



# **OAKLAND POLICE COMMISSION SPECIAL MEETING AGENDA**

**June 25, 2020  
5:30 PM**

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



# OAKLAND POLICE COMMISSION

## SPECIAL MEETING AGENDA

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### PUBLIC PARTICIPATION

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

#### OBSERVE:

- To observe, the public may view the televised video conference by viewing KTOP channel 10 on Xfinity (Comcast) or ATT Channel 99 and locating City of Oakland KTOP – Channel 10
- To observe the meeting by video conference, please click on this link: <https://us02web.zoom.us/j/88092590965> at the noticed meeting time. Instructions on how to join a meeting by video conference are available at: <https://support.zoom.us/hc/en-us/articles/201362193>, which is a webpage entitled “Joining a Meeting”
- To listen to the meeting by phone, please call the numbers below at the noticed meeting time: Dial (for higher quality, dial a number based on your current location):

+1 669 900 9128 or +1 253 215 8782 or +1 346 248 7799 or +1 301 715 8592 or +1 312 626 6799 or +1 646 558 8656  
For each number, please be patient and when requested, dial the following Webinar ID: 880 9259 0965

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

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

- Comment in advance. To send your comment directly to the Commission and staff BEFORE the meeting starts, please send your comment, along with your full name and agenda item number you are commenting on, to [clove@oaklandca.gov](mailto:clove@oaklandca.gov). Please note that e-Comment submissions close at 4:30 pm. All submitted public comment will be provided to the Commissioners prior to the meeting.
- By Video Conference. To comment by Zoom video conference, click the “Raise Your Hand” button to request to speak when Public Comment is being taken on an eligible agenda item at the beginning of the meeting. You will then be unmuted, during your turn, and allowed to participate in public comment. After the allotted time, you will then be re-muted. Instructions on how to “Raise Your Hand” are available at: <https://support.zoom.us/hc/en-us/articles/205566129>, which is a webpage entitled “Raise Hand In Webinar.”
- By Phone. To comment by phone, please call on one of the above listed phone numbers. You will be prompted to “Raise Your Hand” by pressing STAR-NINE (“\*9”) to request to speak when Public Comment is being taken on an eligible agenda item at the beginning of the meeting. Once it is your turn, you will be unmuted and allowed to make your comment. After the allotted time, you will be re-muted. Instructions of how to raise your hand by phone are available at: <https://support.zoom.us/hc/en-us/articles/201362663>, which is a webpage entitled “Joining a Meeting by Phone.”

If you have any questions about these protocols, please e-mail [clove@oaklandca.gov](mailto:clove@oaklandca.gov).



# OAKLAND POLICE COMMISSION

## SPECIAL MEETING AGENDA

June 25, 2020  
5:30 PM

I. **Call to Order**  
Chair Regina Jackson

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

III. **Public Comment on Closed Session Items**

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

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

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE - Gov't Code § 54957(b)  
Review of closed CPRA cases.

V. **Report out of Closed Session**  
a. The Commission will report on any actions taken during Closed Session, as required by law.

VI. **Welcome and Purpose**  
The purpose of the Oakland Police Commission is to oversee the Oakland Police Department's (OPD) policies, practices, and customs to meet or exceed national standards of constitutional policing, and to oversee the Community Police Review Agency (CPRA) which investigates police misconduct and recommends discipline.

VII. **Update from Interim Police Chief**  
OPD Interim Chief Manheimer will provide an update on the Department. Topics discussed in the update may include crime statistics; a preview of topics which may be placed on a future agenda; responses to community member questions sent in advance to the Police Commission Chair; and specific topics requested in advance by Commissioners. ***This is a recurring item. (Attachment 7).***  
a. Discussion  
b. Public Comment  
c. Action, if any

- VIII. Open Forum/Public Comment (1 minute per speaker)**  
Chair Regina Jackson will welcome public speakers. The total time limit for Open Forum is 45 minutes.
- IX. Status of Consensus Policy Changes and OPD Special Order (SO) 9025 on Suspension of the Carotid Use of Restraint**  
The Commission will ask for a status update on pending policy changes related to Warning Before Shooting and Shooting at Moving Vehicles. The Commission will consider and may vote to approve SO 9025 on suspension of the carotid restraint. *This is a new item.* ([Attachment 9](#)).
- a. Discussion
  - b. Public Comment
  - c. Action, if any
- X. OPD General Order (DGO) on New Crowd Management Use of Force Restrictions and Mutual Aid Protocols**  
The Commission will discuss and may vote to approve a new DGO presented by OPD in response to the Commission's request on June 18, 2020. *This is a new item.* ([Attachment 10](#)).
- a. Discussion
  - b. Public Comment
  - c. Action, if any
- XI. Resolution Urging the Civil Service Commission to Adopt Rules to Disqualify Any Applicant for Employment in the Uniformed Ranks of the Oakland Police Department Based on Prior Acts of Misconduct**  
The Commission will discuss and may vote to approve a resolution urging the Civil Service Commission to disqualify applicants to the uniformed ranks of OPD based on prior acts of misconduct. *This is a new item.* ([Attachment 11](#)).
- a. Discussion
  - b. Public Comment
  - c. Action, if any
- XII. Path to Justice Pledge**  
The Commission will discuss the Path to Justice Pledge and may vote on having the Chair write a letter of support. *This is a new item and is continued from 6.11.20.* ([Attachment 12](#)).
- a. Discussion
  - b. Public Comment
  - c. Action, if any
- XIII. Use of Force Ad Hoc Committee Update**  
The Use of Force Ad Hoc Committee will provide an update of progress to date on the drafting of a new OPD Use of Force policy, including planning for future opportunities for public input and outreach. No action to be taken on the policy itself. *This is a recurring item.* ([Attachment 13](#)).
- a. Discussion
  - b. Public Comment
  - c. Action, if any

**XIV. Draft Ordinance on Acquisition and Use of Controlled Equipment**

The Commission will discuss and may vote to approve a draft ordinance regulating the acquisition and use of controlled equipment by the Oakland Police Department, and to forward the draft ordinance to City Council with a request for immediate adoption. ***This is a new item. (Attachment 14).***

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

**XV. Commission and CPRA Audits**

Oakland City Auditor Courtney Ruby will present the Police Commission and CPRA audits. ***This item was discussed on 1.23.20, 4.9.20, 4.23.20, and 5.28.20, and is continued from 6.11.20. (Attachment 15).***

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

**XVI. Report on and Review of CPRA Pending Cases, Completed Investigations, Staffing, and Recent Activities**

To the extent permitted by state and local law, Executive Director John Alden will report on the Agency's pending cases, completed investigations, staffing, and recent activities. ***This is a recurring item. (Attachment 16).***

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

**XVII. Open Forum, Part Two (1 minute per speaker)**

Vice Chair Henry Gage, III will welcome public speakers.

**XVIII. Adjournment**

## Rape Kits Information Report

The California State Attorney General has issued their report, involving the number of untested sexual assault kits by jurisdiction. In July 2019, their audit was conducted, resulting in the California State Attorney General requesting for each law enforcement agency within the state to report the number of untested sexual assault kits in its possession.

The Oakland Police Department (OPD) reported having 1,197 untested kits. A majority of the kits were determined to be prior to 2006. OPD's internal audit raised questions about the high number of untested kits. After our Department identified the issues, we wanted to ensure you and others in our Criminal Justice and Victims Services Communities understand the state audit while we provide context for our internal numbers.

After further intensive review, we have determined there are no kits to review after 2006. Additionally, 957 of the 1,197 cases reported as untested had legitimate, articulated, and documented reasons as to why the kit was not tested. This leaves the Oakland Police Department with 240 cases to further investigate.

The Department has taken steps to aggressively address the 240 cases. After the list was evaluated, the number of records that require further review is 169 out of the 240 cases. Of the 169 cases, 78 are from 1988 – 1999, and 91 are from 2000-2006. There are no cases since 2006 that need to be reviewed. While the statute of limitations for charging most sexual assaults was changed in 2017, the statute did not grandfather in cases prior to 2017. Thus, none of our cases under review or their corresponding kits are within the statute of limitations. Nonetheless, our Department is taking this task seriously and will determine whether any untested kits that remain should still be tested.

The Oakland Police Department is committed to pursuing investigations of cases involving sexual violence. Through focused efforts in 2003, 2009 – 2011 and in 2014 and with the help of backlog reduction grants, **the Department cleared its sexual assault kit backlog in September 2014 and has maintained no backlog of current cases.** The Forensic Nurse Program, the Special Victims Section, the Forensic Biology Unit of the Criminalistics Laboratory, and the District Attorney's

Office have forged a strong, multi-division and agency partnership to ensure that no case fails to be investigated. Any case in OPD's possession containing sexual assault kit evidence is reviewed and appropriately tested in a timely manner, well within the 120-day statutory limit set by the state of California. For example, in 2019, our Criminalistics laboratory completes victim sexual assault evidence kits on a 45 business day average (from the day assigned in the laboratory) and 59 business days from the date of the crime.

The Oakland Police Department is committed to ensuring the success of its contemporaneous kit analysis project. We are proud that we currently do not have a backlog of sexual assault kits and maintain a robust turn-around time for all new cases involving sexual assaults. The Department is also committed to investigating the remaining 169 cases prior to 2006 to determine what further work needs to be done, ensuring that justice has been served. The California Attorney General's Office announced a new grant to help with the submission and testing of sexual assault evidence; the Oakland Police Department applied for the grant funding and is waiting to hear whether funds will be awarded.

June 23, 2020 update:

- 1) All evidence found in relation to the 169 untested kits has been retrieved by Property from offsite storage and brought to the PAB or LAB.
- 2) Investigation into the 169 cases has begun by these parties:
  - a. Property has looked at records
  - b. Special Victims Unit has retrieved records to look into the status of cases.
  - c. Crime Lab has looked into evidence and investigation status to determine what will require analysis.
  - d. Meetings among all units have been held to strategize and create a path forward.
- 3) Grant funding
  - a. OPD's application for funding was submitted to test the 169 kits on May 29.
  - b. We have not heard what, if anything, will be awarded.

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## INQUIRES

### Internal Affairs FTE Positions:

INTERNAL AFFAIRS DIVISION POSITIONS			
Internal Affairs Division -101120	Authorized	Filled	Vacant
Captain of Police	1	0	Acting in authorized Captain position
Lieutenant of Police	2	3	Acting in unauthorized Lt. position
Sergeant of Police	12	14	Two (2) Sgts. working in unauthroized Sgts. postions
Police Officers	5	4	One (1) vacant
Intake Technician	4	4	
Administrative Analyst II	1	1	
Police Records Supervisor	1	1	
Police Records Specialist	3	2	One (1) vacant

### Communication:

MENTAL HEALTH COMMUNICATIONS	
Total Incidents Generated from All Call Types <i>January 1 2020 to June 17, 2020</i>	139,692
Total Number of Mental Health Incidents	6,333
Total % of Mental Health Incidents from All Call Types	4.53%
Total Incoming Calls: January 1, 2020 to June 17, 2020	281,238
Total % of Mental Health Incidents from All Incoming Calls	2.25%

Mental Health Incidents by Month	
20-Jan	1205
20-Feb	1153
20-Mar	824
20-Apr	1225
20-May	1289
20-Jun	637

*\*Mental Health call types: 5150/5150B/913/913A/913TH/EVAL*

**OPD GPF Overtime Budget**

<b>Fiscal Year</b>	<b>Budget</b>
2015-16	\$12,935,458
2016-17	\$12,935,458
2017-18	\$12,435,458
2018-19	\$12,335,458
2019-20	\$15,135,178
2020-21*	\$15,482,998

*\*Proposed Budget*

**OPD GPF OT Spending by Payroll Element**

<b>Payroll Element</b>	<b>FY 2017-18</b>	<b>FY 2018-19</b>	<b>FY 2019-20*</b>
Acting Higher Rank	462,998	444,224	733,910
Administrative Investigation	996,670	1,429,210	1,837,821
Backfill	5,169,624	6,799,567	7,146,352
Callback	848,992	1,043,583	1,098,012
Canine	35,529	37,261	33,500
Community Meetings	6,492	2,098	8,809
Comp Time Earned	262,749	360,472	429,644
Court	309,355	348,836	362,289
Extension of Shift	4,591,625	5,371,700	5,467,809
FLSA	1,092,717	1,705,788	2,336,549
Holiday	2,392,087	3,345,078	3,430,697
Recruiting/Background	695,936	564,641	398,620
Special Events/Enforcement	9,648,861	2,327,582	13,834,385
Training	1,999,667	12,572,446	1,797,560
<b>Grand Total</b>	<b>28,513,303</b>	<b>36,352,485</b>	<b>38,915,955</b>

*\*Projected OT as of May 15, 2020*



# OAKLAND POLICE DEPARTMENT

455 7TH ST., OAKLAND, CA 94607 | OPDCRIMANALYSIS@OAKLANDNET.COM

CRIME ANALYSIS

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

Updated 17 Jun., 2020

### Robbery Before-and-After Comparison — 13 Weeks

Robbery Type	16 Dec to 15 Mar	16 Mar to 14 Jun	% Change
Firearm	228	127	-44%
Knife	59	39	-34%
Strong Arm	344	203	-41%
Other Weapon	18	15	-17%
Carjacking	48	76	58%
Home Invasion	28	28	0%
<b>Total</b>	<b>725</b>	<b>488</b>	<b>-33%</b>

### Gunfire Before-and-After Comparison — 13 Weeks

Shooting Type	16 Dec to 15 Mar	16 Mar to 14 Jun	% Change
Assault with a Firearm - 245(a)(2)	68	102	50%
Occupied Home or Car - 246	65	80	23%
Unoccupied Home or Car - 247(b)	30	49	63%
<b>Subtotal</b>	<b>163</b>	<b>231</b>	<b>42%</b>
Negligent Discharge - 246.3	147	207	41%
<b>Grand Total</b>	<b>473</b>	<b>669</b>	<b>41%</b>

### ShotSpotter Activations Before-and-After Comparison — 13 Weeks

ShotSpotter Activations	16 Dec to 15 Mar	16 Mar to 14 Jun	% Change
ShotSpotter Activations	936	1,373	47%

### Burglary Before-and-After Comparison — 13 Weeks

Burglary Type	16 Dec to 15 Mar	16 Mar to 14 Jun	% Change
Auto	Burglary comparisons are not yet available due to the delay in crime report processing.		
Residential			
Commercial			
<b>Total</b>			

**This report is hierarchy based. Crime totals reflect one charge (the most severe) per incident.**

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

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

ShotSpotter activations extracted from ShotSpotter Investigator.



# OAKLAND POLICE DEPARTMENT

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CRIME ANALYSIS

## Weekly Crime Report—Citywide 08 Jun — 14 Jun, 2020

<b>Part 1 Crimes</b> <i>All totals include attempts except homicides.</i>	<b>Weekly Total</b>	<b>YTD 2018</b>	<b>YTD 2019</b>	<b>YTD 2020</b>	<b>YTD % Change 2019 vs. 2020</b>	<b>3-Year YTD Average</b>	<b>YTD 2020 vs. 3-Year YTD Average</b>
<b>Violent Crime Index</b> (homicide, aggravated assault, rape, robbery)	84	2,353	2,560	2,531	-1%	2,481	2%
Homicide – 17(a)(1) PC	1	26	33	29	-15%	30	-2%
Homicide – 17(a)(2) PC	0	6	2	0	0%	3	-40%
Aggravated Assault	53	1,339	1,237	1,339	7%	1,235	8%
Assault with a firearm – 245(a)(2)PC	7	116	122	122	27%	131	18%
<b>Subtotal – Homicides + Firearm Assault</b>	7	148	158	186	18%	164	13%
Shooting occupied home or vehicle – 246PC	2	108	115	115	20%	120	15%
Shooting unoccupied home or vehicle – 247(b)PC	4	31	59	59	24%	54	34%
Non-firearm aggravated assaults	40	884	941	941	2%	929	4%
Rape	2	10	9	9	3%	95	-2%
Robbery	2	105	1,159	1,159	-10%	1,122	-4%
Firearm	11	386	403	403	-23%	366	-16%
Knife	2	64	53	53	74%	70	32%
Strong-arm	6	496	550	550	-11%	512	-4%
Other dangerous weapon	2	37	43	43	-28%	37	-16%
Residential robbery – 212.5(a)PC	2	31	45	45	4%	41	15%
Carjacking – 215(a) PC	5	72	105	105	6%	96	16%
<b>Subtotal – Vehicle Theft</b>	15	4,185	5,072	5,072	-16%	4,978	-1%
Auto	5	3,059	4,751	4,751	-21%	3,855	-3%
Residential	8	704	785	785	-27%	686	-17%
Commercial	10	267	288	288	52%	331	32%
Other (Includes boats, aircraft, and so on)	1	59	56	56	36%	64	19%
Unknown	1	19	12	12	692%	42	126%
<b>Subtotal – Other</b>	10	2,579	2,757	2,757	22%	3,117	15%
<b>Subtotal – Other</b>	10	2,579	2,757	2,757	-7%	2,930	-3%
<b>Subtotal – Other</b>	10	2,579	2,757	2,757	38%	68	12%
<b>Total</b>	243	12,270	14,506	13,957	-4%	13,578	3%

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

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

\* Justified, accidental, foetal, or manslaughter by negligence. Traffic collision fatalities are not included in this report.

PNC = Percentage not calculated — Percentage cannot be calculated.

All data extracted via Coplink Analytics.



# OAKLAND POLICE DEPARTMENT

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CRIME ANALYSIS

## Weekly Crime Report — Area 1 08 Jun — 14 Jun, 2020

<b>Part 1 Crimes</b> <i>All totals include attempts except homicides.</i>	<b>Weekly Total</b>	<b>YTD 2018</b>	<b>YTD 2019</b>	<b>YTD 2020</b>	<b>YTD % Change 2019 vs. 2020</b>	<b>3-Year YTD Average</b>	<b>YTD 2020 vs. 3-Year YTD Average</b>
<b>Violent Crime Index</b> (homicide, aggravated assault, rape, robbery)	13	471	538	467	-13%	492	-5%
Homicide - 187(a)PC	-	5	5	5	-50%	5	-25%
Sexual Assault - 261(a)PC	-	1	1	1	PNC	1	PNC
Aggravated Assault - 245(a)PC	5	225	251	248	-9%	236	-3%
Assault with a firearm - 245(a)(2)PC	1	21	24	16	-33%	20	-21%
<b>Subtotal - Homicides + Firearm Assault</b>	1	27	32	20	-38%	26	-24%
Shooting occupied home or vehicle - 246PC	-	13	18	16	0%	16	10%
Shooting unoccupied home or vehicle - 247(b)PC	2	3	10	11	30%	9	50%
Non-firearm aggravated assaults	5	188	202	232	-9%	191	-4%
Sexual Assault - 261(b)PC	1	23	23	23	15%	23	1%
Sexual Assault - 261(c)PC	1	24	25	21	-18%	228	-8%
Firearm	1	62	69	39	-43%	57	-31%
Knife	1	13	16	19	19%	16	19%
Strong-arm	2	118	143	124	-13%	128	-3%
Other dangerous weapon	-	5	8	7	0%	7	14%
Residential robbery - 212.5(a)PC	-	9	5	5	40%	7	0%
Carjacking - 215(a) PC	-	10	15	15	-13%	13	3%
Robbery - 215(b) PC	3	1,077	1,094	1,094	-31%	1,338	-13%
Auto	-	1,002	1,497	1,094	-39%	1,140	-19%
Residential	3	83	83	83	14%	87	9%
Commercial	-	77	79	79	24%	85	16%
Other (Includes boats, aircraft, and so on)	-	9	23	23	-4%	18	22%
Unknown	-	1	2	2	1050%	9	165%
Sexual Assault - 261(d)PC	1	403	403	403	3%	403	1%
Sexual Assault - 261(e)PC	1	657	657	657	-21%	657	-11%
Sexual Assault - 261(f)PC	1	17	17	17	-14%	17	-31%
<b>Total</b>	<b>36</b>	<b>2,729</b>	<b>3,368</b>	<b>2,626</b>	<b>-22%</b>	<b>2,908</b>	<b>-10%</b>

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CRIME ANALYSIS

## Weekly Crime Report — Area 2 08 Jun — 14 Jun, 2020

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<b>Violent Crime Index</b> (homicide, aggravated assault, rape, robbery)	12	270	288	213	9%	290	8%
Homicide - 170PC	-	-	1	-	-100%	2	PNC
Aggravated Assault - 245(a)PC	7	108	113	175	14%	117	11%
Assault with a firearm - 245(a)(2)PC	-	2	3	6	100%	4	64%
<b>Subtotal - Homicides + Firearm Assault</b>	-	7	4	6	50%	6	6%
Shooting occupied home or vehicle - 246PC	-	6	5	4	20%	6	6%
Shooting unoccupied home or vehicle - 247(b)PC	-	2	6	2	-67%	3	-40%
Non-firearm aggravated assaults	8	98	99	105	16%	104	11%
Sexual Assault - 261(a)PC	-	15	11	15	36%	14	10%
Sexual Assault with a Weapon - 261(b)PC	1	10	16	6	4%	158	7%
Firearm	1	62	67	67	-34%	58	-24%
Knife	1	3	5	5	300%	9	114%
Strong-arm	1	61	72	72	24%	74	20%
Other dangerous weapon	-	6	5	5	-20%	5	-20%
Residential robbery - 212.5(a)PC	-	4	7	7	0%	6	17%
Carjacking - 215(a) PC	1	7	7	7	-29%	6	-21%
Auto	-	1,457	1,752	1,411	-14%	1,450	4%
Residential	-	789	1,509	1,509	-20%	1,167	3%
Commercial	1	216	180	180	2%	193	-5%
Commercial	5	62	54	54	63%	68	29%
Other (Includes boats, aircraft, and so on)	-	18	10	10	70%	15	13%
Unknown	1	3	-	-	PNC	7	157%
Sexual Assault - 261(a)PC	1	10	11	11	29%	396	15%
Sexual Assault with a Weapon - 261(b)PC	-	1	1	1	6%	643	3%
Sexual Assault - 261(c)PC	-	1	1	1	167%	5	50%
<b>Total</b>	<b>46</b>	<b>2,381</b>	<b>3,026</b>	<b>2,949</b>	<b>-3%</b>	<b>2,785</b>	<b>6%</b>

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# OAKLAND POLICE DEPARTMENT

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

CRIME ANALYSIS

## Weekly Crime Report — Area 3 08 Jun — 14 Jun, 2020

<b>Part 1 Crimes</b> <i>All totals include attempts except homicides.</i>	<b>Weekly Total</b>	<b>YTD 2018</b>	<b>YTD 2019</b>	<b>YTD 2020</b>	<b>YTD % Change 2019 vs. 2020</b>	<b>3-Year YTD Average</b>	<b>YTD 2020 vs. 3-Year YTD Average</b>
<b>Violent Crime Index</b> (homicide, aggravated assault, rape, robbery)	15	467	489	509	15%	505	11%
Sexual Assault - 261 PC	-	0	10	10	-20%	7	9%
Domestic Violence - 262 PC	-	0	0	0	PNC	1	PNC
Aggravated Assault - 245(a) PC	7	161	184	211	31%	195	23%
Assault with a firearm - 245(a)(2) PC	1	14	22	29	32%	22	34%
<b>Subtotal - Homicides + Firearm Assault</b>	1	21	32	37	16%	30	23%
Shooting occupied home or vehicle - 246 PC	-	11	11	11	118%	15	57%
Shooting unoccupied home or vehicle - 247(b) PC	-	5	10	10	50%	10	50%
Non-firearm aggravated assaults	6	131	141	171	23%	148	17%
Sexual Assault - 261 PC	-	0	10	10	27%	18	4%
Domestic Violence - 262 PC	-	0	0	0	4%	284	3%
Firearm	3	95	88	88	-9%	88	-9%
Knife	-	20	9	9	189%	18	42%
Strong-arm	1	134	137	137	-7%	133	-4%
Other dangerous weapon	1	11	11	11	-18%	10	-13%
Residential robbery - 212.5(a) PC	-	4	17	17	-18%	12	20%
Carjacking - 215(a) PC	2	17	18	18	94%	23	50%
Auto	4	470	538	538	0%	796	5%
Residential	1	179	247	247	-48%	185	-30%
Commercial	2	41	47	47	104%	61	57%
Other (Includes boats, aircraft, and so on)	1	8	8	8	88%	10	45%
Unknown	-	7	3	3	200%	6	42%
Sexual Assault - 261 PC	-	0	10	10	15%	736	13%
Domestic Violence - 262 PC	-	0	0	0	9%	572	5%
Aggravated Assault - 245(a) PC	-	0	0	0	125%	11	64%
<b>Total</b>	<b>51</b>	<b>2,402</b>	<b>2,613</b>	<b>2,847</b>	<b>9%</b>	<b>2,621</b>	<b>9%</b>

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# OAKLAND POLICE DEPARTMENT

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CRIME ANALYSIS

## Weekly Crime Report — Area 4 08 Jun — 14 Jun, 2020

<b>Part 1 Crimes</b> <i>All totals include attempts except homicides.</i>	<b>Weekly Total</b>	<b>YTD 2018</b>	<b>YTD 2019</b>	<b>YTD 2020</b>	<b>YTD % Change 2019 vs. 2020</b>	<b>3-Year YTD Average</b>	<b>YTD 2020 vs. 3-Year YTD Average</b>
<b>Violent Crime Index</b> (homicide, aggravated assault, rape, robbery)	20	491	528	489	-7%	503	-3%
Homicide	-	6	13	13	133%	5	31%
Rape	-	-	-	-	-100%	1	PNC
Aggravated Assault	14	235	271	255	-2%	260	2%
Assault with a firearm – 245(a)(2)PC	-	19	25	29	16%	24	19%
<b>Subtotal - Homicides + Firearm Assault</b>	-	25	30	36	20%	30	19%
Shooting occupied home or vehicle – 246PC	2	24	34	28	-18%	29	-2%
Shooting unoccupied home or vehicle – 247(b)PC	-	6	13	16	23%	12	37%
Non-firearm aggravated assaults	12	194	199	197	-4%	195	-2%
Sexual Assault	1	11	5	13	44%	11	15%
Kidnapping	-	23	24	24	-17%	226	-10%
Firearm	1	87	94	67	-29%	83	-19%
Knife	1	16	13	20	54%	16	22%
Strong-arm	2	103	94	69	-5%	95	-7%
Other dangerous weapon	1	6	9	15	44%	7	25%
Residential robbery – 212.5(a)PC	-	6	7	7	-29%	6	-17%
Carjacking – 215(a) PC	-	12	28	18	-36%	19	-7%
Auto	-	255	313	270	-7%	286	1%
Residential	-	94	129	67	-48%	97	-31%
Commercial	3	41	53	59	57%	59	41%
Other (Includes boats, aircraft, and so on)	-	11	4	5	75%	7	-5%
Unknown	-	5	2	1	850%	9	119%
Sexual Assault	-	-	-	-	18%	671	14%
Kidnapping	-	-	-	-	-11%	449	-3%
Firearm	-	-	-	-	33%	12	0%
<b>Total</b>	<b>50</b>	<b>1,935</b>	<b>2,176</b>	<b>2,167</b>	<b>0%</b>	<b>2,093</b>	<b>4%</b>

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# OAKLAND POLICE DEPARTMENT

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CRIME ANALYSIS

## Weekly Crime Report — Area 5 08 Jun — 14 Jun, 2020

<b>Part 1 Crimes</b> <i>All totals include attempts except homicides.</i>	<b>Weekly Total</b>	<b>YTD 2018</b>	<b>YTD 2019</b>	<b>YTD 2020</b>	<b>YTD % Change 2019 vs. 2020</b>	<b>3-Year YTD Average</b>	<b>YTD 2020 vs. 3-Year YTD Average</b>
<b>Violent Crime Index</b> (homicide, aggravated assault, rape, robbery)	22	616	646	649	0%	637	2%
Homicide	-	-	-	10	-17%	10	0%
Aggravated Assault	11	589	637	639	11%	399	8%
Assault with a firearm – 245(a)(2)PC	3	57	43	55	58%	56	21%
<b>Subtotal - Homicides + Firearm Assault</b>	3	65	55	80	45%	67	20%
Shooting occupied home or vehicle – 246PC	-	54	46	53	28%	53	11%
Shooting unoccupied home or vehicle – 247(b)PC	2	15	19	26	37%	20	30%
Non-firearm aggravated assaults	9	254	279	276	-1%	270	2%
Sexual Assault	-	21	25	18	-39%	20	-29%
Sexual Assault - Child	-	2	22	12	-13%	209	-6%
Firearm	4	74	76	73	-4%	74	-2%
Knife	-	11	8	8	0%	9	-11%
Strong-arm	-	78	89	81	-35%	75	-23%
Other dangerous weapon	-	9	8	8	-38%	7	-32%
Residential robbery – 212.5(a)PC	2	8	9	13	44%	10	30%
Carjacking – 215(a) PC	2	26	34	29	15%	33	18%
Auto Theft	-	67	111	102	-23%	657	-4%
Auto	1	344	610	591	-26%	468	-4%
Residential	3	125	139	139	-46%	113	-34%
Commercial	-	44	53	50	32%	56	26%
Other (Includes boats, aircraft, and so on)	-	11	10	10	10%	11	3%
Unknown	-	3	4	4	425%	9	125%
Auto Theft - Other	-	1	1	1	38%	869	24%
Auto Theft - Other	-	-	-	-	-14%	510	-8%
Auto Theft - Other	-	-	-	-	20%	21	14%
<b>Total</b>	<b>59</b>	<b>2,427</b>	<b>2,810</b>	<b>2,847</b>	<b>1%</b>	<b>2,695</b>	<b>6%</b>

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# OAKLAND POLICE DEPARTMENT

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CRIME ANALYSIS

## Year to Date Crime Report 01 Jan. – 17 Jun., 2020

<b>Part 1 Crimes</b> <i>All totals include attempts except homicides.</i>	2019	2020	Percentage Change 2019 vs. 2020
<b>Violent Crime Index</b> (homicide, aggravated assault, rape, robbery)	2,648	2,593	-2%
Sexual Assault	1	0	-12%
Sexual Assault with a Firearm	1	0	-50%
Sexual Assault - Non-Firearm	122	114	6%
Assault with a firearm – 245(a)(2)PC	131	100	25%
<b>Subtotal - Homicides + Firearm Assault</b>	<b>167</b>	<b>195</b>	<b>17%</b>
Shooting occupied home or vehicle – 246PC	120	103	19%
Shooting unoccupied home or vehicle – 247(b)PC	60	76	27%
Non-firearm aggravated assaults	971	973	1%
Aggravated Assault - Firearm	125	140	-11%
Firearm	419	531	-25%
Knife	54	36	72%
Strong-arm	561	622	-11%
Other dangerous weapon	44	67	-30%
Residential robbery – 212.5(a)PC	47	46	2%
Carjacking – 215(a) PC	110	103	7%
Auto	4,853	5,887	-18%
Auto			-22%
Residential	801	1,031	-28%
Commercial	297	143	52%
Other (includes boats, aircraft, and so on)	61	40	30%
Unknown	13	2	592%
Auto			22%
Auto			-8%
Auto			39%
<b>Total</b>	<b>14,893</b>	<b>14,214</b>	<b>-5%</b>

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# OAKLAND POLICE DEPARTMENT

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CRIME ANALYSIS

## Year to Date Gunfire Summary 01 Jan. – 17 Jun., 2020

<b>Citywide</b> <i>All totals include attempts except homicides.</i>	<b>YTD 2019</b>	<b>YTD 2020</b>	<b>YTD % Change 2019 vs. 2020</b>
Homicide – 187(b)PC	23	26	-12%
Homicide – All Other*	2	1	-50%
Assault with a firearm – 245(a)(2)PC	131	164	25%
<b>Subtotal - 187 + 245(a)(2)</b>	<b>167</b>	<b>195</b>	<b>17%</b>
Shooting occupied home or vehicle – 246PC	120	143	19%
Shooting unoccupied home or vehicle – 247(b)PC	60	76	27%
<b>Subtotal - 187 + 245(a)(2) + 246 + 247(b)</b>	<b>347</b>	<b>414</b>	<b>19%</b>
Negligent discharge of a firearm – 246.3PC	333	333	0%
<b>Grand Total</b>	<b>680</b>	<b>747</b>	<b>10%</b>

