



**CITY OF OAKLAND
OAKLAND POLICE COMMISSION**

Meeting Minutes

Thursday, October 25, 2018

6:30 PM

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

I. Call to Order

Thomas Lloyd Smith

The meeting started at 6:30 p.m.

II. Roll Call and Determination of Quorum

Thomas Lloyd Smith

Commissioners Present: Mubarak Ahmad, José Dorado, Ginale Harris, Regina Jackson, Mike Nisperos, Edwin Prather, and Thomas Smith. Quorum was met.

Alternate Commissioners Present: Maureen Benson, Andrea Dooley.

Counsel: None

III. Welcome, Purpose and Open Forum (2 minutes per speaker)

Thomas Lloyd Smith will welcome and call public speakers.

The purpose of the Oakland Police Commission is to oversee the Oakland Police Department's policies, practices and customs to meet or exceed national standards of constitutional policing and to oversee the Community Police Review Agency that investigates police misconduct and recommends discipline.

Larry White, Coalition for Police Accountability. Speaking about the Commission's access to the files of the Agency. You have been told that you have no legal right to view those files and I am here to refute that. Rashidah Grinage emailed the Commission a letter he wrote bringing up the legal points about this matter. I will review some of the things in the letter. First, the Executive Director of the Agency, works/reports to and is supervised by the Commission. You have the power without any more say. You have the power to order him to give you the files. The files he has are not protected by Penal Code Section 832.7 which is a code provision that applies only to the Agency that employs peace officers and it is the individual officers personnel file held by the OPD that you do not have access to except under very certain circumstances. The Discipline Committee may have access to that. Any information derived from the file is also confidential. However, the investigative files created by the Agency are not covered by that and are not covered by any other privilege in terms of your review of them. In fact, the Enabling Ordinance passed by the City Council gives you the duty to review these investigative files and in some cases, send them back to the Agency for further action if you feel you should. This is in the Enabling Ordinance. Again, it's in the letter I sent to you. If you want more information from the Coalition or more legal opinion, we are happy to give it to you. The City Council put this in for you and expects you to fulfill your duty to review those files when you feel the need to do that. One more thing, because there are a lot of things being said of possible legal

justifications, if there are people who feel like there is something in the City Charter or some other law that overrules the Ordinance passed by the City Council, that is a matter for courts. That is not a matter for - For example for an Agency Director to make that call; that is way about his pay grade. Again, you can look at these files. This Commission was set up to do something the City has refused to do and the City is still refusing to do. You have power however, that no other group ever had before and that is your power of the Agency and you have power to review these complaints and decide that they should be followed up further.

Oscar Fuentes, resident of District 6. Mr. Dorado has formed a PAC that has raised about \$70,000 from Unions that don't have memberships in Oakland because they want to get around Desley Brooks' position around the workforce in Oakland. There are also rich people who live in the Hills and they don't live in District 6, and mostly White. It is very offensive and it may be legal and may be ethical – whatever those words mean for City Government like this one. What it doesn't look like is what people wanted out of this Commission. They wanted an independent body that wasn't going to get all mixed up in political issues in other districts and trying to unseat City Councilmembers. I doubt people wanted that. Please look at that. I think you should resign Mr. Dorado or fold your PAC that you already sent out the mailers and you sent them out in the Hills because I live in the flatlands and we did not get your mailers. We got the other PAC's mailers telling us we are too stupid to not vote for Desley Brooks. You sent another set of Mailers to rich people in the Hills. It is gross. You should resign. One last thing, regarding Open Forum. You can say whatever you want and it doesn't have to be on any of the issues. Mr. Dorado took him aside at the beginning of the last meeting and said he wanted to talk to him. Then other members of the Commission came out and pretended I was having some problem. I spent the first 15 seconds of my time explaining what happened and then I was cut off by Ms. Harris. It was obnoxious.

Elise Bernstein is speaking for herself and not for an organization. It follows on the remarks of the previous speaker. I live in District 6. I am one of the many people who has met with Desley Brooks over various issues of importance to the community including the life of the Police Commission. She has always supported us. I was horrified to see a member of the Commission, Commissioner Dorado, had sent out these ugly, vicious fliers and it seems inappropriate political behavior. Perhaps you haven't developed all the structures yet to define what is acceptable and not acceptable and this seems to be a violation. It is not nice even if you are not a-part of the Commission, they are in poor taste.

Henry Gage, Coalition for Police Accountability. As you are aware since Item 5 is on the Agenda, the Mayor has directed OPD to work closely with this Commission to address some of the issues that have been raised in the recent media reporting out of the Chronicle. He drew their attention back to the Policy proposal that we presented back in September because I believe that is particularly germane to the issues of hiring and recruitment that have been raised in recent days. I kindly request this Commission take that proposal, agendaize it for a future meeting and direct OPD at that future meeting to return to this Commission within 30 days or some reasonable time with a written report detailing either assent or objections to such a policy proposal. It is exactly the sort of thing that proposal is designed to combat.

John Jones, III – speaking as a father and a resident. His son asked him a question last week - Dad, why do the police hate black people? Don't Americans have rights? Aren't black people Americans? It is interesting these are questions that are being asked. He is not ready about a conversation about police brutality. It is interesting because someone that is formerly incarcerated - people talk about transformation. He as

a resident is held to a level of responsibility and accountability. My question for everyone in this room - As someone who has been in prison, how many chances will I get to commit felonies before I am put back into prison. Once, right. As someone who sold drugs in this City. He can promise you he never pledged or pled an oath to protect the Constitution, the law, or anything else. Why is someone like me held to a higher accountability than the OPD? He thinks the time has come for all of us to take this seriously. With a lot of things, he has been seeing, experiencing, and been hearing we have not been taking this seriously. Now is the time to keep the Department in compliance because we must set a standard for everybody in the City and it starts with those who pledge an oath to protect the residents of the City.

Jean Moses, member of the Oakland Community Organizations and the Coalition for Police Accountability. Emphasize – it is super important that the Commission hold people accountable and if Director Finnell is not supporting you, it is important to get him out.

Susan Shawl, member of the Coalition for Police Accountability. She is disturbed to learn that legal counsel (Commission) has left working for the Commission and the Commission does not have legal counsel at this point. Also, she wants to make sure that as a past member of the CPRB, that Mr. Finnell and investigations that are done, that you get access to the files. We want to make sure that the investigators and their boss are being fair and complete.

Saleem Bey, long time former Oakland resident, recently gentrified out of this City. He spoke about racial profiling. He said that last week he gave the Commission a document that clearly was an admission of racial profiling by a police officer. Racial profiling is just tossed out there; no one knows what racial profiling is until you have been racially profiled or until you had to live in a racially profiled City. He read aloud information that he had of what racial profiling is in Oakland and specifically associated with Black Muslims. Oakland Police Department officers on redacted special agent ATF everybody. This is just two and one-half hours of time through 36 years of a community that has been put down but on 750 surveillance initiated, three black males (BM) dressed in suits and bow ties (S&B) walked eastbound on 59th street from corner of San Pablo Avenue to driveway leading to back of WYMB, 8:00 three black males wearing suit and black bow ties exited door next to school and entered YBMB. 8:03 – black female (BF) exits child care center, loads items apparently from a business into an older blank license number blank, and proceeds southbound on San Pablo Avenue. 8:04 – this is just 14 minutes in – and we have about 16 people who have already been profiled and none of them breaking the law from what I have said. Blank pulls in to YBMB driveway, talks to three BMs and leaves the area. 8:05, blank pulls into YBMB driveway, 8:07 blank parks on Southside of 59th street near YBMB driveway, driver a black male, medium to large build, exits the vehicle, walks towards the residence on the Southside of 59th Street. Blank has license plate number X. This is just one page of four pages that he read aloud. He will end this right here - just so that we understand what we are talking about. This is 8:11 – this started at 7:50. We are just talking about 21 minutes. 9:11, black male wearing suit and bow tie and black male wearing blank and talking on a cellular phone exited YBMB and crossed San Pablo Avenue to the business Westside. You didn't hear anything about anyone breaking the law. That is a direct violation of freedom of assembly as well as racial profiling based on religious and racial animus. He said he has more information. Chair Smith thanked Mr. Bey.

Lorelei Bosserman, member of the Coalition for Police Accountability. She is here to talk about the hot topic for the evening which is the Commission getting to access the information that you need to do your jobs. She believes it is clearly spelled out in Measure LL and the Enabling Ordinance that you get to look at stuff that is not personnel files from OPD and I am sure that there is a lot of stuff in the investigation

files that are not personnel files from OPD. She is beginning to think that everything is always going to be an uphill battle for the Commission and you must accept that as part of the job and that you have to question every little thing. She was recently looking at some obscured document and found something that shocked her and will talk to the Commission another time. You should just consider everything, question everything, and if people try to give you a legal argument, consider it and don't just accept it. She thinks you are already doing that. Hang in there, keep the faith, stay strong.

John Bey, at the podium, asked if he had been called? Chair Smith said he had two cards that said Saleem Bey. If we didn't know the danger of simply migrated investigative staff into this new Agency without a retraining that places an emphasis on facts and truth, we now know the danger. Two weeks ago, according to Finnell, after a year they found no wrong doing with the Chief of Police, lying, etc. and video. We can't do it right away but they all have got to be replaced, one by one from the most to the least senior of the investigative staff. More importantly, Mr. Interim, has got to go. That crap he spewed at the last meeting about "Measure LL and the way it is set up" that was at 2 hours, 37 minutes, 57 seconds and you can go on from there and it gets worse. He then went on to say that when his group clears a case, and IA closes an investigation, he lets IA know their findings to see if they concur. If IA concurs, then then they close the case. If IA does not concur, they get together and try to figure what the differences are so that their findings are the same. His bottom line was that IA investigations are personnel records. That is not LL language and that is not language of Section 604 of the Charter. Make him site his source from LL. What he read in Subsection (f) under investigations, number 2, subject to applicable law, the Agency shall have the same access to all department files and records except for personnel records in addition to all files and records of other City departments and agencies as the Department's Internal Affairs Division. So, he tried to mix that up with Subsection (g), Adjudication where number 1 it says – if the Chief agrees with the Agency's findings and proposed discipline, he or she shall send to the subject officer notification of findings and intent to impose discipline. At Number 2 it says that if the Chief disagrees with the Agency's findings and/or proposed discipline, the Chief shall prepare his or her own findings which shall be submitted to a Discipline Committee. If says further – the Agency's findings shall also be submitted to the Discipline Committee which shall review both submissions and resolve any dispute between the Agency and the staff. Lastly, Madam Vice-Chair, you asked the legal representative and Ms. Dooley asked her – how do you see the files? Right off the top, she referred to the investigations as personnel records citing what Finnell said. Chair Smith thanked Mr. Bey.

