

**MEMORANDUM**

**To:** Oakland Police Commission

**From:** Garcia Hernandez Sawhney, LLP, Counsel to the Police Commission

**Re:** Preparation for Potential Resolution of Court Oversight

**Date:** Agenda Item for Regular Meeting on October 27, 2022

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*Questions Presented:* What are the Commission's duties under the City Charter and Municipal Code that it is obligated to perform in the remainder of the 2022-23 fiscal year? What next steps should the Commission consider if the City of Oakland stays on track with sustainability and Court oversight ends? How can the Police Commission prioritize its work and resources (including budget development) to ensure strong reform oversight continues after Court oversight ends?

For the remainder of the 2022-23 fiscal year, the Police Commission should consider the following priorities:

1. Exercising all its functions and duties that the voters of Oakland and City Council vested in the Commission in the Charter and the Municipal Code;
2. Enhancing its own proactive policy work and streamline its work approving/modifying OPD's proposed policies.<sup>1</sup>
3. Developing a mechanism for OPC to support and track OPD's compliance with the N.S.A.'s tasks during Sustainability Period and after court oversight ends.
4. Communicating budget needs to the City in order to expand the capacity of its own staff and strengthen the Departments under its direct oversight (CPRA and OIG).<sup>2</sup>

**Attachment 1: Commission Obligations under Charter and Municipal Code** - a list of agenda matters that are functions/duties for OPC to monitor/exercise continuously and annually

**Attachment 2: 2016 N.S.A. Tasks** - a list of N.S.A. Tasks which are incorporated as part of OPC's delineated duties in City Charter in 2016.

**Attachment 3: Proposed Budget Process Anticipating May 2023 Budget Season and NSA Exit** - a proposed budget cycle schedule.

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<sup>1</sup> See Charter Section 604(b)(4), (5).

<sup>2</sup> See the City Council's Police Commission Ordinance, Oakland Municipal Code § 2.45.180

**Attachment 1: Commission Obligations under Charter and Municipal Code  
(Continuous Functions and Duties)**

Task	Charter/MC
Oversee OPD	C 604(a)(1)
Oversee CPRA	C 604(b)(1)
Review the Agency's dismissal and/or administrative closure of all complaints of misconduct involving Class I offenses	OMC 2.45.070(M)
Provide policy guidelines to CPRA Director for determining case prioritization	MC 2.45.070(J)
Determine the number of existing CPRA staff who would work at a "street-level or ground-floor, visible office that is accessible by public transportation."	MC 2.45.020
Oversee OIG	C 604(b)(1), MC 2.45.100(A)
Advise OIG of priorities and the functions and duties, including: <ul style="list-style-type: none"> <li>• Prepare annual report</li> <li>• Monitor/eval # of officers receiving training on profiling, implicit bias, de-escalation, and other key topics</li> <li>• Develop and present a plan to the Commission to measure the performance of each element of the Department's discipline process for sworn officers</li> <li>• Complete all audits/reviews requested by the Mayor, City Administrator, City Council.</li> <li>• Monitor/eval/make recommendations re: <ul style="list-style-type: none"> <li>• Recruiting and hiring sworn personnel</li> <li>• OPD Policies the Commission seeks to create or modify</li> <li>• OPD's risk mgmt. practices</li> </ul> </li> </ul>	MC 2.45.120
Contract for Professional Services	C 604(b)(1)
Propose OPD Policies	C 604(b)(4)
Approve/Modify/Reject OPD's Proposed Policies	C 604(b)(5)
Comment on OPD Policies	C 604(b)(6)

Task	Charter/MC
Solicit input from members of the public regarding the quality of their interaction with the Agency and the Commission	MC 2.45.070(Q)
Review and submit comment on Department's policy/practice of publishing Department data sets "and request the Chief to consider its recommendations and respond to the comments in writing"	MC 2.45.070(P)
Maintain/update bylaws	MC 2.45.040
Notify Chief of required contents of Chief report	MC 2.45.070(F)
Make high level Commission, Chief, CPRA, OIG reports available on Commission website	MC 2.45.070(K)
Establish Rules and Procedures for mediation and resolution of complaints of police misconduct	MC 2.45.070(N)
Agendize and Consider Community Policing Advisory Board Reports/Recommendations	MC 2.45.070(O)
Request Records from OPD	C 604(e)(2)
Receive reports from Department via City Administrator on issues identified by the Commission	MC 2.45.070(R)
Request that the City Attorney submit semi-annual reports to the Commission and to City Council which shall include a listing and summary of	OMC 2.45.070(I)