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# OAKLAND POLICE DEPARTMENT

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**CRIME ANALYSIS**

## Weekly Gunfire Summary 08 Jun. — 14 Jun., 2020

<b>Citywide</b> <i>All totals include attempts except homicides.</i>	<b>Weekly Total</b>	<b>YTD 2018</b>	<b>YTD 2019</b>	<b>YTD 2020</b>	<b>YTD % Change 2019 vs. 2020</b>	<b>3-Year YTD Average</b>	<b>YTD 2020 vs. 3-Year YTD Average</b>
<b>Homicide – 187(a)PC</b>	-	26	34	29	-15%	30	-2%
<b>Homicide – All Other *</b>	-	6	2	2	0%	3	-40%
Assault with a firearm – 245(a)(2)PC	7	116	122	155	27%	131	18%
<b>Subtotal - 187 + 245(a)(2)</b>	7	148	158	186	18%	164	13%
Shooting occupied home or vehicle – 246PC	2	108	115	138	20%	120	15%
Shooting unoccupied home or vehicle – 247(b)PC	4	31	59	73	24%	54	34%
<b>Subtotal - 187 + 245(a)(2) + 246 + 247(b)</b>	13	287	332	397	20%	339	17%
Negligent discharge of a firearm – 246.3PC	21	181	325	326	0%	277	18%
<b>Grand Total</b>	<b>34</b>	<b>468</b>	<b>657</b>	<b>723</b>	<b>10%</b>	<b>616</b>	<b>17%</b>

<b>Area 1</b> <i>All totals include attempts except homicides.</i>	<b>Weekly Total</b>	<b>YTD 2018</b>	<b>YTD 2019</b>	<b>YTD 2020</b>	<b>YTD % Change 2019 vs. 2020</b>	<b>3-Year YTD Average</b>	<b>YTD 2020 vs. 3-Year YTD Average</b>
<b>Homicide – 187(a)PC</b>	-	4	8	4	-50%	5	-25%
<b>Homicide – All Other *</b>	-	2	-	-	PNC	1	PNC
Assault with a firearm – 245(a)(2)PC	1	21	24	16	-33%	20	-21%
<b>Subtotal - 187 + 245(a)(2)</b>	1	27	32	20	-38%	26	-24%
Shooting occupied home or vehicle – 246PC	-	13	18	18	0%	16	10%
Shooting unoccupied home or vehicle – 247(b)PC	2	3	10	13	30%	9	50%
<b>Subtotal - 187 + 245(a)(2) + 246 + 247(b)</b>	3	43	60	51	-15%	51	-1%
Negligent discharge of a firearm – 246.3PC	1	16	36	32	-11%	28	14%
<b>Grand Total</b>	<b>4</b>	<b>59</b>	<b>96</b>	<b>83</b>	<b>-14%</b>	<b>79</b>	<b>5%</b>

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**OAKLAND**  
 POLICE DEPARTMENT

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**CRIME ANALYSIS**

## Weekly Gunfire Summary

### 08 Jun. — 14 Jun., 2020

<b>Area 2</b> <i>All totals include attempts except homicides.</i>	<b>Weekly Total</b>	<b>YTD 2018</b>	<b>YTD 2019</b>	<b>YTD 2020</b>	<b>YTD % Change</b> 2019 vs. 2020	<b>3-Year YTD Average</b>	<b>YTD 2020 vs. 3-Year YTD Average</b>
<b>Homicide – 187(a)PC</b>	-	4	1	-	-100%	2	PNC
<b>Homicide – All Other *</b>	-	1	-	-	PNC	0	PNC
Assault with a firearm – 245(a)(2)PC	-	2	3	6	100%	4	64%
<b>Subtotal - 187 + 245(a)(2)</b>	-	7	4	6	50%	6	6%
Shooting occupied home or vehicle – 246PC	-	6	5	6	20%	6	6%
Shooting unoccupied home or vehicle – 247(b)PC	-	2	6	2	-67%	3	-40%
<b>Subtotal - 187 + 245(a)(2) + 246 + 247(b)</b>	-	15	15	14	-7%	15	-5%
Negligent discharge of a firearm – 246.3PC	1	11	11	7	-36%	10	-28%
<b>Grand Total</b>	<b>1</b>	<b>26</b>	<b>26</b>	<b>21</b>	<b>-19%</b>	<b>24</b>	<b>-14%</b>

<b>Area 3</b> <i>All totals include attempts except homicides.</i>	<b>Weekly Total</b>	<b>YTD 2018</b>	<b>YTD 2019</b>	<b>YTD 2020</b>	<b>YTD % Change</b> 2019 vs. 2020	<b>3-Year YTD Average</b>	<b>YTD 2020 vs. 3-Year YTD Average</b>
<b>Homicide – 187(a)PC</b>	-	4	10	8	-20%	7	9%
<b>Homicide – All Other *</b>	-	3	-	-	PNC	1	PNC
Assault with a firearm – 245(a)(2)PC	1	14	22	29	32%	22	34%
<b>Subtotal - 187 + 245(a)(2)</b>	1	21	32	37	16%	30	23%
Shooting occupied home or vehicle – 246PC	-	11	11	24	118%	15	57%
Shooting unoccupied home or vehicle – 247(b)PC	-	5	10	15	50%	10	50%
<b>Subtotal - 187 + 245(a)(2) + 246 + 247(b)</b>	1	37	53	76	43%	55	37%
Negligent discharge of a firearm – 246.3PC	2	30	56	65	16%	50	29%
<b>Grand Total</b>	<b>3</b>	<b>67</b>	<b>109</b>	<b>141</b>	<b>29%</b>	<b>106</b>	<b>33%</b>

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CRIME ANALYSIS

## Weekly Gunfire Summary 08 Jun. — 14 Jun., 2020

<b>Area 4</b> <i>All totals include attempts except homicides.</i>	<b>Weekly Total</b>	<b>YTD 2018</b>	<b>YTD 2019</b>	<b>YTD 2020</b>	<b>YTD % Change 2019 vs. 2020</b>	<b>3-Year YTD Average</b>	<b>YTD 2020 vs. 3-Year YTD Average</b>
<b>Homicide – 187(a)PC</b>	-	6	3	7	133%	5	31%
<b>Homicide – All Other *</b>	-	-	2	-	-100%	1	PNC
Assault with a firearm – 245(a)(2)PC	-	19	25	29	16%	24	19%
<b>Subtotal - 187 + 245(a)(2)</b>	-	25	30	36	20%	30	19%
Shooting occupied home or vehicle – 246PC	2	24	34	28	-18%	29	-2%
Shooting unoccupied home or vehicle – 247(b)PC	-	6	13	16	23%	12	37%
<b>Subtotal - 187 + 245(a)(2) + 246 + 247(b)</b>	2	55	77	80	4%	71	13%
Negligent discharge of a firearm – 246.3PC	3	44	81	74	-9%	66	12%
<b>Grand Total</b>	<b>5</b>	<b>99</b>	<b>158</b>	<b>154</b>	<b>-3%</b>	<b>137</b>	<b>12%</b>

<b>Area 5</b> <i>All totals include attempts except homicides.</i>	<b>Weekly Total</b>	<b>YTD 2018</b>	<b>YTD 2019</b>	<b>YTD 2020</b>	<b>YTD % Change 2019 vs. 2020</b>	<b>3-Year YTD Average</b>	<b>YTD 2020 vs. 3-Year YTD Average</b>
<b>Homicide – 187(a)PC</b>	-	8	12	10	-17%	10	0%
<b>Homicide – All Other *</b>	-	-	-	2	PNC	1	200%
Assault with a firearm – 245(a)(2)PC	3	57	43	68	58%	56	21%
<b>Subtotal - 187 + 245(a)(2)</b>	3	65	55	80	45%	67	20%
Shooting occupied home or vehicle – 246PC	-	54	46	59	28%	53	11%
Shooting unoccupied home or vehicle – 247(b)PC	2	15	19	26	37%	20	30%
<b>Subtotal - 187 + 245(a)(2) + 246 + 247(b)</b>	5	134	120	165	38%	140	18%
Negligent discharge of a firearm – 246.3PC	13	80	140	143	2%	121	18%
<b>Grand Total</b>	<b>18</b>	<b>214</b>	<b>260</b>	<b>308</b>	<b>18%</b>	<b>261</b>	<b>18%</b>

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

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

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



# OAKLAND POLICE DEPARTMENT

455 7TH ST., OAKLAND, CA 94607 | OPDCRIMEANALYSIS@OAKLANDNET.COM

CRIME ANALYSIS

## Weekly Gunfire Summary 08 Jun. — 14 Jun., 2020

<b>BFO 1</b> <i>All totals include attempts except homicides.</i>	Weekly Total	YTD 2018	YTD 2019	YTD 2020	YTD % Change 2019 vs. 2020	3-Year YTD Average	YTD 2020 vs. 3-Year YTD Average
Homicide – 187(a)PC	-	12	19	12	-37%	14	-16%
Homicide – All Other *	-	6	-	-	PNC	2	PNC
Assault with a firearm – 245(a)(2)PC	2	37	49	51	4%	46	12%
<b>Subtotal - 187 + 245(a)(2)</b>	2	55	68	63	-7%	62	2%
Shooting occupied home or vehicle – 246PC	-	30	34	48	41%	37	29%
Shooting unoccupied home or vehicle – 247(b)PC	2	10	26	30	15%	22	36%
<b>Subtotal - 187 + 245(a)(2) + 246 + 247(b)</b>	4	95	128	141	10%	121	16%
Negligent discharge of a firearm – 246.3PC	4	57	103	104	1%	88	18%
<b>Grand Total</b>	<b>8</b>	<b>152</b>	<b>231</b>	<b>245</b>	<b>6%</b>	<b>209</b>	<b>17%</b>

<b>BFO 2</b> <i>All totals include attempts except homicides.</i>	Weekly Total	YTD 2018	YTD 2019	YTD 2020	YTD % Change 2019 vs. 2020	3-Year YTD Average	YTD 2020 vs. 3-Year YTD Average
Homicide – 187(a)PC	-	14	15	17	13%	15	11%
Homicide – All Other *	-	-	2	2	0%	1	50%
Assault with a firearm – 245(a)(2)PC	3	76	68	97	43%	80	21%
<b>Subtotal - 187 + 245(a)(2)</b>	3	90	85	116	36%	97	20%
Shooting occupied home or vehicle – 246PC	2	78	80	87	9%	82	7%
Shooting unoccupied home or vehicle – 247(b)PC	2	21	32	42	31%	32	33%
<b>Subtotal - 187 + 245(a)(2) + 246 + 247(b)</b>	7	189	197	245	24%	210	16%
Negligent discharge of a firearm – 246.3PC	16	124	221	217	-2%	187	16%
<b>Grand Total</b>	<b>23</b>	<b>313</b>	<b>418</b>	<b>462</b>	<b>11%</b>	<b>398</b>	<b>16%</b>

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

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

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

# CITY OF OAKLAND

## Memorandum

**TO:** Office of Chief of Police  
**ATTN:** Deputy Chief LeRonne Armstrong  
**FROM:** Policy and Publication Unit  
**DATE:** 15 Jun 2020

**RE:** Use of Force Reform

---

Chief Armstrong,

Recent events have cast the need for police reform into sharp relief throughout the United States. While Oakland and its respective communities are active participants in this national dialogue, I am pleased to report that the proposed OPD Use of Force policy draft, created as part of a collaboration between the Oakland Police Commission and members of the Police Department, addresses all of the most widely agreed-upon force policy reforms.<sup>1</sup>

In the sections below, I provide a brief explanation of each proposed reform and how it is addressed in the Oakland Use of Force policy draft:

### **1. Prohibit Chokeholds and Carotid Restraints**

**Background and Recommendation:** OPD's policy and training has always precluded the use of chokeholds (where pressure on the neck impairs the person's ability to breathe). However, until very recently the Department has trained the use of the Carotid Restraint and authorized it, though solely as a lethal force option. Recommendations are to bar the use of any neck restraint to subdue persons or overcome resistance.

**Response:** Chokeholds are not authorized in the draft policy. The Carotid Restraint is, but the Policy and Publication unit is drafting proposed changes in line with proposed Special Order 9025, which removes the Carotid Restraint from the list of authorized force options. It is the expectation of the unit that both will be removed as authorized force options in the final draft policy created by the ad hoc group.

### **2. Require De-Escalation**

**Background and Recommendation:** Policy proposals recommend requiring officers to de-escalate situations, where possible, through means such as communication, distance, slowing the situation, and otherwise reducing the need for force.

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<sup>1</sup> See for example Campaign Zero's "8 Can't Wait" proposals (available at [www.8cantwait.org](http://www.8cantwait.org)) or California Attorney General Xavier Becerra's recommended force policy reforms (available at <https://www.oag.ca.gov/news/press-releases/attorney-general-becerra-calls-broad-police-reforms-and-proactive-efforts>)

**Response:** While these concepts are already part of OPD’s training regimen, the draft policy **requires** that officers use de-escalation tactics and techniques in order to reduce the need for force: **“When safe, feasible, and without compromising law enforcement priorities, officers shall use de-escalation tactics and techniques in order to reduce the need for force.”** (Section C-3, *Policy Requirement Regarding De-Escalation*).

This requirement is stronger than some other agency policies (which only state that officers “should” use these tactics and techniques if feasible) and explicitly does not tether de-escalation solely to mental health encounters. While de-escalation is an integral part of any response to mental health crisis, de-escalation tactics and techniques may reduce the need for force in myriad different types of police encounters. The draft policy recognizes this with its broad prescribed requirement for de-escalation.

### 3. Require Verbal Warnings When Possible Before the Use of Force

**Background and Recommendation:** While certain policy proposals couch this only in terms of lethal force, most suggest that warnings be given before the use of any force, if feasible.

**Response:** The draft policy goes beyond simply requiring a warning, and goes beyond couching it only in regards to deadly force. In section D-4 (*Identification and Warnings Prior to the Use of Force*, which applies to all force), the policy requires **three** things of the officer if feasible:

1. Identify themselves as law enforcement officers;
2. Warn the person that force may be used unless their resistance ceases; and
3. Give the person a reasonable opportunity to comply with a warning that force may be used.

Additionally, the draft policy prevents warnings from being made with malicious or arbitrary intent to threaten, and requires them to have a legitimate law enforcement purpose.

### 4. Exhausting All Other Reasonable Means Prior to Resorting to Deadly Force

**Background and Recommendation:** This recommendation proposes that law enforcement agencies require that deadly force be used only as a last resort when reasonable alternatives have been exhausted or are not feasible to protect the safety of the public and police officers.

**Response:** The ad hoc group’s draft policy addresses this in two separate ways. First, in the section which constrains *all* force by OPD officers (D-1), the policy states that officers use only objectively reasonable and **necessary** force, **proportional** to the level of resistance posed, threat perceived, or urgency of the situation. Furthermore, lethal force is additionally restricted in section H-4, where the officer must show that discharging a firearm at another is necessary to either A) defend against an immediate threat of death, great bodily injury, or serious bodily injury to the officer or another person or B) apprehend a fleeing person for a felony only when extremely high requirements are met (which involve the threat of death or great bodily injury posed by the subject towards the officer or others).

Additionally, the draft policy's definition of "necessary" specifically states that necessity will be judged on whether "objectively reasonable *alternatives* to the action were available and/or practical" (B-17). This is in line with California's recently enacted AB 392, which requires a reasonable belief that lethal force is necessary.

## 5. Duty to Intervene

**Background and Recommendation:** An almost universally accepted recommendation is that agencies have a policy requiring that officers intervene to stop another officer from using excessive force.

**Response:** OPD's current use of force policy already contains a requirement to intervene ("Members shall **intervene and prevent or stop** the use of unreasonable force by other members." DGO K-03, I, C), but the ad hoc group's draft policy goes much further. Borrowing extensively from one of the most progressive use of force policies in the nation (Camden County Police Department, NJ), the draft policy lists a duty to intervene as one of its "Core Principles" (in section A-6) **as well as** in the section regarding general rules around use of force (in section D-3). Both sections require intervention *and* reporting of misconduct.

## 6. Restrictions on Shooting at or from Moving Vehicles

**Background and Recommendation:** Most recommendations include these two combined, proposing severely restricted ability to fire at moving vehicles (unless the occupant or operator poses a threat of death or serious bodily injury to the officer or others) as well as severely restricted ability to fire from a moving vehicle (unless necessary to stop an imminent threat to human life).

**Response:** The draft policy specifically addresses both of these issues, as separate sub-headings (H-5 and H-6, respectively). The draft goes beyond the recommendations, requiring that officers move out of the way of a moving vehicle rather than use lethal force against the driver if feasible. Additionally, while the policy allows for the use of firearms from a moving vehicle in only the most exigent of circumstances, it sets forth that this tactic is highly discouraged and should be considered a last resort.

## 7. Proportionality of Force

**Background and Recommendation:** Sometimes referred to as a continuum, this recommendation proposes that agencies provide express guidance on proportionality of force to ensure that officers understand the relationship that should exist between the force used and the totality of the situation.

**Response:** The draft policy addresses this in several different ways and sections. First, the guiding rules surrounding all force (D-1) requires that all force be "**proportional** to the level of resistance posed, threat perceived, or urgency of the situation". Beyond this, the policy gives explicit guidance on force and resistance levels, devoting a section to levels of resistance (Section E), levels of force (Section F), and specific rules and guidance for less-lethal tools

(Section G). While not providing an “if this, then this” type continuum, this explicit guidance gives concrete direction for officers in the field to follow, and allows for a framework within which one can evaluate the decisions of officers surrounding use of force.

## 8. Comprehensive Reporting

**Background and Recommendation:** This recommendation proposes that agencies develop robust and comprehensive reporting policies, requiring reporting that includes both uses of force and the threat of force (e.g. pointing of a firearm).

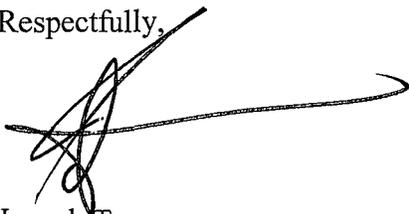
**Response:** While the draft policy does not address force reporting (force reporting is governed under DGO K-04), current OPD policy already requires extremely robust and comprehensive force reporting. DGO K-04, along with attendant special orders (e.g. 9196), sets forth 31 separate “types” of force, within four separate levels, and sets forth escalating reporting requirements depending both on the severity of the force as well as the severity of the outcome of a use of force. Additionally, the department tracks low-level force incidents through its K32 reporting strategy. While force reporting varies wildly throughout the state and nationally, a comparison to the police department in another progressive Bay Area city is instructive in determining how far ahead of the curve OPD is in force reporting:

The Berkeley Police Department’s current force reporting general order requires a use of force report only in five circumstances:

1. Firearms discharges intentionally or unintentionally while on duty or off-duty and acting in the capacity of a police officer;
2. Force that results in death or injury, or when a subject complains that injury has been inflicted;
3. When an officer uses a less-lethal weapon such as OC spray or a baton;
4. When an officer uses force during a crowd control situation; and
5. When a BPD member observes potentially unauthorized use of force.

While the BPD is undoubtedly a smaller agency that has less ability to conduct and utilize comprehensive force reporting (and is currently in the process of amending its reporting policies to more closely resemble Oakland’s), the difference in policies between neighboring cities is stark.

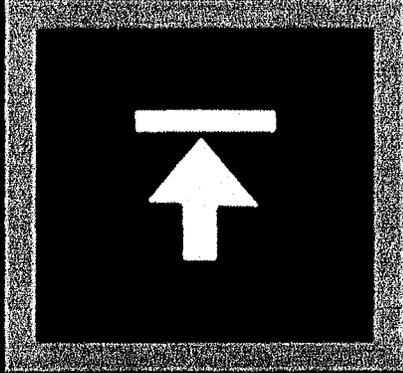
Respectfully,

A handwritten signature in black ink, appearing to read 'Joseph Turner', with a long horizontal flourish extending to the right.

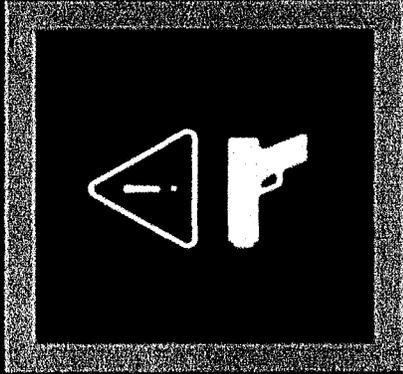
Joseph Turner  
Sergeant of Police  
Policy and Publication Unit

# 8 Can't Wait

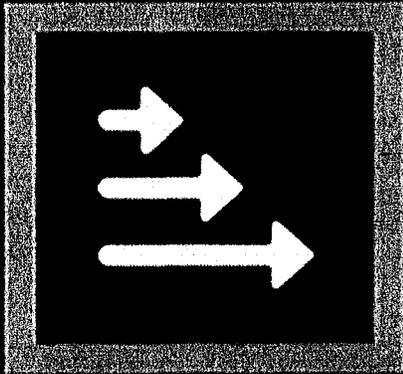
**EXHAUST ALL OTHER  
MEANS BEFORE  
SHOOTING**



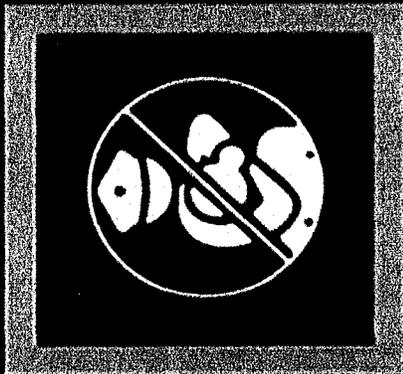
**REQUIRE WARNING  
BEFORE SHOOTING**



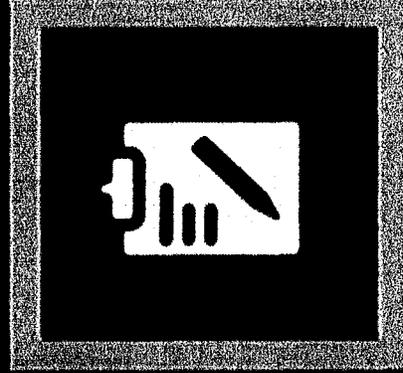
**REQUIRE  
DE-ESCALATION**



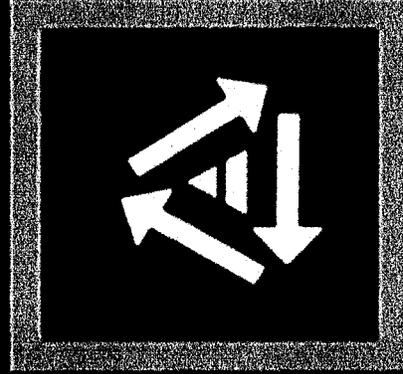
**BAN CHOKEHOLDS &  
STRANGLEHOLDS**



**REQUIRE  
COMPREHENSIVE  
REPORTING**



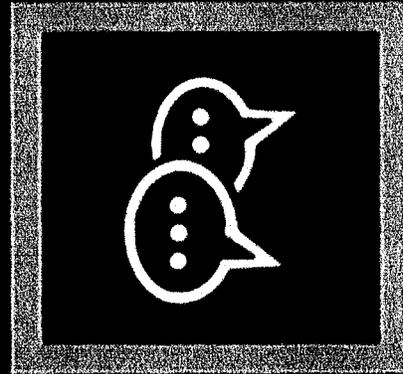
**REQUIRE USE OF  
FORCE CONTINUUM**



**BAN SHOOTING AT  
MOVING VEHICLES**



**DUTY TO INTERVENE**



## **Policy and Training Demands to Prevent Asphyxia**

De-escalation is required, even while detaining and restraining a person.

Putting pressure on the neck, the chest, or the stomach can restrict breathing. A person who is lying on their stomach is at increased risk of difficulty breathing. An officer shall not sit, kneel, stand, or lean on a person's chest, back, lower back, or stomach once a person is restrained. Whenever feasible an officer shall not force the person to lie on his or her stomach. A person under an officer's control shall be immediately positioned so that their breathing is not obstructed either on their side or to a seated or upright position.

Putting weight on a person's back or shoulder must be transitory. As soon as possible, all weight shall be removed. Officers shall be aware of the amount and duration of any weight they place on a person.

If holding a person down while restraining them, officers shall avoid putting weight on the person's neck or head which can fracture the hyoid bone or cervical spine.

Officers shall not "pile on" or "dog pile" on top of a person. If additional restraint is needed, additional officers can hold limbs to restrict a person's movement.

Officers shall be aware of environmental factors, including the nature and temperature of the surface to which they are pressing the subject. For example, holding someone down on a hot or jagged surface or in mud or water can cause injury or impair breathing.

Officers shall recognize risks such as the person saying they can't breathe, gurgling/gasping sounds, panic, prolonged resistance, and "sudden tranquility."

Officers shall constantly monitor the condition and vital signs of a person who is being restrained or placed in restraints. On the scene, one officer shall be identified as assigned to monitor the person.

An officer who was not involved in chasing a person should take over primary responsibility to restrain the person as soon as possible.

People who have been placed on their stomach or had pressure on their neck, shoulder, back, lower back, or stomach who show any distress or whose monitored vital signs indicate distress shall be provided immediate medical attention.

Banning chokeholds and carotid holds.

**Specific training on:**

- “Excited delirium” - the idea that people just suddenly die, unrelated to asphyxia - is used to defend against LEO involvement in sudden deaths. Training must address the medically based causes of asphyxia.
- OPD officers will be disciplined for failure to protect residents from asphyxia.
- If a person is talking, ie. “I can’t breathe,” it is not an indication that they can breathe.
- When a person has their breathing restricted, they may fight harder. What an officer perceives as resistance, it may indicate that the person is fighting for their life.
- Any time that a person spends on their stomach or with pressure on their neck, shoulders, back, lower back, or stomach is dangerous.
- How to restrain a person in approved manners that are safer for the person being detained and the officer.

OFFICE OF CHIEF OF POLICE  
OAKLAND POLICE DEPARTMENT

SPECIAL ORDER 9205

TO: Sworn Personnel

SUBJECT: Suspension of the Carotid Restraint

DATE: 9 Jun 2020

TERMINATION: Upon Revision of DGO K-03, *Use of Force*

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The use of authorized force by police officers, acting as agents of the state, is fundamentally an exercise of governance with the consent of the people. Recent events have changed the nature of the relationship between the public and the government regarding police use of force, especially surrounding restraints of a person's neck.

The Oakland Police Department does not authorize nor train "chokeholds," which obstruct a person's ability to breathe. The Department has continued, however, to teach the carotid restraint hold which has until recently been required training pursuant to California Peace Officer Standards and Training (POST). When used correctly, the carotid restraint hold does not obstruct a person's ability to breathe. While the carotid restraint is utilized by different police departments across the state in different ways, Oakland Police Department has consistently directed officers that the carotid restraint be utilized **only as lethal force**, in "life-threatening situations where a member has reasonable cause to believe that a person poses an immediate threat of death or serious bodily harm to the member or to another person."<sup>1</sup>

OPD's use of force policies already mirror what many believe to be fundamentals of proper police use of force guidance, including a reverence for life,<sup>2</sup> requiring de-escalation,<sup>3</sup> mandating a duty to intervene,<sup>4</sup> severely limiting shooting at moving vehicles,<sup>5</sup> and requiring comprehensive force reporting.<sup>6</sup> OPD is also working on an entirely new use of force policy in coordination with the Oakland Police Commission.

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<sup>1</sup> DGO K-03, *Use of Force*, IV, F

<sup>2</sup> "The Oakland Police Department values the protection and sanctity of human life." *Ibid*, I, A

<sup>3</sup> "Members are required to **de-escalate** the force when member reasonably believes a lesser level or no further force is appropriate." "To the extent possible and without ever compromising safety, members are required to use verbal commands to accomplish the police objective before resorting to physical force." *Ibid* at I, C and III, A, respectively

<sup>4</sup> "Members shall **intervene and prevent or stop** the use of unreasonable force by other members." *Ibid* I, C

<sup>5</sup> "Whenever possible, members shall move out of the way of the vehicle, instead of discharging his or her firearm at the operator." *Ibid* IV, E, 2, b

<sup>6</sup> Reference DGO K-04, *Reporting and Investigating the Use of Force*, and associated Special Orders

OAKLAND POLICE DEPARTMENT  
Special Order 9205

Effective Date:  
9 Jun 2020

On June 5, 2020, California Governor Gavin Newsom announced plans to direct that POST cease training and directing the training of the carotid restraint hold. The Oakland Police Department will do the same.

**Policy**

Effective immediately, OPD will no longer train the use of the Carotid Restraint hold, and the Carotid Restraint hold shall be removed from the list of authorized force options. All references to the Carotid Restraint shall be removed from DGO K-03, *Use of Force*.

By order of

Susan Manheimer  
Interim Chief of Police

Date Signed:



OPEN LETTER TO OUR COMMUNITY FROM THE  
OAKLAND POLICE DEPARTMENT AND  
INTERIM POLICE CHIEF SUSAN MANHEIMER

Dear Oakland Community,

Over the past two weeks, the Oakland Police Department joined our community in outrage over George Floyd's murder. The men and women of the Department helped facilitate and manage the many inspiring and peaceful protests throughout our City.

Unfortunately, like many departments throughout the Bay Area and the Country, OPD also responded to assemblies disrupted by violence, requiring crowd management to control physical attacks on officers and threats to public and officer safety. In addition, individuals engaged in widespread looting, vandalism, and arson that damaged our City's most vulnerable merchant corridors and communities.

We are grateful to the Northern California agencies that provided mutual aid to the City. Their presence enabled us to provide calm and security to our neighborhoods during this period of unrest.

During some of the demonstrations, the safety and security of our community was compromised. OPD took active steps to control the violence and provide presence and security for our already exposed businesses. Here are some statistics:

- Approximately 200 businesses were looted and vandalized.
- 137 arson fires were set throughout Oakland.
- Resources were additionally stressed responding to violent crime throughout the city. During this time period, five homicides and numerous shootings occurred.
- One of the homicides and shootings was related to the incidents of looting.
- Four people within the crowd reported injuries.
- Two federal protective services uniformed officers were shot; one was killed.
- More than 30 first responders were injured of which 21 were Oakland Police Officers and two were Oakland Firefighters.
- Mutual Aid was enacted, providing additional resources to manage the large and disruptive protests.
- More than 300 individuals were arrested with more investigations pending.
- More than 700 calls for service were delayed of which 100 were priority calls.

The City of Oakland, aligned with our County and the region, adopted a curfew as another tool for crowd management. Our department only enforced the curfew as a last resort to calm unruly gatherings. Once the series of violent demonstrations abated, the curfew was lifted quickly in alignment with the County and others in the region.

The Department utilized crowd management strategies in deploying smoke and gas to disperse crowds to stem assaults on officers. All gas deployments will be investigated and reviewed as a use of force.

Throughout the County and the region, the law enforcement tactics and strategies on crowd management are being questioned. We understand and are committed to transparency and thoroughly reviewing our operations, ensuring accountability, and improving as an organization.

Below we outline some of the Oakland Police Department's initial efforts to review our practices. We recognize the importance of rebuilding trust in this period of unrest while the nation focuses on police brutality, most recently exemplified by the horrific incident in Minneapolis. We are evaluating the principles and policies proposed by various groups and organizations calling for changes in police practices. We have some of these practices in place now and commit to reviewing more of these proposals.

### **Department Review**

The Department has mandated systematic reviews of use of force and is preparing an After-Action Report on its response to the demonstrations. This will provide an assessment of the Department's response to the protests and present findings and recommendations. Further, the Department is reviewing all the uses of force consistent with our policy and as part of our oversight and Federal Monitoring.

In addition, a dedicated Internal Affairs team and the Community Police Review Agency are receiving and investigating misconduct complaints. These investigations will be completed within 180 days in compliance with our policy.

