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OAKLAND

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# AGENDA REPORT

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**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Anne E. Kirkpatrick  
Chief of Police

**SUBJECT:** Informational Report on Negotiated  
Settlement Agreement Progress

**DATE:** November 13, 2019

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City Administrator Approval

Date:

*11/21/19*

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## RECOMMENDATION

**Staff Recommends That The City Council Receive An Informational Report From The Oakland Police Department (OPD) On The City's Progress Under The Negotiated Settlement Agreement (NSA) In The Case Of Delphine Allen V. City Of Oakland, Et Al., USDC Case No. C-00-4599.**

## EXECUTIVE SUMMARY

On January 3, 2003, the City of Oakland (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. The NSA Tasks cover key aspects of policing, including the internal affairs process, integrity tests, use of force, academy and field training, supervision, detentions/arrests, community policing, and consistency of discipline. Most tasks have numerous requirements that must be implemented and maintained. A court appointed Monitor reviews and reports on compliance with each Task and makes a determination of "in compliance," "out of compliance," or "partial compliance." Partial compliance generally means some, but not all of the requirements have been accomplished.

Of the 51 NSA Tasks, the City is in full compliance with 44. The Monitor has deemed four tasks in "partial compliance" and three tasks "out of compliance" as shown in **Table 1**. The table below depicts the seven (7) tasks and their number and title. This report will elaborate further on each task.

**Table 1 – Tasks Compliance Status**

| <b>Task</b> | <b>Out of Compliance</b>                                      |
|-------------|---|
| 2           | Timeliness with Internal Affair Division (IAD) Investigations |
| 5           | Complaint Procedures for IAD                                  |
| 30          | Firearms - Discharge Board of Review                          |

| <b>Task</b> | <b>Partial Compliance</b>                              |
|-------------|--|
| 24          | Use of Force Reporting Policy                          |
| 25          | Use of Force Investigation and Report Responsibilities |
| 34          | Vehicle Stops, Field Investigation and Detentions      |
| 45          | Consistency of Discipline                              |

During the last ten (10) years, OPD has transformed and changed our policing culture. A shorter two (2) page visual summary of the remaining tasks, OPD milestones, and risk management data charts spanning approximately ten (10) years, are shown in **Attachment A**.

## **BACKGROUND / LEGISLATIVE HISTORY**

### ***The Riders Case***

In 2000, over 100 plaintiffs filed *Delphine Allen et al. v. City of Oakland*, United States District Court (USDC) Case no. C00-4599 TEH (the “Riders case”), alleging that four Oakland Police Department (OPD) officers violated their civil rights by planting evidence, committing perjury, and using excessive force. The City terminated the four officers and an arbitrator upheld the terminations of the three officers who challenged their terminations. The Alameda County District Attorney dismissed numerous criminal cases because the four officers’ testimony was deemed unreliable and released a number of the plaintiffs who were in custody. The District Attorney prosecuted three of the defendant officers. The fourth officer fled the United States.

In 2003 City Council approved the Negotiated Settlement Agreement (“NSA”) to resolve the Riders case. The USDC for Northern California issued an order approving the NSA. The court retains jurisdiction to oversee completion of the reforms. Under the NSA, the City agreed to implement institutional reforms to meet constitutional standards and to work with an

independent monitor to help the Court oversee compliance. The NSA required selection of a Monitor to review and report on the Department's implementation of 51 Tasks.

In 2010, the parties executed a Memorandum of Understanding ("MOU"), superseding the NSA and reducing the number of monitored Tasks to 22. A new Monitor was selected at the same time. Subsequently, in 2011, an Amended Memorandum of Understanding ("AMOU") was executed, further reducing the number of monitored Tasks to 13. Although the Monitor may review any of the original 51 NSA Tasks for compliance, the focus of monitoring has been the 13 Tasks listed in the AMOU.

In 2012, full compliance with all Tasks had not yet been achieved. The Court appointed a Compliance Director who was tasked with addressing deficiencies that led to noncompliance and develop a plan for facilitating sustainable compliance with all outstanding tasks. Since 2014, the positions of Compliance Director and Monitor have been held by the same person.