IV. Approval of Draft Commission Meeting Minutes October 11, 2018

Thomas Lloyd Smith will offer the draft minutes for approval by the Commission.

a. Discussion

E. Prather referenced Page 1, Item III, at the end of paragraph 1, between the first and second speakers, he recalled that there was a quite a terse exchange between the sitting Vice-Chair and the first speaker. I recall that the speaker refused to yield the floor, did not respect the sitting Vice-Chair, and caused a violation of our Rules of Conduct 3.4 where we can remove disruptive audience participants. He would like these Minutes sent back so that we have a written record of that.

E. Prather referenced Page 8, Paragraph 3, Line 1 as it relates to himself – "I think I would be offering" – Corrected to read: "He would be offering".

He asked that these Minutes go back and that we not vote on them this evening.

J. Dorado said he is in support; they be rewritten and clear as to what happened.

b. Public Comment

Saleem Bey. Last week we provided you hard evidence of racial profiling that the Chief of Police has failed to address in any way which is a violation of State law, Federal court order, and local ordinance. The local ordinance was just enabled by your own Mayor Shaft in 2016 after the Sex Scandal. Measure LL also gives you the subpoena power to get those documents. You should read that. This part of LL says that proposed changes including modifications to the department's ... Chair Smith asked if this is relevant to the Minutes? E. Prather asked Mr. Bey to point them to the portion of the Minutes that he feels does not reflect the comments what you are saying. He needs to follow along. Mr. Bey mentioned profiling and you haven't heard anything about it so I am going to make sure that you get this right now.

E. Prather asked if it was in Public Comment, Item, etc.? Mr. Bey said that profiling was spoke about in Item V the last time, maybe. G. Harris said it is on Page 11. Mr. Bey said it didn't see any of this and he does not have access to the Minutes. Chair Smith said that this portion of time is for is if you have a comment on the actual Minutes. Mr. Bey asked where are the Minutes? Chair Smith said they are posted online. Mr. Bey said that he would like to speak to this right here which is about the Minutes and the fact that the Minutes don't usually reflect what the public is saying. He let the Commission know that Measure LL allows this Commission to 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 in Federal, State, or Local law or First Amendment Assemblies which also contain elements listed in Federal Court Orders or Federal Court Settlements which pertain to the department are in effect at the time of this Charter Section 604 which seats this Commission. Takes effect so long as these Federal Court Orders and Settlements remain. Again, I said that the Police Chief has known about this racial profiling and failed according to your own Charter to follow the consent decree. The failure of Department General Order DGO M-19 which was effective November 15, 2004 which prohibits biases based policing.

E. Prather - Point of Order Mr. Chairman - The Speaker is not addressing the Minutes and I ask that he be ruled out of order. Chair Smith said this is not pertinent to the Minutes. Chair Smith asked Mr. Bey to step away from the microphone. Mr. Bey said that he has something to say about the Minutes - the last time that we went through these Minutes, we finding out that the Minutes were not being correctly reflected. The first time that he came here, we had to get the Minutes changed.

He doesn't believe in the Minutes situation as this Commission is doing because it is not correctly reflected. When someone gets up here and talks about something, you redact it down to its barest minimum, that doesn't reflect what the public is trying to address to you and if you are not listening to what the public says and the public keeps coming up here and saying the same thing, then what are we going to do? Should I just not keep saying it or just say it when I get my two minutes after waiting here for hours and you are going to tell me I can only get two minutes to speak. That is disrespectful. This is the eighth meeting in a row that he has come to. We are still talking about the same thing. To dismiss me out of hand and not address what I am talking about is disrespectful on your part. Chair Smith

John Bey. Something that he saw on the video and doesn't know if it is in the Minutes. He will address the part where Finnell cited - He said the reason he said that you all could not see the documents is because of the way he interpreted it -

Measure LL. He wants to know if that is in the Minutes because he never cited where in LL or the Charter, which are the same – where he got the right or that justification. Was his justification that every IA Report is in its entirety a personnel record? That was what he was stating. That needs to be in the Minutes because that is a bold claim that is nowhere in the language and then when the legal counsel was asked for an opinion, she deferred to Finnell. That is why we need accurate Minutes.

c. Action

MOTION to table the Minutes to the next meeting until they have been rewritten and corrected (M. Nisperos) and seconded (J. Dorado). The vote was Aye: 4 (Ahmad, Dorado, Nisperos, and Prather; No: 1 (Harris); Abstained: 2 (Jackson, Smith). The motion passed.

V. **Oakland Police Department Report (20 minutes)**

Chief Anne Kirkpatrick will report on OPD's practice of asking police applicants being asked whether they were sexually assaulted and planned changes, if any, moving forward. The Commission will also ask the Chief what knowledge, if any, she has of the transcript marked BEY005778 concerning racial profiling.

a. Discussion

Chair Smith welcomed Chief Kirkpatrick.

(1) OPD's practice of asking police applicants being asked whether they were sexually assaulted and planned changes, if any, moving forward. [Response to the San Francisco Chronicle's story that occurred on Sunday].

Chief Kirkpatrick said that she wants to clear up a misconception. The OPD does not now and has not under her tenure asked applicants the question "Have you been a victim of sexual assault?" Such a question does not appear in the personal history questionnaire or other materials that applicants fill out. OPD would never use such information to disqualify a candidate. Rather, the OPD along with every other law enforcement agency that she knows of in this country, including the top ten cities referenced in the Sunday article, use Waivers releasing confidential records. For instance, the Los Angeles Police Department Waiver reads that "the release of information includes any files which are deemed to be confidential and/or sealed". The OPD's Authorization and Waiver form specifically noted that the law enforcement records sought should include incident reports to sexual assault, which are traditionally afforded extra protection under State law. Because that form predates her tenure, she cannot tell you exactly when or why such language was added to the Department's Authorization and Waiver form. She can say that it has been removed from Authorization as a part of our form. It is not necessary and the Department is committed to a process that does not discourage women or any victim of sexual assault.

Moving forward, as you know, we have now wanted to go forward with creating a Blue-Ribbon Panel which we would want Commission participation, which you are aware of, to map out our entire hiring process. We want to open our entire process to you to see what we have been doing, where you would make recommendations about what things to change, but in the meantime, effective immediately on Monday morning, she appreciated the Mayor's leadership after she had a discussion with her after discussing with Ms. Landreth, City Administrator, we wholeheartedly supported the Mayor's direction an order that the Waiver would be changed on the

spot rather than waiting for a Blue-Ribbon Panel. That was done Monday morning and has been posted.

N. Nisperos said that he appreciates the efforts that the Chief has outlined to improve the recruitment and hiring of people who represent the City of Oakland. He appreciates the efforts that the Chief has done in that regard even before this took place. He has concerns about the process that was followed in this situation. Having prepared more than a hundred victims of sexual assault to testify, I know that is a traumatic event, one that lasts a long time. We saw that from the last confirmation hearings. Those are scars that run raw and they run deep. They can produce post-traumatic stress disorder. If there was ever an incident in which an OPD officer was involved in an act of violence and it was discovered by his lawyer, that he/she had PTSD and it had not been found out by the police department because they had failed to exercise due diligence. He doesn't believe that is the case with our OPD based on things that the Chief has told us that take place during the polygraph exam. He does not think that disconcerting as it is, that it should not have been summarily dismissed in a political decision, and is exactly what happened. He said it is under Measure LL and under the Enabling Ordinance. This body must be consulted on any change in policy and this was a change in policy. The Mayor had no right to order on her own. He understands the Chief's position because the situation as it is, the Chief can be fired by the Mayor or by the Commission for an act of misconduct which this Chief is never going to commit. If for any discretionary firing, it is going to be done by the Mayor. It is not fair for any person to have to serve two masters. That is the situation we have our Chief in. I would urge the Commission as you deliberate amendments to the Measure LL and to the Enabling Ordinance, to ask the City Council to take away the firing authority from the Mayor, leave it solely in the Commission and if the Mayor wants to fire the Chief of Police, then the Mayor must come to the Commission and convince the Commission. Maybe not by a vote of five votes, maybe if it's the Mayor bringing the motion to dismiss, that it be by three votes from the Commission, or some other arrangement. It is not fair to have the Chief of Police answering to two lords. If we disagreed with the Mayor on this policy, then the Chief would be in a bad place because on her Performance Evaluation it would say that she has failed and the Mayor would be happy or if she did not do it, and we were happy and we would say she has done an outstanding job and the Mayor could fire her. That is not right. I ask that for your future consideration. This process was flawed and political and did not have the deliberation that it warranted because it is a serious matter; one that could ultimately result in millions of dollars lost to the City again if the wrong decision was made.

G. Harris thanked the Chief. She wants to piggyback on what M. Nisperos said in regards to the Mayor ordering the Chief – it is not fair. She has believed from the beginning of this Police Commission that the Commission itself was not going to ever be invited to the table. Chair Smith said he, M. Nisperos, and R. Jackson all met with the Chief together as well. M. Nisperos said there are two different meetings. Chair Smith said fair enough. He said we met after that meeting. G. Harris said her point in being is that we are never invited to the table, not once ever consulted on anything that goes on with the OPD. As far as she is concerned, she has been shown nothing but blatant disrespect by the Department, by the City, by the Mayor who said that her office was open and she still hasn't got any answers from that office. She is frustrated. It is not fair to the Chief, she was not here, she did not create it, she fell into it. On that note, my apologies to you for that but again we need to be at that table too.

R. Jackson said to the Chief that it was a difficult position to be in and she is very appreciative that you, the Mayor, City Administrator recognized that it was a

discriminatory practice. It would have been appropriate to recommend that it be changed immediately so that we could approve it. I do recognize M. Nisperos' concern. Clearly, we have a serious challenge to deal with because serving two three, or four masters is very difficult. She is here to honor the fact that as soon as it was brought to the attention, it was corrected because that is definitely a discriminatory practice. We have enough challenge to get women to apply and get through the Academy and she is glad that this was changed.

A. Dooley said that her reaction is somewhat like R. Jackson's in that she doesn't think we should have to wait until a Commission meeting for the Chief of Police or the Mayor to do the right thing in a situation that so blatantly deserves it as this. Her concern is that subsequent reports were that City Administration, maybe Police Chief and higher ups hiring process, knew about this months ago – in July and it was only when the San Francisco Chronicle reported on it that action was taken. Her concern is while I want to applaud you for doing the right thing, it should be because you did the right thing and not because a light was shown on it. She thinks a Blue-Ribbon Panel is the right follow up to do a top to bottom and it is a long time coming but she doesn't want to fully credit without understanding how it was that this has been on people's radar for so many months and it was only after the media publicized it that we learned about it.