### **Crowd Management Policy Considerations**

Under the provisions of our Negotiated Settlement Agreement and after many years of federal oversight, we have adopted robust policies, practices, and accountability systems. Our Use of Force policies emphasize de-escalation. Tear gas may be used to disperse unlawful assemblies only under the authority of an incident commander when other techniques have failed or will not be effective, or under exigent circumstances, for example, when an officer confronts an immediate public safety threat. Specialty Impact Munitions (SIM) may be used against a specific individual who is engaging in conduct that poses an immediate threat of loss of life or serious bodily injury; or who is engaging in substantial destruction of property which creates an immediate risk to the lives or safety of other persons.

Smoke, gas, and SIMs were used on May 29, 30, 31, and June 1, 2020, during unlawful assemblies and in exigent circumstances. We will be conducting a thorough review and assessment of our Crowd Control and Crowd Management Policy operations as referenced above in an After-Action Report and via our Use of Force Investigations. All reviews and assessments will be reported to the Federal Monitor and our Police Commission. Transparency and minimal force are our goals.

### **Police Reforms**

#### **USE OF FORCE:**

Currently, there is an initiative encouraging departments to align with the policy guidelines articulated in reform movements such as the "8CantWait" principles <https://8cantwait.org/>.

In collaboration with the Oakland Police Commission, we have spent more than eight months revising our Use of Force Policy and many of the proposed revisions are in alignment with the 8CantWait” principles. With the full support of Mayor Libby Schaaf, we are proposing a Special Order to the Police Commission this week to remove the carotid restraint hold as a use of force option. The Department has already removed chokeholds as a use of force option. We are committed to evaluating the rest of these principles and will work in collaboration with our Police Commission Use of Force Committee to consider the best practices associated with them.

#### IMPLICIT BIAS AND RACE NEUTRAL POLICIES:

In alignment with the 21st Century best practices, the Oakland Police Department has developed and implemented very progressive policies to reduce implicit bias and address racial disparities. We work with leading experts in this field such as Dr. Jennifer Eberhardt of Stanford University, who recently referenced our innovative strategies in a Time Magazine article.

<https://time.com/5849172/police-racial-bias/>

The Oakland Police Department, working with our federal monitoring team and civilian oversight has been making systemic, proactive and progressive changes to our policies and practices for more than 20 years to transform the department’s impact on the community we serve. We are committed to deepening this critical work throughout all our practices, evaluating our recruitment and hiring processes, taking innovative steps to reduce implicit bias, collecting data about who we pull over and why, and partnering with the Police Commission to enact measurable and lasting change.

We recognize it’s not just about changing policy; it’s about changing police culture. To take the next steps, we have established an internal Race and Equity Impact team to evaluate our internal culture and evaluate the external and internal impacts of our practices and policy changes.

The killing of George Floyd in Minneapolis is the latest tragedy to shine a spotlight on the need for police reform across the nation. OPD is committed to advancing this work in Oakland, in collaboration with our City leadership, our Departments of Race & Equity and Violence Prevention, and most importantly, in consultation and partnership with our community.

Yours in Service,

*Susan E. Manheimer*

Interim Chief of Police



# TRAINING



# BULLETIN

Date of Issue / Revision  
04 OCT 13

Index Number: III-G  
Alpha Index: Crowd Control and  
Crowd Management

Evaluation Coordinator: BFO Deputy Chief  
Automatic Revision Cycle: 3 Years

*“Department Training Bulletins shall be used to advise members of current police techniques and procedures and shall constitute official policy.”*

## **OPD Crowd Control and Crowd Management Policy**

The purpose of this Training Bulletin is to set forth policy and procedures regarding crowd control and crowd management.

### **I. POLICY**

The Oakland Police Department crowd management and crowd control policy is to

- Apply the appropriate level of direction and control to protect life, property, and vital facilities;
- Maintain public peace and order; and
- Uphold constitutional rights of free speech and assembly while relying on the minimum use of physical force and authority required to address a crowd management or crowd control issue.

### **II. DEFINITIONS**

#### **A. Crowd Management**

Crowd management is defined as techniques used to manage lawful public assemblies before, during, and after an event for the purpose of maintaining the event's lawful status. Crowd management can be accomplished in part through coordination with event planners and group leaders, permit monitoring, and past event critiques.

#### **B. Crowd Control**

Crowd control is defined as those techniques used to address unlawful public assemblies, including a display of formidable numbers of police officers, crowd containment, dispersal tactics, and arrest procedures.

#### **C. First Amendment Activities**

First Amendment activities include all forms of speech and expressive conduct used to convey ideas and/or information, express grievances, or otherwise communicate with others and include both verbal and non-verbal expression.

Common First Amendment activities include, but are not limited to, speeches, demonstrations, vigils, picketing, distribution of literature, displaying banners or signs, use of puppets to convey a message, street theater, and other artistic forms of expression.

All these activities involve the freedom of speech, association, and assembly and the right to petition the government, as guaranteed by the United States Constitution (First Amendment) and the California Constitution (Article 1, Sections 2 & 3.)

All persons have the right to march, demonstrate, protest, rally, or perform other activities protected by the First Amendment of the United States Constitution and the California Constitution.

The government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.

D. Demonstration

Demonstration is used generically in this Training Bulletin to include a wide range of First Amendment activities which require, or which may require, police traffic control, crowd management, crowd control, crowd dispersal, or enforcement actions in a crowd situation.

As used in this Training Bulletin, the term, demonstration, means a public display of a group's or individual's feeling(s) toward a person(s), idea, cause, etc and includes, but is not limited to, marches, protests, student walk-outs, assemblies, and sit-ins. Such events and activities usually attract a crowd of persons including participants, onlookers, observers, media, and other persons who may disagree with the point of view of the activity.

E. Crowd Event or Crowd Situation

This Training Bulletin covers all crowd events or crowd situations, including sporting events, festivals, concerts, celebratory crowds, and demonstrations as defined above.

### III. GENERAL PRINCIPLES

The Oakland Police Department's Crowd Management/Crowd Control Policy consists of the general principles discussed below.

A. Planning

1. Command staff shall be notified immediately of large or potentially disruptive demonstrations and/or crowd events.
2. The Incident Commander shall be responsible for the development of a written operations plan.
3. The Incident Command System shall be used for managing crowds and acts of civil disobedience.
4. Internal Affairs personnel and civilian staff shall not be included in any planning, tactical or strategy component of an anticipated crowd control or management scenario, other than to help plan for the specific role of IAD functions such as complaint intake and investigations.

Ensure there are sufficient Criminal Investigation Division (CID) and Internal Affairs Division (IAD) personnel that are not assigned to uniformed field assignments where a reasonable possibility of confrontation, force, or subsequent alleged misconduct or officer involved criminal complaints may occur, so that they are available for investigating such allegations.

5. The Incident Commander shall coordinate with the City Attorney and County District Attorney to solicit and ensure information is current regarding but not limited to:
  - a. Criteria for unlawful assembly.
  - b. Appropriate penal codes for enforcement and arrest criteria.
  - c. Appropriate Oakland Municipal Codes for enforcement and arrest criteria.
  - d. Legal updates regarding force, search and seizure and arrest.
6. OPD shall make every effort to follow the principle of establishing contact and communication with the event or demonstration planners.

Stakeholder involvement is critical to the overall success of managing crowd events and/or civil disobedience during demonstrations. If knowledge exists that a demonstration or crowd event may happen or will happen, OPD shall proactively and repeatedly make every reasonable attempt to establish and to maintain communication and cooperation with representatives or leaders of the demonstration or crowd event, without regard to whether a permit has been applied for or issued.

When planning for and responding to demonstrations, crowd events, and civil disobedience situations, Incident Commanders assigned to these incidents shall facilitate the involvement of stakeholders. If and when communication is established, personnel shall make every effort to identify representatives or leaders of the event and identify a primary police liaison. The primary police liaison should be requested to be in continuous contact with an assigned police representative, preferably the Incident Commander or someone with continuous access to the Incident Commander.

A group's failure to respond to OPD attempts to establish communication and cooperation prior to a demonstration shall not mitigate OPD's efforts to establish liaison and positive communication with the group as early as possible at the scene of the demonstration or crowd event.

7. Spontaneous demonstrations or crowd events, which occur without prior planning and/or without prior notice to the police, present less opportunity for OPD planning and prevention efforts. Nonetheless, the same policies and regulations concerning crowd management, crowd control, crowd dispersal, and police responses to violence and disorder apply to a spontaneous demonstration or crowd event situation as to a planned demonstration or crowd event. Incident Commanders shall involve representatives of demonstrators or crowd events when planning and responding to both planned and spontaneous events.

## B. Deployment

1. Decisions about crowd dispersal and general strategies about crowd containment or crowd redirection, multiple simultaneous arrests, planned individual arrests, or planned use of force shall be made at the level of the Incident Commander or higher.
  - a. If such decisions are made by higher ranking off-site OPD officials, it is required that the Incident Commander first be consulted about the state of affairs in the field and the potential consequences of the decision.
  - b. All such decisions shall be documented in writing with regard to time, the identity of the person making the decision, and the precise decision and directions given. Such documentation shall be made at the time of the decision or as soon thereafter as possible and included in an After Action Report.

This directive shall not preclude individual commanders, supervisors, and officers from defending themselves or others from imminent danger when the delay in requesting permission to take action would increase the risk of injury.

2. OPD recognizes that the designated police liaison may change during the course of an event and that leadership of certain groups may not exist nor desire to be identified. No retaliatory practices or adverse action shall be taken by OPD against a group because it has failed or refused to appoint a police liaison or otherwise establish lines of communication with OPD.
3. Communication with the identified police liaison shall continue even if enforcement actions commence.
4. As staffing permits, officers should be deployed to the best available vantage points to observe and report crowd actions.
5. Lines of control should be established, especially in events that involve protesters with opposing views. Whenever possible, hostile factions should be separated.
6. Considering the type of crowd involved is an important factor in responding properly to its behavior.
7. Crowds may vary from cooperative or celebratory to non-compliant, hostile, and combative. Organized demonstrations in which some engage in coordinated, nonviolent civil disobedience should be distinguished, to the extent possible, from crowds in which substantial numbers of people are engaged in other types of unlawful acts.

## C. Policing a Crowd

1. Sufficient resources to make multiple simultaneous arrests should be available at demonstrations where such arrests are a reasonable possibility. However, this need must be balanced against the fact that a large and visible police presence may have a chilling effect on the exercise of free speech rights.
2. When possible, officers should be at their posts well in advance of arriving participants. If possible, officers should be positioned at a reasonable distance from the crowd to avoid a perception of intimidation.

3. In general, OPD officers shall work together in squads or platoons when policing a demonstration.
4. Each officer shall wear a badge, nameplate, or other device on the outside of his or her uniform or on his or her helmet which bears the identification number or the name of the officer, as required by Penal Code § 830.10.

The number or name shall be clearly visible at all times. The letters or numerals on helmets, jackets, and vests shall be clearly legible at a distance sufficient to provide a measure of safety for both officers and demonstrators/observers and, in no case, shall be less than two inches in height on helmets.

5. Crowd control and crowd dispersal, as well as a show of force in crowd control situations, should be accomplished whenever possible using specialized units of OPD rather than on-duty patrol officers.
6. Regardless of whether a parade permit has been obtained, OPD officers will try to facilitate demonstrations that may temporarily block traffic and/or otherwise use public streets subject to time, place, and manner of circumstances, by regulating and/or rerouting traffic as much as practical.

For a demonstration without a pre-planned route, the Incident Commander shall evaluate the size of the crowd with regard to whether demonstrators should be required to stay on the sidewalk or whether demonstrators should be allowed to be in one or more lanes of traffic.

This directive does not mean demonstrations must be allowed to deliberately disrupt commuter traffic and/or bridge approaches.

The Incident Commander shall balance the level of disruption to traffic against the OPD policy of facilitating First Amendment activity, the practicality of relegating the crowd to sidewalks or an alternate route, the expected duration of the disruption, and the traffic disruption expected in making a mass arrest if demonstrators refuse to leave the street.

OPD shall seek to communicate with organizers through their police liaison to resolve a problem if possible. Traffic control may also be essential at varying points in a demonstration and may help accomplish crowd containment, crowd isolation, or crowd dispersal.

7. It is essential to recognize that all members of a crowd of demonstrators are not the same.

Even when some members of a crowd engage in violence or destruction of property, other members of the crowd are not participating in those acts. Once some members of a crowd become violent, the situation often turns chaotic, and many individuals in the crowd who do not want to participate in the violent or destructive acts may be blocked from leaving the scene because the crowd is so large or because they are afraid they will move into a position of heightened danger.

This understanding does not mean OPD cannot take enforcement action against the crowd as permitted under this policy, but OPD shall seek to minimize the risk that force and arrests may be directed at innocent persons.

Verbal abuse against officers shall not constitute a reason for an arrest or for any use of force against such individuals. Officers shall avoid responding to abusive comments

8. Officers must not be affected by the content of the opinions being expressed nor by the race, gender, sexual orientation, physical disabilities, appearances, or affiliation of anyone exercising their lawful rights.
9. Department personnel must maintain professional demeanor and remain neutral in word and deed despite unlawful or anti-social behavior on the part of crowd members. Unprofessional police behavior can inflame a tense situation and make control efforts more difficult and dangerous.

Strong supervision and command are essential to maintaining unified, measured, and effective police response. A response incorporating strong leadership and based upon teamwork is crucial to maintaining control and safety. Impulsive or independent actions by officers are to be avoided.

10. Officers in non-violent crowd situations shall not display weapons before a dispersal order is given or other enforcement action is implemented.
11. OPD officers shall not be sent into an obviously hostile crowd solely for the purpose of communication. OPD officers shall not penetrate a crowd for an individual arrest unless the targeted individual is involved in criminal conduct which endangers persons or property, and the decision to move into the crowd is made by a supervisor or commander.
12. The Incident Commander and supervisors shall make every effort to ensure that the police mission is accomplished as efficiently and unobtrusively as possible with the highest regard for the human dignity and liberty of all persons and with minimal reliance on the use of physical force.

The use of force shall be restricted to circumstances authorized by law and to the degree reasonably necessary in light of the circumstances confronting members. This directive does not preclude police officers from taking appropriate action to direct crowd and vehicular movement; enforce ordinances and statutes; and employ the physical force necessary to maintain the safety of the crowd, the general public, law enforcement personnel, and emergency personnel.

#### **IV. RESPONSES TO CROWD SITUATIONS**

##### **A. Spontaneous Event or Incident**

1. The Watch Commander shall respond to the scene of spontaneous events, when practical, and take command of the incident as the Incident Commander until relieved by a ranking officer.
2. The Incident Commander shall declare over the police radio that he or she has assumed command of the incident. When practical, a command post shall be established as soon as possible.

3. An immediate assessment of the situation is essential for effective police response. The Incident Commander must ascertain the following information at the earliest possible time:
  - a. The location and type of event.
  - b. First Amendment activities will be evaluated by the Incident Commander to determine lawfulness of the actions by groups and individuals.
  - c. The approximate number of specific individuals engaged in unlawful conduct.
  - d. The likelihood that unlawful behavior will spread to other crowd participants (mimicking).
  - e. Immediate threats to the safety of the public and/or police officers.
  - f. The number of structure(s) or vehicle(s) involved.
  - g. The size of the involved area.
  - h. The number of additional officers and police resources needed as well as requirements for specialized units (Traffic, Tactical Operations Team, Crime Reduction Teams, etc.).
  - i. The appropriate manner of response (Code 2 or 3).
  - j. The staging area.
  - k. The location for a media staging area.
  - l. The ingress and egress routes.
  - m. Additional resources needed (paramedic, fire department, outside agencies, etc.).

**B. Planned Event Involving Potentially Large Crowds**

1. Upon notification, the Special Operations Division Commander or designee (Incident Commander) shall develop a written operations plan.  
  
The Incident Commander of planned events shall be responsible for the overall coordination of the event as well as for crowd control and management.  
  
Operations plans for large events requiring the redeployment of personnel from regular assignments shall be approved by the Deputy Chief of Field Operations.
2. The following factors shall be considered and addressed in developing the operations plan for a large crowd event, including but not limited to:
  - a. What type of event is to occur?
  - b. Who are the organizers? What is their past record of conduct (peaceful, violent, cooperative, etc.)?

- c. Will outsiders visibly and/or physically oppose the planned event?
- d. Will the event involve the use or abuse of alcohol or other substances?
- e. Where is the event to occur? Consider the size, location, and ingress and egress points.
- f. What is the optimal site for a command post as well as staging areas?
- g. Have the appropriate permits been issued?
- h. Have other agencies, bureaus, and divisions been notified and included in the planning process (paramedics, fire department, Communications, Intel, etc.)?
- i. Will the EOC be needed? Is Mutual Aid needed?
- j. Will off-duty personnel be involved? Has the commander of any off-duty personnel been made part of the planning process?
- k. Is it possible and appropriate to coordinate with group organizers and explain the Department's mission, preparation, and potential responses?

Information considered sensitive or confidential shall not be released to group organizers if it will jeopardize the safety or effectiveness of police personnel.

- l. Have the proper number of personnel been scheduled to safely handle the event? Should a reserve force be available?
  - m. Has an enforcement policy been formulated and communicated to affected personnel?
3. The OPD Event Coordinator shall perform the following tasks.
- a. Gather and analyze intelligence information about future crowd events, including review of information from both internal and external sources.
  - b. Coordinate with Special Events regarding permits and various Department sections, including bureaus, divisions, and specialized units, to prepare for a planned special event.
  - c. Meet in advance with event sponsors and group leaders to exchange information and to present the Department's philosophy and intent. Details of the department plan and preparation shall not be disclosed except when necessary to ensure success of the operation.
  - d. Coordinate with affected bureaus, divisions, police service areas, and special units to prepare and coordinate the development of an operations plan for a given event that details assignments, traffic and crowd flow, communications, tactics, and training.
  - e. Prepare operations plan as requested.
  - f. Coordinate inspection of protest/event area prior to an event to locate any pre-positioned equipment staged by demonstrators.

- g. Ensure that appropriate equipment and supplies are available.
  - h. Ensure that a video team(s) is established and required video equipment is available (see Part X.)
  - i. Establish protocols and procedures for the processing of arrestees and collection of evidence.
4. Personnel creating an operations plan to address a large crowd event should anticipate a variety of scenarios and devise a police response for each. Such scenarios and responses should be made part of the final plan and communicated to the affected personnel.
  5. When practical, personnel preparing for a large event with the potential for violence shall be retrained; training to include physically practicing various aspects of crowd management and crowd control.

Topics may include but are not limited to Mobile Field Force (MFF), multiple simultaneous arrest procedures, functioning in a tear gas environment, use of specialty impact munitions, applicable ordinances and statutes, protected speech, etc.

6. Personnel shall be briefed on the operations plan and their particular assignments before deployment.

Specific instructions covering topics such as applicable laws, community concerns, appropriate enforcement actions, chain of command, tactics, traffic patterns, etc., shall be clearly presented to personnel. All personnel shall be given a copy of the operations plan.

## **V. PERMISSIBLE CROWD CONTROL AND CROWD DISPERSAL TECHNIQUES**

- A. In the event of a declared unlawful assembly, it is the general policy of the OPD to use multiple simultaneous arrests to deal with a non-violent demonstration that fails to disperse and voluntarily submits to arrest as a form of political protest rather than dispersing the demonstrators by using weapons or force beyond that necessary to make the arrests.
- B. The Incident Commander shall make the final decision as to what control action, if any, will be taken to address a given crowd situation.

Crowd size and available Department resources will also factor into the police response. The following factors will be considered prior to determining what action to take:

1. Will police action likely improve the situation?
2. Will targeting specific violent or disruptive individuals for arrest be more effective or appropriate than applying control tactics to the entire crowd?
3. Are sufficient resources available to effectively manage the incident?

4. Have clear and secure escape routes been established for both the crowd and the police?
  5. Has the dispersal order been given (loudspeaker, personal contact, etc.)?
  6. Have contingency plans been established in the event initial police efforts are ineffective?
- C. Commanders shall constantly reassess and adjust tactics, as necessary, as the crowd's actions change.
- D. The Incident Commander shall consider and take reasonable and appropriate steps to ensure the safety of bystanders.
- E. When officers take action to move or disperse a crowd, steps should be taken to ensure that the crowd is not moved into a position or place that could be dangerous to persons in the crowd or bystanders, such as pushing them up against glass windows.
- F. When an Unlawful Assembly May Be Declared
1. The definition of an unlawful assembly has been set forth in Penal Code Section 407 and interpreted by court decisions. The terms, "boisterous" and "tumultuous," as written in Penal Code Section 407, have been interpreted as "conduct that poses a clear and present danger of imminent violence" or when the demonstration or crowd event is for the purpose of committing a criminal act.  
  
The police may not disperse a demonstration or crowd event before demonstrators have acted illegally or before the demonstrators pose a clear and present danger of imminent violence.
  2. The mere failure to obtain a permit, such as a parade permit or sound permit is not a sufficient basis to declare an unlawful assembly. There must be criminal activity or a clear and present danger of imminent violence.
  3. The fact that some of the demonstrators or organizing groups have engaged in violent or unlawful acts on prior occasions or demonstrations is not grounds for declaring an assembly unlawful.
  4. Unless emergency or dangerous circumstances prevent negotiation, crowd dispersal techniques shall not be initiated until after attempts have been made through contacts with the police liaisons and demonstration or crowd event leaders to negotiate a resolution of the situation so that the unlawful activity will cease and the First Amendment activity can continue.
  5. If after a crowd disperses pursuant to a declaration of unlawful assembly and subsequently participants assemble at a different geographic location where the participants are engaged in non-violent and lawful First Amendment activity, such an assembly cannot be dispersed unless it has been determined that it is an unlawful assembly and the required official declaration has been adequately given.

G. Declaration of Unlawful Assembly

1. When the only violation present is unlawful assembly, the crowd should be given an opportunity to disperse rather than face arrest.

Crowd dispersal techniques shall not be initiated until OPD has made repeated announcements to the crowd, asking members of the crowd to voluntarily disperse and informing them that, if they do not disperse, they will be subject to arrest.

These announcements must be made using adequate sound amplification equipment in a manner that will ensure that they are audible over a sufficient area. Announcements must be made from different locations when the demonstration is large and noisy. The dispersal orders should be repeated after commencement of the dispersal operation so that persons not present at the original broadcast will understand that they must leave the area. The announcements shall also specify adequate egress or escape routes. Whenever possible, a minimum of two escape/egress routes shall be identified and announced.

It is the responsibility of the on scene OPD commanders to ensure that all such announcements are made in such a way that they are clearly audible to the crowd.

2. Unless an immediate risk to public safety exists or significant property damage is occurring, sufficient time will be allowed for a crowd to comply with police commands before action is taken.
3. Dispersal orders should be given in English and in other languages that are appropriate for the audience.
4. The Incident Commander should ensure that the name of the individual making the dispersal order and the date/time each order was given is recorded.
5. Dispersal orders should not be given until officers are in position to support/direct crowd movement.
6. Personnel shall use the following Departmental dispersal order:

I am (rank/name), a peace officer for the City of Oakland. I hereby declare this to be an unlawful assembly, and in the name of the people of the State of California, command all those assembled at to immediately leave. If you do not do so, you may be arrested or subject to other police action, including the use of force which may result in serious injury.

Section 409 of the Penal Code prohibits remaining present at an unlawful assembly. If you remain in the area just described, regardless of your purpose, you will be in violation of Section 409. The following routes of dispersal are available (routes). You have (specify amount) minutes to leave. If you refuse to move, you will be arrested.

\* If you refuse to move, chemical agents will be used. (\* Provide the chemical warning only if use is anticipated).

7. When a command decision is made to employ crowd dispersal techniques, attempts to obtain voluntary compliance through announcements and attempts to obtain cooperation through negotiation shall both be continued. At any point at which a crowd is dispersing, whether as a reaction to police dispersal techniques, through voluntary compliance, or as a result of discussion or negotiation with crowd leaders, OPD dispersal techniques shall be suspended and the crowd shall be allowed to disperse voluntarily. This directive does not preclude a command decision by OPD to reinstate dispersal techniques if crowd compliance ceases.

#### H. Approved Tactics and Weapons to Disperse or Control a Non-Compliant Crowd

If negotiation and verbal announcements to disperse do not result in voluntary movement of the crowd, officers may employ additional crowd dispersal tactics, but only after orders from the Incident Commander or designated supervisory officials.

The permissible tactics to disperse or control a non-compliant crowd include all of the following (not in any specific order of use):

The use of these crowd dispersal tactics shall be consistent with the Department policy of using the minimal police intervention needed to address a crowd management or control issue in accordance with Department General Order K-3, USE OF FORCE.

1. Display of police officers (forceful presence).

A police formation may be moved as a unit to an area within the crowd's view to assist with crowd management. If a display of police officers, motorcycles, police vehicles, and mobile field forces, combined with a dispersal order, is not effective, more forceful actions may be employed.

Generally, officers should be assigned to squads of sufficient size to be effective. At larger events, the crowd can be divided (with a commander in charge of each squad).

2. Encirclement and Arrest

If the crowd has failed to disperse after the required announcements, officers may encircle the crowd or a portion of the crowd for purposes of making multiple simultaneous arrests (see Section VII).

Persons who make it clear (e.g., by sitting down, locking arms) that they seek to be arrested shall be arrested and not subjected to other dispersal techniques, such as the use of batons or chemical agents.

Arrests of non-violent persons shall be accomplished by verbal commands and persuasion, handcuffing, lifting, carrying, the use of dollies and/or stretchers, and/or the use of control holds including the bent-wrist control hold and twist-lock control hold (See Training Bulletin III-I.1, WEAPONLESS DEFENSE, pages 28-31.)

When dealing with non-violent or passive persons, control holds should only be used when a Supervisor or Commander determines that control holds are necessary to accomplish the policing goal after other methods of arrest have failed or are not feasible under the circumstances and when the use of control holds would be a lawful use of force.

In the event control holds are necessary, precautions should be taken to assure that arrestees are not injured or subjected to unnecessary or excessive pain.

A decision to authorize control holds and the reasons for said decision should be documented.

3. Police Formations and Use of Batons

- a. If a crowd refuses to disperse after the required announcements, the police may use squad or platoon formations (skirmish line, wedge, echelons, etc.) to move the crowd along.
- b. Batons shall not be used for crowd control, crowd containment, or crowd dispersal except as specified below.
- c. Batons may be visibly displayed and held in a ready position during squad or platoon formations.
- d. Batons shall only be used as set forth in Department General Order K-3, USE OF FORCE and Department Training Bulletin III-H.2, USE OF THE LONG BATON.

Officers shall not intentionally strike a person with any baton to the head, neck, throat, kidneys, spine, or groin or jab with force to the left armpit except when the person's conduct is creating an immediate threat of serious bodily injury or death to an officer or any other person. Batons shall not be used against a person who is handcuffed.

4. Non Hand-Held Crowd Control Chemical Agents

- a. Crowd control chemical agents are those chemical agents designed and intended to move or stop large numbers of individuals in a crowd situation and administered in the form of a delivery system which emits the chemical agent diffusely without targeting a specific individual or individuals.
- b. Chemical agents can produce serious injuries or even death. The elderly person or infant in the crowd or the individual with asthma or other breathing disorder may have a fatal reaction to chemical agents even when those chemical agents are used in accordance with the manufacturer's recommendations and the Department's training. Thus, crowd control chemical agents shall be used only if other techniques, such as encirclement and multiple simultaneous arrest or police formations have failed or will not accomplish the policing goal as determined by the Incident Commander.
- c. Members shall use the minimum amount of chemical agent necessary to obtain compliance in accordance with Department General Order K-3, USE OF FORCE.
- d. Indirect delivery or crowd dispersal spray and/or discharge of a chemical agent shall not be used in demonstrations or other crowd events without the approval of the Incident Commander. Only under exigent circumstances may a supervisor or commander authorize the immediate use of chemical agents.

The Incident Commander shall be notified immediately when an exigent use of chemical agents has occurred.

- e. Chemical agents shall not be used for crowd control or dispersal without first giving audible warning of their imminent use and giving reasonable time to the crowd, media, and observers to disperse.
- f. If chemical agents are contemplated in crowd situations, OPD shall have medical personnel on site prior to their use and shall make provision for decontamination and medical screening to those persons affected by the chemical agent(s).

5. Hand-thrown chemical agents or pyrotechnic gas dispersal devices

- a. Hand-thrown chemical agents or pyrotechnic gas dispersal devices shall not be used for crowd control or crowd dispersal without the approval of the Incident Commander. Only under exigent circumstances may a supervisor or commander authorize the immediate use of hand-thrown chemical agents or pyrotechnic gas dispersal devices. The Incident Commander shall be immediately notified when an exigent use of hand-thrown chemical agents or pyrotechnic gas dispersal devices has occurred.
- b. The use of hand-thrown chemical agents or pyrotechnic gas dispersal devices may present a risk of permanent loss of hearing or serious bodily injury from shrapnel. Said devices shall be deployed to explode at a safe distance from the crowd to minimize the risk of personal injury and to move the crowd in the direction that will accomplish the policing objective.
- c. Hand-thrown chemical agents or pyrotechnic gas dispersal devices shall not be used for crowd control without first giving audible warnings to the crowd and additional reasonable time to disperse.
- d. Hand-thrown chemical agents or pyrotechnic gas dispersal devices shall be used only if other techniques such as encirclement and mass arrest or police formations have failed or will not accomplish the policing goal as determined by the Incident Commander.

## **VI. WEAPONS PROHIBITED FOR CROWD CONTROL AND CROWD DISPERSAL PURPOSES**

### A. Lethal Force

The use of lethal force by OPD members is governed by the Department's Use of Force Policy. Nothing about a crowd control situation eliminates or changes any of the constraints and criteria governing the use of lethal force in the Department's Use of Force Policy.

### B. Canines

Canines shall not be used for crowd control, crowd containment, or crowd dispersal.

C. Horses

Horses shall be used only for purposes of crowd control in the event of a riot involving substantial numbers of people actively engaged in violence or serious property destruction. Horses shall never be used to disperse non-violent crowds, including persons who are seated or lying down.

Horses may be used for crowd management during festivals and sporting events.

D. Fire Hoses

Fire hoses shall not be used for crowd control, crowd containment, or crowd dispersal.

E. Motorcycles

The technique referred to as the Basic Use of Motorcycle Push Technique (B.U.M.P.) is prohibited. Motorcycles and police vehicles may not be used for crowd dispersal but may be used for purposes of observation, visible deterrence, traffic control, transportation, and area control during a crowd event.

F. Specialty Impact Less-Lethal Weapons

1. Skip Fired Specialty Impact Less-Lethal Munitions (Wooden Dowels and Stinger Grenades) are prohibited.
  - a. Any and all less-lethal specialty impact weapons designed to be skip fired or otherwise deployed in a non-directional non-target specific manner, including but not limited to the Multiple Wood Baton Shell (264W) manufactured by Armor Holdings, Inc. shall not be used at all by OPD during demonstrations or crowd events.
  - b. The use of the Stinger Grenade containing rubber pellets designed to be deployed in a non-directional non-target specific manner is also prohibited for all crowd control use.
2. Uses of Direct Fired Specialty Impact Less-Lethal Munitions (SIM)

Direct Fired SIM are less-lethal specialty impact weapons that are designed to be direct fired at a specific target, including but not limited to flexible batons ("bean bags"), and shall not be used for crowd management, crowd control or crowd dispersal during demonstrations or crowd events. Direct Fired SIM may never be used indiscriminately against a crowd or group of persons even if some members of the crowd or group are violent or disruptive.

- a. Direct Fired SIM may be used against a specific individual who is engaging in conduct that poses an immediate threat of loss of life or serious bodily injury to him or herself, officers, or the general public or who is engaging in substantial destruction of property which creates an immediate risk to the lives or safety of other persons.

In such instances, Direct Fired SIM shall be used only when other means of arrest are unsafe and when the individual can be targeted without endangering other crowd members or bystanders.