On May 21, 2015, the Court modified the monitoring plan in "*focusing on the long-term sustainability of the reforms of the Negotiated Settlement Agreement.*"

*"The Court's Order of May 21, 2015 modified the monitoring plan that has been in place since the beginning of our tenure to make more efficient use of resources while focusing on the long-term sustainability of the reforms in the Negotiated Settlement Agreement (NSA) in the case of Delphine Allen, et al., vs. City of Oakland, et al., in the United States District Court for the Northern District of California. After 12 years of monitoring OPD's progress with the reforms, it is time for us to devote special attention to the most problematic component parts of the seven Tasks (5, 20, 26, 30, 34, 41, and 45) that are not yet in full compliance or have not been in compliance for at least one year."*

*(Twenty-Second Report of the MONITOR for the OPD, July 10, 2015)*

Since 2015, Tasks 20 (Span of Control), 26 (Force Review Boards) and 41 (Personnel Information Management System) are in compliance. The seven Tasks that are not in full compliance are detailed in the Analysis section, and are based on the most recent Monitor reports addressing said Tasks. The 64<sup>th</sup> Report of the Independent Monitor of the Oakland Police Department is the most recently issued report and addresses NSA compliance under the direction of Judge William H. Orrick of the United States District Court for Northern District of California.

## **ANALYSIS / POLICY ALTERNATIVES**

### **Task 2 Timeliness Standards with IAD Investigations**

Subtask 2.1 - "OPD policy requires that at least 85 percent of Class I misconduct investigations and at least 85 percent of Class II misconduct investigations must be completed within 180 days to be considered timely."

Item: \_\_\_\_\_

Public Safety Committee  
December 3, 2019

**The Monitor's most recent finding on overall Task 2 compliance is as follows:**

*The 63<sup>rd</sup> and 64<sup>th</sup> Monitor reports show Class I investigations completion within 180 days at 29 percent and 34 percent, respectively, and Class II investigation completion within 180 days at 23 percent and 36 percent, respectively.*

In late 2018 new command staff in the Internal Affairs Division identified a backlog of 129 cases. This backlog would undoubtedly result in falling short of timeliness standards of internal affairs investigations. Commanders in IAD began working on a plan to eliminate the backlog and implement process improvements to ensure sustainability with the timeliness standards. Although progress is being made to improve timelines, it will take additional time to recover from the backlog of cases and other resource challenges.

It is important to note that OPD emphasized high investigatory standards over checking the box on the Task 2 timelines. Although OPD has not met the threshold of 85 percent of cases being completed in 180 days, the department continues to complete cases within the 1-year statute of limitations imposed by Government Code § 3304.

The IAD Commander has taken the following steps to improve timelines.

1. Placed IAD Lieutenant in charge of Division Level Case Review (formerly supervised by IAD Civilian Manager)
2. Used extra resources and personnel to clear the backlog
3. Streamlined IAD Intake Process to expedite time for Investigations
4. Increased Case Review Sergeant Staffing to reduce review time
5. Enhanced training provided to investigators, specifically with regards to quality of investigations
6. Provided Guidance to Reviewers "Division Level Investigation (DLI) Review Tips and Guidance" to all commanders and managers (August 30, 2019)
7. Designated the chain of command to authorize extension requests with proper justification as necessary
8. Held Supervisors and Commanders accountable for timeliness failures by initiating internal complaints and delivering training those who have missed timelines.

In addition, the Chief requested the Office of Inspector General (OIG) to conduct an audit of IAD investigative timelines to identify the causes of delays and solutions to the problem. Although the audit has not been finalized, many of the preliminary recommendations have already been implemented by the IAD. OIG recognizes the proactive approach IAD has taken to address the delays.

The Department is confident that compliance rates on this Task will continue to increase, especially now that the backlog has been eliminated. Newer cases that are being processed under an improved system should not experience the same challenges that caused older cases to fall short of compliance.