Chief Kirkpatrick responded because as she understood when the San Francisco Chronicle and now know what their story was as I said at the top, it was do we ask the question? We are like everybody ask – no, we don't ask the question. What we understood then what was being messaged is that it comes up in the Waiver form. That is kind of a distinction – do you ask the question – No, we don't ask the question. When we realized what the spin in it was that it was in the Waiver, that is where there was a misperception of what we're talking about. As I said, every agency has these Waiver forms. Ours had the language that said – by the way, a confidential record could be a sexual assault where you were the victim. When you are signing Waivers, what you are signing is to all confidential records. OPD had specifically pointed out one of those types of records. As she said, she can point back to LAPD and theirs is a Release of all records, confidential, including sealed records. That is broad. She agrees, that is how your Chief missed it. She thought they were saying do you ask a question – we don't ask a question.

(2) Chief Kirkpatrick will respond to what knowledge, if any, she has of the transcript marked BEY005778 concerning racial profiling. [Remark regarding the Bey matter, specifically a form].

Chief Kirkpatrick responded and said she has a statement to read: She has been advised to not comment on the document presented to the Commission with the Label 5778 because it was produced during and relates to ongoing litigation. She has also been advised to not comment on that document because it was designated "confidential" when produced in the litigation and remains subject to a Protective Order issued by the Federal Court. The document presented to the Commission appears to have been altered to have the "confidential subject to protective order" designation removed. That is the end of her statement.

Chair Smith asked if any Commissioners had comments.

M. Benson said she has been sitting reflecting. Firstly, she finds it interesting that the Chief was advised not to comment on a document yet slipped in a comment about a document indicating that it had been falsified. Secondly, to build off M. Nisperos' comment, what can we do to interrupt the fact that this was clearly political. There is a Mayor election in two weeks, and the last thing this Mayor

wants is some national headache around anything else related to this police department and she absolutely disrespected this Commission by moving forward and indicating that there should be a policy change and inviting several people to the table afterwards. I am wondering what we can do today to be an action to interrupt that from ever happening again.

G. Harris thanked M. Benson and she agrees. What can we do today to get action? She would like to say to the Chief – although you have been advised that you cannot answer any questions today, it doesn't go away today. I will continue to ask, ask, and ask. I will ask this Commission to go into Closed Session if necessary to get the answers. You didn't even know what we were going to ask in regards to the form but you peaked my interest so thank you. Now I want to know.

A. Dooley, her recollection of the discussion that led to this being put on the Agenda was that she had made a motion that we refer the new evidence to Mr. Finnell whether to reopen the investigation based on the criteria that are set forth in Government Code 3304. That was not adopted by the Commission. Any alternative, the Police Chief was invited to come and speak on whether any new evidence warrants reopening the investigation under 3304 on the police department's side. The question still stands as to whether any new information has come forward to warrant a new investigation or reopening the investigation. That was the question that brought this here and why that document was put forward. For her, that was the question that it didn't get asked and it didn't get answered – she is just raising that point.

G. Harris said before we were asked if we can ask if there are any questions, she had already said that she was advised not to answer anything. She can ask her now – Do you believe this to be evidence where we can reopen the case?

Chair Smith to the Chief. Chief Kirkpatrick said that she cannot comment.

M. Benson – M. Nisperos since I heard you suggest something around changing language in the future but I am wondering that action is listed on this Agenda tonight. Someone, voting member, could make a Motion. Do you see that there is a motion this evening that we could make, whether it is a proclamation (within our bylaws can alter what the Mayor, Police Chief can do)? What are your thoughts – blatant disrespect in the future?

M. Nisperos said to M. Benson that he is sorry that he doesn't have anything. This is something that this Commission should deliberate very seriously and be part of a package of all the amendments. I know that you are beginning to see more and more that needs to be brought so that it isn't done piecemeal but that you have a whole package.

A. Dooley noted that we are going to have a conversation later in this meeting about how we intend to structure our performance evaluation process. There may be some room in that discussion to consider how we talk about and get communication.

J. Dorado said he is disturbed by the non-answer regarding the Application question and the non-answer again with the advice of counsel. We need to take a stand and there are several different places that we can do that. This pattern of disrespect must be interrupted. As M. Nisperos said, do a deep deliberation of how we should do that and move forward. It must stop and stop now.

Chair Smith said we are going to go to Public Comment.

b. Public Comment

Lorelei Bosserman said her comments are for Chief Kirkpatrick. She does not appreciate it when you dodge the question. Commissioner Dooley specifically said why wasn't this addressed earlier than the article because apparently, people knew about it earlier than the article and what you said was oh, we didn't understand what the article meant, etc. That is not what she asked about. She asked why this didn't happen months earlier when people were aware of it. Now maybe they weren't aware of it, you could have spoken to that but you did not. Her next comment is also for the Chief although she said she doesn't know what the legalities are here but everyone does it, politicians do it a lot, people are constantly saying my lawyer has advised me not to comment. That is all well and good but you are just protecting yourself – we deserve answers whether or not you need to protect yourself. I will allow, I will acknowledge – everybody does that so that is not picking on you, just saying that I don't like it when you do it either.

Cathy Leonard, Oakland Neighborhoods for Equity. She said her comments are directed to the Chief. It is easy and it is a cope out to blame that policy on your past administration. You are the Chief of Police. OPD has been under Federal Consent Decree for 15 years. All the policies should have been looked at. Every piece of paper in OPD should have been looked at over the 15-year period that you were under the consent decree and find these things. There were officers who were accused of raping a minor child. That would be the time to look in your records - do we have anything here that may be construed as being insulting to someone, to people who have been sexually assaulted. It seems that you guys are not doing your jobs and will still probably be under this Consent Decree for another 15 years. We wasted too much time, took much money. Every time I come to a Police Commission meeting I ask OPD to clean up their act. Clean up your act. This is embarrassing. That shouldn't have been on any form – I don't care who else had done it (Los Angeles, San Francisco). Do we follow along because someone else is doing it? Is that our excuse? Let's clean up this Department, please. Thank you.

Bruce Schmiechen, Oakland Community Organizations and Coalition for Police Accountability. He heard clarification from the Chief which he wasn't aware of asking the question versus release of forms where this information would reside. He heard Commissioner Dooley ask specifically why this policy was changed when a newspaper exposed it and the facts were known at least as far back as June. What he is hearing from the Chief is that oh, we changed it as soon as the newspaper exposed it but the newspaper story wasn't exactly 100 percent right. If the policy was known in June, her question is still on the floor. He heard no answer to the question as to why, if it was known in June, you suddenly changed it even though the policy had some differences from maybe what was reported. He doesn't know the details on that but takes her word on that. I didn't hear an answer to that question. It is a valid question.

Mary Vail, once again going back to Commissioner Dooley's question. What she read in the paper today was that the members of the Public Safety Committee several months ago particularly Councilmember Kaplan was looking at City recruitment, diversity issues asked questions expressed concerns, got nothing back other than rationalizations of the status quo and nothing happened. That is a deep concern. Getting non-answers to questions of deep concern. Listening to the Chief talk about the difference between an independent question on a questionnaire and having a section on record disclosure and saying – giving disclosing records of your sexual assault complaint as an example talk about a distinction without a difference but again, it is thrown out there. The media. The Chief and Mayor's statements about the whole West Oakland ICE – it is the same – we are not doing that, etc. The

bigger question reflected by the trafficking underage scandal. OPD has a problem and she remembers trying to recruit people to the Commission who had experience and advocating for victims (primarily women) of sexual assault and domestic violence. A few years ago, Mayor Schaaf's first year, there was a detailed report in the East Bay Express about a complaint of a woman being violated again by a detective. Now skeptical, refusing to investigate, low and behold you have got on the index of cases – there are some new cases about this. The culture is broken; the practice is broken. She doesn't see any energy coming from the Mayor's Office or the Police Chief. To put on a document release is an example of the kind of records that will be released - a prior sexual assault. That is evil, suppressive, discriminatory, and clueless. The fact that it has been sitting on the form for all these years – it is another embarrassment for the Department.

John Jones, III, member of the Coalition for Police Accountability. He reminded everyone what is on Agenda Item 3 – it states that the purpose of the Oakland Police Commission is to oversee the OPD's policies, practices and customs to meet or exceed national standards of constitutional policing. For him, he understands that if he heard it correctly, at least three members of this body was present at that meeting when a decision was made to change that policy? For this body, the Police Commission, which is the result of a Charter change, that 83% of the voters in Oakland supported, for you to have the creditability that you deserve, it starts with other departments acknowledging that. That goes for the Mayor, City Administrator and the Police Chief. You should not hear things after the fact. That is ethically and professionally disrespectful. It seems to me that there has been a repeated pattern of either undermining this body's authority and power or just blatant outright disrespect. How is it, he understands the Chief's position, but there is one thing missing – I read the City Charter and understands that the Police Chief reports to the City Administrator who also reports to the Mayor. However, the Police Chief in Oakland, as a result of Measure LL, also is held accountable to the Commission because you have the power to fire the Chief. I am disgusted by this concept that every time there is something connected to OPD, they never disclose it. We must hear it through the media, etc. and let them come forth, take some responsibility. Let it stop - allowing shenanigans to continue.

Elise Bernstein, Coalition for Police Accountability. The previous speakers have said it all, especially John Jones. The Chief's explanation for this today reminds me of my 9-year old grandson who goes by the letter of the law – not the spirit. This OPD doesn't get it. They need to address these issues. It is better if they come forward, if they had identified it in June or July, it would have been great. We would be pleased with that. Coming here occasionally, I feel frustrated. I can't imagine how you all feel and I thank you for your patience and determination and persistence.