- b. The use of Direct Fired SIM must cease when the violent or destructive actions cease. These weapons must not be used for the purpose of apprehension or to otherwise prevent escape unless escape would present a substantial risk of continued immediate threat to loss of life or serious bodily injury.
- c. Members shall only deploy Direct Fired SIM during a demonstration or crowd event under the direction of a supervisor.
- d. When circumstances permit, the supervisor on the scene shall make an attempt to accomplish the policing goal without the use of Direct Fired SIM as described above, and, if practical, an audible warning shall be given to the subject before deployment of the weapon.
- e. Any person struck by a round shall be transported to a hospital for observation and any necessary treatment. Ambulance service, if required, shall be ordered per Department General Order I-4, AMBULANCE SERVICE. First aid, when necessary, shall be administered per Training Bulletin III-K, FIRST AID.
- f. No member shall use Direct Fired SIM without formal training.
- g. Direct Fired SIM shall not be used against a person who is under restraint.
- h. Members shall not discharge a Direct Fired SIM at a person's head, neck, throat, face, left armpit, spine, kidneys, or groin unless deadly force would be justified.

G. Electronic Immobilizing Devices (EID)

EID's such as tasers, stun guns, and stun shields shall not be used for crowd management, crowd control, or crowd dispersal during demonstrations or crowd events. Officers are not restricted from using Tasers in accordance with Department General Order K-3, USE OF FORCE.

H. Aerosol Hand-held Chemical Agents

Aerosol, hand-held, pressurized, containerized chemical agents that emit a stream shall not be used for crowd management, crowd control, or crowd dispersal during demonstrations or crowd events. Aerosol hand held chemical agents may not be used indiscriminately against a crowd or group of persons, but only against specific individuals who are engaged in specific acts of serious unlawful conduct or who are actively resisting arrest.

Members shall use the minimum amount of the chemical agent necessary to overcome the subject's resistance in accordance with Department General Order K-3, USE OF FORCE.

Officers must be familiar with OPD Training Bulletin V-F.2, USE OF OLEORESIN CAPSICUM (OC), and, specifically, the risk factors associated with aerosol chemical agents and the treatment for individuals subjected to them.

Aerosol chemical agents shall not be used in a demonstration or crowd situation or other civil disorders without the approval of a supervisor or command officer.

When possible, persons should be removed quickly from any area where hand-held chemical agents have been used. Members shall monitor the subject and pay particular attention to the subject's ability to breathe following the application of OC. As soon as practical, members and employees shall obtain professional medical treatment for all persons who have had OC applied to them. Paramedics in the field may administer treatment if no other medical treatment is required. If paramedics are not available in a timely manner, subjects shall be transported to a hospital for treatment within 45 minutes of the application of OC.

A subject who has been sprayed with hand-held chemical agents shall not be left lying on his/her stomach once handcuffed or restrained with any other device.

#### I. Munitions Inventory Log

The Training Section shall maintain the munitions inventory log for all less-lethal munitions which are checked out during crowd control events. Officers shall update the munitions inventory log after each event to specify how many munitions were used and by which person. A copy of the inventory log shall be included in the after-action report.

### VII. ARRESTS

#### A. Multiple Simultaneous Arrests

1. When a large-scale event involving possible arrests is to be conducted, OPD planners will estimate the number of potential arrestees and will configure arrest teams capable of managing multiple arrests safely.
2. When arrests are necessary, the Incident Commander shall attempt to ensure that sufficient numbers of police officers are present to effect arrests. This tactic can be effective in dispersing the remaining crowd members wanting to avoid arrest.
3. When multiple arrests are contemplated in advance and it is impracticable for arrestees to be cited at the scene as further discussed below, pre-arrangement of transportation shall be made.
4. The Incident Commander or his/her designee shall make the decisions to engage in selective individual arrests or multiple simultaneous arrests as a crowd control technique with consideration given to the following factors:
  - The likelihood that police action will improve the situation relative to taking no action.
  - The seriousness of the offense(s) as opposed to the potential for the arrest to escalate violence or unlawful activity by crowd members.
  - Whether individual or mass arrests will be more effective in ending the criminal activity at issue.
  - Whether clear and secure escape routes have been established for the crowd and police.
  - Whether communication has been established with crowd representatives.
  - What contingency plans are available?
  - What types of force can be used in effecting the arrests, if necessary.

5. Probable cause for each individual arrest:

Individuals may not be arrested based on their association with a crowd in which unlawful activity has occurred. There must be probable cause for each individual arrest.

This principle means the officer must have objective facts based on his own knowledge or information given him by other officers sufficient to believe that each specific individual being arrested committed the offense.

Thus, the only proper basis for a multiple simultaneous arrest of all the individuals encircled at a demonstration is failure to disperse (Pen. Code §409), when the dispersal was properly ordered based on the existence of an unlawful assembly and adequate notice and opportunity to disperse has been given.

To make arrests for violating Vehicle Code §2800 (non-compliance with lawful police order), the officer must have probable cause to believe that each individual arrested willfully failed or refused to comply with a lawful order.

6. The Incident Commander shall ensure that evidentiary items are recovered and preserved, when possible, to corroborate unlawful acts observed by personnel.

B. Arrests for Civil Disobedience

1. Some demonstrators commit "civil disobedience," by sitting down or otherwise blocking streets, intersections, sidewalks, and/or entranceways or by occupying a targeted office.

The proper response to such actions is to verbally advise the demonstrators that they will be subject to arrest if they choose to remain, allow time for some or all the demonstrators to cease the unlawful activity, and to arrest those who deliberately remain in violation of the law.

When practical, demonstrators committing civil disobedience shall be persuaded into compliance rather than being forcibly removed.

2. Passively resisting arrestees (i.e., arrestees who go limp) shall be arrested by handcuffing and then either by verbal persuasion, lifting, carrying, the use of dollies or stretchers, and/or control holds (See Training Bulletin III-I.1, WEAPONLESS DEFENSE, pages 28 - 31) depending on the circumstances and the decision of the Supervisor.

Control holds should be used only when the Supervisor determines that control holds are necessary to accomplish the policing goal after other methods of arrest have failed or are not feasible under the circumstances and when the use of control holds would be a lawful use of force.

In the event control holds are necessary, precautions must be taken to ensure that arrestees are not injured or subjected to unnecessary or excessive pain.

A Supervisor's decision to authorize control holds and the reasons for said decision should be documented.

Planning for demonstrations where civil disobedience and passive resistance to arrest are a possibility should take into account these different arrest techniques for passive demonstrators.

3. In some cases, demonstrators may lock arms or use lock boxes to slow down the arrest process.

Where such demonstrators have been advised that they will be subject to arrest if they choose to remain and refuse to disperse, a member of the arrest team shall individually advise each demonstrator that he or she is under arrest prior to the application of any force to remove locking devices or to move the demonstrators. The officer shall continue to give verbal directions to give the arrestee a chance to comply before force is used to unlock arms or implements used to remove lock boxes.

4. Although dealing with passive resistance may frustrate officers, civil disobedience is usually a nonviolent means of making a political statement, and officers shall remain neutral, non-antagonistic, and professional at all times in their response.

C. Use of Handcuffs

1. All persons subject to arrest during a demonstration or crowd event shall be handcuffed in accordance with department policy, orders, and Training Bulletins.
2. Officers should be cognizant that flex-cuffs may tighten when arrestees' hands swell or move, sometimes simply in response to pain from the cuffs themselves.

Each unit involved in detention and/or transportation of arrestees with flex-cuffs should have a flex-cuff cutter and adequate supplies of extra flex-cuffs readily available. The officer applying flex-cuffs shall write his serial number in indelible marker on the cuffs whenever used. When arrestees complain of pain from overly tight flex cuffs, members shall examine the cuffs to ensure proper fit

D. Arrest of Juveniles

Juveniles arrested in demonstrations shall be handled consistent with OPD policy on arrest, transportation, and detention of juveniles.

## **VIII. CITE/RELEASE AND BOOKING PROCEDURES**

- A. Individuals arrested for minor offenses may be cited and released in compliance with Penal Code §853.6 and Department General Order M-7, CITATIONS FOR ADULT MISDEMEANORS, Part III, A-N.
- B. When it is impractical to cite arrestees at or near the site of the demonstration because of a substantial risk that this procedure would allow the unlawful activity to continue or because of specific geographic factors, officers may cite and release arrestees from temporary processing stations or police facilities as near the site of the arrest as possible. While detained during the citation and release process, arrestees shall have reasonable access to toilet facilities and to appropriate medical attention.
- C. No fingerprinting will be done as part of the citation and release process. Arrestees may be instructed to appear for booking prior to or after arraignment.

Commanders shall exercise discretion as to whether property searches are necessary. Property of persons who qualify for citation and release will not be confiscated unless it is found to contain contraband. The intention of this policy is to release citation-eligible arrestees as promptly as possible, and to obviate the need to transfer such arrestees to the Sheriff's custody. Persons for whom a valid warrant is confirmed, or who do not produce valid identification or who are otherwise found ineligible for citation will be transferred to the Sheriff's custody.

- D. An officer seeking to book a misdemeanor arrestee into jail must have an articulable basis to believe that one of the specified statutory exceptions to mandatory cite and release applies to that individual. This basis must be documented in the police report.
- E. The mere fact that further demonstrations are likely to be held in the near future is not a proper basis to apply subdivision (7) of P.C. 853.6 ("reasonable likelihood that the offense may continue or resume") to individual demonstrators.
- F. There must be an articulable objective basis to believe that, if cited out, those specific individuals would continue the same illegal activity for which they were arrested.
- G. Individuals may not be booked into jail on the sole basis of a felony charge consisting of conspiracy to commit a misdemeanor.

## **IX. MUTUAL AID & MULTI-AGENCY COORDINATION**

For large demonstrations and mass gatherings, OPD may be required to rely on Mutual Aid agencies for assistance (see DGO L-3, ASSISTANCE TO OUTSIDE JURISDICTIONS AND MUTUAL AID.) The Department is responsible for following the protocols of the Mutual Aid Plan in accordance with the California Emergency Services Act, commencing at Government Code Section 8550, for contacting law enforcement partners for assistance. Department leaders and commanders should be familiar with the process and responsibilities of requesting and receiving law enforcement mutual aid. See, the Law Enforcement Mutual Aid Plan and its companion document, Law Enforcement Guide for Emergency Operations, at [www.calema.ca.gov](http://www.calema.ca.gov). In addition, the IC shall be responsible for ensuring to the extent possible that mutual aid agencies:

- 1. Are briefed and in agreement with OPD's Unity of Command structure under which only OPD Commanders may authorize the use of less lethal munitions for crowd control and dispersal;
- 2. Are briefed on OPD's policy on prohibited weapons and force;
- 3. Do not bring or use any weapons or force that is prohibited under OPD's policy;
- 4. Are provided a copy of OPD's Crowd Control Policy and Use of Force policies;
- 5. Are not assigned to front-line positions or used for crowd intervention, control or dispersal unless there is a public safety emergency;
- 6. Complete required reports prior to being released from duty. Agencies should provide the following documents/reports when they are applicable: Use of force report, arrest report, crime report, injury report, equipment damage report and list of responding personnel; and

7. These provisions do not affect an OPD or mutual aid officer from taking action or using force against an individual in self-defense or in defense of another person or officer.

## **X. DOCUMENTATION**

### **A. Video and Photographic Recording**

1. It is the policy of the Department to videotape and photograph in a manner that minimizes interference with people lawfully participating in First Amendment activities.

Videotaping and photographing of First Amendment activities shall take place only when authorized by the Incident Commander or other supervisory officer.

Officers shall utilize their Personal Digital Recording Device (PDRD) in accordance with DGO I-15.1, PORTABLE VIDEO MANAGEMENT SYSTEM. In addition, officers shall activate their PDRDs whenever taking any enforcement action during a crowd control situation or when ordered to activate their PDRD by a supervisor or commander.

2. Individuals should not be singled out for photographing or recording simply because they appear to be leaders, organizers, or speakers.
3. Each camcorder operator shall write a supplemental report at the end of his/her duty assignment documenting the camcorder operations.
4. Unless they provide evidence of criminal activity, videos or photographs of demonstrations shall not be disseminated to other government agencies, including federal, state, and local law enforcement agencies. If videos or photographs are disseminated or shared with another law enforcement agency, a record should be created and maintained noting the date and recipient of the information.
5. If there are no pending criminal prosecutions arising from the demonstration or if the video recording or photographing is not relevant to an Internal Affairs or citizen complaint investigation or proceedings or to civil litigation arising from police conduct at the demonstration, the video recording and/or photographs shall be destroyed in accordance with Department and city policies.

This directive shall not prohibit the OPD from using these videos or footage from such videos as part of training materials for OPD officers in crowd control and crowd dispersal techniques and procedures. The destruction of any such videos or photographs shall be documented in writing with regard to the date of the destruction and the identity of the person who carried it out.

6. Nothing in this section is intended to alter the disclosure requirements of the California Public Records Act (Government Code §6250 et seq.) or the City of Oakland's Sunshine Ordinance (O.M.C. §2.20 et seq.).

## **XI. REPORTING**

- A. The Incident Commander shall ensure that the Deputy Chief of the Bureau of Field Operations is notified of the incident in a timely manner.
- B. The Incident Commander shall ensure that a debrief is conducted within 72 hours of the critical incident.
- C. The IC shall evaluate the need for an After-Action report which outlines the lessons learned and training opportunities, as well as an assessment of the effectiveness and quality of the Operations Plans. An After Action Report will be completed within 30 days of the event if one of the following events occurs:
  - 1. Mutual Aid is requested;
  - 2. An unlawful assembly is declared;
  - 3. Arrests are made for acts of civil disobedience;
  - 4. Significant police resources are used to control the event; or
  - 5. Chemical agents or SIMS are used

The Operations Plan and After Action Report shall be reviewed by the chain of command and forwarded to the Bureau of Risk Management and the Crowd Control Coordinator for retention.

## **XII. PUBLIC INFORMATION AND THE MEDIA**

- A. The media have a right to cover demonstrations, including the right to record the event on video, film, or in photographs.
- B. OPD members shall accommodate the media in accordance with Department policy.
- C. The media shall be permitted to observe and shall be permitted close enough access to the arrestees to record their names. Even after a dispersal order has been given, clearly identified media shall be permitted to carry out their professional duties in any area where arrests are being made unless their presence would unduly interfere with the enforcement action.
- D. Self-identified legal observers and crowd monitors do not have the same legal status as the professional media and are, therefore, subject to all laws and orders similar to any other person or citizen.
- E. Said personnel must comply with all dispersal orders similar to any other person or citizen. A supervisor or commander may allow a person who self-identifies as a legal observer or crowd monitor to remain in an area after a dispersal order if circumstances permit and if the person's presence would not unduly interfere with the enforcement action.

- F. On request, the Incident Commander or a supervisor may inform the media, legal observers, crowd monitors, police liaison, and/or organizers about the nature of any criminal charges to be filed against arrestees, the location where arrestees are being taken, and the Department's intent for arrestees to be cited out or booked at a custodial facility.
- G. The media, legal observers, crowd monitors, police liaison, and/or organizers shall never be targeted for dispersal or enforcement action because of their status.

### **XIII. TRAINING**

- A. All OPD crowd control policies and procedures shall be set forth in a Crowd Control Training Bulletin.

All other OPD orders and Training Bulletins will be reviewed to ensure consistency with the new policy and Training Bulletin.

- B. All officers must receive training consistent with these new policies and procedures.

All training on crowd control shall include substantial coverage of these Department policies. No officers shall use less-lethal weapons unless they have received the training required by Department policies.

- C. Every OPD officer shall receive this training.

Either independently or in conjunction with other scheduled training, each officer shall receive periodic instruction regarding the key elements of this policy. The Department will seek to improve its ability to manage crowd control events through study and evaluation of past incidents occurring in Oakland and other jurisdictions. Training in crowd management is crucial and shall be an ongoing process. All members of OPD shall be trained in these crowd control policies and procedures and shall then receive additional periodic crowd control refresher training thereafter. Crowd control training shall also become an integral part of the recruit academy curriculum.

- D. All training called for in this section shall be documented with regard to individual officer attendance, dates of training, test scores or other evidence of successful completion of training, and identity of each instructor, and copies of both student curriculum materials and instructor curriculum materials shall be archived.

### **XIV. CROWD MANAGEMENT COORDINATOR (CMC)**

- A. The Chief of Police shall designate a Departmental Crowd Management Coordinator whose responsibilities will include:

1. Coordinating the training of personnel on crowd control, planning, operations and after-action reporting.
2. Conducting reviews of crowd control policies and case law.

3. Conducting quarterly reviews of all crowd control incidents and their respective operation plans and after action reports and providing a quarterly report to the Chief of Police. In the course of the producing the quarterly reports, the Crowd Management Coordinator shall:
  - a. Look to identify training points for publication in Training Bulletins;
  - b. Look to identify Departmental training needs;
  - c. Ensure Departmental policy and training comports with new case law and industry standards;
  - d. Ensure that the City Attorney and District Attorney are consulted when revising Departmental policy and planning Departmental training on crowd control and management and related topics; and
  - e. Produce a non-classified public quarterly crowd control report

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AKIL RILEY, IAN McDONNELL, NICO  
NADA, AZIZE NGO, and JENNIFER LI

16  
17 **UNITED STATES DISTRICT COURT**

18 **NORTHERN DISTRICT OF CALIFORNIA**

19 ANTI POLICE-TERROR PROJECT,  
20 COMMUNITY READY CORPS, AKIL  
RILEY, IAN McDONNELL, NICO NADA,  
21 AZIZE NGO, and JENNIFER LI, on behalf  
of themselves and similarly situated  
22 individuals,

23 Plaintiffs,

24 vs.

25 CITY OF OAKLAND,  
26  
27  
28

Defendants.

) Case No. 3:20-cv-03866-JCS  
)  
) **[PROPOSED] ORDER GRANTING**  
) **TEMPORARY RESTRAINING ORDER**  
) **AND ORDER TO SHOW CAUSE**

1 This matter came before the Court's on June 18, 2020, at 1 p.m., on Plaintiffs'  
2 Application for a Temporary Restraining Order and Order to Show Cause.

3 Based upon the agreement of the parties and good cause appearing,

4 IT IS HEREBY ORDERED, pending further hearing and the Court's Order, that  
5 defendants City of Oakland, Police Chief Susan Manheimer, et al., and all persons acting on  
6 their behalf and under their supervision are forbidden from:

- 7 1. Using tear gas or any other chemical weapons against persons taking part in a  
8 protest or demonstration.
- 9 2. Firing rubber bullets or similar projectiles at persons taking part in a protest or  
10 demonstration.
- 11 3. Firing flash bang grenades at persons taking part in a protest or demonstration.
- 12 4. The prohibitions of paragraphs 1 and 3 do not apply where, upon the decision of  
13 the OPD Operations Commander or Incident Commander, it is determined that  
14 the use of tear gas or any other chemical weapon or flash bang grenades is  
15 reasonably necessary to protect the lives of people, protect people from serious  
16 bodily injury, or to prevent the imminent destruction of property, tear gas or other  
17 chemical weapons or flash bang grenades at Oakland City Hall, the OPD  
18 Administration Building, or the OPD Eastmont Mall Substation to protect persons  
19 or protect that property from destruction. Flash bang grenades may not be fired  
20 directly at persons but must be fired only in a safe direction. To the fullest extent  
21 possible, such use of tear gas or other chemical weapons and flash bang grenades  
22 is allowed only after an audible warning of their use has been issued and after  
23 sufficient time to comply has been granted.
- 24 5. In all actions in which the Oakland Police Department calls in police personnel  
25 from other jurisdictions under mutual aid agreements, to the fullest extent  
26 possible OPD personnel shall endeavor to assume front line positions between  
27 mutual aid officers and demonstrators.
- 28

1 This Order shall remain in effect until further Order of the Court. This matter shall be  
2 heard by the Court on July 2, 2020, on Plaintiffs' motion for a preliminary injunction.

3  
4 SO STIPULATED.

5  
6 SIEGEL, YEE, BRUNNER & MEHTA  
7 WALTER RILEY  
8 JAMES DOUGLAS BURCH

9 By: *Dan Siegel* \_\_\_\_\_  
10 Dan Siegel

11 Attorneys for Plaintiffs

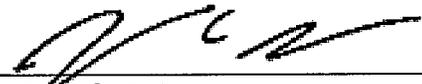
12 CITY OF OAKLAND

13 By: *David A. Pereda* \_\_\_\_\_  
14 David A. Pereda

15 Attorneys for Defendants

16 IT IS SO ORDERED.

17  
18 Dated: June 18, 2020

19   
20 \_\_\_\_\_  
21 Hon. Joseph C. Spero  
22 UNITED STATES MAGISTRATE JUDGE  
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# OAKLAND POLICE COMMISSION

## RESOLUTION NO. 20-02

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### **RESOLUTION URGING THE CIVIL SERVICE COMMISSION TO ADOPT RULES TO DISQUALIFY ANY APPLICANT FOR EMPLOYMENT IN THE UNIFORMED RANKS OF THE OAKLAND POLICE DEPARTMENT BASED ON PRIOR ACTS OF MISCONDUCT.**

**WHEREAS**, the voters of the City of Oakland voted yes for Measure LL on November 8, 2016, which established the Oakland Police Commission; and

**WHEREAS**, Measure LL amended the Oakland City Charter to add section 604, entitled "Police Commission;" and

**WHEREAS**, The Oakland Police Department (OPD) is entrusted with keeping all community members in Oakland safe and enforcing laws; and

**WHEREAS**, All Oakland community members equally deserve to feel safe when interacting with police and should be able to trust that the officers tasked with protecting them have no prior history of excessive force, racial bias, or other significant misconduct; and

**WHEREAS**, There is a national crisis over repeated instances of police brutality and killings of Black people and persons of color; and

**WHEREAS**, There is a longstanding history of racial bias in policing nationwide and in Oakland, especially towards Black people; and

**WHEREAS**, George Floyd, a Black Man, was killed by a Minneapolis Police Officer who kneeled on his neck for more than eight minutes while he struggled to breathe and who had prior complaints against him and multiple officer-involved shootings but was permitted to remain on the police force; and

**WHEREAS**, Various Bay Area criminal justice policy bodies have acknowledged that communities of color have borne the burdens of inequitable social, environmental, economic, and criminal justice policies, practices, and investments; and

**WHEREAS**, The legacy of these injustices has caused deep racial disparities throughout Oakland; and

**WHEREAS**, Various The Oakland Police Commission has committed to the elimination of racial disparities in policing; and

**WHEREAS**, Members of the public cannot fully trust law enforcement officers or feel safe if they are uncertain whether an officer with whom they interact had a prior history of significant misconduct or abuse; and

**WHEREAS**, It is difficult, and in some cases prohibited, especially under California law for members of the public to know about prior complaints or findings related to law enforcement officer misconduct; and

**WHEREAS**, Public trust, including in Oakland, is badly damaged between law enforcement and many of the communities they serve, particularly communities of color; and

**WHEREAS**, The Oakland Police Commission aspires to hold the Oakland Police Department to the highest standard of professionalism and integrity; now, therefore, be it

**RESOLVED**, That the Oakland Police Commission urges the Civil Service Commission to adopt rules requiring the disqualification of any applicant for employment in the Uniformed Ranks of the Oakland Police Department if:

(1) The applicant has been the subject of a sustained finding or two unsustained complaints by different complainants against the applicant by any law enforcement agency or oversight agency, following an investigation and opportunity for administrative appeal by the applicant, that the applicant, while employed as a peace officer, engaged in serious misconduct, which includes but is not limited to the following: use of excessive force, racial bias, sexual assault, discrimination against any person or group based on race, gender, religion, nationality, or sexual orientation, or dishonesty directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence; or

(2) The applicant resigned or retired from their employment as a peace officer in any jurisdiction during the pendency of a disciplinary proceeding related to alleged serious misconduct by the applicant while they were employed as a peace officer, and the proceeding was suspended or terminated as a result of the applicant's resignation or retirement, until such a time that the applicant has been exonerated for the pending allegation.

IN POLICE COMMISSION MEETING, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES –

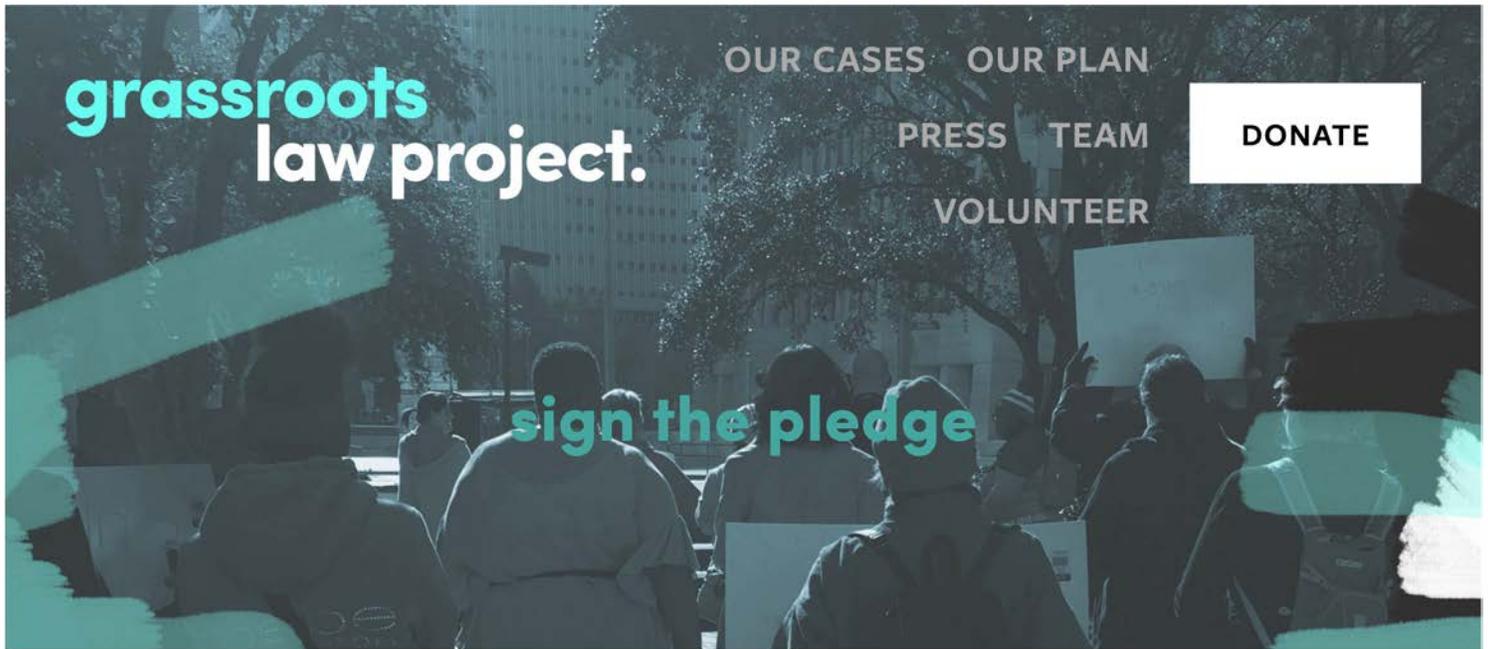
NOES –

ABSENT –

ABSTENTION –

ATTEST: \_\_\_\_\_

JAN RUS, IV  
Policy Analyst, Community Police Review Agency  
City of Oakland, California



# Sign the Path to Justice Pledge

Officials who sign the Path to Justice Pledge commit to support policies that:

- End police brutality and killings by restricting the use of force, creating non-lethal response teams, and demilitarizing police forces.
- Hold law enforcement accountable by creating committees for oversight with subpoena powers, and eliminating exceptions for law enforcement such as qualified immunity

**Please provide a link to a social media post or press release as proof of a public statement in support of the Path to Justice Pledge.**

Official Position or Title\*

Name \*

First Name

Last Name

Email \*

City\*

State\*

Link to Proof of Public Statement\*

**SIGN UP**

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## POLICE COMMISSION

250 FRANK H. OGAWA PLAZA, SUITE 6302 • OAKLAND, CALIFORNIA 94612

**TO:** Oakland Police Commission  
Members of the Oakland Community

**FROM:** Police Commission / Police Department Ad Hoc Working Group on Policy:  
General Order K-03 – *Use of Force*

---

Honorable Commissioners and Members of the Public,

In the agenda packet before you, you can see the product of an extensive number of meetings (averaging several hours per meeting) of an ad hoc working group dedicated to re-writing the Oakland Police Department's *Use of Force* policy from the ground up. In January 2020, the Oakland Police Commission voted to approve a new version of Department General Order (DGO) K-03 Use of Force, to comply with Assembly Bill 392 Peace Officer: Deadly Force an act to amend Sections 196 and 835a of the Penal Code, relating to peace officers. This was the first phase of a two-phase project and immediate need to bring Oakland's Use of Force policy to legal compliance. As a part of the discussion about approving the new K-03, effective January 1, 2020, the Oakland Police Commission, external stakeholders and community groups, and the Oakland Police Department collectively asserted during this meeting that the ultimate goal, to best serve the community, was a more comprehensive revision of K-03. Members of the Use of Force Ad Hoc (UOF Ad Hoc) agreed to reconvene to complete the comprehensive revision. The UOF Ad Hoc group met nearly every other Thursday evening, and weekly after the shelter-in-place order, for almost six months to produce a comprehensive document which gives both broad conceptual guidance and specific instruction to Oakland's sworn officers on the Use of Force in the course of their duties. Beyond leveraging the experience and knowledge of all ad hoc group members, the group also borrowed concepts and language from leading use of force policies from agencies throughout the United States (see section II, below).

### **I. Highlights of the Draft Policy**

The draft policy created by the ad hoc working group seeks to set forth plain-language guidance and instruction for Oakland's sworn officers while at the same time keeping the policy transparent and easily understandable by the community. Some of the highlights of the draft policy include:

- ❖ **Core Principles and Overall Mission First:** The first section of the document is dedicated to important overarching concepts that must guide all decisions surrounding the use and evaluation of force, including the primary mission of protecting life, a commitment to de-escalation, a duty to intervene to stop excessive force, a commitment to medical aid, and a commitment to thorough and fair evaluation of force.

- ❖ **Specific Policy Direction Mandating De-Escalation:** Sworn officers are required by the draft policy (in Section C) to utilize de-escalation tactics and techniques in order to reduce the need for force, and de-escalation is tied specifically to the Department’s mission of preserving life and limiting reliance on the use of force.
- ❖ **Overarching, Easily Understood Concepts Applicable to All Force:** Before getting into more specific rules and prohibitions, the draft policy sets forth (in Section D) general policy requirements that apply to all force, regardless of type or intensity. These include:
  - Requirements that force be reasonable, necessary, and proportional;
  - Prohibitions on unreasonable force;
  - Requirements for identification and warnings prior to all use of force;
  - Requirements to de-escalate force after force has been used; and
  - Requirements to provide medical aid after force has been used.
- ❖ **Extensive Discussion of Levels of Resistance, Force, and Less-Lethal Force Options**
- ❖ **Strict Necessity Requirements for Lethal Force in Line with AB 392**
- ❖ **Prohibitions on Discharging Firearms at Moving Vehicles**
- ❖ **Specific Rules on Preventing Positional Asphyxia:** These include specific direction against sitting, standing, or kneeling on a persons’ head, neck, chest, or back and to ensure that a subject under control is in a position to allow free breathing.

