Gage, III, seconded by Regina Jackson, to extend the meeting by 15 minutes. The motion carried by the following vote:

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

No: 0

A fourth motion was made by Thomas Lloyd Smith, seconded by Henry Gage, III, to extend the meeting by 15 minutes. The motion carried by the following vote:

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

No: 0

A second motion was made by Thomas Lloyd Smith, seconded by José Dorado, to affirm the following changes in the first version of a draft resolution amending City Charter section 604 included in the Supplemental Attachment that were collected by Henry Gage, III:

Section 604(a)(5)

Suggested language: “The City Administration shall not exercise any managerial authority over Commissioners or their designated staff, and shall not initiate an investigation of a Commissioner unless required by law or collective bargaining agreement.”

Section 604(c)(1)

Delete the following phrase: “Commissioners shall ... not be issued and shall not display, wear, or carry badges that identify themselves as Commissioners.”

The language setting forth eligibility requirements for Commissioners should remain as it is in the Charter.

Section 604(e)(4)

Change the first sentence to read: “The staff of the Agency shall consist of no fewer than one line investigator for every seventy (70) sworn officers in the Department.”

Section 604(e)(6)

The Commission believes that the Inspector General (OIG) should be an at-will employee, similar to the Executive Director of the CPRA. Therefore, delete the sentence “The Commission may remove the Inspector General only after adopting a finding or findings of cause, which may be defined by City Ordinance.”

Section 604(g)(5)

Change the section to read: “The Commission on its own motion may convene a Discipline Committee for cases when either or both the Agency Director or the Department have not completed an investigation within two hundred and fifty (250) days of the filing of a complaint or when the evidence upon which the findings of either the Department or CPRA do not include required body worn camera footage of the incident in question. The Commission shall adopt additional qualifying criteria for convening a Discipline Committee within its own bylaws. The Discipline Committee may require the Agency to further investigate the complaint by notifying the Agency Director, in writing, of the specific issues that need further investigation. The Commission may convene such a Discipline Committee by a vote of no fewer than five (5) affirmative votes.”

The motion carried by the following vote:

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

No: 0

A motion was made by Tara Anderson, seconded by Thomas Lloyd Smith, to table items XIII, XIV, and XV to a future agenda. The motion carried by the following vote:

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

No: 0

XIII. Committee Reports (*this item was tabled to a future agenda*)

Comments were provided by the following public speakers:

Rashidah Grinage

XIV. Meeting Minutes Approval (*this item was tabled to a future agenda*)

No public comments were provided on this item.

XV. Agenda Setting and Prioritization of Upcoming Agenda Items (*this item was tabled to a future agenda*)

No public comments were provided on this item.

XVI. Adjournment

A motion was made by Thomas Lloyd Smith, seconded by Henry Gage, III, to adjourn the meeting at 11:58 pm. The motion carried by the following vote:

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

No: 0

OAKLAND POLICE COMMISSION RESOLUTION

Resolution to Correct Previously Adopted Meeting Minutes and Amend Bylaw 2.16

WHEREAS on September 13, 2018, the Oakland Police Commission (“Commission”) properly moved, seconded, and voted to adopt in bylaw form a process for adopting new policies (“Commission Bylaw 2.16”);

WHEREAS, The Commission’s official copy of its meeting minutes from September 13, 2018 do not currently reflect the Commission’s passage of Commission Bylaw 2.16;

THEREFORE, amended meeting minutes are hereby adopted to reflect that the Commission passed Commission Bylaw 2.16 as reflected below at the Commission’s September 13, 2018 meeting;

FURTHER, Commission Bylaw 2.16 as drafted is hereby clarified that it applies on a forward-looking basis to polices to be developed beginning after June 11, 2020;

FURTHER, due to the meeting minutes discrepancy and the ambiguity about the policy’s mandatory nature, the Commission Bylaw 2.16 hereby waives and deems the bylaw not to have applied any formal process requirements to any of its prior formal policy actions;

And FURTHER, the Commission hereby expresses its intention to revisit and amend the new Bylaw 2.16 to ensure it continues to reflect best practices for transparent and effective development of policies for the Oakland Police Department by the first regular meeting of the Commission in November of this year, which is currently scheduled for Thursday, November 12, 2020.