Saleem Bey and we know censorship is very real here. The Police Chief's answer to the question of the document is unacceptable. To hide behind the lawyer is one thing but to violate the law is another thing. It says here under Department General Order M-19, Section 1c – California Penal Code 13519.4e prohibits racial profiling by law enforcement officers. The Department's policy explicitly prohibits racial profiling and other biased based policing. Even though the Police Chief can't comment on the document, she read that racial profiling breaks the law and that there were officers breaking the law, so even though she doesn't say anything to you, she should be acting on it. She can't say something publicly, but why didn't she report it to the Compliance Director, the NSA. These are all violations that you should be asking her about. Since we are talking about the NSA and the NSA is over the Commission, the NSA says in Section 4 of the Settlement Agreement of Patterns and Practice Claims, which is racial profiling, under M– Investigation of

Allegations of Manual of Rules Violations resulting from lawsuits and legal claims. OPD shall investigate allegations of Manual of Rules violations resulting from lawsuits involving misconduct and legal claims and/or tort claims involving Class 1 and 2 violations treating them in the same manner as other citizen complaints. The litigation and IA process shall be handled separately to avoid either process being unnecessarily compromised should a personnel investigation be delayed, halted, not undertaken, or any way modified because of an underlying matter in the litigation. Personnel investigations shall not be delayed in any manner because of underlying incidents. Basically, what we are saying is that even though the Chief can't comment to you, she should have acted on it. She has been given direct evidence of Penal Code violation which is State law which you are now have been noticed that racial profiling breaks that specific State law (CPC 13519.4e). If the Chief is ignoring a Penal Code violation by OPD but then coming here and saying she can't say anything, yet she has not reported this to the NSA, the Monitor, Compliance Director – those are all violations of the Consent Decree to which supersedes the Commission. Even though the Commission doesn't have the power in some senses, you should read your subpoena power and find out exactly what you can subpoena too. That is in LL and you should have that.

Joh Bey said although I haven't been able to make a meeting until this one, I watch the meetings and review them, etc. He told Saleem several meetings ago, the fact that he has been here time and time again, these people are new and they will get to the point where OPD disrespects them so much and so openly it will hurt them personally inside, it will offend them. Once we get the Commissioners offended by the normal actions of OPD, then maybe they will listen to what we must say because what we want is action. We don't want to just continue to talk and continue to try to talk over you, we want some action. We cite wherein the paper what you can do – do it. Finnell does it. The other lady doesn't do nothing. That is fake. Action. Consider the thing, come up with what is going on, and let's put this thing together so we don't waste time coming up here trying to bring all these documents time and time again. Put it somewhere where we can lay it down – our facts against that crap they come up with. I knew of course that they would not answer the direct question - that is one dodge. The other dodge, they give you a half-baked answer, change and pivot, and go a different direction. Didn't answer her question. That is the Chief. That is as good as it gets. This is her Department; these failings are hers. She isn't that new person coming into town reformed the Department – either she got corrupted or the corruption comes out easy because it is a cesspool. Stop kidding around. If they aren't doing it, hold them accountable. If they do good, praise them. Right now, they are not doing good, she is not on the ball, and her boss is deep in failure.

c. Action

MOTION that based on the Police Chief's answer, we instruct Mr. Finnell to reopen this case. Chair Smith said that motion is out of order for the context here. If we are going to reopen a case, it will probably be later when we talk about cases in Closed Session. E. Harris withdrew her motion.

VI. Proclamation for Commissioner Mike Nisperos

A proclamation will be offered to Commissioner Mike Nisperos recognizing his service on the Oakland Police Commission.

a. Discussion

Chair Smith said that as many of you know, this is a very sad occasion but Commissioner Nisperos who is one of the original Oakland Police Commissioners and has served with distinction and put a ton of effort into this work, has announced his resignation and today will be his last meeting. He turned the floor over to Commissioner Prather and we worked up an appropriate farewell for him. He asked E. Prather to speak on that matter.

E. Prather said to Commissioner Nisperos - it has been an honor and a pleasure. Even as a younger Asian American Attorney coming up in the legal community, everyone knew Mike Nisperos. Mike Nisperos was an icon in the Filipino legal community doing amazing things. Before I met you, I knew about your work with John Burris, with the State Bar. It was when I learned that you were on this Commission, I was excited. I was excited obviously for the opportunity that this brought for me but to work with you. It has been a pleasure to watch you work, to see your commitment and dedication to this body, to the public, to the people of Oakland - you have always served throughout your entire career others. It's a true testament to you as a person and personally I want to say thank you, I have learned so much, you've held me back when I needed to be held back, and you've pushed me when I needed to be pushed. A lot of that happens behind the scenes where people can't see but personally after everybody who wants to speak on it, speaks after public comment, I will offer a proclamation to you Commissioner. I wanted you to know personally you have my heartfelt thanks and friends for life, it has been a very good ride and I thank you. I know there is a personal circumstance that is keeping you from continuing to serve, and I am happy and sad at the same time, it is bitter sweet, I know you would be on this Commission for fifty years if you could be. I thank you very much.

R. Jackson – Commissioner Mike Nisperos - we appreciate your guidance and your direction particularly around Roberts Rules of Order, all the process scenarios – you've kept us in step and for many of us you paved the way for understanding what the process should be and how important it is to follow it. As I told you before this meeting started, you might not be on this Commission but you will be helping us set up and you told me, you got my number and I am taking that on face value – we are going to miss you incredibly. Thank you for the guidance thus far and the guidance that you will offer after you leave the Commission post.

J. Dorado - Commissioner Nisperos, Mike, – you are at various junctures and some of them critical. You were the first one I called. I appreciate so much your counsel; in several areas, I could have made some serious mistakes and I could have made some wrong decisions. I got a refinement of some of the things I did get right and I appreciate that so much. You are still good and beyond speed dial. I want the first slice of pizza out of your pizza – we will be seeing you.

G. Harris – Commissioner Nisperos, I want to say it was a pleasure to meet you. I don't like a lot of people and will be honest about that. I am a very good judge of character and I have the gift of sight and I see people for what they are. Your heart is good and your intent is pure. I have been reprimanded by you a few times and I will take that because it came with love and I appreciated it. Thank you for your service and thank you for being my friend.

M. Benson – Added that it has been an immense pleasure to collaborate with you over this last year and very much you bring expertise but you have consistently shown up in a very open, mindful, willing to be challenged, and lovingly challenging your colleagues, weighing, which I greatly appreciate. It says a lot about your character and commitment. You will be missed by me.

A. Dooley – Thank you Mike. I sent you a message to say this but it is worth saying again. I appreciate your wisdom, and particularly your institutional knowledge and depth of understanding of the City and the Police Department and the legal systems that we are operating in. I sometimes struggle with process and I do want to echo, I say this with the highest praise, being slowed down and being reminded what the process is, has been critical for us try to begin to form what we are going to be doing here. Thank you so much for your service to the City and to the Commission. I hope that you can get KTOP in Vacaville but if you don't get Channel 10, I know we are online and we will be here every other Thursday for the rest of our terms and I hope you will tune in. We will miss you.

M. Ahmad – He wanted to say that since his first meeting, with you on the Commission, it has been a pleasure working with you. You bring a lot of wisdom and guidance and it was appreciated. It has been a pleasure. Thank you.

Chair Smith said that he thanked you once but he will thank you again because I have had more phone conversations with you and learned so much from you. I appreciate the way that you helped me shepherd and navigate, especially the first few months on this Commission. You have been so consistent, so steady, and so willing to pick up the phone when you know most likely it's an issue surfacing again. I want to thank you for that. We will be in touch consistently still. Chair Smith said that we will go to Public Comment.

b. Public Comment

John Jones, III said he doesn't want you to go and a little disappointed you didn't tell us first. As the second Chairperson on the Selection Panel, he is going to speak on behalf of the entire Selection Panel, you were one of the Police Commissioners that we selected. It honestly has been a pleasure to see not just you here but to hear the amount of influence that you have showed up in a positive way which is so needed. Not needed from a standpoint that your colleagues are not capable, but just needed because of all the opposition that you all have been receiving. I was going to come here and ask this body to make a motion to not only deny this Proclamation but reject the Resignation. Someone second and third that. But then when I saw the pictures, it all made sense. I wish you well buddy, take care, it has been a pleasure.

Henry Gage, III, Coalition for Police Accountability. Commissioner Nisperos, thank you for your service. I think it is very easy to become disillusioned with government especially local government. It's hard sometimes for people to pay attention to what is happening. It is hard to feel like you are engaged or involved because it can often seem remote or confusing or difficult to understand in its entirety and its complexity. I am particularly appreciative because you have provided an excellent example of what it looks like to be an informed and engaged citizen. You have provided distinguished service throughout your career and to this Commission. I am very grateful for the example that you have set. Thank you for your time here with us and I sincerely wish you the best in your future endeavors.

Rashidah Grinage said when I first met Mike Nisperos, he was the CPRB Director, not a Commissioner. He had the job that Mr. Finnell has now. We didn't always get along and that is because the community will always be pushing for more accountability, for more transparency, for more independence, for more courage and that will always be the case. I hope before you let Mike off the hook, that you make sure to take advantage of his having done the job of the CPRB Director in giving you some pointers on one of the next Agenda items that you have this evening, which is the evaluation of the CPRA Director. Having done the job himself, under different circumstances to some extent, but very much the same in terms of

overseeing the investigations of public complaints, of police misconduct. I am sure that he would be very helpful to your developing a good template to use for that evaluation as well as for the IG, I would assume. I want to thank Mike as well for all the service he has rendered to our community and it hasn't always been a pleasure, but it most certainly has been recently. Thank you.

Chair Smith turned the floor back over to E. Prather for the Proclamation. At the end of your proclamation reading, you should make a motion and we can approve the proclamation as a Commission.

E. Prather to Mike – We have a Proclamation for you and I hope you have a new wall to put this on. He asked the Chair and Vice-Chair to present it to Mr. Nisperos. E. Prather said that he will read it into the record as a formal motion.

By the Police Commission of the City of Oakland, Whereas, in November 2016, the voters of the City of Oakland passed Measure LL, a Charter amendment creating a seven-member civilian Police Commission to oversee the Oakland Police Department in order to ensure that it's policies, practices and customs conform to national standards of constitutional policing. Whereas, in October 2017, the Oakland City Council confirmed the initial seven Commissioners to serve on the Oakland Police Commission and Mike Nisperos was one the original seven Commissioners. Whereas, during his tenure on the Commission, Mr. Nisperos was instrumental in working with his fellow Commissioners to establish policies, procedures and practices that have formed the foundation upon which the Commission's future work will be built. Whereas, Mr. Nisperos notably tackled inertly, personnel structure and policy issues facing the Commission and Whereas, Mr. Nisperos served the Commission and the citizenry of the City of Oakland with honor and distinction. Now, therefore, let it be resolved that we, the Oakland Police Commission, in recognition of his significant contributions to our City, express our sincere gratitude to Mr. Nisperos for his leadership, integrity, commitment, and dedication to the people of the City of Oakland. As Mr. Nisperos was one of the original seven Commissioners, the Commission confers upon Mr. Nisperos the title of Police Commissioner Emeritus. Signed: October 25, 2018.

c. Action

MOTION that we adopt the Proclamation to Mr. Nisperos and seconded (Chair Smith). The vote was Aye: 6 (Ahmad, Dorado, Harris, Jackson, Prather, and Smith); Opposed: 0; Abstained: 1 (Nisperos). The motion passed. Chair Smith stated that your Proclamation has been approved. Congratulations Commissioner Nisperos, Commissioner Emeritus you are after the meeting. Chair Smith asked if there were any final words. Commissioner Nisperos said that because Marines, even old Marines, aren't supposed to cry, I am not going to say much just that I want to say thank you to everyone, friends I've had for over 30 years in the audience and on this Commission, it has been an honor and a privilege to serve with you and I know you will do well and I will be watching and anything I can do to help, please do not hesitate to call.