## II. Policies and Sources Consulted

The draft policy owes much of its language and concepts to other policies. Each addition from other sources, however, was reviewed and often modified or added upon in the draft policy by the ad hoc group. The policies and sources consulted during the drafting of this policy include:

- ❖ **Assembly Bill 392** – text of Penal Code § 835a, which took effect January 1<sup>st</sup> 2020;
- ❖ **Denver Police Policy on Use of Force** – Includes content from Denver PD Operations Manual 101.00 (General Philosophy), 105.01 (Use of Force Policy), 105.02 (Force and Control Options), 105.03 (Reporting), 105.04 (Shooting by and/or of Police Officers), and 105.05 (Use of Force Review Board)
- ❖ **New Orleans Police Department Policy on Use of Force** – Includes content from NOPD Operations Manual Chapter 1.3, Title: “Use of Force”
- ❖ **Camden County (NJ) Police Department Order on Use of Force** – Effective date January 28th, 2013, revision date August 21st, 2019.
- ❖ **Campaign Zero’s “8 Can’t Wait” proposals** (available at [www.8cantwait.org](http://www.8cantwait.org))
- ❖ **District of Columbia Metropolitan Police Department General Order on Use of Force** – Effective Date November 3rd, 2017
- ❖ **Cleveland Division of Police General Order on De-Escalation** – Effective Date January 1st, 2018
- ❖ **Seattle Police Department Manual, Title 8 – Use of Force.** Includes Chapters:
  - 8.000 - Use of Force Core Principles (Effective Date September 15th, 2019)
  - 8.050 - Use of Force Definitions (Effective Date September 15th, 2019)
  - 8.100 - De-Escalation (Effective Date September 15th, 2019)

- 8.200 - Using Force (Effective Date September 15th, 2019)
- 8.300 - Use of Force Tools (Effective Date September 15th, 2019)
- 8.310 - OC Spray Chain of Custody (Effective Date September 1st, 2019)
- 8.400 - Use of Force Reporting and Investigation (Effective Date September 15th, 2019)
- 8.500 - Reviewing Use of Force (Effective Date September 15th, 2019)
- ❖ **National Consensus Policy on Use of Force** – International Association of Chiefs of Police, October 2017
- ❖ **San Francisco Police Department General Order 5.01, Use of Force** – Revised December 21st, 2016.
- ❖ **California Jury Instructions 3160**, Great Bodily Injury – CalCRIM 2017 Edition, Judicial Council of California.
- ❖ *Graham v. Connor*, 490 U.S. 386 (1989)
- ❖ **California Attorney General Xavier Becerra’s recommended force policy reforms** (available at <https://www.oag.ca.gov/news/press-releases/attorney-general-becerra-calls-broad-police-reforms-and-proactive-efforts>)

### III. Members of the Ad Hoc Group

Ginale Harris, Commissioner, Oakland Police Commission  
 Tara Anderson, Commissioner, Oakland Police Commission  
 Henry Gage III, Vice-Chair, Oakland Police Commission  
 James B. Chanin, Civil Rights Attorney  
 John Alden, Director, Community Police Review Agency  
 Juanito Rus, Policy Analyst, Community Police Review Agency  
 LeRonne Armstrong, Deputy Chief, Oakland Police Department  
 Roland Holmgren, Deputy Chief, Oakland Police Department  
 Nishant Joshi, Captain, Oakland Police Department  
 Phillip Andrew Best, Police Services Manager, Oakland Police Department  
 Joseph Turner, Sergeant, Oakland Police Department  
 Brigid Martin, Deputy City Attorney, Office of the Oakland City Attorney

### IV. Next Steps

While the UOF Ad Hoc group is formally presenting this draft to the whole of the Commission and to the public during this public meeting, the work is not done. The UOF Ad Hoc group formally endorses and recommends three activities to engage the public to inform the final development of DGO K-03. After additional work by the ad hoc group to review and modify the draft in consideration of public input, the ad hoc group will formally propose that the policy be approved by the entirety of the Police Commission. In order to facilitate authentic and meaningful inclusion of the information provided through these activities the UOF Ad Hoc believes that the final draft of the revised DGO K-03 will be presented to the Commission as a whole in September 2020.

### Town Halls

A series of public town hall-style meetings to solicit public comment and input, where third party facilitators assist with organizing and collecting/contextualizing public feedback. Further discussions from the full Commission regarding planning for the fullest representation in any public outreach strategy is suggested to ensure that the voices of those most impacted will be welcomed and heard.

### **Public Posting & Written Feedback**

The draft revisions to DGO K-03 will be posted on the Police Commission website. There will be an open 30 period to provide written feedback on the department general order. Respondents will be instructed to submit edits or recommendations to an email solely designated for this purpose.

### **Raheem**

Virtual town hall meetings and solicitation of written feedback will unintentionally exclude members of the community from the policy development process. As a result, the Commission proactively instructed the Community Police Review Agency (CPRA) to enter into a professional services contract with Raheem for the purpose of collecting, “community input related to the Oakland Police Department Use of Force Policy Revision.” The specific services under this agreement include; an analysis of resident experiences of and attitudes towards use of force by Oakland Police and Use of Force Study Report. These activities differ in scope and scale from previous efforts in that respondents will have had recent experience with having been stopped by, called, and or directly harmed by OPD. Raheem’s main source of data on Use of Force was requested directly from the City of Oakland and the Oakland Police Department, and includes detailed police stop and incident data.

OFFICE OF CHIEF OF POLICE  
OAKLAND POLICE DEPARTMENT

SPECIAL ORDER 9205

TO: Sworn Personnel

SUBJECT: Suspension of the Carotid Restraint

DATE: 9 Jun 2020

TERMINATION: Upon Revision of DGO K-03, *Use of Force*

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The use of authorized force by police officers, acting as agents of the state, is fundamentally an exercise of governance with the consent of the people. Recent events have changed the nature of the relationship between the public and the government regarding police use of force, especially surrounding restraints of a person's neck.

The Oakland Police Department does not authorize nor train "chokeholds," which obstruct a person's ability to breathe. The Department has continued, however, to teach the carotid restraint hold which has until recently been required training pursuant to California Peace Officer Standards and Training (POST). When used correctly, the carotid restraint hold does not obstruct a person's ability to breathe. While the carotid restraint is utilized by different police departments across the state in different ways, Oakland Police Department has consistently directed officers that the carotid restraint be utilized **only as lethal force**, in "life-threatening situations where a member has reasonable cause to believe that a person poses an immediate threat of death or serious bodily harm to the member or to another person."<sup>1</sup>

OPD's use of force policies already mirror what many believe to be fundamentals of proper police use of force guidance, including a reverence for life,<sup>2</sup> requiring de-escalation,<sup>3</sup> mandating a duty to intervene,<sup>4</sup> severely limiting shooting at moving vehicles,<sup>5</sup> and requiring comprehensive force reporting.<sup>6</sup> OPD is also working on an entirely new use of force policy in coordination with the Oakland Police Commission.

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<sup>1</sup> DGO K-03, *Use of Force*, IV, F

<sup>2</sup> "The Oakland Police Department values the protection and sanctity of human life." *Ibid*, I, A

<sup>3</sup> "Members are required to **de-escalate** the force when member reasonably believes a lesser level or no further force is appropriate." "To the extent possible and without ever compromising safety, members are required to use verbal commands to accomplish the police objective before resorting to physical force." *Ibid* at I, C and III, A, respectively

<sup>4</sup> "Members shall **intervene and prevent or stop** the use of unreasonable force by other members." *Ibid* I, C

<sup>5</sup> "Whenever possible, members shall move out of the way of the vehicle, instead of discharging his or her firearm at the operator." *Ibid* IV, E, 2, b

<sup>6</sup> Reference DGO K-04, *Reporting and Investigating the Use of Force*, and associated Special Orders

OAKLAND POLICE DEPARTMENT  
Special Order 9205

Effective Date:  
9 Jun 2020

On June 5, 2020, California Governor Gavin Newsom announced plans to direct that POST cease training and directing the training of the carotid restraint hold. The Oakland Police Department will do the same.

**Policy**

Effective immediately, OPD will no longer train the use of the Carotid Restraint hold, and the Carotid Restraint hold shall be removed from the list of authorized force options. All references to the Carotid Restraint shall be removed from DGO K-03, *Use of Force*.

By order of

Susan Manheimer  
Interim Chief of Police

Date Signed:



## DEPARTMENTAL GENERAL ORDER

**K-03: USE OF FORCE**

Effective Date: XX MMM 20  
 Coordinator: Training Division

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OAKLAND POLICE DEPARTMENT

Effective Date  
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## DEPARTMENTAL GENERAL ORDER

**K-03: USE OF FORCE**

Effective Date: XX MMM 20

Coordinator: Training Division

**A. MISSION, PURPOSE, AND CORE PRINCIPLES****A - 1. Protection and Sanctity of Human Life Paramount**

The overarching mission and utmost priority of the Oakland Police Department is the protection of human life. The authority to use force, conferred on peace officers by § 835a of the California Penal Code, is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life.

**A - 2. Department Commitment to Law, Defense of Civil Rights and Dignity, and the Protection of Human Life**

Every member of the Oakland Police Department is committed to upholding the Constitution, Laws of the United States, Laws of the State of California, and defending the civil rights and dignity of all individuals, while protecting all human life and property and maintaining civil order.

While the ultimate objective of every law enforcement encounter is to protect the public, nothing in this policy requires a member to retreat or be exposed to possible physical injury before applying reasonable force.

**A - 3. Policy Direction Beyond Constitutional Principles**

The Fourth Amendment requires that an officer's use of force be "objectively reasonable." (*Graham v. Connor*, 490 U.S. 386 (1989)). The Constitution provides a "floor" for government action. The Oakland Police Department aspires to go beyond *Graham* and its minimum requirements. Sound judgment and the appropriate exercise of discretion will always be the foundation of police officer decision-making in the broad range of possible use of force situations. It is not possible to entirely replace judgment and discretion with detailed policy provisions. Nonetheless, this policy is intended to ensure that de-escalation techniques are used whenever feasible, that force is used only when necessary, and that the amount of force used is proportional to the situation that an officer encounters.

**A - 4. Department Purpose**

The purpose of the Department is to reduce crime and serve the community through fair, quality policing. Officers may, at times, be required to make forcible arrests, defend themselves or others, and overcome resistance. The Department's goal for the protection of both officers and the community is that officers should attempt to use non-force alternatives, including de-escalation, unless time and circumstances do not allow for the use of these alternatives.

**A - 5. Strict Prohibitions on Inappropriate Force**

Oakland Police Department officers are prohibited from using force to punish, retaliate, or interrogate. Force that is not reasonable and necessary under the totality of the circumstances will be subject to corrective action, including discipline up to and including termination. It is the expectation of the Department that when an individual is under control, either through the application of physical restraint or the individual's compliance, only the amount of force necessary to maintain control will be used. Under no circumstances will an officer use force solely because another officer is using force. Officers shall not use force based on bias against a person's race, ethnicity, nationality, religion, disability, gender, gender identity, sexual orientation, or any other protected characteristic.

#### **A - 6. Duty to Intervene**

Every officer has an obligation to ensure compliance, by themselves and others, with Department policy, as well as all applicable laws, regarding use of force. Any officer who observes another officer about to use force that is illegal, excessive, or otherwise inconsistent with this policy shall, absent extraordinary circumstances, do whatever he/she can to interrupt the flow of events *before* the fellow officer does something that makes any official action necessary. Officers can serve each other and the public by simply saying or doing the right thing to prevent a fellow officer from resorting to force illegally or inappropriately. Similarly, any officer who observes an officer using force that is illegal, excessive, or otherwise inconsistent with this directive shall, absent extraordinary circumstances, do whatever he/she can to interrupt the flow of events and *stop* the use of force. Members witnessing instances of misconduct must also follow the direction given in Department Manual of Rules Section 314.48, *Reporting Violations of Laws, Ordinances, Rules, or Orders*.

#### **A - 7. Commitment to De-Escalation**

When safe, feasible, and without compromising law enforcement priorities, officers shall use de-escalation tactics and techniques in order to reduce the need for force. The goal of the Department is to promote thoughtful resolutions to situations and to reduce the likelihood of harm to all persons involved. In concert with using proportional force, officers shall de-escalate the amount of force used when the officer reasonably believes that a lesser level or no further force is appropriate.

#### **A - 8. Commitment to Serving Members of the Community with Physical, Mental Health, Developmental, or Intellectual Disabilities**

The Department recognizes that individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from officers. The Department is committed to reducing these deleterious

effects with a focus on communication, prescriptions in this policy, de-escalation, and training, among other remedies.

**A - 9. Commitment to Medical Aid**

Whenever a person is injured by a use of force, complains of injury from a use of force, or requests medical attention after a use of force, as soon as it is safe and practical, officers shall request medical aid and provide appropriate medical care consistent with the officer's training and skillset.

**A - 10. Commitment to Thorough and Fair Evaluation of Force**

The Department is committed to evaluating force by reviewing the totality of the circumstances facing the officer at the time force was used, in a manner that reflects the gravity of the authority to use force and the serious consequences of the use of force by police officers.

Any evaluation of force must also allow for the fact that law enforcement officers must sometimes make split-second decisions about the amount of force that is necessary in a particular situation with limited information and in circumstances that are tense, uncertain, rapidly evolving, and dangerous.

**B. DEFINITIONS**

**B - 1. Carotid Restraint Hold**

A physical technique where continuing compression on the carotid arteries on both sides of an individual's neck, with no effect on the respiratory structures of the throat, is applied in order to gain control.

The carotid restraint hold is considered lethal force by the Oakland Police Department, and members are prohibited from using the carotid restraint hold.

**B - 2. Chokehold**

A physical maneuver that restricts an individual's ability to breathe for the purposes of incapacitation. This does not include the carotid restraint hold.

A chokehold is considered lethal force by the Oakland Police Department, and members are prohibited from using chokeholds.

**B - 3. Complaint of Pain**

A report of pain that persists beyond the use of a physical control hold or other use of force, but where there is no visible injury corresponding to that pain.

**B - 4. Cooperation / Compliance**

Responsiveness to and compliance with officer requests.

**B - 5. Crowd Control**

Those techniques used to address unlawful public assemblies, including a display of large numbers of police officers, crowd containment, dispersal

tactics, and arrest procedures. Reference **Training Bulletin III-G, Crowd Control and Crowd Management**.

#### **B - 6. De-Escalation**

Actions or verbal/non-verbal communication during a potential force encounter used to:

- stabilize the situation and/or reduce the immediacy of the threat, so that more time, distance, or other options and resources are available for resolution without the use of force or with a reduced type of force, or
- reduce or end a use of force after resistance or an immediate threat has ceased or diminished.

#### **B - 7. Exigent Circumstances**

Those circumstances that would cause a reasonable person to believe that a particular action is necessary to prevent physical harm to an individual, the destruction of relevant evidence, or the escape of a suspect.<sup>1</sup>

#### **B - 8. Feasible**

Capable of being done or carried out to successfully achieve a lawful objective without increasing risk to the officer or another person.

#### **B - 9. Force**

Any physical or mechanical intervention used by an officer to defend against, control, overpower, restrain, or overcome the resistance of an individual. Force includes less-lethal and lethal force options.

#### **B - 10. Force Options**

The force options trained and deployed by the Oakland Police Department include:

- Baton / Impact Weapons
- Chemical Agents
- Control Holds / Defensive Tactics / Compliance Techniques
- Electronic Control Weapons
- Firearms
- Oleoresin Capsicum (OC) Spray
- Personal Body Weapons
- Physical Control Techniques, including escorts
- Police Canines

<sup>1</sup> Based on the definition from *United States v. McConney*, 728 f.2d 1195, 1199 (9<sup>th</sup> Cir.), cert. denied, 469 U.S. 824 (1984).

- Specialty Impact Munitions
- Takedowns
- Verbal Commands / Instructions / Command Presence
- Verbal Persuasion

Less-lethal force options are further explained in section **G-1, Less-Lethal Force Options**, while lethal force options are further explained in section **H-1, Lethal Force Options**.

#### **B - 11. Great Bodily Injury**

Great bodily injury is significant or substantial physical injury which involves a substantial risk of death, a substantial risk of serious permanent disfigurement, or a substantial risk of protracted loss or impairment of the function of any part or organ of the body. It is an injury that is greater than minor or moderate harm, and is more severe than serious bodily injury.

#### **B - 12. Immediate Threat**

A threat is immediate when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that the person threatening has the present intent, means, opportunity, and ability to complete the threat, regardless of whether the threatened action has been initiated. An immediate threat is ready to take place, impending, likely to happen, or at the point of happening, and is not merely a fear of future harm; instead, an immediate threat is one that, from appearances, must be instantly confronted and addressed.

#### **B - 13. Less-Lethal Force**

Any use of force, other than lethal force, which by design and application is less likely to cause great bodily injury or death. The possibility of an unintended lethal outcome, although very rare, still exists.

#### **B - 14. Lethal Force**

The application of force by firearm or any other means which create a substantial risk of causing death or great bodily injury.

#### **B - 15. Medical Aid**

Medical interventions and life-saving techniques, ranging from home remedies and first-aid to life-saving or -sustaining interventions. Such efforts are not considered force. Medical aid includes monitoring an engaged person's vital signs while calling for medical assistance from first responders with higher medical skills, such as fire department or ambulance personnel.

#### **B - 16. Minor Bodily Injury**

Corporal injury, illness, or an impairment of physical condition greater than transitory pain but less than great or serious bodily injury (e.g. bruises, cuts, and abrasions).

#### **B - 17. Necessary**

Evaluations of the necessity of actions shall be done from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and shall account for occasions when officers may be forced to make quick judgments about taking action. The evaluation of necessity shall be on a case-by-case basis, and with the understanding that necessity does not require that all possible alternatives be exhausted prior to the use of force.

An action is necessary if it is reasonably believed to be required by the totality of the circumstances. The evaluation of whether an action was necessary shall be based on whether

1. Objectively reasonable *alternatives* to the action were available and/or practical AND
2. Whether the action was reasonably likely to *effect the lawful purpose* intended.

#### **B - 18. Objectively Reasonable**

Objective reasonableness is a test to measure whether a particular intrusion on an individual's person or interests by government agents was justified. The test of whether or not an intrusion – such as the use of force – is objectively reasonable requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake. The “test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application”<sup>2</sup>; however its proper application requires careful attention to the facts and circumstances of each particular case.

Any evaluation of the reasonableness of a particular use of force shall be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight, and must allow for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation. All evaluations of reasonableness shall also be carried out in light of the facts and circumstances facing the officer at the time of the force, without regard to their underlying intent or motivation.

Factors which may be considered in determining the objective reasonableness of force – and which may be used by officers to determine whether force is

<sup>2</sup> *Bell v. Wolfish*, 441 U.S. 520, 559 (1979)

reasonable based on a situation in which they are involved – include, but are not limited to:

- The seriousness/severity of the crime or suspected offense;
- The level of threat or resistance presented by the engaged person;
- Whether the engaged person was posing an immediate threat to officers or a danger to the public;
- The potential for injury to members of the public, officers, or engaged persons;
- The risk or apparent attempt by the engaged person to escape;
- The conduct of the engaged person being confronted (as reasonably perceived by the officer at the time);
- The conduct of officers leading up to the use of force;
- The apparent need for immediate control of the engaged person for a prompt resolution of the situation versus the ability to step back, regroup, and develop an alternative approach, and the time available to the officer to make that decision;
- Efforts made by officers to de-escalate the situation, and the reactions of the engaged person(s) to those efforts;
- The time available to the officer to make a decision;
- The availability of other resources;
- The training received by the officer;
- The proximity or availability of weapons, or items which could be used as weapons, to the engaged person;
- Officer versus engaged person factors such as age, size, relative strength, skill level, injury/exhaustion, and number of officers versus engaged persons;
- Environmental factors and/or other exigent circumstances;
- Whether the engaged person had any perceived physical disability;
- Whether a person is unresponsive and the reasons for that unresponsiveness;
- Whether the engaged person was under the influence of alcohol or drugs, or was influenced by mental illness or a mental health crisis.

#### **B - 19. Officer**

Any sworn member of the Oakland Police Department, at any rank.

Although the use of force is primarily intended for sworn officers, various professional staff job classifications include Departmental training in specific

force options normally reserved for sworn officers. In these cases, professional staff are held to the same standard as officers for the application of these authorized force options, and policy directed towards “officers” shall apply to these professional staff members as well. All members of the Oakland Police Department shall maintain their right to self-defense by any objectively reasonable means.

#### **B - 20. Police Canine**

A canine that is specifically trained and deployed to search for, locate and assist in the apprehension of criminal suspects. The Police Canine is certified by a Peace Officer Standards and Training (POST) certified canine evaluator as meeting current voluntary POST canine standards. A Police Canine may also be cross-trained in the tracking method and narcotics detection. Reference **DGO K-09, Department Canine Program.**

#### **B - 21. Procedural Justice**

Procedural justice in the context of policing focuses on the nature and quality of the way that police personnel deliver services, with the understanding that the legitimacy of police personnel in the eyes of the community they serve is based in part on personnel exhibiting procedurally just behavior. Procedurally just behavior is based on four main principles:

- **Respect:** Treating all people with dignity and respect;
- **Voice:** Giving people an opportunity to be heard;
- **Neutrality:** Being neutral and fair when making decisions; and
- **Trustworthiness:** Conveying trustworthy motives, such as doing what is best for the community.

#### **B - 22. Proportional Force**

Proportional force is force which is deemed reasonably effective to overcome the level of resistance posed, taking into account the severity of the offense or law enforcement need facing the officer(s) using force. Officers must rely on training, experience, and assessment of the situation to decide an appropriate level of force to be applied. Reasonable and sound judgment will dictate the force option to be employed, consistent with the constraints of this policy, and assessments of proportionality shall be based on an objectively reasonable officer standard.

Proportional force does not require officers to use the same type or amount of force as the engaged person. The more immediate the threat and the more likely that the threat will result in death or injury, the greater the level of force that may be proportional, objectively reasonable, and necessary to counter it. (See section **F, LEVELS OF FORCE**)

#### **B - 23. Resistance**

Resistance is the absence of **cooperation**, an indication of unwillingness to comply with an officer's lawful orders or direction, physical obstruction of an officer's attempts to gain compliance, or physical attacks on an officer or others. Resistance can range in severity from non-compliance to life-threatening. The severity, or **level** (see section E, **LEVELS OF RESISTANCE**), of resistance offered by a person to the lawful commands or actions of officers is an important factor in determining the **immediacy of the threat**, if any, posed by the person as well as whether the force used to overcome the resistance was **proportional** to the resistance posed.

#### **B - 24. Restrained Person**

A restrained person is a person who has been fully placed in a Department-authorized restraint device such as both hands handcuffed, a WRAP, or a RIPP Hobble.

#### **B - 25. Serious Bodily Injury**

Serious bodily injury is any injury which involves temporary but substantial disfigurement of the body or a body part, temporary but substantial loss or impairment of the function of any body part, or fracture of any body part. Serious bodily injury includes, but is not limited to, loss of consciousness, concussion, dislocation of joints or appendages, and wounds requiring suturing. Serious bodily injuries typically require treatment in a hospital or medical facility beyond what is required by basic first aid. Serious bodily injuries are serious in nature, but not as severe as great bodily injuries.

#### **B - 26. Totality of Circumstances**

All of the facts and circumstances an officer knew, or reasonably should have known, without mere conjecture or speculation, at the time of the incident, action, or decision being assessed, based upon a continual assessment of the situation, however rapid. This includes, but is not limited to, the seriousness of the threat of injury posed to the officer or other persons, the seriousness of the crime in question, and the conduct of the officer and engaged person leading up to the use of force, all viewed from the perspective of a reasonable officer.

#### **B - 27. Vehicle Ramming/Mass-Casualty Attack**

An attack in which a person deliberately rams, or attempts to ram, a motor vehicle at a crowd of people with the intent to inflict fatal injuries.

### **C. DE-ESCALATION**

Officers have the ability to impact the direction and outcome of an incident with their decision making and employed tactics. All members of the Oakland Police Department must remember the overarching mission and utmost priority of the Department: the protection of human life. De-escalation is an integral tool in furtherance of that mission. The Department values thoughtful resolutions to

situations where public, engaged subject, and officer safety are enhanced by sound decision making and tactics that further the Department's mission.

Policing, at times, requires that an officer exercise control of a violent or resisting person, or a person experiencing a mental or behavioral crisis. At other times, policing may require an officer to serve as a mediator between parties, or defuse a tense situation. At all times, however, officer actions must be in furtherance of the mission of the Department: to attempt to resolve situations while preserving life and limiting reliance on the use of force.

An officer who makes or attempts to make an arrest need not retreat or desist from their efforts by reason of the resistance or threatened resistance of the person being arrested. An officer shall not be deemed an aggressor or lose the right to self-defense by the use of objectively reasonable force to effect the arrest or to accomplish the lawful purpose or objective. Tactical repositioning or other de-escalation tactics are not considered "retreat" for the purposes of this policy.

### **C - 1. Goals of De-Escalation**

The goal of the Department is to promote thoughtful resolutions to situations and to reduce the likelihood of harm to all persons involved. When used appropriately, de-escalation techniques may reduce the immediacy of the threat, so that more time, options, and resources are available for resolution without the use of force or with a reduced level of force.

### **C - 2. Considerations Surrounding the use of De-Escalation**

De-escalation is one facet of an overall strategy designed to lower the tensions inherent in a police encounter, promote cooperation and peaceful resolution, effectively utilize police resources, and enhance officer, engaged person, and public safety while limiting reliance on the use of force. While the Department mandates that officers use de-escalation techniques when safe and feasible, the Department also recognizes that whether de-escalation is reasonable, safe, and feasible, and the extent to which de-escalation techniques are used, is based on the totality of the circumstances of the encounter at hand.

Factors, including law enforcement priorities, which may be considered when evaluating the totality of the circumstances surrounding the reasonableness and feasibility of de-escalation include:

- The officer's use of a critical decision-making structure;
- The benefits and drawbacks of immediate resolution or pre-emptive action on the part of the officer to resolve the situation;
- Facts and circumstances which influenced the chances of de-escalation strategies being successfully implemented;
- Whether limited intervention early in the encounter may have forestalled more marked or severe intervention later in the encounter;

- The availability of additional de-escalation resources;
- Whether the engaged person involved in the police encounter is believed to have a physical, mental health, developmental, or intellectual disability;
- The level of resistance posed;
- Circumstances existing (such as the presence of a weapon) which increase the chance of the encounter escalating to a significant or lethal force encounter.

### C - 3. Policy Requirement Regarding De-Escalation

**When safe, feasible, and without compromising law enforcement priorities, officers shall use de-escalation tactics and techniques in order to reduce the need for force.** De-escalation is reviewed and evaluated under the totality of the circumstances present at the time of the incident, and assessments of the feasibility and safety of de-escalation tactics shall be based on an objectively reasonable officer standard.

Team approaches to de-escalation are encouraged and should consider officer training and skill level, number of officers, and whether any officer has successfully established rapport with the engaged person. Where officers use a team approach to de-escalation, each individual officer's obligation to de-escalate will be satisfied as long as the officer's actions complement the overall approach.

### C - 4. De-Escalation Tactics, Techniques, and Principles

De-escalation may take many forms, and can vary from incident to incident. Just because a tactic or technique is not mentioned in this policy does not mean it is prohibited from being used as a de-escalation technique; officers are encouraged to creatively problem-solve to find and employ de-escalation techniques which are focused on protecting life, limiting force, respecting the dignity of others, enhancing officer, engaged person, and public safety, and completing the law enforcement mission.

Broadly, de-escalation techniques fall under the following categories:

#### ➤ **Communication**

Communication is often the most effective de-escalation technique, and involves active listening as much as, if not more than, what is said by the officer. Communication includes:

- Calm and respectful tone, body language, and interaction – this includes avoiding placing hands on weapons on the tool belt when not necessary for safety reasons
- Avoidance of language, such as taunting or insults, which could escalate the incident
- Clear instructions and commands

- Active listening, repetition, and indications of understanding
- Gathering information
- Assessing communication barriers
- Warnings and clear indications of the consequences of resistance
- Considering whether any lack of compliance is a deliberate attempt to resist rather than an inability to comply based on factors including, but not limited to,
  - Medical conditions
  - Mental impairment
  - Developmental disability
  - Physical limitation
  - Language barrier
  - Drug interaction
  - Behavioral crisis
  - Fear or anxiety
- Seeking to communicate in non-verbal ways when a verbal warning would be inadequate (such as when a person does not speak English or is unable to hear or understand warnings)
- Giving the engaged person a reasonable amount of time to comply with commands.

➤ **Isolation/Containment**

Isolating the engaged person (limiting or preventing access to officers, the public, or possible victims of resistance, including officers) and containing the engaged person (limiting the ability of the engaged person to move away from an area controlled by officers) are both important aspects of de-escalation, as they limit the exposure of the public to the engaged person and allow officers to lower the number of variables that they are attempting to control during the encounter. Isolation/containment includes actions such as:

- Separating parties in disputes;
- Handcuffing or restraining agitated persons to prevent their agitation from turning to active resistance, if appropriate;
- Placing barriers between officers and uncooperative engaged persons;
- Setting police perimeters, and limiting access to the scene;
- Using additional personnel to cover possible escape routes; and

- Transitioning incidents from dynamic to static by limiting access to unsecured areas, limiting mobility, and preventing the introduction of non-involved community members.

- **Positioning and Spatial Awareness**

Closely related to the concepts of distance and cover, positioning and spatial awareness covers both the positioning of the officer and the engaged person. Officers should constantly be assessing their positioning relative to the engaged person and seeking a position of advantage which affords the best opportunity to control the situation. Positioning and spatial awareness includes:

- Proper interview stance;
- Separation of parties during disputes;
- Handcuffing or restraining agitated persons to prevent their agitation from turning to active resistance, if appropriate; and
- Consideration of environmental hazards and other environmental factors which may enhance or detract from safety.

- **Time, Distance, and Cover**

Time, distance, and cover may allow officers additional time to assess the totality of the incident, including resistance, and to formulate a response. The main goal of using time, distance, and cover to de-escalate situations is to slow the momentum of a charged or critical incident to allow for more time, options, and resources to become available for incident resolution. Time, distance, and cover may be enhanced by utilizing:

- Additional resources such as crisis intervention trained officers or mental health crisis response units;
- Avoidance or minimization of physical confrontation, unless necessary (for example to protect someone or stop dangerous behavior);
- Using cover and concealment for tactical advantage, such as:
  - Placing barriers between an uncooperative engaged person and officers
  - Using natural barriers in the immediate environment
- Officers with stand-off or longer-distance force options; or
- Armored vehicles.

- **De-Escalation Resources**

De-escalation resources are continuously evolving, and the Department encourages creative, thoughtful de-escalation strategies to resolve situations. Some of the de-escalation resources utilized by the Department include:

- Armored vehicles
- Mental Health Professionals working with Law Enforcement (e.g. Mobile Evaluation Team)
- Language Assistance (e.g. language translation line, multi-lingual Department personnel)
- Crisis intervention-trained officers

## **D. USE OF FORCE – GENERAL CONSIDERATIONS AND POLICY**

### **D - 1. Use of Force Shall be Reasonable, Necessary, and Proportional, and for a Lawful Purpose or Objective**

Officers shall only use **objectively reasonable and necessary** force, **proportional** to the level of resistance posed, threat perceived, or urgency of the situation, to achieve the lawful purpose or objective.

**Lethal force is strictly prohibited solely to protect property or against a person who presents only a danger to himself/herself and does not pose an immediate threat of death or serious bodily injury to another person or officer.**

Officers may use objectively reasonable and necessary force options in the performance of their duties in the following circumstances:

- To effect a lawful arrest, detention, or search;
- To overcome resistance or prevent escape;
- To prevent the commission of a public offense;
- In defense of others or in self-defense;
- To gain compliance with a lawful order;
- To prevent a person from injuring him/herself.

### **D - 2. Prohibitions on Unreasonable Force**

Oakland Police Department officers are prohibited from using force or the threat of force to punish, retaliate, or unlawfully coerce.

It is the expectation of the Department that when an individual is under control, either through the application of physical restraint or the individual's compliance, only the amount of force necessary to maintain control will be used. Under no circumstances will an officer use force solely because another officer is using force. Officers shall not use force based on bias against a person's race, ethnicity, nationality, religion, disability, gender, gender identity, sexual orientation, or any other protected characteristic.

### **D - 3. Duty to Intervene**

Any officer who observes another officer about to use force that is illegal, excessive, or otherwise inconsistent with this policy shall, absent

extraordinary circumstances, do whatever he/she can to interrupt the flow of events *before* the fellow officer does something that makes any official action necessary.

Similarly, any officer who observes an officer using force that is illegal, excessive, or otherwise inconsistent with this directive shall, absent extraordinary circumstances, do whatever he/she can do to interrupt the flow of events and *stop* the use of force.