### **Task 5 – Complaint Procedures for IAD Review**

*Task 5 imposes multiple policy and procedure provisions on the Department in the arena of receiving, processing, and investigating complaints against Department personnel. The majority of the subtasks of Task 5 are In Compliance and have been for some time.*

#### **The Monitor's most recent finding on overall Task 5 compliance is as follows:**

*"Deferred, based on the provisions of the March 23, 2016 Order, our general concerns, and the findings of our forthcoming analysis of the Department's investigation of the officer-involved shooting of March 11, 2018." (Monitor report #64.)*

On March 23, 2016, the Court placed all of Task 5 out of compliance because of IAD Case 15-0771. The case, which involved several officers engaging in inappropriate interactions with a young woman, resulted a Court ordered investigation. In June 2017, Court Investigator Swanson's report recommended nine (9) OPD internal improvements related to that case. As of September 2018, all nine recommendations were completed and reported to the court.

### **Task 24 and 25 - Use of Force Reporting and Use of Force Investigations**

Tasks 24 and 25 impose multiple policy provisions for the reporting and investigation of use of force.

#### **The Monitor's most recent finding on overall Task 24 and 25 compliance is as follow:**

*"The Court's reactivation of Task 24 (and 25) at a November 2018 Case Management Conference resulted from our serious concerns with the Department's handling and investigation of recent uses of force. OPD has authored Special Order 9196 to address and clarify requirements for the proper reporting of use of force. OIG's recent audit should be troubling to the Department, the City, and the community, as it has identified numerous concerns with the reporting of use of force and enumerated a number of recommendations. It remains to be seen if forthcoming policy revisions and other changes, prompted by our involvement and our review of previously unexplained reductions in reported use of force, will have a positive outcome on this issue. As a result, OPD remains in partial compliance with this Task." (Monitor Report #63)*

Since 2015, the Department was in compliance with Tasks 24 (Use of Force Reporting Policy) and 25 (Use of Force Investigation and Report Responsibilities). However, in November 2018, the Court reactivated the two Tasks due to emerging force reporting issues. Currently, the Department is in partial compliance with these Tasks.

In 2018, pursuant to an audit on the drop of the Level 4 Intentional Pointing of a Firearm, the Office of Inspector General (OIG) expressed concern with officers reporting when they pointed a firearm at individual(s). The issue of underreporting force, particularly when officers pointed firearms or used takedowns, was also identified by the Independent Monitoring Team and reaffirmed in OIG's 2019 Global Use of Force Audit. The concerns with underreporting were primarily caused by policy issues but also involved training and supervisory shortfalls. Although some officers and supervisors were referred to the Internal Affairs Division for investigation, the

Department recognized the need for a Department-wide response. To ensure accurate reporting, enhance supervision, and engage in best practices, the Department took the steps outlined below.

In late 2018, the Chief issued a directive to provide immediate re-training to all field officers regarding the pointing of a firearm and reporting that type of force. Since the training, the Department experienced an immediate and substantial increase in reported Level 4 uses of force, particularly the pointing of a firearm.

To address supervision, the Chief issued a directive requiring all Sergeants to review the Body Worn Camera (BWC) video of arrests made pursuant to resisting, delaying, or obstructing an officer and battery on an officer. These types of arrests generally involve physically resistant subjects and are therefore more likely to involve an officer using force.

In collaboration with the Police Commission and other stakeholders, the Department drafted a Special Order, which modified the reporting of force. The intent of the Special Order was to ensure the complete reporting of force, the collection of data any time officers use force, and the review and investigation of force. The draft Order was approved by the Police Commission and will be scheduled for meet and confer with the Oakland Police Officer Association (OPOA), followed by Department-wide training.

In addition to the use of force reporting training, the Department developed training on Supervisor and Command Oversight/Review of Force and Other High-Risk Incidents. This training includes the review of force incidents, responsibilities regarding Special Resource teams, and continuity of supervision and oversight. Further, the Department is developing in house instructors for the Ethical Policing is Courageous (EPIC) program, Integrating Communications Assessment and Tactics (ICAT), Trauma Informed Care and Wellness Program, and the four-module Race and Equity Academy.