VII. Election of Alternate Commissioner to Fill Commission Vacancy

Measure LL states, "For vacancies occurring for reasons other than the expiration of a regular member's term, the Commission shall select one of the alternates to replace the regular member for that regular member's remaining term of office." The Commission will elect one of the two alternate commissioners to fill the vacancy due to Commissioner Nisperos' resignation.

a. Discussion

Chair Smith said we will have an election but before we do, he will give the floor to both the Alternate Commissioners for comments before we conduct that election.

M. Benson said she would like to say three things. Firstly, she appreciates A. Dooley and will not speak for her but she and I have had discussion and we are both committed to making sure whatever process happens, isn't about us or them. She appreciates A. Dooley. She has been highly participatory and excellent and has a lot of skills to bring to this Commission. Secondly, as many of you have learned about me, I'm more of a strategist and think long-term process. For me it was less about A. Dooley or M. Benson, but an opportunity to think about a process that this Commission could use in the future. I would like to propose that the Commission consider taking something that I think was implied in Measure LL but not actually formalized. That is to avoid potential issues later that are political, as we are talking about that. We have four community appointed seats and three mayoral appointed seats. She would suggest, because we exhaust ourselves intellectually, emotionally, and inter-personally all the time, the proposal that she would make is that you adopt when a community appointed seat is vacated, that the community appointed alternate is seated and when a mayoral appointee resigns, that the mayoral appointee alternate is seated. That simplifies things. She also recognizes that it could look self-serving. Thirdly, simply that she has thought long and hard, etc. and without any hesitation where one of the mayoral appointees that stepped down, she would endorse Commissioner Dooley to take a seat.

A. Dooley thanked M. Benson for her comments and echoed her sentiment. We did discuss it several times that we weren't going to campaign for this position because we both feel that the other is a person who should be on the Commission and will give everything to the Commission and will bring a lot of gifts and talents and energy to the Commission. We are not mayoral appointees or selection panel appointees; we are Commissioners who are tasked with upholding the purpose of the Commission and that she doesn't serve here at the Mayor's discretion – She serves here at the discretion of her fellow Commissioners. She knows that M. Benson feels the same way in her commitment to what the purpose of what this is. She appreciates that this is a difficult decision and she wants you to know that she shares M. Benson's view that however we do moving forward, we are both going to continue to be fully engaged.

Comments were given by Commissioners.

Ahmad inquired about the Mayoral appointees. Chair Smith responded.

A. Dooley said that her understanding is that whoever is selected for Mr. Nisperos' term, finishes his term and then the selection panel replaces that. So, if you selected the Mayoral appointee, that is still a selection panel seat. When the term is over, the selection panel chooses whoever gets that. Chair Smith said that there is roughly two years left in M. Nisperos' term and then we are selection who will fill out those next two years. When the term comes to an end, the selection panel will choose who sits in that seat.

G. Smith asked John Jones, III to take the podium – she has a question for him; it's in regards to the selection panel. When she was interviewed by the Selection Panel, it was a vigorous process and she felt like it was community. I understand that this Panel is made up of community members as well as mayoral appointees but the representation is representing the community. So was it the intent of the Selection Panel when you chose two

Alternates; that if one alternate left, if they were from the selection panel choice, do we replace them with a selection panel choice or do we chose from either/or – we could have all mayoral appointees up here at one point.

Mary Vail said the Selection Panel, according to LL, we have one person from each council district plus one person/mayoral. LL is clear on something else. That is four community selection panel Commissioners, three mayoral appointed Commissioners, one mayoral alternate (which is Ms. Dooley) and one selection committee nominated (which is Ms. Benson). If you do not chose Ms. Benson, because of that succession line and that ratio overall in the Commission, you don't have a choice. Both Alternates have been exceptional. It would be hard to pick if it was just between he two of you. You have been given the power to designate but you don't have a choice in designation because Mr. Nisperos was our fourth person. G. Harris said that there is no need to vote. Chair Smith said that is not correct. We have already gotten the legal interpretation of this provision from the City Attorney.

M. Vail said you do need to vote. I will admit it is possible it is possible that the City Attorney Office thinks different than she does – the maintaining the succession between selection committee and mayoral appointees which is repeated several times in LL, is not repeated in this subsection covering this situation. I could envision a situation where the City Attorney would tell you that it is a choice between the two current Commissions but I would strongly argue that she is wrong. G. Harris said that she wants to be clear.

Chair Smith told G. Harris that she is out of order. We already got a legal interpretation of it. We are taking a vote tonight. Then it will be a choice of who fills the seat/vacancy. That is the way it is.

John Jones, III. Yes, the Commission – you make the decision on which Alternate you choose. For us – Selection Panel Members – we are going to discuss this at our next meeting. We want to make sure that we meet all the requirements that are necessary.

Chair Smith said that if it is not pertaining to this Agenda Item (election of the Alternates), then it would be a Motion that you would have to make when it is agendized so you can raise it during the agenda setting portion of the meeting and then we can decide to put it on a subsequent Agenda. This Agenda Item is to elect who will fill Commissioner Nisperos' seat which we have just done.

G. Harris asked who came up with that process?

Chair Smith said it is quoted in Measure LL and it was included in the Agenda Packet as Item 7. G. Harris said that we just heard an interpretation from the people who wrote it. Chair Smith read aloud from Measure LL, which was included in Item 7 of the Agenda Packet. Measure LL states, "For vacancies occurring for reasons other than the expiration of a regular member's term, the Commission shall select one of the alternates to replace the regular member for that regular member's remaining term of office." That is just what we did.

A. Dooley said that it had been intended to be on our Agenda but our Agenda got so long we bumped it. We do need to reconsider some matters for the Bylaws. As M. Benson noted, it may be appropriate to do one of the Bylaw amendments - just put this in the Bylaws. The seats are filled in that fashion that was described because I don't think the Ordinance is clear but the Bylaws could clear it up. Have a Bylaw discussion.

Chair Smith said that this Item is closed.

b. Public Comment

Henry Gage said that this process that you are going through now should not have been an election to begin with. If you look at the early drafts of Measure LL, Section 604 (c)(a) stated that the Selection Panel Regular Commissioners are to be replaced by a Selection Panel appointed Alternate Commissioner. The Mayoral Appointed Commissioners are to be replaced by a mayoral appointed alternate. Failure to do so would change the balance of power on the Commission, etc. This should not be an election but it is. I hope that with the selection you adhere to the intent of what should have remained in the language of Measure LL.

Mary Vail following up on what Mr. Gage said – one of the biggest issues during the drafting of Measure LL, etc. – we lost endorsers of LL over the issue of not having all the members of the Commission selected by the Selection Committee. You would have a lot of community concern if a Selection Committee Commissioner was the person elevated and was not a Selection Committee Alternate. The City Attorney or legal minds can differ. It would be a major breach of faith of the people in the community who voted for LL. Yes, we could clarify the provision but we didn't have to and no one saw the need to clarify this. Your choice is guided by LL.

John Bey said that he would implore you not to do an OPD type move. Just do what you want to do. Stick to what it says to do, keep it what it is. They both are fine people but need to preserve this stuff as it is. You are still trying to get set, get creditability, have people follow process, establish processes – don't break with it. Make it simple, keep it moving, and let's get down to business. Do the City's business about the Police Department. The way John Jones read – oversight of the policies, procedures, customs, etc. – all the foolishness that they do, is up to you, but if you can't figure things out, we suffer.

Saleem Bey said that it is clear. You have a community person that is leaving, you should have a community person that goes in. If we had to go any deeper than that, we would go to the fact that it was the electorate (83% that voted to take the Mayor's power away from the police/over the police department). Why would you give a Mayor's appointment, an extra seat here basically deferring back to the Mayor? That doesn't make sense. Let's keep what the people wanted – people wanted the community to have say over the police department so when a community person leaves, a community person goes on it. I don't believe the Mayor should have any say on any positions. We are willing to work with the process, if the process is fair. If you are going to be a dictator when they can speak, accept/won't accept, etc. – then you are more of the same as OPD.

Bruce Schmiechen said that both Alternates are excellent and he has been coming to these meetings. Based on that, he would have no question about the choice of either person. If I was outside the circle of people who come here and know the people, and see the growth and what has been happening, etc., that public trust piece is critical. Public trust is often based on not a lot of depth of understanding and a lot of times it is based on appearances and that cannot be the whole story but it is real.

Mariano Contreras, Latino Task Force, you guys are going to do what you are going to do – but this is a public comment. A soft criticism for some serious ears. Chair Smith you have two women that are being considered Commissioners. Your communication with Commissioner Harris – please listen to the woman. I have a lot

of respect for you and seen you function. Take that to heart. Thank you.

c. Action

MOTION that we conduct an election to determine which of the Alternates (A. Dooley or M. Benson) will fill the vacancy for Commissioner Nisperos' seat and that will begin at our next meeting (Chair Smith) and seconded (R. Jackson). Chair Smith said that we will now go around and each Commissioner will vote which Alternate to elect: Ahmad (Benson), Dorado (Benson), Harris (Benson), Jackson (Benson), Nisperos (Benson), Prather (Abstain), Smith (Abstain). The vote for M. Benson passed. Chair Smith said congratulations to Commissioner Benson.

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

VIII. Closed Session

PUBLIC EMPLOYEE PERFORMANCE – Step Increase in Salary
Govt. Code § 54954.5 (e)
Title: (Interim Executive Director of the CPRA)

a. Action – Report out of closed session

Chair Smith said the Commission took action on the step salary increase for the Executive Director of the Community Police Review Agency. That was the only item we discussed in closed session and decided.

b. Public Comment

No public comment.

IX. Oral Report of Disclosable Final Decisions Made During Closed Session

a. Report of disclosable final decisions, if any

The Commission approved a step salary increase for the Executive Director of the Community Police Review Agency.

b. Public Comment

No public comment.