Members witnessing instances of misconduct must also follow the direction given in Department Manual of Rules Section 314.48, *Reporting Violations of Laws, Ordinances, Rules, or Orders*<sup>3</sup>, and members who fail to report excessive force are subject to appropriate discipline.

#### **D - 4. Identification and Warnings Prior to the Use of Force**

When feasible, and without sacrificing officer, engaged person, or public safety, officers shall:

- Identify themselves as law enforcement officers;
- Warn the engaged person that force may be used unless their resistance ceases; and
- Give the engaged person a reasonable opportunity to comply with a warning that force may be used.

Warnings about the use of force shall not be made with malicious or arbitrary intent to threaten, but instead shall have a legitimate law enforcement purpose.

#### **D - 5. Use of Force on Restrained Persons**

Officers may only use objectively reasonable, necessary, and proportional force on restrained persons. The fact that the person was restrained shall be evaluated both as part of the totality of the circumstances and when determining the level of resistance and the threat posed by the engaged person. Typically, intermediate less-lethal and lethal force may not be used against restrained persons (see G-5).

#### **D - 6. De-escalation of Force After Force has been Used**

Officers shall de-escalate the use of force when the officer reasonably believes a lesser level or no further force is appropriate. It is the expectation of the Department that when an individual is under control, either through the application of physical restraint or the individual's compliance, only the amount of force necessary to maintain control will be used.

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<sup>3</sup> Manual of Rules 314.48: "Members and employees who become aware that other members or employees violated laws, ordinances, rules of the Department, or disobeyed orders, of a Class I violation or any Class II violation which indicates a pattern of misconduct of which they are aware, shall within 24 hours or sooner, if practical, report the offense, orally or in writing, to his/her supervisor or the Internal Affairs Division." The use of unreasonable or excessive force is **Class I** misconduct.

**D - 7. Providing Medical Assistance to Persons Subject to the Use of Force**

When feasible, officers shall request medical aid for any minor, serious, or great bodily injury, complaint of serious or great bodily injury, or sign of medical distress for persons subject to the use of force, even if the aid is declined.

After requesting medical aid, officers shall, if feasible, render aid within the full scope of their training and skillset unless aid is declined. Consent should be assumed for unconscious persons or persons incapable of providing consent.

Officers shall automatically request medical aid for persons who have been struck, contacted, or contaminated by the following force options, regardless of injury:

- Lethal ammunition fired from a firearm;
- Electronic Control Weapons, whether probe or drive-stun;
- Specialty Impact Munitions;
- Impact or impromptu impact weapon strikes with contact; or
- Oleoresin Capsicum spray.

**E. LEVELS OF RESISTANCE**

Resistance (**Section E, LEVELS OF RESISTANCE**) and response (**Section F, LEVELS OF FORCE**) are dynamic. The engaged person's behavior and the use of force to control it may escalate or de-escalate during any given interaction until complete control of the engaged person is achieved. This policy does not require that an officer attempt to select or exhaust each force option or level of force before moving to another level; rather, gradations on the levels of resistance (**Section E**) and force which may be used to overcome that resistance (**Section F**) are set forth below to guide officers in making reasonable decisions on the use of force and to provide a framework to allow for evaluation of decisions made during use of force incidents.

Proportional force does not require officers to use the same type or amount of force as the engaged person. The more immediate the threat and the more likely that the threat will result in death or injury, the greater the level of force that may be proportional, objectively reasonable, and necessary to counter it.

Nothing in this document removes the rights of officers to reasonably protect themselves or others from immediate threats to their safety or the safety of others.

**E - 1. Non-Compliance**

Verbal and physical actions indicate the engaged person is not responding to verbal commands but also offers no form of physical resistance.

**E - 2. Passive Resistance**

Engaged person responds without compliance or takes physical actions that do not prevent an officer's attempts to exercise control of a person or place them in custody.

Verbal responses indicating an unwillingness to comply with an officer's directions which do not rise to the level of threats are also considered passive resistance.

### **E - 3. Active Resistance**

Physically evasive movements to defeat an officer's attempts at control including bracing, tensing, or pulling / running away.

Verbal responses indicating an unwillingness to comply with an officer's directions which **do** rise to the level of threats are also considered active resistance.

### **E - 4. Assaultive Resistance**

Physical movements which demonstrate an intent and present ability to assault the officer or another person. Assaultive resistance is resistance that is not immediately life-threatening.

### **E - 5. Life-Threatening Resistance**

Any action likely to result in death, great bodily injury, or serious bodily injury to the officer or another person.

## **F. LEVELS OF FORCE**

**Note:** Clear commands, warnings, command presence, and increased officer numbers are essential aspects of all levels of force, as well as of de-escalation attempts both before and after any use of force incident.

### **F - 1. Contact Controls**

Low-level physical tactics used to gain control and overcome **non-compliance** or **passive resistance**. These include physical control techniques (e.g. pulling, pushing, or maneuvering an engaged person's body), escorts, or simply using a firm grip. This level of force is not intended to cause injury or pain.

### **F - 2. Compliance Techniques and Defensive Tactics**

Low-level physical tactics used to gain control and overcome **passive resistance** and **active resistance**, depending on the totality of the circumstances. While not intended to cause injury, these techniques may cause transitory pain or discomfort, and are occasionally intended to cause pain in order to gain compliance (e.g. control holds). Techniques and tactics used to overcome **passive resistance** shall be objectively reasonable based on the totality of the circumstances, and the level of resistance is an important calculation regarding the proportionality of force.

Techniques and tactics to overcome **passive resistance** include control holds, **objectively reasonable** takedowns, and non-striking use of the baton. OC spray shall not be used on those engaged persons who go limp or offer no physical resistance.

Techniques and tactics to overcome **active resistance** include control holds, oleoresin capsicum (OC) spray, takedowns, non-striking use of the baton, and personal body weapons.

### **F - 3. Intermediate Less-Lethal Force**

Intermediate-level force options which pose a foreseeable risk of injury or harm, but are neither likely nor intended to cause death or great bodily injury. Intermediate less-lethal force is intended to overcome **active** and **assaultive resistance**, and includes personal body weapons, impact weapons, electronic control weapons (ECW), oleoresin capsicum (OC) spray, police canines, and specialty impact munitions.

### **F - 4. Lethal Force**

Any use of force that creates a substantial risk of causing great bodily injury or death, intended to overcome **life-threatening resistance**. Lethal force includes impact weapon strikes to the head, the discharge of a firearm loaded with lethal ammunition, and intentionally striking a person with a vehicle.

## **G. COMMANDS AND LESS-LETHAL FORCE**

The Oakland Police Department trains on multiple different tools and techniques which constitute commands or less-lethal force options. These options can be broadly categorized into three realms: **Presence/Command Options, Physical Control/Personal Weapons Options, and Less-Lethal Tool Options.**

### **G - 1. Presence/Command Options**

Officer presence, verbal commands, measured tone, and command presence of a uniformed officer are all part of the larger field of **Presence/Command Options**. These are communication techniques, both verbal and non-verbal, which are not a use of force but which are essential in resolving tense, uncertain, and rapidly-developing incidents or incidents where force is used. Verbal commands shall be respectful and clearly relay the police objective, and presence/command options are an integral part of de-escalation (see section C, **De-Escalation**).

### **G - 2. Physical Control/Personal Weapons Options**

Depending on the manner and intensity in which they are used, **Physical Control/Personal Weapons Options** may fall into multiple force levels: Contact Controls, Compliance Techniques and Defensive Tactics, or Intermediate Less-Lethal Force. These options include, but are not limited to:

- Escorts and physical body manipulation without pain compliance

- Control Holds
- Takedowns
- Vulnerable Area manipulation
- Personal Weapon strikes – **NOTE:** Personal Weapon strikes to a restrained person are considered Intermediate Less-Lethal Force.

Absent exigent circumstances, all **Physical Control/Personal Weapons Options** shall be compliant with Oakland Police Department policy and training. Refer to **Training Bulletin III-I.1, *Weaponless Defense***.

### **G - 3. Less-Lethal Tool Options**

Less-lethal tools are used to interrupt an engaged person's threatening behavior so that officers may take physical control of the engaged person with less risk of injury to the engaged person or officer than posed by other force applications. Less-lethal tools alone cannot be expected to render an engaged person harmless.

Officers will only carry and use tools that have been approved by the Department and that the officer has been properly trained and certified to use; use of improvised or impromptu weapons may be permissible under exigent circumstances.

Less-lethal tools most often fall into the level of Intermediate Less-Lethal Force, although certain tools, depending on the totality of the circumstances, may fall to the level of Compliance Techniques and Defensive Tactics (e.g. non-striking use of a baton or OC Spray).

Less-lethal tools, depending on the nature of the tool and the manner in which they are used, have the potential to cause serious consequences. Officers are reminded that they shall follow the specific policy and guidance contained in Departmental Training Bulletins that govern any specific tool. Important warnings regarding specific less-lethal tools, covered below, are not a substitute for a complete understanding of the specific policy and guidance for any particular force option as described in the appropriate Training Bulletin or policy.

The Less-lethal tools authorized by the Department include:

- Patrol Canine – See **DGO K-09, *Department Canine Program***
- Electronic Control Weapon (ECW) – See **DGO (Lexipol) 304, *Electronic Control Weapon (TASER)***
  - **Important warning:** When feasible, a verbal warning of the intended use of the ECW shall precede its use, to warn the engaged person and other officers.

- Impact Weapons: Includes the ASP® expandable baton, long wood baton, and short wood baton – See **Training Bulletin III-H.02, Hand-held Impact Weapons**
  - **Important warning:** Unless exigent circumstances exist, officers shall not intentionally strike the head, neck, throat, spine, kidneys, groin, or left armpit with impact weapons.
- Specialty Impact Weapons: Includes direct-fired ranged impact munitions, regardless of weapons platform – See **Training Bulletin III-H, Specialty Impact Weapons**
  - **Important warning:** SIM use during crowd control situations is further limited – see **Training Bulletin III-G, Crowd Control and Crowd Management**.
- Oleoresin Capsicum (OC) Spray – See **Training Bulletin V-F.02, Chemical Agents**
  - **Important warning:** OC spray shall not be used to wake up or arouse unconscious or sleeping individuals who otherwise pose no threat.
  - **Important warning:** OC spray shall not be used on passive resisters who go limp or offer no physical resistance.
- Crowd Control and Tactical Team Chemical Agents – See **Training Bulletin V-F.02, Chemical Agents and Training Bulletin III-G, Crowd Control and Crowd Management**.

#### **G - 4. Requirement to Carry at Least One Less-Lethal Tool**

Uniformed sworn officers who are working field assignments shall carry at least one hand-held less-lethal tool (e.g. ECW, impact weapon, and/or OC).

#### **G - 5. Restrictions on Use of Less-Lethal Tools Against Restrained Persons**

Officers are prohibited from using less-lethal tools against restrained persons unless that person is exhibiting **Assaultive** or **Life-Threatening** resistance or there is an immediate threat of serious or great bodily injury or death.

### **H. LETHAL FORCE**

#### **H - 1. Lethal Force Options**

Lethal force is any force that creates a substantial risk of causing great bodily injury or death. These force options include firearms loaded with lethal ammunition, force likely to cause great bodily injury or death, and using a vehicle to intentionally strike the body of another person. For the purpose of this section of the policy, the term “firearms” shall indicate firearms loaded with lethal ammunition.

The Department acknowledges that policy regarding the use of lethal force does not, and cannot, cover every situation that may arise. Any deviations

from the provisions of this policy shall be examined rigorously and will be critically reviewed on a case-by-case basis. The involved officers must be able to articulate clearly the reasons for the use of lethal force, including whether the officer's life or the lives of others were in immediate peril and if there was no reasonable alternative.

## **H - 2. Drawing, Exhibiting, or Unholstering Firearms**

An officer may draw, exhibit, or unholster their firearm in the line of duty when the officer reasonably believes it is necessary for his or her own safety or for the safety of others. The drawing, exhibiting, or unholstering of a firearm by law enforcement officers can be perceived as threatening and intimidating and, when unwarranted, may cast a negative impression on officers. Unwarranted emphasis on the police possession of weapons, such as an officer placing their hand on a holstered firearm during an interaction with the public when not justified by a safety concern, can also create negative impressions and damage rapport.

Officers may draw, exhibit, or unholster their firearms only when justified by appropriate circumstances, and the drawing, exhibiting, and unholstering of firearms will be tracked by the Department (see **DGO K-04, Reporting and Investigating the Use of Force**).

When an officer determines that the threat is over, the officer shall holster his or her firearm, when feasible.

## **H - 3. Pointing Firearms at a Person**

The pointing of a firearm at another person is a Fourth Amendment seizure and a use of force.<sup>4</sup> Officers shall only point a firearm at another person if there is an objectively reasonable perception of a substantial risk that the situation may escalate to justify lethal force.

If an officer points a firearm at a person the person shall, when safe and appropriate, be advised of the reason why the officer(s) pointed the firearm.

## **H - 4. Discharging Firearms at a Person**

An officer is justified in discharging a firearm at another person only when the officer believes, based on the totality of the circumstances, that the discharge is necessary for either of the following reasons:

- To defend against an immediate threat of death, great bodily injury, or serious bodily injury to the officer or another person; or
- To apprehend a fleeing person for a felony when the following three conditions are met:

<sup>4</sup> *Robinson v. Solano County*, 278 F. 3d 1007 (9<sup>th</sup> Cir. 2002)

- There is probable cause to arrest the engaged person for the commission of a felony that threatened or caused death, great bodily injury, or serious bodily injury;
- The officer reasonably believes that the person will cause death or great bodily injury to another unless immediately apprehended; and
- There are no other reasonably available or practical alternatives to apprehend the person.

If feasible, and if doing so would not increase the danger to the officer or others, an officer shall identify themselves as a police officer and give a verbal warning that deadly force may be used before discharging a firearm at a person.

#### **H - 5. Discharging Firearms at Moving Vehicles**

Discharging firearms at occupants in moving vehicles poses an increased risk for the occupants of the vehicle, officers, and the public at large.

Officers shall not discharge firearms at occupants of moving vehicles, with the following exceptions:

- Officers may discharge firearms at occupants of moving vehicles to defend the officer or another person against the vehicle occupant's immediate threat of death, great bodily injury, or serious bodily injury *by means other than the vehicle*;
- Officers may discharge firearms at the operator of a moving vehicle to defend the officer or another person against the operator's use of the vehicle to cause death, great bodily injury, or serious bodily injury *where the officer or other person has no reasonable avenue of protection or escape*.
- Officers may discharge firearms at the operator of a moving vehicle who is committing or attempting to commit a **vehicle ramming mass-casualty attack**.

Officers are prohibited from intentionally positioning themselves in a location vulnerable to a vehicular attack, and, whenever possible, shall move out of the way of the vehicle instead of discharging their firearm at the operator.

Officers are also prohibited from discharging their firearms at the operator of a vehicle when the vehicle has passed and is attempting to escape, except in the case of a **vehicle ramming mass-casualty attack**.

#### **H - 6. Discharging Firearms from Moving Vehicles**

Officers shall not discharge a firearm from a moving vehicle unless a person is immediately threatening the officer or another person with life-threatening resistance. This behavior is strongly discouraged and should be considered a last resort.

**H - 7. Discharging Firearms at Animals**

Officers may discharge firearms at animals under the following circumstances if it is not feasible to control the animal by using Oakland Animal Services (OAS) personnel or services:

- Against a dangerous animal to deter an attack or to prevent injury to persons present; or
- If an animal is a threat to human safety and cannot be controlled by the responsible person, or there is no responsible person present, or the animal is a wild animal, and the threat is such that the animal must be dispatched (killed) in order to ameliorate the threat.

Other than when the animal presents an immediate threat of attack or injury to a human, and when it has been determined that it is not feasible to control the animal by using OAS personnel or services, officers shall summon a supervisor or commander to the scene prior to dispatching an animal. The supervisor or commander shall either dispatch the animal (if necessary) or delegate the responsibility to a designated officer.

**H - 8. General Prohibitions Regarding Firearms**

Officers are prohibited from the following actions:

- Using firearms as impact weapons, unless any of the following circumstances exist:
  - When a person is attempting to take the firearm away from the officer;
  - When lethal force is permitted; or
  - When using long-gun-specific defensive tactics muzzle strikes as taught by Patrol Rifle or Firearms training staff;
- Firing warning shots; and
- Using lethal force solely to protect property or against a person who presents only a danger to himself/herself and does not pose an immediate threat of death, great bodily injury, or serious bodily injury to another person or officer.

**H - 9. Force Likely to Cause Great Bodily Injury or Death**

Other than firearms, certain other force options create a substantial risk of causing death or great bodily injury. These include:

- Intentional impact weapon strikes to the head; and
- Intentional use of a vehicle, at any vehicle speed, to strike the person of another.

Officers may use force likely to cause great bodily injury or death only when the officer believes, based on the totality of the circumstances, that the force is necessary for either of the following reasons:

- To defend against an immediate threat of death or serious bodily injury to the officer or another person; or
- To apprehend a fleeing person for a felony when the following three conditions are met:
  - There is probable cause to arrest the engaged person for the commission of a felony that threatened or caused death, great bodily injury, or serious bodily injury;
  - The officer reasonably believes that the person will cause death or great bodily injury to another unless immediately apprehended; and
  - There are no other reasonably available or practical alternatives to apprehend the person.

## **I. CONSIDERATIONS AFTER FORCE**

### **I - 1. Preventing Positional Asphyxia**

In addition to requesting medical assistance after certain uses of force or when the engaged person has sustained injuries or demonstrates signs of medical distress (see section D-7), officers shall, consistent with officer safety, evaluate the positioning of an engaged person to mitigate the chances of positional asphyxia. This includes positioning the person in a manner to allow free breathing once the engaged person has been controlled and placed under custodial restraint using handcuffs or other authorized methods.

Engaged persons under an officer's control should be positioned in a way so that their breathing is not obstructed – obstruction of a person's breathing could easily lead to death or serious bodily injury. This means that officers should not sit, kneel, or stand on an engaged person's head, neck, chest or back, and whenever feasible should not force the engaged person to lie on his or her stomach.

### **I - 2. Administrative Leave after Lethal Force Incidents**

Officers involved in a lethal force incident shall be placed on paid administrative leave for not less than three days, unless otherwise directed by the Chief of Police. The Incident Commander may recommend other personnel be placed on paid administrative leave to the Chief of Police. The assignment to administrative leave shall not be interpreted to imply or indicate that an officer acted improperly.

While on administrative leave, officers shall remain available at all times for official Departmental business, including interviews and statements regarding the incident.

**I - 3. Counseling Services after Lethal Force Incidents**

Officers involved in a force incident that results in a person being seriously injured or killed shall attend employee assistance and counseling services provided by the City before his/her return to normal duties. Supervisors shall verify attendance only and document completion in an SNF entry. Command officers shall ensure involved officers are advised of the services available and shall direct their attendance. As needed, officers and employees who witness such incidents may also be referred to counseling services.

**J. TRAINING****J - 1. Annual Training on Use of Force Policy**

Sworn officers of all ranks, and professional staff members who are trained on and authorized to use specific force options, shall receive training at least annually on the specific provisions of this policy. This training may include, but is not limited to, instruction during continued professional training (CPT) and written refresher training distributed via Department intranet or other document management system.

**J - 2. Use of Force Policy Training Incorporation into Practical Training**

All practical force and force option training for Department members that is delivered by Department training staff shall incorporate into the lesson plan or training materials instruction on this policy and how the force options or skills being practiced are specifically evaluated and used in light of this policy.

**J - 3. Training Bulletins**

Officers are reminded that they shall follow the specific policy and guidance contained in Departmental Training Bulletins.

By order of

Susan Manheimer  
Interim Chief of Police

Date Signed: \_\_\_\_\_



## CITY OF OAKLAND

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

Police Commission

To: Oakland Police Commission  
 From: Equipment Policy Ad Hoc Committee  
 Date: 07 June 2020  
 RE: Police Equipment Policy

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Dear Colleagues on the Oakland Police Commission and Members of the Public,

### **RECOMMENDATION**

The Equipment Policy Ad Hoc Committee (Committee) requests that the Oakland Police Commission (Commission) waive further policy development requirements, endorse the proposed draft ordinance regulating the acquisition and use of controlled equipment by the Oakland Police Department, and forward the draft ordinance to City Council with a request for immediate adoption.

### **BACKGROUND**

In October 2019 Henry Gage III (then a member of the public) introduced a draft ordinance to regulate the Oakland Police Department's acquisition and use of militarized equipment. This draft ordinance was the result of many hours of diligent work by community advocates who want to ensure that the tools and tactics deployed by the police are subject to appropriate oversight, and reasonable checks and balances.

The Commission tabled discussion of this draft until November 2019. During a November 14, 2019 meeting the Commission created an ad hoc committee to manage the creation of this draft legislation, and to make recommendations to the Commission for further action. This ad hoc is comprised of Vice Chair Gage, Alternate Commissioner David Jordan, and Alternate Commissioner Chris Brown.

The Committee met with community advocates, elected officials, and police department staff to discuss the proposed ordinance, gather policy feedback, hear practical concerns about implementation, and review proposed amendments. Community advocates organized and produced a townhall on militarized policing, and recorded testimony from Oakland residents. These meetings guided the development of working drafts, which were first presented to the Police Commission for review and comment during the Commission's November 14, 2019 meeting. Discussion on updated drafts were continued on a number of occasions, and some feedback has been received from Commissioners and members of the public.

In response to the growing COVID-19 pandemic, and in recognition of the need for immediate resource realignment, in April 2020 the Committee recommended that work on the proposed ordinance be temporarily suspended. In a few short weeks, circumstances have changed dramatically. The Oakland Police Department, supported by a host of mutual aid partners, has been video recorded using teargas, armored vehicles, riot equipment, and flashbangs against non-violent demonstrators. The Committee has deemed that the need for immediate regulation requires that this ordinance be submitted for consideration by the Commission.

## LEGISLATIVE SUMMARY

This legislation is being offered to regulate the Oakland Police Department ability to acquire and use certain categories of equipment. The structure created by this legislation models the Oakland Surveillance Ordinance in terms of workflow and it models California Assembly Bill 3131, a prior attempt to establish statewide requirements for the regulation of military equipment,<sup>1</sup> in terms of subject matter.

### The primary concepts of the proposed Ordinance are as follows:

1. Controlled Equipment Use Policies and Controlled Equipment Impact Reports must be reviewed and adopted before the use of Controlled Equipment may be authorized.
2. Requires the Police Department to submit Controlled Equipment Use Policies and Controlled Equipment Impact Reports to the Police Commission for review and recommendation.
3. Requires the Police Commission to review submissions at a public hearing and determine whether such submissions warrant a recommendation to Council for adoption or rejection.
4. Requires the City Council to ratify or reverse the Police Commission's recommendations following the Commission's review of Controlled Equipment Use Policies.
5. Requires the Police Department to submit an annual report describing the use of authorized Controlled Equipment during the year prior.
6. Requires the Police Commission to review the annual Controlled Equipment report, determine whether covered equipment has complied with the standards for approval, and recommend renewal or modification of Use Policies, or the revocation of authorization for use.
7. Requires the City Council to ratify or reverse the Police Commission's recommendations following the Commission's review of the Controlled Equipment annual report.

## ANALYSIS

The acquisition and use of military equipment adversely affects the public's safety and welfare, and creates severe and continuing risks to civil rights, civil liberties, and the physical and psychological well-being of the public. Legally enforceable safeguards, including transparency, oversight, and accountability measures, must be in place to protect the public's welfare, safety, civil rights, and civil liberties before certain categories of equipment are funded, acquired, or used.

In his 2016 book, To Protect and Serve, former Seattle Police Chief Norm Stamper notes that:

“Although there is a time and a place for military-like tactics, weaponry, and equipment, it's indisputable that the nation's police have often misused and abused the 'military approach.' In many jurisdictions there seems to be a 'boys with toys' mentality; if you have these 'toys' on hand, you want to use them, 'play' with them. And where personal and organizational discipline is lacking, people get hurt, cops and citizens alike.”<sup>2</sup>

The Oakland Police Commission is the institution best suited to ensure that the Police Department's acquisition and use of military equipment is subject to close oversight. By adopting the proposed ordinance, the City of Oakland can create a procedure to determine the necessity and use of equipment that, if misused or abused, will likely cause irreparable harm.

///

<sup>1</sup> This bill passed the Legislature, but was vetoed by then-Governor Jerry Brown

<sup>2</sup> Norm Stamper, To Protect and Serve: How to Fix America's Police 83, (2016)

**CONCLUSION**

For questions regarding this report, please email Vice Chair Henry Gage, at:

[hgage@oaklandcommission.org](mailto:hgage@oaklandcommission.org).

Sincerely,

Henry Gage III  
Vice Chair, Oakland Police Commission

Oakland Police Commission  
11 June 2020  
Item: \_\_\_\_\_

## DRAFT ORDINANCE ON ACQUISITION AND USE OF CONTROLLED EQUIPMENT

WHEREAS, the City Council finds that the acquisition of military and militaristic equipment and its deployment in Oakland can adversely impact the public's safety and welfare, including introducing significant risks to civil rights, civil liberties, and physical and psychological well-being, and incurring significant financial costs; and

WHEREAS, the Law Enforcement Equipment Acquisition Working Group created by President Barack Obama in Executive Order 13688 (later rescinded by President Donald Trump) recommended requiring "local civilian government (non-police) review of and authorization for law enforcement agencies' request for or acquisition of controlled equipment," and that such review included detailed justification for the acquisition and collecting information on and reporting on its use; and

WHEREAS, the City Council finds that the public has a right to know about any funding, acquisition, or use of military or militaristic equipment by the City of Oakland, as well as a right to participate in any City decision to fund, acquire, or use such equipment; and

WHEREAS, the City Council finds that decisions regarding whether and how military or militaristic equipment is funded, acquired, or used should give strong consideration to the public's welfare, safety, civil rights, and civil liberties, and should be based on meaningful public input; and

WHEREAS, several studies indicate that police departments in the United States that acquire military-grade equipment are more likely to use violence and are no more successful in reducing crime than those that acquire less such equipment;<sup>1</sup> and

WHEREAS, the City Council finds that legally enforceable safeguards, including transparency, oversight, and accountability measures, must be in place to protect the public's welfare, safety, civil rights, and civil liberties before military or militaristic equipment is funded, acquired, or used; and

WHEREAS, the City Council finds that the lack of a public forum to discuss the acquisition of military or militaristic equipment jeopardizes the relationship police have with the community, which can be undermined when law enforcement is seen as an occupying force rather than a public safety service; and

WHEREAS, the City Council finds that if military or militaristic equipment is acquired, reporting measures must be adopted that empower the City Council and public to verify that mandated civil rights safeguards have been strictly adhere to.

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<sup>1</sup> Jonathan Mummolo, "Militarization fails to enhance police safety or reduce crime but may harm police reputation," *Proceedings of the National Academy of Sciences*, September 11, 2018 (37) 9181-9186; Casey Delehanty, Jack Mewhirter, Ryan Welch and Jason Wilks, "Militarization and police violence: The case of the 1033 program," *Research and Politics*, April-June 2017, 1-7; and Edward Lawson Jr., "Police Militarization and the Use of Lethal Force," *Political Research Quarterly*, 2018, 1-13.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

**SECTION 1. Name of Ordinance.**

(A) This Ordinance shall be known as the Police Equipment and Community Safety Ordinance.

**SECTION 2. Definitions.**

(A) **“Controlled Equipment”** means equipment that is military or militaristic in nature, or is likely to be perceived as military or militaristic in nature, and includes, but is not limited to, all of the following:

- (1) Special-purpose wheeled vehicles that are built or modified to provide ballistic protection to their occupants, such as mine-resistant ambush protected (MRAP) vehicles or armored personnel carriers.
  - (a) Police versions of standard patrol vehicles are specifically excluded from this section.
- (2) Multi-purpose wheeled vehicles that are built to operate both on-road and off-road, such as a high mobility multipurpose wheeled vehicle (HMMWV), commonly referred to as a Humvee, a two and one-half-ton truck, or a five-ton truck, or vehicles built or modified to use a breaching or entry apparatus as an attachment.
  - (a) Unarmored all-terrain vehicles (ATVs) and motorized dirt bikes are specifically excluded from this section.
- (3) Tracked vehicles that are built or modified to provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion.
- (4) Weapon-bearing aircraft, vessels, or vehicles of any kind, whether manned or unmanned.
- (5) Breaching apparatus designed to provide rapid entry into a building or through a secured doorway, including equipment that is mechanical, such as a battering ram, equipment that is ballistic, such as a slug, or equipment that is explosive in nature.
- (6) Firearms of .50 caliber or greater.
- (7) Ammunition of .50 caliber or greater.
- (8) Specialized firearms and associated ammunition of less than .50 caliber, as defined in Sections 30510 and 30515 of the California Penal Code.
- (9) Projectile launch platforms, such as 40mm projectile launchers, “bean bag” or specialty impact munition (“SIM”) weapons, and “riot guns” used to disperse chemical agents.
- (10) Any knife designed to be attached to the muzzle of a rifle, shotgun, or long gun for purposes of hand-to-hand combat.
- (11) Explosives, pyrotechnics, such as “flashbang” grenades and explosive breaching tools, and chemical weapons such as “teargas” and “pepper balls”.
- (12) Crowd-control equipment, such as riot batons, riot helmets, and riot shields, but excluding service-issued telescopic or fixed-length straight batons.
- (13) Active area denial weapons, such as the Taser Shockwave, microwave weapons, water cannons, and the Long-Range Acoustic Device (LRAD).

- (a) Only LRAD use as an area denial tool shall trigger the reporting requirements of this ordinance.
- (14) Any other equipment as determined by the City Council to require additional oversight.
- (B) "**City**" means any department, agency, bureau, and/or subordinate division of the City of Oakland as provided by Chapter 2.29 of the Oakland Municipal Code.
- (C) "**City Staff**" means City personnel authorized by the City Administrator or designee to seek City Council approval of the acquisition of Controlled Equipment in conformance with this Ordinance.
- (D) "**Controlled Equipment Impact Statement**" means a publicly released, written document that includes, at a minimum, all of the following:
- (1) Description: A description of each type of Controlled Equipment, the quantity sought, its capabilities, expected lifespan, intended uses and effects, and how it works, including product descriptions from the manufacturer of the Controlled Equipment.
  - (2) Purpose: The purposes and reasons for which the Oakland Police Department (hereinafter, "Police Department") proposes to use each type of Controlled Equipment.
  - (3) Fiscal Cost: The fiscal cost of each type of Controlled Equipment, including the initial costs of obtaining the equipment, the estimated or anticipated costs of each proposed use, the estimated or anticipated costs of potential adverse impacts, and the estimated or anticipated annual, ongoing costs of the equipment, including operating, training, transportation, storage, maintenance, and upgrade costs.
  - (4) Impact: An assessment specifically identifying any potential impacts that the use of Controlled Equipment might have on the welfare, safety, civil rights, and civil liberties of the public, and what specific affirmative measures will be implemented to safeguard the public from potential adverse impacts.
  - (5) Mitigations: Specific, affirmative technical and procedural measures that will be implemented to safeguard the public from such impacts.
  - (6) Alternatives: Alternative method or methods by which the Police Department can accomplish the purposes for which the Controlled Equipment is proposed to be used, the annual costs of alternative method or methods, and the potential impacts of alternative method or methods on the welfare, safety, civil rights, and civil liberties of the public.
  - (7) Location: The location(s) it may be used, using general descriptive terms.
  - (8) Third Party Dependence: Whether use or maintenance of the Controlled Equipment will require the engagement of third-party service providers.
  - (9) Track Record: A summary of the experience (if any) other entities, especially government entities have had with the proposed Controlled Equipment, including, if available, quantitative information about the effectiveness of the Controlled Equipment in achieving its stated purpose in other jurisdictions, and any known adverse information about the Controlled Equipment (such as unanticipated costs, failures, or civil rights and civil liberties abuses).