To enhance oversight, the Department is researching technology that will not only track the removal of a firearm from the holster, but also automatically activate the BWC when a firearm is removed from the holster.

Finally, the Department continues to hold monthly Executive and Area Level Risk Management Meetings (RMM), during which all areas of risk are reviewed and discussed, including use of force. As part of the review, the Department's Executive Team and Area Commanders assess force to arrest ratios, looking for outlier squads and officers and assigning follow-up deliverables as needed.

### **Task 30 Executive Force Review Board (EFRB)**

*Task 30 requires that the Department convene an EFRB to review the factual circumstances surrounding any Level 1 force, in-custody death, or vehicle pursuit-related death incidents.*

In 2019, the Monitor found the Department no longer in compliance with Task 30 based on the Executive Force Review Board (EFRB) regarding the officer-involved-shooting (OIS) that resulted in the death of Joshua Pawlik. In the five years prior to this EFRB, the Department

conducted seventeen (17) EFRBs, all of which were found to be in compliance with the NSA and Department policy.

As with all Force Review Boards, the Pawlik OIS presented the Department with an opportunity to review our training, tactics, supervision, and investigation related to critical incidents. Whether a use of force is within policy or the law, the Department's goal is always to preserve the sanctity of life.

To that end, the Chief immediately directed the Department's instructors and subject matter experts to outline tactical considerations and strategies for safely mitigating high-risk incidents, particularly incidents that involve sleeping, unconscious or unresponsive armed individuals. OPD's instructors incorporated training for these incidents into the Department's reality-based scenario practical exercises and classroom instruction. The training is delivered in the academy and in-service continued professional training.

Further, in collaboration with stakeholders, the Department has been working on policies to include the response to Armed Unresponsive Subjects, the use of Dedicated Arrest Teams, and the deployment of Armored Vehicles. In addition to Department-wide policies, the Criminal Investigations Division (CID) is working on a policy and procedure to strengthen officer involved shooting investigations.

With the recent passage of Assembly Bill (AB) AB392 and Senate Bill (SB) SB 230, the Department is currently collaborating with the Police Commission to modify its use of force policies. A working group consisting of Department staff, an ad hoc committee of the Police Commission, a community member, and Plaintiff's Counsel, have regular meetings to collaborate on the new policies.

The Department's EFRB process will thoroughly review cases to come to appropriate findings, but also conduct a comprehensive review of policy, training and tactics with the goal of minimizing force while still ensuring officer and public safety.

#### **Task 34 – Vehicle Stops, Field Investigations, and Detentions**

Task 34 requires that the Department collect specified data on every vehicle stop, field investigation, and detention, and enter said data into a database where it can be queried.

#### **The Monitor's most recent finding on overall Task 34 compliance is as follows:**

*"Compliance with this Task includes: 1) the collection of specific, detailed stop data; 2) staff analyses of the data to ascertain the presence or absence of indicators of disparate treatment among the population groups; and, where indicated, 3) the implementation of corrective measures – i.e., policy revisions, training, or other individualized intervention where warranted."* (Monitor Report #58)

The Department remains committed to reducing racial disparities in our enforcement actions and reducing the negative impact of unnecessary contacts with law enforcement. This effort is centered around the Department's robust stop-data collection program. Adding to data collection tools OPD created an AB953 compliant stop-data form in January 2019, which far

exceeds the State-mandated data collection requirements. The Department's monthly Executive and Area Command Risk Management Meetings are designed to allow command to examine stop data at the Area level, Squad level, and individual officer level. This meeting includes a thorough analysis of all discretionary and non-discretionary stops by race, searches, and recoveries. The Department looks forward to continued reductions in overall stops in 2019, following 2018's decrease of over 10,000 stops compared to 2017.

The Department also continues to make significant progress on the implementation of the 50 Stanford Recommendations. Currently the Department has completed 47 of the 50 recommendations. Two of the three remaining recommendations will be completed with the release of the Vision early warning system, which is anticipated to go live in November. Once Vision is implemented, the Department will continue its collaborative work on risk management dashboards, which will be instrumental in providing supervisors and commanders real-time stop-data analytics on all stops. The final recommendation requires the hiring of a Data Manager for the Department. This position will be filled in the first quarter of 2020, through the hiring of a temporary employee with the required specialized skillset while the Department works with the HRM to identify a permanent hire.