X. Performance Review Processes

The Commission will discuss the performance review process for the Interim Executive Director and the Chief of Police. The Commission will also discuss and consider a performance review process for Commissioners.

a. Discussion

Chair Smith said that we have been talking about how it is we go about the review of the Executive Director and we don't have a rubric yet but I know that R. Jackson has been working on getting on.

R. Jackson said that she made calls to San Francisco and Los Angeles and we are going to be receiving what it is they use so that we can have a baseline and then develop some of the additional queries we have since we are in a unique situation. She will turn that over to you next week.

M. Nisperos said he never did receive a review (10 years) and is not familiar with it. He suggested inviting HR to come in and talk to you about how to do Performance Evaluations as you structure the rubric.

Chair Smith said in addition to this rubric, one of the important things we do is get feedback from the employees our Executive Director manages. That feedback will be helpful to understand a perspective we don't see every day and that he does and that his employees see every day. We must make sure we have a component of that evaluation that will give us that information.

Chair Smith asked for comments relating to the Chief of Police Evaluation, before we go to public comment. We need to find a rubric and then determine – what our expectations will be, sit down with the Chief of Police and have her read through those expectations and give us feedback, and make sure that all of them are apparent to her before we begin to conduct an evaluation. The value that we bring in having her in the process is that we can provide a community perspective to oversight of the role.

R. Jackson said we will be in the uncharted territory about the phone calls made about reviews for police chiefs – either there isn't one or folks aren't willing to share. We will have a good opportunity to blaze a trail of our own.

G. Harris said that in that aspect (R. Jackson) – she said she can help with that. She has long term relationships with people in other cities that she can get at least two rubrics for us.

M. Nisperos said that when he was at the State Bar, we did it a little bit opposite and it was easier on the body. I had to prepare as the Chief Trial Counsel the Performance Goals and Objectives that I wanted to accomplish in the following year and submit those to the Board of Governors. Then they adopted some, modified some, and then they added some, and may have detracted some. The process was to put the onus??? on the Executive and then you would respond to it. Chair Smith said that is a great idea.

M. Ahmad asked in Measure LL, is there anything in it that says the Police Commission gives people review? Mr. Finnell has been here and worked with Ms. Grinage, etc. from the community for a lot of years. We are in uncharted water, trying to evaluate people and hire people and where does it say that in Measure LL that it is part of our duty?

M. Benson spoke on the performance review process for Commissioners. She said it was a compromise. She wanted to make sure that the Chair was evaluated and she heard the Chair reply he would be open to a 360 evaluation. Is that your understanding of that conversation? Chair Smith said that if we were going to have an evaluation, then every Commissioner would be evaluated but I think whether we have that for the entire Commission is a group decision. M. Benson said this was not her idea but she credited Chair Smith for offering the

information.

A. Dooley said that she ever sat on a Board where we had the opportunity to do a 360 evaluation but she does know that they exist – formats that are pre-existing and are often the kinds of folks that can facilitate a retreat or conversation about our goals and strategy probably has that kind of evaluation tool and it's different from a performance evaluation in this employment sense – it is more of a skills evaluation and strengths/weaknesses and then getting feedback and it is framed. She has done 360 evaluations at Kaiser – the feedback is framed very usefully to help you grow, it is not like a performance evaluation like we are writing you up to move you out, etc. I think that when we finally get down to brass tacks, having a facilitator for retreat, that would be something we might ask for them to provide (feedback facilitation).

Further discussion took place with Commissioners.

MOTION that we set a May 2019 Evaluation date for the Chief (E. Prather) and seconded (J. Dorado). The motion was withdrawn.

G. Harris said that she doesn't understand the motion. Chair Smith asked E. Prather to explain the motion which he did.

E. Prather said that he learned that the City's evaluation period is a May 1 to April 30 period. It would be appropriate for us to set a deadline of a May evaluation, certainly for the Chief and maybe for other evaluations.

G. Harris asked if we are going to set a deadline for the Executive Director Evaluation as well?

Chair Smith said that Evaluation should be sooner than what we have done for the Chief. G. Harris said that she has a calendar. A. Dooley said that obviously, it would help to review the Measure but it is parallel language with the Executive Director – it is a year from when the performance standards were established. If you want to set an earlier deadline for the performance standards, it sounds like the City commonly goes until April 30 and then performance reviews and that is how their system works. We might want to have the Executive Director and the Police Chief a little off one another's schedules so we are not constantly spending all of May just on Performance Evaluations. Maybe it is a different deadline but I think it is still a year. Chair Smith said he has a proposal – I think it would be great if we set a deadline for our Interim Executive Director to get us a rubric that he proposes and then we can mark that up and change it as we like, but at least we have something to work with. That would help us accelerate the process. It is the year after we give him the rubric that we get to Evaluate. He made a proposal that we have our Interim Executive Director give us his proposed evaluation rubric by our first meeting in December and then we can mark that up and go back and forth with him but at least we have some draft that we are working with and he will check with Mr. Finnell – That would be the second Thursday in December. He asked Mr. Finnell if he could get us a draft that he would propose by then? Mr. Finnell said yes.

G. Harris asked if you are open to getting other rubrics?

Chair Smith said that after Mr. Finnell gives us his rubric if we have additional rubrics, we can bring in ideas from those but at least we have something from Mr. Finnell that he has produced. M. Benson said that you would provide some clear expectations to the Chief and the Executive Director by May 2019, is that correct? The one that you just passed about the Chief. To that end, would we then also ask

the Chief to Mr. Nisperos' point to also present something to us by December or should I hold that for a different conversation. Chair Smith said that would be a good idea. He would like to finish this motion. We could follow this motion with another motion that gives us something from the Chief, etc.

Chair Smith said we can make a motion that the Police Chief submit to the Commission her proposed rubric for her evaluation by no later than December. M. Benson said that she wouldn't suggest a rubric, I think M. Nisperos was speaking about goals – overall performance and here is what you can expect. rubric is how one is scored. If we are asking the Chief to draft performance expectations, goals – that is what I would want and would not want to see a rubric. Chair Smith said that he does not disagree with the goals, I would like to see the rubric too.

Further discussion by Commissioners.

b. Public Comment

Saleem Bey, citizen. One of the issues that the Commission needs to focus on when we talk about performance review is to make sure that you identify specific things that need to be reviewed specifically jobs that are being done, especially where the community is coming up here and telling you that there are failures and you should then take those failures and challenge the Chief and make sure that the Chief is addressing the failures or has said that these are not failures. If the community is going to come up and ask for these things I would like that the Commission would take notes and build a database of things that the Chief must check off and say I am in compliance with this because one of the things that we do know, is that OPD is not in compliance according to the Negotiated Settlement Agreement. As a matter of fact, the Monitor just in its most September report, still states that OPD is racially profiling people of color. Here it is 2018, and OPD has been under Quasi Receivership since 2003 and we are talking about 15 years in which OPD has steadfastly refused. It has got to the point where the people got so fed up with the job that OPD and the City are doing and voted overwhelming to create this body. The other performance review that he spoke about is for the Interim Director. There are plenty of cases out there where an Interim Director can be held accountable for. Our case, as a matter fact, 16-0147, which was on the Agenda last week but was never addressed and was closed by the Interim Director. This would be something the Commission needs to go ahead and focus on when someone comes up and gives you a specific case and then ask the Interim Director for that information and he refuses, then use your subpoena power to get that case.

John Bey said that it needs to be established for performance review as far as benchmarks. Clarity on who the Interim Executive Director works for and what his functions are. You unilaterally make decisions and make interpretations for a standalone individual who would be fine but someone who reports to a body that was formed based on the wishes of 83% of the City, we want certain things and we expect certain things. No one wanted a Commission and then an Interim Director who does what he wants and says that nobody tells me what to do in these things. Somebody needs to. As you are talking about processes and establishing norms, if he's free to do what he wishes, that could run counter to what the body decides and what the people want. Whether you have fully acclimated to Oakland, we want how we want it. In other cities, they may do it differently but that is one thing. We know how to do things and work in accordance with policies and procedures. Definitely, the unwillingness to comply with standards should be the measure and that is what we are getting right now.

Rashidah Grinage said that I certainly hope that you will consult with NACOLE to

see whether they have rubrics for evaluation of both Police Chief and Investigative Agency Directors. It is also important not only to survey the staff that are his subordinates but also the public that has filed complaints. We had advocated for a 360 review and certainly the people who have contacted that office could be asked to give some feedback (how are we doing, etc.). On the issue of the actual work product, one of the reasons we are advocating so strongly that you insist on getting the investigative files is that there is no other way for you to evaluate the work product and therefore evaluate the work being done under this person's supervision regardless of who the Director is. It is not personal but it is an issue of being able to examine the work product. The other thing she suggested is that you look at external statistics from other investigative agencies to look at their sustained rates and the not sustained rates and their exoneration rates and do a side by side comparison to see whether or not we are in the norm or whether our investigative agency is in fact an outlier in terms of those percentages.

c. Action, if any

MOTION that we must give the Chief, according to Measure LL, a year notice to be evaluated; get a date to set down with the Chief no later than May 2019 and then provide her with the criteria and the rubrics on which she will be evaluated (E. Prather) and seconded (J. Dorado). The vote was Aye: 7 (Ahmad. Dorado, Harris, Jackson, Nisperos, Prather, and Smith). The motion passed unanimously.

MOTION that we have Mr. Finnell submit to the Commission his proposed draft of an evaluation rubric for himself by our first meeting in December 2018, which is December 13 (Chair Smith) and seconded (R. Jackson). The vote was Aye: 7 (Ahmad. Dorado, Harris, Jackson, Nisperos, Prather, and Smith). The motion passed unanimously.

MOTION proposed that we have the Chief of Police give us her goals and her proposed rubric for evaluation by no later than December 13 (Chair Smith) and seconded (R. Jackson). The vote was Aye: 7 (Ahmad. Dorado, Harris, Jackson, Nisperos, Prather, and Smith). The motion passed unanimously.

XI. Executive Director Recruiting Process for the Community Police Review Agency
The Personnel Ad Hoc Committee will provide an update on the Executive Director recruiting process.

a. Discussion

M. Nisperos gave an update. He said the Committee consists of himself, Chair, and Vice-Chair. We have been receiving Applications as they are being submitted to the City Administrator. There are between 150 – 160 Applications. He went through each of the Applications and then went back and looked at it again, etc. He decided to use the minimum qualifications that were described in the Job Description. First I went through each Application if there was a college degree. For those that didn't, they were eliminated for consideration – marked unqualified. Then looked at the remaining Applications to see who had 5 years of investigation experience. If you did not, you were put in the not qualified pile. Then he looked at the remaining group to see who among that group had two years of supervisory experience. If you had two years of supervisory experience, 5 years of investigation experience, and a Bachelor's Degree or better, you were placed in the qualified batch. I took under consideration the provision in the Job Description that says if you are an attorney, you are entitled to certain credit for years of investigation.