- (E) **“Controlled Equipment Use Policy”** means a publicly released, legally enforceable written document governing the use of Controlled Equipment by the Oakland Police Department that addresses, at a minimum, all of the following:
- (1) Purpose: The specific purpose or purposes that each type of Controlled Equipment is intended to achieve.
  - (2) Authorized Use: The specific uses of Controlled Equipment that are authorized, and rules and processes required prior to such use.
  - (3) Prohibited Uses: A non-exclusive list of uses that are not authorized.
  - (4) Training: The course of training that must be completed before any officer, agent, or employee of the Police Department is allowed to use each specific type of Controlled Equipment.
  - (5) Auditing and Oversight: The mechanisms to ensure compliance with the Controlled Equipment Use Policy, including which independent persons or entities have oversight authority, and what legally enforceable sanctions are put in place for violations of the policy.
  - (6) Transparency: The procedures by which members of the public may register complaints or concerns or submit questions about the use of each specific type of Controlled Equipment, and how the Police Department will ensure that each complaint, concern, or question receives a response in a timely manner.
- (F) **"Police Area"** refers to each of the geographic districts assigned to a police commander and as such districts are amended from time to time.

### **SECTION 3. Acquisition and Use of Controlled Equipment.**

- (A) Restrictions Prior to Submission and Approval
- (1) The Oakland Police Department shall submit to the Oakland Police Commission (hereinafter “Police Commission”) a Controlled Equipment Impact Report and a Controlled Equipment Use Policy prior to engaging in any of the following:
    - (a) Requesting the transfer of Controlled Equipment pursuant to Section 2576a of Title 10 of the United States Code.
    - (b) Seeking funds for Controlled Equipment, including, but not limited to, applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.
    - (c) Acquiring Controlled Equipment either permanently or temporarily, including by borrowing or leasing.
    - (d) Collaborating with another law enforcement agency, such as commanding, controlling, or otherwise directing that agency or its personnel, in the deployment or other use of Controlled Equipment within Oakland.
    - (e) Using any new or existing Controlled Equipment for a purpose, in a manner, or by a person not previously approved by the governing body pursuant to this Ordinance.
    - (f) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of, Controlled Equipment.

- (2) The funding, acquisition, or use of Controlled Equipment by the Police Department shall not be permitted without the review and recommendation, by the Police Commission, and approval, by City Council, of a Controlled Equipment Impact Report and a Controlled Equipment Use Policy submitted pursuant to this Ordinance.
  - (a) The Chair of the Police Commission, in consultation with the Vice Chair, may provide limited approval, in writing, for the Department to solicit funding for Controlled Equipment prior to the submission of a Controlled Equipment Impact Report and a Controlled Equipment Use Policy.
  - (b) Controlled Equipment purchased under the exception provided by this subsection shall not be used unless a Controlled Equipment Impact Report and Controlled Equipment Use Policy is subsequently submitted to the Police Commission for review and subsequently approved by City Council, pursuant to the general requirements of this section.

(B) Submission to Police Commission

- (1) When seeking the review and recommendation of the Police Commission, the Police Department shall submit to the Police Commission a Controlled Equipment Impact Report and a Controlled Equipment Use Policy.
- (2) At least 15 days prior to any public hearing concerning the Controlled Equipment at issue, the Department shall publish the Controlled Equipment Impact Report and Controlled Equipment Use Policy for public review. Publishing to the Department's website shall satisfy the requirements of this subsection.
- (3) In order to facilitate public participation, Controlled Equipment Impact Reports and Controlled Equipment Use Policies shall be made publicly available on the Department's website for as long as the Controlled Equipment is proposed or approved for use.
- (4) The Police Commission shall consider Controlled Equipment Impact Reports and Controlled Equipment Use Policies as an agenda item for review at an open session of a regularly noticed meeting.

(C) Criteria for Police Commission Recommendations

- (1) The Police Commission shall only recommend approval of a request to fund, acquire, or use Controlled Equipment pursuant to this chapter if it determines all of the following:
  - (a) The Controlled Equipment is needed despite available alternatives.
  - (b) The Controlled Equipment Use Policy will safeguard the public's welfare, safety, civil rights, and civil liberties.
  - (c) The use of Controlled Equipment will not be used based on race, national origin, religion, sexual orientation, gender, gender identity, political viewpoint, or disability, or disproportionately impact any community or group.
  - (d) The use of Controlled Equipment is the most cost-effective option among all available alternatives.
- (2) If the submitted Controlled Equipment Impact Report identifies a risk of potential adverse effects on the public's welfare, safety, civil rights, or civil liberties, a recommendation for approval for the funding, acquisition, or use of

Controlled Equipment by the Police Commission pursuant to this Ordinance shall not be deemed an acquiescence to those effects, but instead an acknowledgment of the risk of those effects and the need to avoid them proactively.

- (E) Police Commission Review Required Before City Council Consideration of Approval.
- (1) The Police Commission shall recommend that the City Council adopt, modify, or reject the proposed Controlled Equipment Use Policy.
    - (a) If the Police Commission proposes that the Controlled Equipment Use Policy be modified, the Police Commission shall propose such modifications to City Staff. City Staff shall present such modifications or notice of rejection to City Council when subsequently seeking City Council approval pursuant to this Ordinance.
    - (b) Failure by the Police Commission to make its recommendation on a proposal within ninety (90) days of submission shall enable City Staff to proceed to the City Council for approval of the proposal.
- (F) Police Commission Review of Prior Recommendations
- (1) The Police Commission shall review any recommendation that it has adopted pursuant to this Ordinance approving the funding, acquisition, or use of Controlled Equipment at least annually and vote on whether to recommend renewal of the approval.
  - (2) A Police Commission recommendation to City Council that a prior approval be revoked shall be presented to Council for immediate consideration. If City Council has not reviewed and taken action on a Police Commission recommendation that a prior approval be revoked within four (4) City Council meetings from when the item was initially scheduled for City Council consideration, the City shall cease its use of the Controlled Equipment.
- (G) Review Process for Previously-Acquired Equipment
- (1) The Police Department shall have one year from the date of passage of this Ordinance to submit Controlled Equipment Use Policies and Controlled Equipment Impact Statements for approval pursuant to this Ordinance if the Department wishes to continue the use of Controlled Equipment acquired prior to the passage of this Ordinance. The Department shall cease the use of Controlled Equipment acquired prior to the date of passage of this ordinance if, after one year, no approval, pursuant to the requirements of this Ordinance, has been granted.
  - (2) In order to ensure that the review of previously-acquired Controlled Equipment is appropriately prioritized, the Police Department shall provide a prioritized ranking of Controlled Equipment possessed and/or used by the City, and the Police Commission shall consider this ranking in determining order in which previously-acquired Controlled Equipment is agendized for review.
- (H) City Council Review Process
- (1) After the Police Commission Notification and Review requirements have been met, City Staff seeking City Council approval shall schedule for City Council

- consideration a package containing the Controlled Equipment Impact Report, Controlled Equipment Use Policy, and Police Commission recommendations, at least fifteen (15) days prior to a public meeting.
- (2) The City Council shall only approve a proposed Controlled Equipment Impact Report and proposed Controlled Equipment Use Policy after first considering the recommendation of the Police Commission, and subsequently making a determination that the City's interest in community safety outweighs the potential adverse affects of using Controlled Equipment.
  - (3) For approval of existing Controlled Equipment for which the Police Commission has failed to make a recommendation within ninety (90) days as provided by this Section, if the City Council has not reviewed and approved such item within four (4) City Council meetings from when the item was initially scheduled for City Council consideration, the City shall cease its use of the Controlled Equipment until such review and approval occurs.

#### **SECTION 4. Reports on the Use of Controlled Equipment.**

##### **(A) Annual Report on Controlled Equipment**

- (1) The Oakland Police Department shall submit to the Police Commission an annual report on Controlled Equipment to the Police Commission within one year of approval, and annually thereafter for as long as the Controlled Equipment is available for use. The annual report shall be provided no later than March 15th of each year, unless the Police Commission advises the Police Department that an alternate date is preferred. The Police Department shall make each annual report required by this section publicly available on its website for as long as the Controlled Equipment is available for use. The annual report shall, at a minimum, include the following information for the immediately preceding calendar year:
  - (a) Production descriptions and specifications for Controlled Equipment and inventory numbers of each type of Controlled Equipment in the Police Department's possession.
  - (b) A summary of how Controlled Equipment was used.
  - (c) If applicable, a statement of whether any uses of Controlled Equipment were conducted in combination with judicial warrants.
  - (d) A summary of any complaints or concerns received concerning Controlled Equipment.
  - (e) The results of any internal audits, any information about violations of Controlled Equipment Use Policies, and any actions taken in response.
  - (f) The estimated annual cost for each type of Controlled Equipment, including acquisition, personnel, training, transportation, maintenance, storage, upgrade, and other ongoing costs, and from what source funds will be provided for Controlled Equipment in the calendar year following submission of the annual report.
- (2) Within 60 days of the Police Department submitting and publicly releasing an annual report pursuant to this section, the Police Commission shall place the report as an agenda item for an open session of a regular meeting. After review and approval by the Police Commission, City Staff shall submit the annual report to City Council.

**(C) Compliance & Revocation of Approval**

- (1) The Police Commission shall determine, based on the annual report submitted pursuant to Section 4, whether each type of Controlled Equipment identified in that report has complied with the standards for approval set forth in Section 3. If the Police Commission determines that any Controlled Equipment identified in the annual report has not complied with the standards for approval set forth in Section 3, the Police Commission shall either recommend revocation of the authorization for that piece of Controlled Equipment or modify the Controlled Equipment Use Policy in a manner that will resolve the lack of compliance. Recommendations for revocations pursuant to this section shall be forwarded to City Council in accordance with the approval process in Section 3.

**SECTION 5. Enforcement.****(A) Remedies for Violations of this Ordinance**

- (1) Any violation of this Ordinance, or of a Controlled Equipment Use Policy promulgated under this Ordinance, constitutes an injury and any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in the Superior Court of the State of California to enforce this Ordinance. An action instituted under this paragraph shall be brought against the respective city department, and the City of Oakland, and, if necessary to effectuate compliance with this Ordinance or a Controlled Equipment Use Policy, any other governmental agency with possession, custody, or control of Controlled Equipment subject to this Ordinance, to the extent permitted by law.
- (2) Any person who has been subjected to the use of Controlled Equipment in violation of this Ordinance may institute proceedings in the Superior Court of the State of California against the City of Oakland and shall be entitled to recover actual damages (but not less than liquidated damages of one thousand dollars (\$1,000.00) or one hundred dollars (\$100.00) per day for each day of violation, whichever is greater).
- (3) A court shall award costs and reasonable attorneys' fees to the plaintiff who is the prevailing party in an action brought under subpart (1) or (2) above.
- (4) Violations of this Ordinance by a city employee may result in consequences that may include retraining, suspension, or termination, subject to due process requirements.

**SECTION 6. Transparency.****(A) Disclosure Requirements**

- (1) It shall be unlawful for the City to enter into any Controlled Equipment-related contract or other agreement that conflicts with the provisions of this Ordinance, and any conflicting provisions in such future contracts or agreements, including but not limited to non-disclosure agreements, shall be deemed void and legally unenforceable.
- (2) To the extent permitted by law, the City shall publicly disclose all of its Controlled Equipment-related contracts, including any and all related non-disclosure agreements, if any, regardless of any contract terms to the contrary.

**SECTION 7. Whistleblower Protections.****(A) Protections Against Retaliation**

- (1) Neither the City nor anyone acting on behalf of the City may take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment, including but not limited to discriminating with respect to compensation, terms and conditions of employment, access to information, restrictions on due process rights, or civil or criminal liability, because:
  - (a) The employee or applicant was perceived to, about to, or assisted in any lawful disclosure of information concerning the funding, acquisition, or use of Controlled Equipment based upon a good faith belief that the disclosure evidenced a violation of this Ordinance; or
  - (b) The employee or applicant was perceived to, about to, or assisted or participated in any proceeding or action to carry out the purposes of this Ordinance.
  - (c) It shall be grounds for disciplinary action for a city employee or anyone else acting on behalf of the city to retaliate against another city employee or applicant who makes a good-faith complaint that there has been a failure to comply with any Controlled Equipment Use Policy or administrative instruction promulgated under this Ordinance.
  - (d) Any employee or applicant who is injured by a violation of this Section may institute a proceeding for monetary damages and injunctive relief against the city in any court of competent jurisdiction.



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

## **CITY AUDITOR**

Courtney Ruby, CPA, CFE

## **AUDIT TEAM**

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

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**JUNE 1, 2020**

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

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

## Audit Reports

Copies of audit reports are available at: [www.OaklandAuditor.com](http://www.OaklandAuditor.com)

Alternate formats available upon request.

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Copias de nuestros informes de auditoría están disponibles en: [www.OaklandAuditor.com](http://www.OaklandAuditor.com)

Formatos alternativos de los informes se harán disponibles a pedido.

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審查報告可以在此網頁下載：[www.OaklandAuditor.com](http://www.OaklandAuditor.com)

可根據要求提供其它格式版本。



## Contact

Phone: (510) 238-3378

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June 1, 2020

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

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

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

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

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

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

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

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

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

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

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

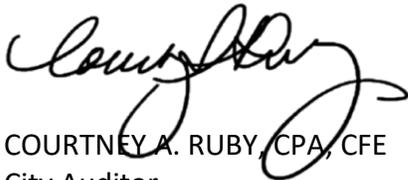
Lastly, as we release this report, I think it is important to acknowledge that our City, and cities across our nation are reeling from the recent deaths of Ahmaud Arbery, Breonna Taylor and George Floyd. Police violently took the lives of Mr. Floyd and Ms. Taylor. These tragedies illustrate the enormous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

Honorable Mayor, Honorable City Council, Honorable Police Commission, Community Police Review Agency  
Director, Honorable City Attorney, City Administrator, and Oakland Residents  
Performance Audit of the Oakland Police Commission and the Community Police Review Agency  
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power. Their deaths yet again, remind the leaders and residents of Oakland, about the need for effective police oversight to eliminate racial bias, profiling, and the illegitimate use of power.

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

Sincerely,

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

COURTNEY A. RUBY, CPA, CFE  
City Auditor

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# Executive Summary

## Introduction and Background

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

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

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

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

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

## Audit Findings and Recommendations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Introduction

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

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

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

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

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

## Background

### Police Commission

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

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

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

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

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

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

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

The City Charter specifies the authority to:

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

The Municipal Code adds responsibilities such as:

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

### Community Police Review Agency

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

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

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

The City Charter requires the Agency to:

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

### Office of the Inspector General

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

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

Budget

Exhibit 1 below summarizes the actual and budgeted expenditures and Full-Time Equivalent (FTE) staff<sup>2</sup> assigned to the Commission, the Agency, and the Inspector General for FY 2017-2018 through FY 2019-2020.

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

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

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

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

## Audit Objectives

The objectives of the audit were to:

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

## Audit Scope

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

## Methodology

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

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

## Statement of Compliance with Government Auditing Standards

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

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

### Summary

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

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

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

### The Commission's activities related to its mission

The Commission has undertaken various activities related to its mission:

- Hired a new Agency Executive Director
- Held meetings twice per month and met quorum consistently
- Received some of the required training
- Reviewed some administrative closures<sup>4</sup>
- Heard various presentations from OPD
- Dismissed and replaced the Interim Executive Director of the Agency
- Attended special meetings on legal rights of residents when dealing with police and on OPD's practices of policing the homeless community
- Adopted a limited social media policy
- Other miscellaneous actions

#### The Commission reviewed and approved two policies through 2019

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

- Use of force
- Use of force review boards
- Profiling based on any of the protected characteristics
- First Amendment assemblies<sup>5</sup>
- Policies and procedures on federal court orders such as the NSA
- Review and comment on all other OPD policies, procedures, and General Orders

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

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

<sup>5</sup> Public protests or marches.

another policy on when and how officers should use force.

### *First policy*

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

### *Second policy*

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

### *Third policy initiated in 2019*

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

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

on January 9, 2020.

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

### Challenges in policymaking

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit 2 – Required Trainings for Commissioners<sup>7</sup>

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

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

<sup>7</sup> Testing included the four previous Commissioners who either resigned or their terms expired.

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

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

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

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

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

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

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

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

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

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

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

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

The Commission, as a body, did not formally review and comment on the education and training OPD provides its sworn employees regarding the management of job-related stress, and regarding the signs and symptoms of post-traumatic stress disorder, drug and alcohol abuse, and other job-related mental and emotional health issues. In addition, the Commission did not prepare and deliver to the Mayor, City Administrator, and the Chief of Police, a proposed budget for providing the education and training on the management of job-related stress.

The Municipal Code requires the Commission to review and comment on the education and budget related to the training OPD provides its sworn employees regarding the management of job-related stress, and regarding the signs and symptoms of post-traumatic stress disorder, drug and alcohol abuse, and other job-related mental and emotional health issues.

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

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

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

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

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

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

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

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

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

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

#### The Commission has not consistently complied with the California Brown Act

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

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

We have noted several cases when the Commissioners address issues that are not included on the agenda. For example, Commissioners discussed OPD’s purchase of a BearCat<sup>8</sup> vehicle and made a motion prohibiting the City from purchasing this vehicle. The agenda item on which they made this motion was on OPD’s policy on the deployment of the BearCat. The decision whether to purchase the BearCat was not on the meeting agenda and the Commission’s discussion about the purchase of this vehicle was a violation of the Brown Act.

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

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

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

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

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

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

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

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

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

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

### The Commission has not established a mediation program for complaints

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

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

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

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

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

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

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

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

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

The Commission is a new organization experiencing organizational challenges

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

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

#### The Commission lacks senior-level staff

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### The working relationship between the Commission and City Administration needs improvement

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

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

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

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

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

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

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

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

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

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

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

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

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

### The Commission has not established formal goals and objectives

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

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

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

### The Commission lacks a strategic plan

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

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

### The Commission lacks annual workplans

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

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

around the work to be accomplished.

The Commission has not established annual workplans.

The Commission needs to improve its agenda management practices

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

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

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

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

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

The Commission needs a process for assessing its performance

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

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

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

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

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

### Conclusion

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

### Recommendations

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

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

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

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

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

- Orientation notebook
- Department presentations
- Organizational/departmental videos

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

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

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

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

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

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

### Summary

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

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

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

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

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

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

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

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

#### The Commission has solicited bids on at least three occasions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

disagree on findings and/or proposed discipline.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### The Commission has not adequately controlled its meetings and agendas

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

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

### The Commission has not established a code of conduct

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

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

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

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

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

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

Although the Commission does not have a code of conduct, the City Charter gives authority to the City Council to remove members of the Commission for cause, after conducting a hearing, with at least six affirmative votes. The City Charter also gives the Commission the authority to remove a Commissioner. It may, with a majority vote, remove a Commissioner for the conviction of a felony, misdemeanor involving moral turpitude, a material act of dishonesty, fraud, or other act of moral turpitude, substantial neglect of duty, gross misconduct in office, inability to discharge the powers and duties of the office, absence from three consecutive regular Commission meetings or five regular meetings in a calendar year, except on account of illness or when absent by permission.

#### The Commission has a limited social media policy

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

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

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

### Conclusion

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

### Recommendations

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

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

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

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

16. Develop the following protocols:

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

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

### Summary

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

Recommendations

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

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

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

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

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

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

### Summary

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

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

Specifically, we noted the Agency has not:

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

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

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

## Background

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

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

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

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

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

## Agency investigations and staffing

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

Agency staff has investigated and completed an estimated<sup>12</sup> 50 cases per year during the audit period under review. See Exhibit 3 below for the number of cases reviewed and completed by the Agency during Calendar Years 2018 and 2019 and Exhibit 4 shows the number of cases closed by

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

intake.

**Exhibit 3 – Number of Completed Investigations by Calendar Year**

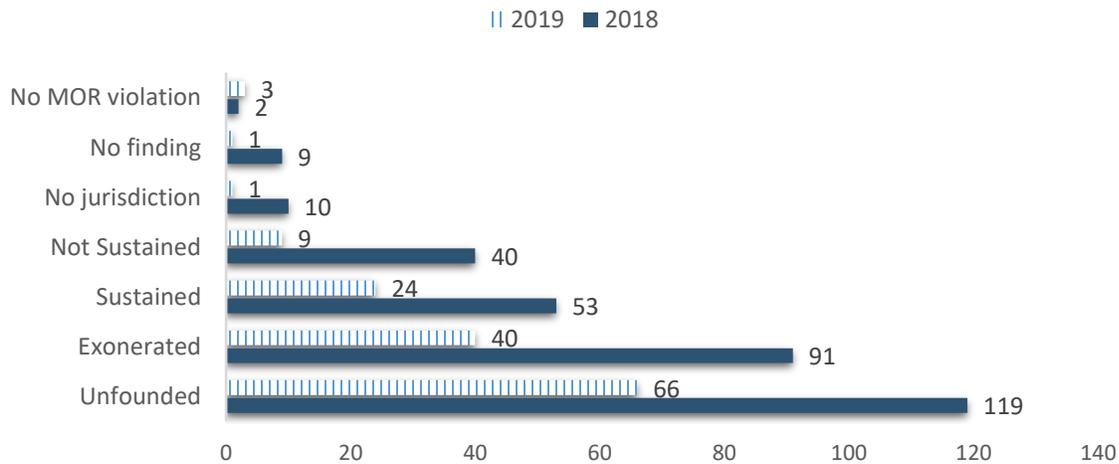
Calendar Year	Number of Completed Investigations
2018 (January through December)	51
2019 (January through August)	30

**Exhibit 4 – Number of Cases Closed by Intake**

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

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

**Exhibit 5 - Results of Closed Complaints**



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

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

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

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

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

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

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

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

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

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

### The Agency lacks a formal planning process for its investigations

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

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

#### The Agency lacks documentation requirements for its investigations

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

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

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

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

#### The Agency lacks a formal quality review process for its investigations

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

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

#### The Agency lacks an adequate management information system

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

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

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

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

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

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

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

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

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

### Conclusion

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

### Recommendations

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

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

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

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

### Summary

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

### The City Council is considering amending the City Charter

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

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

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

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

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

anyone else in the organization.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### Conclusion

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

### Recommendations

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

35. Consider the following questions in regard to the Commission's authority to fire the Chief of Police:
  - Who should be vested with the authority to fire the Chief of Police for cause?
  - Who should be vested with the authority to fire the Chief of Police without cause?
  - What processes and controls should be put in place to ensure the actions taken to remove the Chief of Police do not pose significant liability issues for the City?
36. Debate the pros and cons of the various methods used to select Commissioners.
37. Consider revising the City Charter to allow the City Council to review and approve Commissioners individually, instead of a slate of candidates.
38. Consider amending the requirements for selection panel members to eliminate potential conflicts of interest and the Municipal Code should be amended to eliminate the provision that exempted members who were previously grandfathered onto the selection panel.

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

## Appendix A – The passage of Measure LL

A **civilian police commission measure** was on the ballot for Oakland voters in Alameda County, California, on November 8, 2016. Measure LL<sup>14</sup> was approved.

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

### Ballot question

The following question appeared on the ballot:

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

### City Attorney's impartial analysis

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

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

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

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

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

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

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

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

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

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

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

—*Oakland City Attorney*

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

The following are the Commission’s powers and duties listed in City Charter Section 604<sup>15</sup>(b):

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

<sup>15</sup> Full text of City Charter Section 604: [City Charter Section 604](#)

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

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

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

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

The following are the functions and duties of the Commission listed in Section 2.45.070<sup>16</sup> of the Municipal Code:

- A. In accord with the City's record retention schedule, maintain all electronic communications to, from and/or copied to any Commissioner or alternate regarding any matters within the Commission's jurisdiction, and provide such communications to the City upon request.
- B. Maintain the confidentiality of its business in accordance with state and local law, including without limitation, California Penal Code 832.7 and the California Public Records Act (Cal. Gov't Code sec. 6250, et seq.). A Commissioner's failure to maintain such confidentiality, whether or not intentional, may be considered "gross misconduct in office" for purposes of City Charter section 604(c)(10).
- C. Review and comment on the education and training the Department provides its sworn employees regarding the management of job-related stress, and regarding the signs and symptoms of post-traumatic stress disorder, drug and alcohol abuse, and other job-related mental and emotional health issues. The Commission shall provide any recommendations for more or different education and training to the Chief who shall respond in writing consistent with section 604(b)(6) of the Oakland City Charter.
- D. Prepare and deliver to the Mayor, the City Administrator and the Chief by April 15 of each year, or such other date as set by the Mayor, a proposed budget for providing the education and training identified in subsection C., above.
- E. Notwithstanding section 2.29.020 of the Oakland Municipal Code and in accordance with section 604(b)(10) of the City Charter, have the authority to remove the Chief, without the approval of the Mayor, by a vote of not less than five (5) affirmative votes and only after finding cause. For purposes of removing the Chief, "cause" shall be defined as any of the following:
  - 1. Continuing, intentional, or willful failure or refusal to perform the duties and responsibilities of the Chief of Police as required by any employment agreement with the City, the City Charter, the City's governing laws and regulations, or any laws, rules or regulations of any governmental entity applicable to the Chief's employment by the City or to City operations, including without limitation, the inability to perform the

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

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

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

The Chief's annual report shall not disclose any information in violation of state and local law regarding the confidentiality of personnel records, including but not limited to California Penal Code section 832.7.

- G. Conduct an annual performance review of the Agency Director and of the Chief. The Commission shall determine the criteria for evaluating the Agency Director's and the Chief's job performance, and communicate those performance criteria, in addition to any other job performance expectations, to the Agency Director and the Chief one (1) full year before conducting any evaluation of their job performance. The Commission may, in its discretion decide to solicit and consider, as part of its evaluation, comments and observations from the City Administrator and other City staff who are familiar with the Agency Director's or the Chief's job performance. Responses to the Commission's requests for comments and observations shall be strictly voluntary.
- H. Create a form for Commissioners to use in providing annual comments, observations and assessments to the City Administrator regarding the Inspector General's job performance. Each Commissioner shall complete the form individually and submit his or her completed form to the City Administrator confidentially.
- I. Request that the City Attorney submit semi-annual reports to the Commission and to City Council which shall include a listing and summary of:

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

The City Attorney's semi-annual reports shall not disclose any information in violation of state and local law regarding the confidentiality of personnel records, including but not limited to California Penal Code section 832.7.

J. Provide policy guidelines to the Agency Director for assistance in determining case prioritization.

K. Make available on its website, to the extent permitted by law:

1. The Commission's annual report;
2. The Chief's annual report;
3. The Agency's reports;
4. The Agency Director's monthly reports; and
5. The Inspector General's annual report.

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

L. Direct the Agency to investigate a serious incident when requested by the Mayor, the City Administrator, and/or the City Council by an affirmative majority vote.

M. Review the Agency's dismissal and/or administrative closure of all complaints of misconduct involving Class I offenses, including any Agency investigative file regarding such complaints, and, in its discretion and by five (5) affirmative votes, direct the Agency to reopen the case and investigate the complaint. For purposes of this subsection, the definition of "Class I offenses" shall be the same as the definition of "Class I offenses" in the Department's Discipline Policy.

N. In association with the Agency Director and in consultation with the Chief or the Chief's designee, establish rules and procedures for the mediation and resolution of complaints of

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

- O. Receive all reports prepared by the Community Policing Advisory Board (hereinafter referred to as "CPAB") and consider acting upon any of the CPAB's recommendations for promoting community policing efforts and developing solutions for promoting and sustaining a relationship of trust and cooperation between the Department and the community.
- P. Review and comment on the Department's policy and/or practice of publishing Department data sets and reports regarding various Department activities, submit its comments to the Chief, and request the Chief to consider its recommendations and respond to the comments in writing.
- Q. Solicit and consider input from members of the public regarding the quality of their interactions with the Agency and the Commission.
- R. The Department, through the City Administrator or his or her designee, shall report to the Commission on issues identified by the Commission through the Commission's Chair. The City Administrator, or his or her designee, shall attend in person unless impracticable, and shall be prepared to discuss and answer questions regarding the issues identified by the Commission.

(Ord. No. 13498, § 2, 7-10-2018)

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

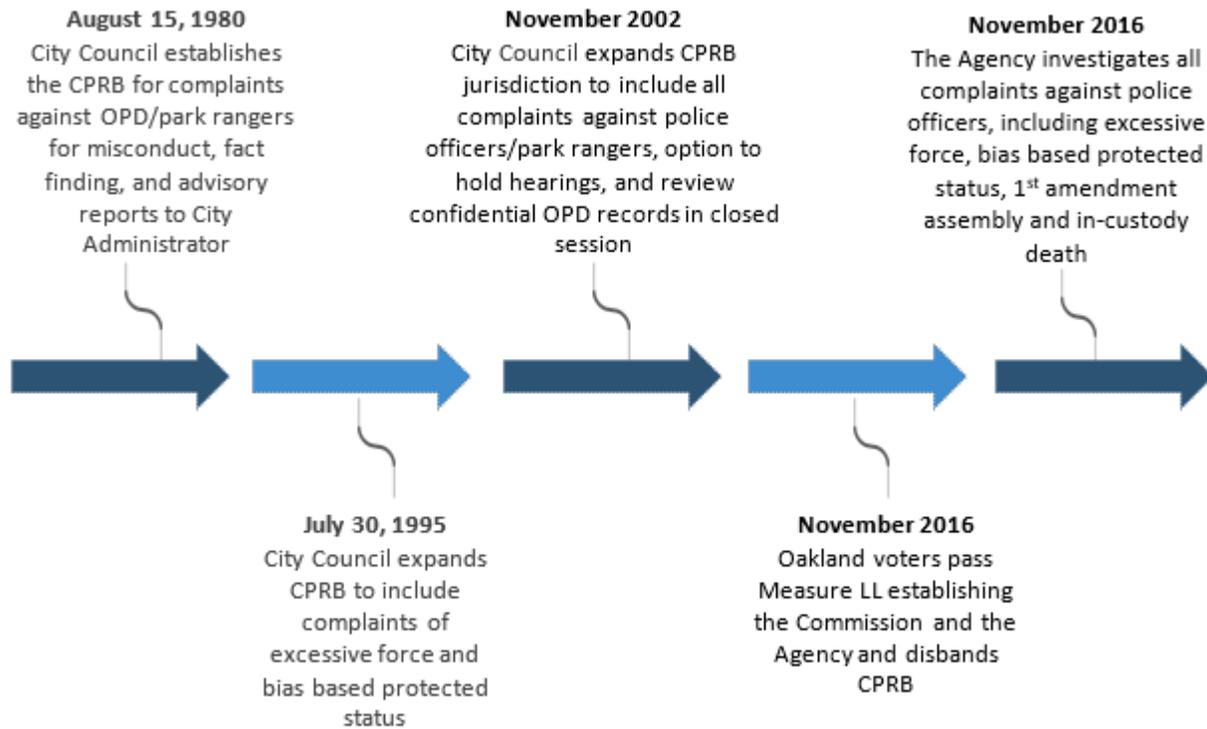
In addition to the powers and duties prescribed in Section 604 of the Oakland City Charter, Section 2.46.030<sup>17</sup> of the Municipal Code also lists the Agency's functions and duties. They are the following:

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

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

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

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



## Appendix F – Definitions of Allegations

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

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

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

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

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

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

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

(Ord. No. 13498, § 3, 7-10-2018)



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May 18, 2020

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

RE: Joint Rebuttal Submissions

Dear City Auditor Ruby and Audit Team:

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

Thank you for your time and attention.

/s/

Regina Jackson  
Chair, Oakland Police Commission

/s/

John Alden  
Executive Director, Oakland Community Police Review Agency

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

May 18, 2020

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

Dear City Auditor Ruby:

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

①

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

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

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

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

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

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

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

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

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

8

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

9

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

/s/

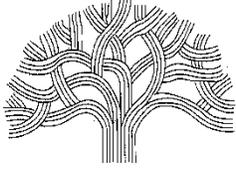
Chair Regina Jackson  
Oakland Police Commission

### Summarized Table of Disputes

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

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

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



CITY OF OAKLAND  
COMMUNITY POLICE REVIEW AGENCY

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May 18, 2020

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

RE: CPRA Rebuttal Submission

Dear City Auditor Ruby and Audit Team:

## **Introduction**

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

## **Overview**

CPRA is a work in progress.