#### **Task 45 Consistency of Discipline**

Task 45 requires that the Department revise and update its disciplinary policy to ensure that discipline is imposed in a fair and consistent manner.

*In 2014, the Monitor found the Department in partial compliance with Task 45 and it has remained in partial compliance.*

*"During the nineteenth reporting period, however, we placed OPD in deferred compliance status with Task 45, due to two cases that had emerged from the disciplinary process that we found unacceptable. In one case, a senior officer struck a subject when he was lying on the ground after being shocked by a Taser. In this case, the then-City Administrator overruled the OPD discipline process, and reduced the discipline from a 10-day suspension to counseling. The second case involved an officer who threw a "flash bang" explosive device into a crowd of demonstrators during the Occupy Oakland-related protests of 2011. This officer's termination was overruled by an arbitrator who ordered his reinstatement." (Monitor Report #25)*

*The Court-appointed investigator issued his report on April 16, 2015. The report concluded that Oakland's police discipline process is "broken" because, among other reasons, it fails "to deliver fair, consistent, and effective discipline." It continued, "Time and again, when the Oakland Police Department...has attempted to impose significant discipline, its decisions have been reversed or gutted at the arbitration stage, causing the public to question whether the City handles disciplinary cases appropriately." The report discussed the lack of accountability among City officials for the serious failures of both OPD and the Office of the City Attorney in police discipline cases. It also offered many concrete recommendations in the areas of investigation, discipline, preparation, arbitration, and sustainability.*

*Just a few days following the report's release, on April 20, 2015, the Court ordered the City to "work to eliminate the problems identified" in the Court-appointed investigator's report, and to file a status report on or before September 1, 2015 to discuss its progress. On September 1, 2015, the City filed its status report with the Court as required. (Monitor Report #25)*

Since the 21<sup>st</sup> Reporting period of December 2014, OPD has been in partial compliance with Consistency of Discipline. The Department has followed the Court Appointed Investigator's recommendations on improving the Department's Disciplinary Process. Since January 2015, the Monitor has reviewed 365 disciplinary cases, 45 Skelly hearings and four arbitration findings. The Department has implemented all required recommendations stemming the Court-appoint investigators report. The Monitor found the Department is doing what the task requires: documenting and maintaining an adequate system for tracking discipline and corrective action; consistently imposing discipline; and appropriately training Skelly officers.

Earlier this year, the Department contracted with Hillard Heintze and Associates to conduct a study to determine if there are disparities in discipline. The Department anticipates the discipline study being completed by the end of January 2020.

The Monitor has found no cases out of compliance related to Consistency of Discipline.

#### **FISCAL IMPACT**

Since January 2017, the City has spent \$2,892,930 on Compliance Director and Monitor services, including the cost of renting office space for the Monitor and any subject matter experts they consult with. While there have been numerous other NSA related expenses since 2003, only payments made to the United States District Court, directly to the Compliance Director and Monitor, and Rotunda Partners II, LLC (Monitor Office Space) since 2017 are included in this figure.

#### **PUBLIC OUTREACH / INTEREST**

This item did not require additional public outreach other than posting on the City's website.

#### **COORDINATION**

This informational report was written in coordination with the Office of the City Attorney and Oakland Police Department.

Sabrina B. Landreth, City Administrator

Subject: Informational Report on Negotiated Settlement Agreement Progress

Date: November 13, 2019

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**ACTION REQUESTED OF THE CITY COUNCIL**

**Staff Recommends That The City Council Receive An Informational Report From The Oakland Police Department (OPD) On The City's Progress Under The Negotiated Settlement Agreement (NSA) In The Case Of Delphine Allen V. City Of Oakland, Et Al., USDC Case No. C-00-4599 TEH**

For questions regarding this report, please contact Andy Best at 510-238-6443.

Respectfully submitted,



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Item: \_\_\_\_\_  
Public Safety Committee  
December 3, 2019