There were many attorneys who applied, a few were able to take advantage of that provision. He went through all the qualified Applications and identified the seven that he thought were the most qualified. He submitted them to the other two Committee members. At this time, the Application process is still open. I would ask the Commission to pass a motion to close the process. He asked the Chair to appoint someone to replace me on this Committee and that they meet to confer amongst themselves to identify who they feel are the top six or seven candidates to be interviewed and would ask the Commission to decide tonight as to who conducts that interview, whether it is just the Committee of three or the Commission. We have been given a time schedule by the City Administrator which would take all day (6 candidates). Then have the interview discussion and move on. It is a very lengthy process.

Chair Smith said until we start the interviews, I want to see every Application that comes through because we are approaching the holiday time and people who work hard, may be slowing down and looking now. His bias is to not be so fast to close the Application period. Once we set up the interview and start to conduct them, then close it. We haven't scheduled that date yet. That is his concern.

R. Jackson asked M. Nisperos – How far back do Applications go in terms of the dates? When did you first receive the Applications? M. Nisperos asked Mr. Finnell when he submitted his Application – he was in the first batch. Mr. Finnell said mid-April. R. Jackson said she is not about rushing. By moving so slowly, people take themselves out of the process and apply other places. Identifying dates to do interviews would be important before the holidays.

G. Harris said her process was different. She has a stack of well qualified applicants but again it is just paper. She looked for the community component as well as everything that M. Nisperos said. She didn't narrow hers down to seven. She would submit the first seven that are qualified but she would also keep the remainder.

M. Nisperos asked that Chair Smith appoint someone to replace him on the Committee.

Chair Smith to R. Jackson – You have been asking for this appointment. Do you still want to do it? R. Jackson said yes and she has some experience in this area. Chair Smith appointed her to the Ad Hoc Personnel Committee.

M. Nisperos suggested that the Committee meet as soon as possible to finalize your selection of top candidates that you are going to put forward for oral interviews and that the Commission decide tonight who is going to do the interviews. Will it be the Ad Hoc Committee or the Commission?

Chair Smith said that we will probably have multiple rounds – what we agreed before we would reduce the number of candidates to a feasible number but we did not limit the number and then bring those people before the Commission and the Commission can make the final decision. The first set of interviews we were going to do as a Committee and then put forward all those candidates that we thought were qualified for the whole Commission to review. E. Prather said that he would prefer the Committee interview as many candidates as it chooses to and he would like that Committee to bring the Commission no less than three candidates but any candidates over five he would like there to be consensus amongst the three members that this is a candidate that must be moved forward. Like if it is 1 to 2 or 2 to 1, he doesn't want to interview that person. He wants to interview the folks that you think unanimously can do the job. Whether that is three, five, seven - if you are unanimous that we should take up our time to interview candidate number seven,

then he thinks that is fine. He would want that level of scrutiny.

Further discussion took place with Commissioners.

b. Public Comment

John Bey said that he agrees with R. Jackson's point; we don't want to lose qualified candidates by taking forever. Recognize this is a place that people want to be – apparently work that people want to do. Believe in yourselves, let the process work. If it is there, narrow it down, and let's keep it moving.

Saleem Bey, to that point, he said that not only is it important, to keep it moving but all the time that you leave this broken person in place, it degrades your creditability with the community. The community knows that he has been closing cases for the police department. It is the reason why the community voted overwhelming to seat you again. I keep saying that but it goes directly to the power that you have that the people put in your hands to act. My brother keeps saying – act. Please do something. Mr. Prather always likes to say he doesn't want to kick the can down the road but you can say you don't want to kick the can down the road, but if the can keeps kicking down the road, at some point you are kicking the can down the road. The most important thing is to get somebody in place as soon as possible. Somebody that you can trust. Somebody that the people have trust in. What happened is that the CPRB was so malfunctioned that the people voted to get rid of them and instead of getting rid of them, they were folded underneath the new Commission which then taints the new Commission. We are always told that you can have a big bowl of ice cream, but just a little boo on top of the ice cream ruins it all.

c. Action, if any

MOTION to close the Application period and accept no more Applications (M. Nisperos) and seconded (J. Dorado). The vote was Aye: 6 (Ahmad, Dorado, Harris, Jackson, Nisperos, and Prather); Opposed: 1 (Smith); Abstained: 0. The motion passed.

MOTION that the Ad Hoc Committee bring the Commission no less than three candidates with an eye toward bringing us three to five candidates and if it feels like it needs to exceed five candidates, it should be with the unanimous vote of that Ad Hoc Committee (E. Prather) and seconded (G. Harris). The vote was Aye: 6 (Dorado, Harris, Jackson, Nisperos, Prather, and Smith); Opposed: 0; Abstained: 1 (Ahmad). The motion passed.

XII. Administrative Analyst Selection and Placement

The Commission will report on the placement of the Administrative Analyst for the Oakland Police Commission.

a. Discussion

Chair Smith reported that he received an email today from Stephanie Hom and she informed him that by mid-November they will have our Analyst for the Commission.

b. Public Comment

No public comment.

c. Action, if any

None.

XIII. Proposed Amendment of Measure LL to Confirm Commission Access to Community Police Review Investigative Files for the Purpose of Assessing Whether to Support or Deny Case Closure.

The Commission will discuss making a legislative recommendation to City Council to Clarify that the Commission has access to personnel records and/or reports in closed session so that it can make an informed decision whether to support or deny case closure.

a. Discussion

Chair Smith said this Item was raised by G. Harris and asked if she wanted to speak on the Item. G. Harris said there is some language that needs to go into the Ordinance. Today when she came in there was an argument in regards to whether it should go in the Ordinance or Measure LL. In regards to the Commission reviewing the files, that she has been asking to review from the CPRA. It is her understanding from the community's perspective and legal standpoint (Larry White) that we have the right to view these files.

A. Dooley said what is clear to her is that there is a serious dispute about the meaning of Measure LL and the Enabling Ordinance as it relates to this matter. She has looked at Mr. White's legal opinion and has looked at the City Attorney's view that she shared this afternoon, our legal counsel as folks have heard has resigned so we do not have independent legal counsel to continue helping us interpret this disagreement and so I am of the opinion that while she believes that there are many readings of the Measure LL and the Enabling Ordinance which entitle us to these documents. That we should proceed on several different avenues. One, we had asked Ms. Prescott and Ms. Brown to formulate an investigative summary or report which would comply with disclosure requirements or confidentiality requirements that we could begin to use or at least provide us some understanding of what the legal impediments to using the CPRB form were. We haven't gotten that yet. She would renew the call now to Ms. Prescott to try and devise something while we fight about this that gives us more information than what we have been receiving but which still protects officer's rights under POAB???

That is something we approved and directed and is something we should ask for. The second piece is that she noticed that you submitted the CPRB Ordinance and in Section F (4) – there is language that wouldn't hurt us to ask a City Councilmember to sponsor adding to the Enabling Ordinance concerning relevant records in confidence which would eliminate the dispute and we wouldn't have to have a fight between the City Attorney and the Coalition or any other community groups that might do that. Then we will also need to get new legal counsel and have someone who can help us understand how best to achieve the goals of the Ordinance and the City Charter without running afoul of any other laws. The final thing she said is that the law will change – not dramatically, but will begin to change in January and then again in July, is to create more transparency about records. We should have a record request in now for disclosure of all relevant materials on January 1 so the minimum we can start to see what the historical information and patterns have been around officer-involved shootings and other matters that may be covered by that. She described a lot of things but we need to activate on all of them at the same time while recognizing that there is a disagreement but not wanting to minimize anyone's

views in that we are all working on the same thing and need to do multiple things to achieve it. That is her suggestion.

Further discussion took place with Commissioners.

b. Public Comment

Lorelei Bosserman said she is disturbed and alarmed that she keeps hearing the suggestion that you don't need to discuss something because you have already received a legal opinion. We have talked about establishing independent legal counsel and the difficulties you faced with that. To say we have a legal opinion, we are done – you should absolutely discuss that.

Larry White, Coalition for Police Accountability. He wondered if you would share the City Attorney's legal opinion with them so that he could respond to it. Chair Smith said that the advice that they have shared says it is a confidential legal opinion. L. White said that you are the client and they are the attorney. The client/attorney privilege runs for the client and not the attorney. This is a matter of great public importance. We must see that opinion from the City Attorney. How can we respond to it? The City Attorney has been against the whole Commission from the beginning. He has been involved in creating, one of the principle drafters of Measure LL and of the Ordinance. There is no surprise that the City Attorney would give you this advice. The Ordinance passed by the City Council says that "you have the duty to review the Agency's dismissal or administrative closure of all complaints of misconduct involving Class 1 offenses including any Agency investigative file regarding such complaints". He understands that you want to be cautious after a City Attorney's opinion. That is why we need to respond to what the City Attorney says. I find it outrageous that they would say their opinion is confidential on a matter like this. Why would it be confidential? This involves matters of great public importance. He hopes the Commission will share it with the public. The privilege runs to the Commission, not to the Attorney. You make that decision.

Cathy Leonard, Coalition for Police Accountability. She agrees 100% with what Larry White said. The Attorney/Client Privilege – the holder belongs to the client and not to the Attorney. You can disclose that information if you wish to as the client. You should order the CPRA Director to provide access to all those documents as provided by the Ordinance. It is clearly stated in the Ordinance. You have the power to make that order and you should make that order. Everybody in the City of Oakland is trying to disrupt your authority. Take your authority and use it to serve the citizens of Oakland.

Saleem Bey said he agrees with everything they are saying about the powers and duties of the Commission and the things that you have access to that people are telling you don't. You should take a stand and force them to give you what you want based on your powers. He read aloud from the Charter Amendment, Oakland City Charter Section 604, which created the Police Commission; (b) – Powers and Duties. Being in Federal Court, I know the judge unsealed large parts of our case. It is not that a case is sealed in general all the way around just because the Director who closed the case says that you cannot see any of it, there are sections that you can see right now even with the law as it stands but beyond that, the Board has the to issue a subpoena to demand what you want from the people that you want it from. Then let them go to their lawyers and then fight that subpoena and we will see who has the power to get these documents. One of the things his brother was say is action.