The full text of the bylaw will be included in the Commission’s official list of bylaws as follows, and the numbering of the prior Bylaw 2.16 will be updated and changed to Bylaw 2.17, with all sequential bylaws up to but not including Bylaw 3.1 to be updated in turn.

Bylaw 2-16 - Police Commission: Process for editing or drafting policy.

1. Initial announcement of intent to review or draft with 4-6 weeks notice prior to date agendized.

- A. Present in a method to generate ideas, include key points, critical elements of policy initiative.
- B. Chair will direct the ED of CPRA to review policy and provide an analysis.
- C. Include CPRA memo for updates on best practice, relevant research (must be presented at least two weeks prior to the Commission meeting where it is agendized).

D. Make sure impacted parties are well invited and included. Commission will generate a list of community groups to outreach to as they relate to the topic (i.e. NCPC, NSC or organizations related to the topic of the policy.)

E. Ensure policy is able to be translated to multiple languages for community groups to have access (i.e. Google Translate button featured on website)

F. Include clear dates (submitted by, date of action needed, etc.)

2. Hold commission meeting where we engage feedback, generate key points, etc. from the Community and Commission.

A. Create list of points, feedback, concerns, questions, etc. that will be used to review the next draft against.

B. Be mindful of creating inclusive facilitation (i.e. using live tweets, polls from constituent groups, etc.)

C. Follow up with implications for the outreach committee (social media, canvassing, flyering, community meetings, etc.) Commission will generate a list of community groups to outreach to as they relate to the topic.

3. Ad hoc creates policy or edits existing, drafts based on initial Commission mtg.

4. Announce second review with 3-4 weeks notice prior to date agendized. Include:

A. Plan for outreach, to review draft of policy or initiative and check it against the brainstorm (make sure Commissioners have the brainstorm and new draft to check against at least 1-2 weeks before the official meeting)

B. Make sure impacted parties (community groups as created above) are well invited and included.

C. Consider before the meeting use of social media, newsletters and outreach to generate feedback in multiple ways.

Police Commission Pending Agenda Matters List

	A	B	C	D	E	F	G	H
1	Pending Agenda Matter	Date Placed on List	Duties/Deliverables	Additional Information/Details	Priority Level	Timeline/Deadline	Scheduled	Lead Commissioner(s), if any
2	City Auditor's Office to Present Performance and Financial Audit of Commission and Agency		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.	High	6/11/2020		
3	Commissioner Trainings	1/1/2018	Complete trainings mandated by City Charter section 604 (c)(9) and Enabling Ordinance section 2.45.190 Some trainings have deadlines for when they should be completed (within 3 months, 6 months, etc.) Several trainings were delivered in open session and have been recorded for future use	The following trainings must be done in Open Session: 1. California's Meyers Milias Brown Act (MMBA) and Public Employment Relations Board's Administration of MMBA (done 3.12.20) 2. Civil Service Board and Other Relevant City Personnel Policies and Procedures (done 2.27.20) 3. Memoranda of Understanding with Oakland Police Officers Association and Other Represented Employees (rescheduled due to COVID-19 health emergency) 4. Police Officers Bill of Rights (done 12.12.19)	High	Ongoing		

Police Commission Pending Agenda Matters List

	A	B	C	D	E	F	G	H
1	Pending Agenda Matter	Date Placed on List	Duties/Deliverables	Additional Information/Details	Priority Level	Timeline/Deadline	Scheduled	Lead Commissioner(s), if any
4	Confirming the Process to Hire Staff for the Office of Inspector General	5/17/2019	Per the Enabling Ordinance: The City shall allocate a sufficient budget for the OIG to perform its functions and duties as set forth in section 2.45.120, including budgeting one (1) full-time staff position comparable to the position of Police Program and Audit Supervisor. 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. All OIG staff, including the Inspector General, shall be civil service employees in accordance with Article IX of the City Charter.	This will require information presented from the City Administrator's Office.	High			