**Attachment 1: Commission Obligations under Charter and Municipal Code  
(Annual and Incident-Based Functions/Duties)**

**[Annual Functions/Duties]**

<b>Task</b>	<b>Charter/ Municipal Code</b>
Set Performance Metrics 1 Year in Advance of Performance Eval (Chief, CPRA Dir, IG)	MC 2.45.070(G)
Conduct 3 Performance Evals (Chief, CPRA Dir, IG)	MC 2.45.070(G)/(H)
At least twice each year, the Commission shall hold one (1) of its regularly scheduled meetings at a location outside of City Hall, agendaized 10 days in advance	MC 2.45.090(B)
Hold a Hearing on Department Policies	C 604(b)(2)
Annual report to the Mayor/City Council/the public	C 604(b)(9)
Approve/Modify/Revoke OPD Use of "Military Equipment" via Annual Report Process	MC 9.65.030
<b>[Specific to Budget Cycle]</b>	
Review/comment on education and training re job-related stress and PTSD signs and symptom for sworn officers	MC 2.45.070(C)
Prepare a job related stress proposed budget for mayor by April 15 of each year	MC 2.45.070(D)
Propose staff position submission to City Administrator necessary to permit the Commission and the CPRA to fulfill its functions and duties.	MC 2.45.180
Review Mayor's Budget for OPD	C 604(b)(7)
Hold Hearing on Mayor's Budget for OPD	C 604(b)(7)
Develop and Approve Recommendations to City Council re Mayor's Budget	C 604(b)(7)

**[Incident-Based Functions/Duties]**

<b>Task</b>	<b>Charter/ Municipal Code</b>
Direct CPRA to investigate serious incidents not otherwise submitted by community members if requested by the Mayor/City Council	MC 2.45.070(L)
Convene Discipline Committees	C 604(G)(2), (5)
Issue Lawful Subpoenas	C 604(b)(3)
Direct CPRA to reopen a closed case	MC 2.45.070(M)
Require Chief or designee to respond to Commission requests made by a majority vote	C 604(b)(8)
Hiring/Removal Authority Over Chief, CPRA Director, OIG	C 604(b)(10), (e)(6), (7)

## Attachment 2: 2016 N.S.A. Tasks

### Oakland City Charter Section 604(b)(4) –Powers and Duties

(b) “The powers and duties of the Commission are as follows:”

...

(4) “Propose changes at its discretion or upon direction, by adoption of a resolution, of the City Council, 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.**”

See [tasks in effect](#) as of 2016

N.S.A. Task	Description
1.	IAD Staffing & Resources
2.	Timeliness Standards & Compliance w/IAD Investigations
3.	IAD Integrity Tests
4.	Complaint Control System for IAD
5.	Complaint Procedures for IAD
6.	Refusal to Accept or Refer Citizen Complaints
7.	Methods for Receiving Citizen Complaints
8.	Classification of Citizen Complaint
9.	Contact of Citizen Complaint
10.	IAD Manual *tasks in gray do not require assessment
11.	Summary of Citizen Complaints Provided to OPD Personnel
12.	Disclosure of Possible Investigator Bias
13.	Documentation of Pitchess Responses
14.	Investigation of Allegations on MOR Violations
15.	Reviewing Findings & Disciplinary Responses
16.	Support IAD Process-Supervisor/Managerial Accountability
17.	Audit, Review and Evaluation of IAD Functions
18.	Arrest Approval and Report Review
19.	Unity of Command
20.	Span of Control for Supervisors
21.	Members, Employees & Supervisors Performance Review
22.	Management Level Liaison
23.	Command Staff Rotation
24.	Use of force Reporting Policy
25.	Use of Force Investigation and Report Responsibilities

26.	Use of Force Review
27.	OC Log and Check-out Procedures
28.	Use of Force - Investigation of Criminal Misconduct
29.	IAD Investigation Priority
30.	Firearms-Discharge Board of Review
31.	Officer-Involved Shooting Investigation
32.	Use of Camcorders
33.	Reporting Procedures for Misconduct
34.	Vehicle Stops, Field Investigation and Active Detentions
35.	Use of Force - Witness ID
36.	Transporting Detainees and Citizens
37.	Internal Investigations-Retaliation Against Witnesses
38.	Citizens Signing Statements
39.	Personnel Arrested, Sued, or Served
40.	PAS Purpose
41.	Use of PAS
42.	Field Training Program
43.	Academy Training Plan
44.	Personnel Practices
45.	Consistency of Discipline
46.	Promotional Consideration Review
47.	Community Policing
48.	Departmental Annual Management Reports
49.	Monitor Selection/ Compensation
50.	Compliance Unity Liaison Policy
51.	Compliance Audits and Integrity Tests
CD1	Resolve/Reduce incidents that may involve unjustified force, OIS, pointing of firearms
CD2	Resolve/Reduce incidents that may involve racial profiling and bias-based policing
CD3	Resolve/Reduce citizen complaints
CD4	Resolve/Reduce high speed pursuits

*Note: The following Negotiated Settlement Agreement Tasks were identified by Judge Orrick for the Sustainability Period (June 1, 2022 – June 1, 2023): 2, 5, 20, 24, 25, 26, 30, 31, 34, 41, and 45. Task 5 (Complaint Procedures for IAD due to the two outstanding investigation cases) and Task 45 (Consistency of Discipline due to issues identified in the OPD-OIA Discipline Equity and Internal Procedural Justice Report – a.k.a., “Disparity Study”) were specifically identified for discussion by the Court and Plaintiff’s Counsel at the October 13, 2022 Case Management Conference.*

# Proposed Budget Process Anticipating May 2023 Budget Season & NSA Exit