Henry Gage, Coalition for Police Accountability. Reasonable attorneys can differ on a wide range of issues. It is insulting to have a City Attorney tell you that you can't publish a legal opinion you ask them to write for you. If they are going to assert the privilege, then they need to defend that assertion. A fact that requires that kind of opinion be confidential. If that is not there, this entire conversation about confidentiality is ridiculous. He would love to hear what the City Attorney is saying about the confidentiality of CPRA files; hear whether or not they distinguish between investigative files and personnel records, see how they engage in that discussion of who gets access to what and why, but he can't engage in that discussion because if I don't know what they are signing. It is infuriating. When you are going through this process, he has a due process issue to raise. You should consider – California Labor Law does require that a body involved in the investigation of evidential misconduct cannot also be involved in the adjudication of that misconduct. What you are talking about right now is involving yourself in the investigation and misconduct. You are looking over CPRA's shoulder, looking at their investigative files, and you are trying to determine whether or not to send them back or to provide recommendations for further investigation. If you do that as a full body, you will lose your due process, your ability to oversee adjudication if that same file comes back before a disciplinary committee, so I would recommend that if you are going to go down this road, be very clear about your process. Set up some sort of specified committee, standing committee, to review these sorts of closure reports and set up a process where the standing committee that would review these reports would forward their recommendation to the full Commission which unfortunately the majority of you would not be able to review in detail.

John Bey read aloud from Measure LL – Investigations, Subsection F (2). Nowhere in there does it say what you can do. Any prior advice from the previous counsel should be checked or met with suspicion or needs to be reviewed. Again, it is a gray area, and you are being cautious, this individual over here is not. It can also be interpreted another way. Let that legal counsel, previously had, vested in things not getting out, of course you will be misguided. Question everything, particularly from the City Attorney. We are still dealing with OPD, 16+ years deep. It is not getting better. Tenth Chief in 15 years. Over 80 million dollars in settlements.

Rashidah Grinage read aloud from the Ordinance – M (review the agency's dismissal and/or administrative closure of all complaints of misconduct of class 1 offenses, etc.). That is the law. The Mayor may not like it, the City Administrator may not like it, the City Attorney doesn't like it – it is what the City Council passed. It is law. If the City wants to challenge it, they can go to court to challenge it. Until then, it is the law. You advocated for provisions in this Ordinance and so did the Coalition. The City Attorney argued strenuously and brought in outside counsel to argue strenuously against this Ordinance and the City Council rejected that legal advice. You can do the same thing. The Commission can reject the City Attorney's advice or any attorney's advice. If you do not get and we do not get in the public, as Henry asked, citations – what is the legal foundation for their ability to challenge your access – then you must disregard it. It is not confidential. How can it be privileged when the City Attorney's position and the outside counsel that the City Attorney hired, was part of the supplemental agenda packet for this Ordinance. That was disclosed to the public. How is that this Opinion can't be disclosed to the public. It is inconsistent. Don't go for it.

Elise Bernstein has nothing original to say. These lawyers and Ms. Grinage know their stuff. Don't give on this. You are totally within the law by doing what you know you need to do. Withstand it.

Ann Jenks said she does not usually speak. There is another thing for you to consider here. You are going to damage your creditability if you tell the public that you are not going to tell us what you are basing your decision on because it is confidential for no apparent reason or explanation. Show us the citation. I am shocked that is a play an attorney would even make.

c. Action, if any

MOTION that we be able to view the closed files, the investigative files, from the CPRA. Chair Smith said that is not in the scope of what is agendized. Do you want to withdraw that motion? G. Harris said yes.

Chair Smith said we don't need a motion; we can put together an Ad Hoc Committee which will be A. Dooley, G. Harris and M. Benson. The Committee will work on this matter.

MOTION to continue this meeting (J. Dorado) and seconded (G. Harris). The vote was Aye: 3 (Dorado, Harris, and Smith); Opposed: 2 (Jackson, Prather); Abstained: 2 (Ahmad, Nisperos). The motion failed.

MOTION to continue this meeting past our 10:30 p.m. deadline and no longer than 11:15 p.m. (E. Prather) and seconded (R. Jackson). The vote was Aye: 6 (Dorado, Harris, Jackson, Nisperos, Prather and Smith); Opposed: 1 (Ahmad); Abstained: 0. The motion passed.

XIV. Social Media Policy

The Commission will consider development of a social media policy and whether to approve the use of Twitter and Facebook to reach out to and communicate with Oakland residents on matters relevant to the Commissioner's work.

a. Discussion

Chair Smith asked A. Dooley to speak on this matter. A. Dooley asked members to review Item 14 in the Agenda Packet which she reviewed. She mentioned that Action is needed by the Commission for two items listed on the bottom of that document. R. Jackson said we need to take the Action needed on the document.

Further discussion took place with Commissioners. R. Jackson and A. Dooley will partner

b. Public Comment

Cathy Leonard can't believe that you are spending a lot of time talking about this. Just do it. She's on the Community Policing Advisory Board and have a Twitter page. Let the public know that you exist. Announce when your meetings are, etc.

John Bey thought this would be the one opportunity for quick action but nevertheless – point to meetings and point to agendas and here we are.

Henry Gage agrees with John Bey. Useful to consider at some date designating a spokesperson to make factual statements about what happened. Someone who can interact with local media. The Chair might be that designated spokesperson.

c. Action, if any

MOTION that (1) The Commission should approve the use of Twitter and Facebook and Nextdoor to reach out to and communicate with Oakland residents on matters relevant to the Commission's work and (2) Accept Alternate Commissioner Dooley's offer to manage the social media accounts until staff can be hired and trained to assist in this management effort along with R. Jackson's support (R. Jackson) and seconded (J. Dorado). The vote was Aye: 6 (Dorado, Harris, Jackson, Nisperos, Prather and Smith); Opposed: 0; Abstained: 1 (Ahmad). The motion passed.

XV. Standing Committee Application Process

The Commission has authorized a request for City Council to approve a Personnel Standing Committee (approved June 28, 2018) and Community Outreach Standing Committee (approved May 24, 2018). Counsel Brown was directed to prepare the requests to City Council and will provide an update on their status. The Commission will report on progress and consider additional standing committees, such as a policy and procedures committee.

a. Discussion

Chair Smith said M. Brown may have completed the paperwork for the two committees (Personnel and Community Outreach). We are seeing what happens with City Council. He suggested a policy making standing committee. It is an area for us in that we want public participation feedback, etc., I would caution us around creating too many standing committees because the burden is real and the ability to work quickly on things is also real in how it slows the process. The reason we did personnel and community outreach was to focus on things that we knew we were going to be doing repeatedly.

Commissioners gave comments. A. Dooley said that Mr. Finnell had some information about the status about the two previously approved standing committees since M. Brown is not here. Mr. Finnell said he received a call from Ms. Hom that Mr. Luna is taking the lead now on preparing the necessary paperwork. I will work closely with him to get the paperwork in the process started to get it before the Council and advise the Commission on the status.

b. Public Comment

Henry Gage complimented Mr. Finnell and Mr. Rus for putting together a list of potential standing committees. It is excellent work. This is a necessary structural change. It is also a necessary time management change because what often happens in meetings like this is a topic comes up for discussion that deserves considered discussion, and since the case work happens in front of the entire body which is not a good use of the full Commission's use of time on a regular basis, because of that, it is important that these standing committees be put in place as quickly as possible. This will save us a great deal of work if the standing committees can do things like review policies or consider outreach plans and come to the Commission with fully formed ideas instead of debating and hashing it out at the Dias. It would be nice having that debate in a smaller format so we are not engaging in that every night until 11:00 p.m. It is very time consuming.

c. Action, if any

None.

XVI. Review of Agency’s Administrative Closures or Dismissals

Mr. Finnell will report on the CPRA’s proposed dismissal or closure of complaints of misconduct involving Class 1 offenses. The Commission will consider whether to close the case(s) or direct the CPRA to continue or reopen the case(s) and investigate the complaint in accordance with the Oakland Police Commission Enabling Ordinance § 2.45.070(M).

a. Discussion

Mr. Finnell stated that he has nothing to report. We did not close any cases during the last period.

G. Harris said that this is an agenda item that we should move to the next meeting because she is very tired and not mentally prepared to discuss and would like to since this is her favorite subject. Chair Smith said this item is on every agenda.

b. Public Comment

None.

c. Action to approve CPRA recommendation for dismissal or closure of cases or reopen the investigation, if any

None.

XVII. Agenda Setting and Prioritization of Upcoming Agenda Items

Thomas Lloyd Smith will engage the Commission 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.

a. Discussion

M. Benson requested a working session and plan six months of work. She proposed that this be the agenda item for the next meeting; we sit and are very thoughtful and diligent and assign these to the right committee’s items.

Chair Smith mentioned that we do have a report, Mr. Luna sent it out – the Community Police Advisory Board. They want to make a report at the next meeting. He proposes that we put it on the agenda so they can make their report to us.

G. Harris would like to have a closed session in regards to personnel. E. Prather said he filled out one of these forms and did some research – mistake to call them conflict of interest issues – they are what’s called in legal terms incompatible activities. He will be able in a future meeting to make a presentation on Commissioners and what incompatible activities are and for the Commission’s consideration. This can be added to the Agenda.

Further comments were given by Commissioners.

b. Public Comment

Rashidah Grinage - On the next Agenda under the Item - Director's Report on Administrative Closures or it could be a separate item as well. We are requesting that you as the Client waive privilege and issue publicly the legal justification for the attorney's position that you are not entitled to have access to the investigative files. We want that legal opinion released publicly on your next Agenda.

Henry Gage made a comment earlier – return to this agenda and forwarded to OPD for written comment in the future. This is directly in line with the Mayor's direction to engage in a review of hire/recruitment practices. It is upsetting that your staff attorney is now a vacant position.

Saleem Bey – Ad hoc committee created by Mr. Prather. He requested a report by the ad hoc committee and what they have accomplished. He also spoke about the report of the Independent Monitor on racial profiling. Request to ask the police chief about racial profiling in Oakland specifically in compliance with M-19 Racial Profiling prohibitions under M-19. Task 34 of the negotiated settlement agreement, which included general order M-19.

John Bey –Request for the chief to address General Order M-19, which is the policy that addresses racial profiling. What is the Chief and the oversight commission doing about general order M-19.

c. Action, if any

None.

XVIII. Adjournment

MOTION to adjourn by J. Dorado and seconded R. Jackson. The motion passed.

The meeting was adjourned at 11:20 p.m.