Police Commission Pending Agenda Matters List

	A	B	C	D	E	F	G	H
	Pending Agenda Matter	Date Placed on List	Duties/Deliverables	Additional Information/Details	Priority Level	Timeline/Deadline	Scheduled	Lead Commissioner(s), if any
1								
5	Finalize Bylaws and Rules	1/24/2019			High			Gage
6	Hire Inspector General (IG)	1/14/2019	Hire IG once the job is officially posted	Pending Measure LL revisions to be included in the November 2020 ballot. Recruitment and job posting in process.	High			Personnel Committee
7	Measure LL Revisions	10/1/2019	The Commission will discuss and provide feedback on the draft revision of Measure LL provided by the Coalition for Police Accountability to the Commission and City Council President Kaplan		High			Gage
8	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"> 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; 2. The number of pending investigations in IAD, and the types of Misconduct that are being investigated; 3. The number of investigations completed by IAD, and the results of the investigations; 4. The number of training sessions provided to Department sworn employees, and the subject matter of the training sessions; 5. Revisions made to Department policies; 6. The number and location of Department sworn employee-involved shootings; 7. The number of Executive Force Review Board or Force Review Board hearings and the results; 8. A summary of the Department's monthly Use of Force Reports; 9. The number of Department sworn employees disciplined and the level of discipline imposed; and 10. The number of closed investigations which did not result in discipline of the Subject Officer. <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

Police Commission Pending Agenda Matters List

	A	B	C	D	E	F	G	H
1	Pending Agenda Matter	Date Placed on List	Duties/Deliverables	Additional Information/Details	Priority Level	Timeline/Deadline	Scheduled	Lead Commissioner(s), if any
9	OPD to Provide a 30 Day Snapshot on the Effectiveness of SO 9202	2/27/2020		On 2.27.20, at the request of OPD the Commission considered and approved SO 9202 which amends the section in SO 9196 regarding Type 32 reportable force	High			
10	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		
11	Recommendations for Increasing Communication Between CPRA and IAD	10/6/2018		Review of existing communication practices and information sharing protocols between departments, need recommendations from stakeholders about whether a policy is needed. Ensure prompt forwarding of complaints from IAD to CPRA and prompt data sharing.	High			
12	Reports from OPD	10/6/2018	Commission to decide on what reports are needed prior to receiving them.	Receive reports from OPD on issues such 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	High	Ongoing as appropriate		

Police Commission Pending Agenda Matters List

	A	B	C	D	E	F	G	H
1	Pending Agenda Matter	Date Placed on List	Duties/Deliverables	Additional Information/Details	Priority Level	Timeline/Deadline	Scheduled	Lead Commissioner(s), if any
13	Request City Attorney Reports	1/1/2018	Request the City Attorney submit semi-annual reports to the Commission and the City Council	Request the City Attorney submit semi-annual reports to the Commission and City Council which shall include a listing and summary of: 1. To the extent permitted by applicable law, the discipline decisions that were appealed to arbitration; 2. Arbitration decisions or other related results; 3. The ways in which it has supported the police discipline process; and 4. Significant recent developments in police discipline. 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	High	Semi-annually		Smith
14	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.	Medium	Annually; at least twice each year	6/25/20 10/8/20	Dorado, Harris, Jackson
15	Community Policing Task Force/Summit	1/24/2019			Medium			Dorado

Police Commission Pending Agenda Matters List

	A	B	C	D	E	F	G	H
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16	CPAB Report			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	May or June 2020		
17	Desk Audit of CPRA Staff by Human Resources	5/17/2019	The Commission would like to request that Human Resources do a desk audit for every job position in the CPRA.	This will enable the Police Commission to engage in a reorganization of the CPRA.	Medium			Personnel Committee
18	Determine Outstanding Issues in Meet and Confer and the Status of M&C on 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			
19	Develop Plan for Quarterly Reports in Relation to Annual Report that is Due April 17th of Each Year	12/6/2019		The Commission is required to submit an annual report each year to the Mayor, City Council and the public. Preparing quarterly reports will help with the coordination and preparation of an annual report.	Medium			
20	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			
21	Free Gun Trace Service	1/27/2020		This service was mentioned at a meeting in 2019.	Medium			Dorado
22	Modify Code of Conduct from Public Ethics Commission for Police Commission	10/2/2018		On code of conduct for Commissioners there is currently a code that was developed by the Public Ethics Commission.	Medium			

Police Commission Pending Agenda Matters List

	A	B	C	D	E	F	G	H
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23	OPD 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			
24	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	Ongoing as appropriate		
25	Receive a Report from the Ad Hoc Committee on CPRA Appellate Process	6/13/2019	Once the Commission has an outside counsel, work with them on determining an appellate process	When a draft process is determined, bring to the Commission for a vote.	Medium			Brown, Gage, Prather
26	Receive Report from Urban Strategies on their Safe Oakland Summit of 6.5.19	8/22/2019		Commissioner Dorado will invite David Harris of Urban Strategies to give a report on the Safe Oakland Summit which was held on 6.5.19	Medium			Dorado
27	Report from OPD Regarding Found/Confiscated Items	7/12/2019	OPD will report on the Department's policy for disposition of found/confiscated items.	This came about through a question from Nino Parker. The Chief offered to present a report at a future meeting.	Medium			
28	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		

Police Commission Pending Agenda Matters List

	A	B	C	D	E	F	G	H
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29	Review Budget and Resources of IAD	10/10/2018		In Discipline Training it was noted that many "lower level" investigations are outsourced to direct supervisors and sergeants. Leaders in IAD have agreed that it would be helpful to double investigators and stop outsourcing to Supervisors/Sgts. Commissioners have also wondered about an increase civilian investigators. Does the Commission have jurisdiction over this?	Medium			
30	Review Commission's Agenda Setting Policy	4/25/2019			Medium			
31	Review Commission's Code of Conduct Policy	4/25/2019			Medium			Prather
32	Review Commission's Outreach Policy	4/25/2019			Medium			Dorado
33	Revise Contracts with CPRA and Commission Legal Counsels	10/10/2018		The 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.	Medium			
34	Taser Policy (incorporate into Use of Force)	10/10/2018		This is part of Use of Force Policy; Review use of tasers in light of what happened to Marcellus Toney - In the report the Commission was given, it mentioned that officers have choice as to where to deploy a taser.	Medium			

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	A	B	C	D	E	F	G	H
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35	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			
36	Annual Report	1/1/2018	Submit an annual report each year to the Mayor, City Council and the public		Low	Spring, 2021		Prather, Smith
37	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			
38	CPRA Report on App Usage	10/10/2018		Report from staff on usage of app.	Low			
39	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			
40	De-Escalation Policy (incorporate into Use of Force)	1/1/2018		This should be part of Use of Force Policy; review existing policy (if any) and take testimony/evidence from experts and community about best practices for de-escalation.	Low			

Police Commission Pending Agenda Matters List

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41	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			
42	Discipline: Second Swanson Report Recommendations – Have These Been Implemented?	10/6/2018		Supervisor discipline Process for recommending improvements to policies, procedures and training, and to track and implement recommendations Tracking officer training and the content of training Comparable discipline imposed – database of discipline imposed, demonstrate following guidelines IAD civilian oversight for continuity in IAD Improved discovery processes Permanent arbitration panel implemented from MOU OPD internal counsel Two attorneys in OCA that support OPD disciplines and arbitration Reports on how OCA is supporting OPD in discipline matters and reports on arbitration Public report on police discipline from Mayor's office OIG audit includes key metrics on standards of discipline	Low			

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43	Feedback from Youth on CPRA App	10/10/2018		Get some feedback from youth as to what ideas, concerns, questions they have about its usability.	Low			
44	OPD Data and Reporting			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			
45	OPD Update on New Karibbean City Night Club Issue	10/29/2019	OPD to provide an update on the status of an issue that was raised on 10.10.19	The owner of the night club spoke during Open Forum at the meeting on 10.10.19 about an issue with OPD.	Low			
46	Outreach Committee: Work with Mayor's Office and City Admin to Publicize CPRA App	10/10/2018			Low			
47	Overtime Usage by OPD - Cost and Impact on Personal Health; Moonlighting for AC Transit	1/1/2018		Request Office of Inspector General conduct study of overtime usage and "moonlighting" practices.	Low			
48	Process to Review Allegations of Misconduct by a Commissioner	10/2/2018		Maureen Benson named concerns/allegations about a sitting Commissioner early in 2018, 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

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49	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.	Low	4/15/2021		
50	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 1st of each year.	Low	Spring, 2021		
51	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		Low	Annually; at least once per year		Dorado
52	Revisit Standing and Ad Hoc Committee Assignments	10/29/2019			Low			
53	Social Media Communication Responsibilities, Coordination, and Policy	7/30/2019		Decide on social media guidelines regarding responsibilities and coordination.	Low			