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

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

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

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

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

## **Agency Staffing**

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

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

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

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

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

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

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

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

## **Agency Realm of Control**

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

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

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

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

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

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

## **AGENCY ACHIEVEMENTS**

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

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

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

## **RESPONSE TO FINDING THREE**

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

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

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

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

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

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

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

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

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

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

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

## **RESPONSE TO FINDING FOUR**

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

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

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

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

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

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

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

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

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

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

## CONCLUSION

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

Sincerely,



John Alden  
Executive Director  
Community Police Review Agency

Enclosure: Auditor's Matrix

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

	<p>4. Develop annual workplans to address its strategic plan goals.</p> <p>5. Develop policies and procedures for its agenda management process, including compliance with the Brown Act and ensure agenda items are within its jurisdiction and are prioritized based on importance.</p> <p>6. Develop policies and procedures, or by-laws, for conducting all aspects of the Commission’s oversight function including:</p> <ul style="list-style-type: none"> <li>a. Establishing by-laws that govern how the Commission should operate including defining the roles of the Chair, the Vice-Chair, and its committees</li> <li>b. Developing an effective process to review OPD’s policies, practices, customs, and general orders to identify and prioritize areas for improvement. In addition, prioritize new policies and practices</li> <li>c. Monitoring the training requirements of Commission members and consider providing some trainings online so that</li> </ul>		<p>Commission</p> <p>Commission</p> <p>See Rebuttal</p>	
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	<p>Commissioners can take them at their convenience</p> <ul style="list-style-type: none"> <li>d. Requesting and reviewing reports from the Chief of Police and the City Attorney</li> <li>e. Evaluating the Chief of Police and Agency Director at least annually</li> <li>f. Reviewing and commenting on the education and training of OPD’s sworn employees regarding the signs and symptoms of stress, drug abuse, alcoholism, and emotional health issues</li> <li>g. Reviewing and approving administrative closures and dismissal of cases</li> <li>h. Reviewing OPD’s budget to ensure that it aligns with OPD’s policies, procedures, customs, and general orders</li> <li>i. Ensuring full-compliance with the Brown Act</li> <li>j. Meeting, as a body, at least twice per year outside of City Hall</li> </ul>			
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	<p>k. Providing guidance to the Agency on how to prioritize cases</p> <p>l. Establishing a mediation program for complaints</p> <p>m. Releasing audio and video tapes of Class I alleged offenses</p> <p>7. Prepare an annual report summarizing the Commission’s progress in achieving its goals and objectives, as well its progress in implementing its strategic plan and annual workplans. This information should be included on the Commission’s website.</p> <p>8. Develop a budget proposal including sufficient resources to assist the Commission and Agency in carrying out duties.</p> <p>To ensure new Commissioners and oversight bodies are prepared to assume their duties prior to being seated, the City Administration, with the assistance of the Commission, should:</p> <p>9. Establish a formal orientation program which includes the following:</p> <ul style="list-style-type: none"> <li>• Meetings with the local government manager and other Commissioners</li> <li>• Orientation notebook</li> </ul>		<p>Commission</p> <p>Commission</p> <p>City Administration and Commission</p>	
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	<ul style="list-style-type: none"> <li>• Department presentations</li> <li>• Organizational/departmental videos</li> </ul> <p>The orientation program should also cover issues relevant to Commissioners such as:</p> <ul style="list-style-type: none"> <li>• Legal requirements and conflicts of interest</li> <li>• Expectations regarding ethical conduct</li> <li>• Provisions regarding sunshine laws or open meeting laws</li> <li>• City norms, policies, procedures, and by-laws</li> <li>• Meeting protocols (seating, use of technology on the dais, meeting etiquette, Robert’s Rules of Order)</li> <li>• Commissioners’ roles regarding its own committees and serving on other boards and committees</li> <li>• Media relations (including social media)</li> <li>• Contact and Communication with staff</li> </ul> <p>In addition, the City should assign a liaison to the Commission and other bodies to mentor them in the matters described above.</p>			
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	<p>To improve the working relationship between the City Administration and the Police Commission, the City Administration and the Commission should:</p> <p>10. Convene working sessions to discuss their differences, clarify their respective roles, understand respective boundaries, and develop some solutions to improve their working relationship. If matters cannot be resolved, the City should consider hiring a mediator to assist the City Administration and the Commission in working out their differences.</p>		<p>City Administration and Commission</p>	
<p>2</p>	<p>To address these issues, the Commission should implement the following recommendations:</p> <p>11. Use a more systematic approach for addressing racial profiling in law enforcement in Oakland. This approach should include, but not be limited to acknowledging racial profiling as a reality, engaging the communities affected, adopting policy guidance to address and end racial profiling, implementing data collection of race data to measure progress in reducing racial-disparities in law and monitoring progress to assess</p>		<p>See Rebuttal</p>	

	<p>whether new policies are having a positive effect on reducing racial profiling.</p> <p>12. Obtain training on conducting and managing public meetings, including how to address public comments in general.</p> <p>13. Ensure agenda items are consistent with the Commission’s mission and enforce limits on public comments.</p> <p>14. Develop a written code of conduct policy. This policy should address the desired behavior and values that the Commission should be promoting. The policy should also address the enforcement of the policy such as censure or removal from the Commission if the Commissioners do not comply with the code of conduct.</p> <p>15. Develop a comprehensive social media policy that explains restrictions on how Commissioners can use social media.</p> <p>To address situations when Commissioners contact City staff directly, the City Administration should:</p> <p>16. Develop the following protocols:</p> <ul style="list-style-type: none"> <li>• Guidance reminding staff to not respond to Commissioners without authorization and for notifying</li> </ul>		<p>See Rebuttal</p> <p>See Rebuttal</p> <p>See Rebuttal</p> <p>See Rebuttal</p> <p>See Rebuttal</p>	
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	<p>department officials of when Commissioners contact staff directly</p> <ul style="list-style-type: none"> <li>• Guidance addressing situations when Commissioners contact staff directly</li> <li>• Guidance elevating the matter to the Commission, the City Council, or to the City Attorney</li> </ul>			
<p>3</p>	<p>To ensure compliance with the Municipal Code requirement regarding the Agency’s office location, the City Administration and the Agency should:</p> <p>17. Work together to obtain space for the Agency that is consistent with the requirements specified in the Municipal Code.</p> <p>To assist in fulfilling the requirements of the City Charter and the Municipal Code, the Agency should:</p> <p>18. Work with Human Resources to ensure that hiring lists are kept up-to-date to have sufficient candidates available for hiring when vacancies occur.</p>	<p>17. Agreed. CPRA looks forward to working with the City Administrator’s Office to locate suitable office space.</p> <p>18. Agreed. CPRA now maintains current lists for the Complaint Investigator II and Complaint Investigator III positions. These lists will be updated regularly, and as frequently as the City of Oakland Civil Service Rules</p>	<p>City Administrator’s Office</p> <p>CPRA in conjunction with Human Resources Management.</p>	<p>Completed</p>

	<p>19. Establish written goals and objectives regarding the timeliness of their investigations. It should define the various aspects of the investigative process that need to be tracked. Finally, it should develop management reporting systems to allow management to monitor the timeliness of investigations.</p>	<p>allow. CPRA shares the classification of Intake Technician with the Police Department, and in the future will work with the Police Department on keeping that list current, also.</p> <p>19. Agreed. Since this audit was conducted, CPRA instituted written deadlines for the work of Intake Technicians and Complaint Investigators. These deadlines include separate dates for completion of key tasks, such as ordering documents, intake summaries, investigative plans, and investigative reports, among other tasks. These deadlines are monitored through reports and submission of key documents up to supervisors, and feedback in performance evaluations.</p>	<p>CPRA</p>	<p>Completed</p>
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	<p>20. Develop written policies and procedures to ensure investigations are concluded in a timely manner.</p>	<p>20. Agreed. As noted in #19, Intake Technicians and Complaint Investigators have been instructed in writing to meet specific deadlines for specific steps in the investigative process. These include creation of an investigative plan at the inception of a Complaint Investigator's work on a case so they can create a strategy for prioritizing cases and allegations within cases, and strategies for timely gathering of the relevant evidence.</p>	<p>CPRA</p>	<p>Completed</p>
	<p>21. Develop written policies and procedures to ensure all interviews with officers who allegedly committed Class I offenses are videotaped.</p>	<p>21. Agreed. All Complaint Investigators have been instructed in writing to videotape interviews in Class I cases. CPRA also has videotaping equipment, and has instructed Investigators as to how to use that equipment and store the resulting recording.</p>	<p>CPRA</p>	<p>Completed</p>

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

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

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

	<p>27. Define and document the overall processes necessary to undertake investigations, including establishing policies and procedures for the intake process.</p> <p>28. Establish and document a formal process for assigning staff to an investigation that considers the complexity of the investigation, staff experience and background, and whether the investigator is independent and free from personal impairments.</p>	<p>27. Agreed. CPRA is currently hiring for an additional Complaint Investigator III to oversee, define, and document the intake process. CPRA has created a first iteration of policies and procedures for both investigations and intake through performance expectations, and will be refining those as they are tested this calendar year.</p> <p>28. Disagree. The assignment of cases to individual investigators is complex, and depends heavily on matching individual skills to the unique complexities of each case. Overall the assignment process is a soft skill art, not a process susceptible to hard routinization as suggested here.</p>	<p>CPRA</p> <p>CPRA</p>	<p>Late 2020.</p>
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	<p>29. Agency management should ensure all job qualifications are met before hiring an investigator, as the role of an investigator requires extensive experience and the ability to interpret applicable laws and regulations.</p> <p>30. Establish procedures for the planning of investigations, including creating a standard investigation plan with clear objectives and methodology for the investigation. This plan should be reviewed and approved by the Supervisor before the formal investigation commences.</p> <p>31. Standardize reports to ensure consistency in how investigations are conducted and reported. In addition, the Executive Director should formally sign off on the final report of the investigation.</p>	<p>29. Agreed, within the rules set forth in the civil service system.</p> <p>30. Agreed. CPRA has recently created a requirement that Complaint Investigators create investigative plans for each case. This calendar year, CPRA will assess which plans were the most effective as we refine standardized investigative plans moving forward.</p> <p>31. Agreed. CPRA has created a standardized report structure and begun using it across all investigations. That form includes a signature line for the Executive Director and also the assigned Complaint Investigator.</p>	<p>CPRA and Human Resources Management.</p> <p>CPRA</p> <p>CPRA</p>	<p>Completed.</p> <p>Completed.</p> <p>Completed.</p>
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	<p>32. Establish policies and procedures that outline which phases of an investigation require quality review and how this will be documented.</p>	<p>32. Agreed. CPRA has already implemented supervisory review at the initial screening, intake summary, investigative plan, and report writing stages of the investigation. The intake summary, investigative plan, and final report are all documented, which assists with quality control.</p>	<p>CPRA</p>	<p>Completed.</p>
	<p>33. Management should acquire a case management system to assist management in performing its responsibilities of case management and reporting, measuring its accomplishments, and responding to inquiries.</p>	<p>33. Agreed. CPRA continues to work with IT to improve the existing CPRA database in this regard.</p>	<p>CPRA and Information Technology.</p>	<p>Mid-2021.</p>
	<p>34. Work with the Commission to establish the preferred investigative agency oversight model.</p>	<p>34. Agreed. CPRA has reached a consensus with the Commission that CPRA should move towards the investigative model.</p>	<p>CPRA and the Police Commission.</p>	<p>Completed.</p>

<p>5</p>	<p>As it considers changes to the City Charter and the Municipal Code, the City Council should:</p> <p>35. Consider the following questions in regard to the Commission’s authority to fire the Chief of Police:</p> <ul style="list-style-type: none"> <li>• Who should be vested with the authority to fire the Chief of Police for cause?</li> <li>• Who should be vested with the authority to fire the Chief of Police without cause?</li> <li>• What processes and controls should be put in place to ensure the actions taken to remove the Chief of Police are fair to all concerned and do not pose significant liability issues for the City?</li> </ul> <p>36. Debate the pros and cons of the various methods used to select Commissioners.</p> <p>37. Consider revising the City Charter to allow the City Council to review and approve Commissioners individually, instead of a slate of candidates.</p> <p>38. Consider amending the requirements for selection panel members to eliminate potential conflicts of interest and the</p>		<p>See Rebuttal</p>	
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	<p>Municipal Code should be amended to eliminate the provision that exempted members who were previously grandfathered onto the selection panel.</p> <p>39. Develop language in the proposed ballot measure to prohibit the Commission from participating in administrative activities and directing staff.</p> <p>40. Develop clarifying language, if needed, in the proposed ballot measure to clearly identify the Commission’s authority and responsibilities.</p> <p>41. Reassess the Commission’s requirements from the City Charter and the Municipal Code to determine whether a Commission comprised of part-time volunteers can effectively address those requirements or whether the City Council should eliminate requirements in the proposed City Charter amendment or in the Municipal Code.</p>			
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# City Administration's Response

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



# AGENDA REPORT

**TO:** Police Commission

**FROM:** John Alden  
Executive Director, CPRA

**SUBJECT:** CPRA Monthly Report, June 2020

**DATE:** June 22, 2020

Attached are the CPRA's monthly statistical reports to the Police Commission, as required by Charter. This month, those include:

- Pending Cases, one sorted by one-year goal and the other by assigned staff;
- Closed Cases, including policy recommendations;
- Pending Demonstration Related Cases.

As one can see from this list, this month we have separated out those cases relating to recent demonstrations into a special report. Those number over thirty cases, are all Charter-mandated, and normally would be assigned to Complaint Investigators. These cases therefore would double the current caseload assigned to Complaint Investigators and have already created additional workload for CPRA intake staff. These cases simply cannot be investigated by CPRA without additional funding. CPRA has estimated that temporary staff to handle this surge would cost approximately \$800,000 in the upcoming fiscal year.

The closed cases this cycle resulted in a variety of policy recommendations, including recommendations that OPD create new policies for handling the children of arrested parents, including how to communicate back to the arrested parents about the safety and security of their children upon their arrest. OPD currently lacks a policy in this regard, which creates inconsistent and detrimental handling of both the effected children and parents. Other jurisdictions have created policies in this regard that could serve as a model.

Likewise, the closed cases this cycle include recommendations as to modernizing missing persons procedures at OPD and coordinating those procedures with social media policy.

Should time permit at this week's Commission meeting, staff can provide more detailed information as to all of these matters if so desired.

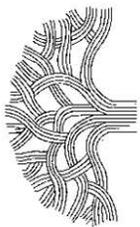
**CITY OF OAKLAND**  
**COMMUNITY POLICE REVIEW AGENCY**  
**Cases Associated with Public Demonstrations 5/29/20 – 6/1/20 (30 Cases Total)**

Case #	Incident Date	Assigned Staff	180-day Goal	1-year Goal	Type* (604(f)(1) or Other)	Allegation(s)
20-0638	5/29/2020	N/A	11/25/2020	5/28/2021	1st Amendment Assembly	Conduct Toward Others
20-0639	5/30/2020	N/A	11/26/2020	5/29/2021	Use of Force, 1st Amendment Assembly	Use of Force
20-0640	5/30/2020	N/A	11/26/2020	5/29/2021	1st Amendment Assembly	Performance of Duty
20-0641	5/31/2020	N/A	11/27/2020	5/30/2021	1st Amendment Assembly	Performance of Duty, Service Related
20-0642	5/30/2020	N/A	11/26/2020	5/29/2021	Use of Force, 1st Amendment Assembly	Use of Force, Crowd Control
20-0643	5/30/2020	N/A	11/26/2020	5/29/2021	Use of Force, 1st Amendment Assembly	Use of Force, Unintentional/Improper Search Seizure Arrest
20-0644	5/30/2020	N/A	11/26/2020	5/29/2021	Use of Force, 1st Amendment Assembly	Use of Force, Crowd Control
20-0645	5/31/2020	N/A	11/27/2020	5/30/2021	Use of Force, 1st Amendment Assembly	Use of Force, Harassment and Discrimination, Care of Property, Unintentional/Improper Search Seizure Arrest
20-0646	6/1/2020	ED	11/28/2020	5/31/2021	Use of Force, 1st Amendment Assembly	Use of Force, Failure to Provide Serial Number
20-0647	5/31/2020	N/A	11/27/2020	5/30/2021	Use of Force, 1st Amendment Assembly	Use of Force, Failure to Provide Serial Number
20-0648	6/1/2020	N/A	11/28/2020	5/31/2021	Use of Force, 1st Amendment Assembly	Use of Force, Care of Property, Department Property and Equipment
20-0652	5/30/2020	N/A	11/26/2020	5/29/2021	1st Amendment Assembly	Crowd Control, Failure to take a Report
20-0658	6/1/2020	N/A	11/28/2020	5/31/2021	Use of Force, 1st Amendment Assembly	Unintentional/Improper Search Seizure Arrest, Use of Force
20-0659	6/1/2020	N/A	11/28/2020	5/31/2021	1st Amendment Assembly	Crowd Control, Unintentional/Improper Search Seizure Arrest
20-0660	6/1/2020	N/A	11/28/2020	5/31/2021	1st Amendment Assembly	Conduct Toward Others, Demeanor

**CITY OF OAKLAND**  
**COMMUNITY POLICE REVIEW AGENCY**  
**Cases Associated with Public Demonstrations 5/29/20 – 6/1/20 (30 Cases Total)**

20-0661	6/1/2020	N/A	11/28/2020	5/31/2021	Use of Force, 1st Amendment Assembly	Use of Force, Unintentional/Improper Search Seizure Arrest
20-0662	6/1/2020	N/A	11/28/2020	5/31/2021	1st Amendment Assembly	Unintentional/Improper Search Seizure Arrest, Conduct Toward Others
20-0666	6/1/2020	N/A	11/28/2020	5/31/2021	1st Amendment Assembly	Unintentional/Improper Search Seizure Arrest, Care of Property, Harassment and Discrimination, Demeanor
20-0667	6/1/2020	N/A	11/28/2020	5/31/2021	Use of Force, 1st Amendment Assembly	Use of Force, Crowd Control, Demeanor
20-0668	6/1/2020	N/A	11/28/2020	5/31/2021	1st Amendment Assembly	Demeanor
20-0669	6/1/2020	N/A	11/28/2020	5/31/2021	1st Amendment Assembly	Conduct Toward Others, Demeanor
20-0670	5/20/2020	N/A	11/16/2020	5/19/2021	1st Amendment Assembly	Service Related
20-0675	6/3/2020	N/A	11/30/2020	6/2/2021	1st Amendment Assembly of Duty	Performance of Duty, Service Related
20-0677	6/2/2020	N/A	11/29/2020	6/1/2021	1st Amendment Assembly	Crowd Control, Service Related
20-0682	5/30/2020	N/A	11/26/2020	5/29/2021	1st Amendment Assembly	Service Related, Failure to Act
20-0683	5/30/2020	N/A	11/26/2020	5/29/2021	1st Amendment Assembly	Performance of Duty
20-0685	6/1/2020	N/A	11/28/2020	5/31/2021	Use of Force, 1st Amendment Assembly	Use of Force, Crowd Control, Unintentional/Improper Search Seizure Arrest, Care of Property
20-0686	6/7/2020	N/A	12/4/2020	6/6/2021	1st Amendment Assembly	Care of Property, Obedience to Laws
20-0705	5/29/2020	N/A	11/25/2020	5/28/2021	Use of Force, 1st Amendment Assembly	Use of Force
20-0711	5/29/2020	N/A	11/25/2020	5/28/2021	Use of Force, 1st Amendment Assembly	Use of Force

\* The Type (604(f) or Other) column addresses whether the investigation contains allegations for which a full investigation is mandated under Oakland City Charter Section 604 (Measure LL). The allegation types listed in this column are: DUI, Profiling, Use of Force, In Custody Death, 1st Amendment Assembly or Other.

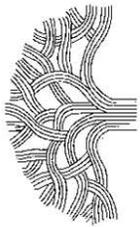


CITY OF OAKLAND  
**COMMUNITY POLICE REVIEW AGENCY**  
*Pending Cases (Sorted by 1-year Goal)*

6/19/2020  
 Page 1 of 3  
 (Total Pending = 94)

Case #	Complainant	Incident Date	Rcv'd CPRA	Rcv'd ID	Intake or Investigator	Assigned Staff	180-day Goal	1-year Goal	Type (604(f) or Other)	Class	Subject Officers	Allegation Count	Allegation(s)
19-00619	McCallum, Phillip	6/24/19	7/18/19	6/24/19	Investigator	MM	1/14/20	6/22/20	Use of Force	1	2	11	Improper Search, Excessive Force, Performance of Duty
19-00685	Owens, Patrick	6/26/19	7/12/19	7/9/19	Investigator	AN	1/9/20	7/7/20	Other	2	3	9	Performance of Duty, Improper Search/Seizure
19-00775	Powell, Lakisha	7/31/19	8/5/19	8/5/19	Investigator	AL	2/1/20	7/30/20	Other	2	3	4	Service Complaint, No MOR, Misdemeanor, Performance of Duty
19-00669	Thompson, Darrel	8/16/19	8/21/19	8/21/19	Investigator	MM	2/17/20	8/16/20	Use of Force	1	2	2	Use of Force
19-00877	Udovic, Olivia	8/19/19	8/21/19	8/19/19	Investigator	AN	2/17/20	8/17/20	Use of Force	1	2	5	Harassment and Discrimination/Race, Unlawful arrest, Use of Force,
19-00906	Simmons, Jo	8/26/19	8/28/19	8/26/19	Investigator	JS	2/24/20	8/24/20	Use of Force	1	1	3	Excessive force, handcuffing, misdemeanor
19-00911	Orozco, Jose	8/27/19	8/29/19	8/27/19	Investigator	AL	2/25/20	8/23/20	Use of Force	1	2	3	Use of Force, Performance of Duty
19-00651	Taylor, Crystal	7/1/19	7/8/19	7/1/19	Investigator	JS	1/4/20	8/28/20	Racial Profiling	1	1	6	Improper Stop, Failure to Provide Serial Number, Identity Profiling by Race or Ethnicity
20-00445	CPRA	1/29/19	2/8/19	1/29/19	Investigator	AN	8/7/19	8/31/20	Other	1	1	5	Performance of Duty, Truthfulness
19-10668	McGinnis, Felicia	9/30/19	10/2/19	10/2/19	Investigator	MM	3/30/20	9/29/20	Other	1	1	2	Performance of Duty
19-10991	Dunbar, Louis et al.	10/4/19	10/9/19	10/4/19	Investigator	ED	4/6/20	10/2/20	Use of Force	1	3	8	Use of Force
19-10993	Hodges, Demario	10/5/19	10/9/19	10/5/19	Investigator	AL	4/6/20	10/3/20	Use of Force	1	4	8	Performance of Duty
19-11223	Gomez, Ernesto	10/10/19	10/15/19	10/11/19	Investigator	ED	4/12/20	10/9/20	Use of Force	1	8	27	Use of Force, misdemeanor, performance of duty
19-11669	Riles, Wilson	10/17/19	10/22/19	10/17/19	Investigator	ED	4/19/20	10/15/20	Use of Force, Profiling	1	3	11	Excessive force, false arrest, discrimination, Miranda violation
19-11553	Whaley, Marlin	10/17/19	10/17/19	10/17/19	Investigator	MM	4/15/20	10/15/20	Profiling	1	2	6	Identity Profiling by Race or Ethnicity, Unintentional/Improper Search or seizure, or arrest, Performance of Duty
19-13111	Palacios, Augustin	11/14/19	11/26/19	11/14/19	Investigator	AL	5/24/20	11/13/20	Other	2	1	2	Performance of Duty
19-13201	Williams, Damont	11/24/19	11/26/19	11/24/19	Investigator	AL	5/24/19	11/22/20	Use of Force	1	2	4	Harassment and Discrimination, Use of Force,
19-13288	Evans, Kenjora	5/31/19	12/3/19	11/27/19	Investigator	MM	5/31/19	11/25/20	Profiling	1	1	2	Harassment and Discrimination, Performance of Duty, Truthfulness,
19-13900	Perez-Rodriguez, Hector	12/8/19	12/13/19	12/12/19	Investigator	JS	6/10/20	12/10/20	Use of Force	1	1	3	Performance of Duty, Use of Force,
19-13911	Jacobs, Jonathan	12/13/19	12/19/19	12/13/19	Investigator	JS	6/14/20	12/11/20	Use of Force	1	2	4	Use of Force
19-13988	Kenney, Christopher	12/15/19	12/17/19	12/15/19	Investigator	AL	6/14/20	12/13/20	Use of Force	1	1	1	Use of Force
19-14400	Ingram, Sean	12/24/19	12/27/19	12/24/19	Intake	CD	6/24/20	12/22/20	Use of Force	1	1	1	Use of Force
19-14477	McQuarters, Orlando	12/26/19	12/31/19	12/26/19	Investigator	AN	6/28/20	12/24/20	Use of Force	1	2	2	Use of Force, Care of Property
20-00044	Zambrano, Rosa	1/10/20	1/15/20	1/10/20	Intake	CD	7/13/20	1/8/21	Harassment/discrim.	1	3	3	Conduct towards others
20-00051	OPD	1/12/20	1/6/20	1/14/20	Investigator	JS	7/14/20	1/11/21	Other	1	1	1	Inaccurate report
20-00050	Rodgers, D'Lano	1/14/20	1/16/20	1/14/20	Investigator	ED	7/14/20	1/14/21	Use of Force	1	2	9	Use of force, false arrest, improper search, improper handcuffing, Miranda violation
20-01006	Delaney, Keith	1/22/20	2/4/20	1/20/20	Intake	CD	8/2/20	1/20/21	Harassment/discrim.	1	2	2	Conduct Towards Others / Performance of Duty
20-01008	Lacy, Dimonte	1/29/20	1/31/20	1/30/20	Investigator	ED	7/29/20	1/30/21	Use of Force	1	1	1	Use of Force
20-01011	Johnson, Donald	2/10/20	2/13/20	2/8/20	Intake	AL	8/11/20	2/7/21	Use of Force	1	1	1	Use of Force
20-01071	Cardenas, Gustavo	2/12/20	2/18/20	2/13/20	Intake	CD	8/16/20	2/11/21	Use of Force	1	1	1	Use of Force
20-01096	Jones-Ferguson, Carol	2/19/20	2/20/20	2/19/20	Intake	CD	8/18/20	2/17/21	UOFF/Harassment	1	2	6	UOF, Conduct towards others;
20-02111	Bailey, Alexander	2/23/20	2/23/20	2/23/20	Intake	CD	8/21/20	2/21/21	Harrasment/discrimination	1	4	4	Conduct towards others
20-02006	Kirk, Sean	2/23/20	2/25/20	2/23/19	Intake	CD	8/23/20	2/23/21	General	2	1	4	Performance of Duty, Conduct Towards Others
20-02198	Bey, Saleem/John	10/29/18	2/25/20	2/25/20	Investigator	JA	8/23/20	2/24/21	Harassment/Discrimination	1	2	2	Harassment and Discrimination/Race, Failure to Investigate

\* The Type (604(f) or Other) column addresses whether the investigation contains allegations for which a full investigation is mandated under Oakland City Charter Section 604 (Measure LL). The allegation types listed in this column are: DUI, Profiling, Use of Force, In Custody Death, 1st Amendment Assembly or Other.

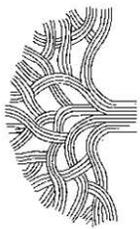


CITY OF OAKLAND  
**COMMUNITY POLICE REVIEW AGENCY**  
*Pending Cases (Sorted by 1-year Goal)*

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 (Total Pending = 94)

Case #	Complainant	Incident Date	Rcv'd CPRA	Rcv'd ID	Intake or Investigator	Assigned Staff	180-day Goal	1-year Goal	Type (604(f) or Other)	Class	Subject Officers	Allegation Count	Allegation(s)
20-0204	Merritt, Andy	2/22/20	2/26/20	2/24/20	Intake	CD	8/24/20	2/24/21	Service Complaint	0	1	1	Service Complaint
20-0270	Kincaid, Linda	1/18/19	3/2/20	2/25/20	Intake	CD	8/29/20	2/25/21	General	2	1	1	Performance of Duty
20-0268	Robins, Ken	2/28/20	3/5/20	2/28/20	Intake	CD	9/1/20	2/28/21	Harassment/General	1	2	5	Performance of Duty/Harassment & Discrimination
20-0258	Branch, Duran	3/2/20	3/4/20	3/3/20	Intake	CD	8/31/20	3/2/21	General	2	2	4	Performance of Duty
20-0274	Bailey, Sarahia	3/4/20	3/4/20	3/5/20	Investigator	JS	8/29/20	3/6/21	Bias/discrimination; Performance of	1	1	2	Bias; Performance of Duty
20-0311	Mapp-Parker, Belinda	3/13/20	3/13/20	3/13/20	Intake	MB	9/9/20	3/14/21	Use of Force	1	1	3	Use of Force
20-0313	Santiago, Rosalina	3/14/20	3/17/20	3/15/20	Investigator	AN	9/13/20	3/15/21	Use of Force	1	3	5	Use of Force, False Arrest, Care of Property
20-0325	Byrd, Draekar	3/17/20	3/18/20	3/17/20	Intake	CD	9/14/2020	3/18/21	Use of Force	1	1	2	Use of Force/Performance of Duty
20-0322	Laux, Kallin	3/11/20	3/17/20	3/17/20	Investigator	MM	9/13/20	3/18/21	Other	2	1	1	Performance of Duty
20-0334	Sumler, Seyla	3/19/20	3/20/20	3/19/20	Intake	CD	9/16/2020	3/19/21	Performance of Duty	2	2	2	Performance of Duty
20-0355	Williams, Marise	3/24/20	3/26/20	3/24/20	Intake	CD	9/22/20	3/23/21	Harassment/Discrim.	1	2	2	Conduct towards others
20-0366	Shunteen Jefferson	2/28/20	4/1/20	3/28/20	Intake	CD	9/28/20	3/27/21	Harassment/Discrim.	1	6	6	Conduct towards others
20-0367	Corazon Chaplin	3/28/20	4/1/20	3/29/20	Intake	CD	9/28/20	3/28/21	General	2	2	2	Performance of Duty
20-0374	Michael	3/29/20	4/1/20	3/28/20	Intake	CD	9/28/20	3/28/21	Demeanor	2	1	1	Conduct towards others
20-0385	Gage, Henry	3/29/20	3/30/20	3/30/20	Investigator	MM	9/29/20	3/29/21	Use of Force	1	1	2	Use of Force
20-0375	Annie Thomas	3/0/20	4/1/20	3/20/20	Intake	CD	9/29/20	3/29/21	Use of Force/False arrest	1	2	4	Use of Force/Performance of Duty
20-0379	Johnson, Henry	3/11/20	3/31/20	3/31/20	Intake	MB	9/28/20	4/1/21	Other	2	1	3	Performance of Duty
20-0391	Rashidi, Kathryn	4/3/20	4/7/20	4/3/20	Intake	CD	10/4/20	4/2/21	Use of Force	1	3	3	Use of Force
20-0394	Robinson, Gail	4/5/20	4/7/20	4/5/20	Intake	MB	10/4/20	4/6/21	Use of Force	1	3	6	Use of Force
20-0416	Avant, Deshawn	4/10/20	4/16/20	4/10/20	Intake	MB	10/13/20	4/10/21	Other	2	1	1	Demeanor
20-0426	Meier, Axel	2/16/19	4/14/20	4/14/20	Intake	CD	10/11/20	4/13/21	General	2	1	1	Performance of Duty
20-0431	Singleton, Joel	3/18/20	4/17/20	4/15/20	Intake	CD	10/14/20	4/14/21	Use of Force	1	1	1	Use of Force
20-0413	Hewitt, Lea	4/12/20	4/16/20	4/13/20	Intake	MB	10/13/20	4/14/21	Use of Force	1	2	8	Use of Force
20-0438	OPD (OIS)	4/16/20	4/16/20	4/16/20	Investigator	AN	10/13/20	4/15/21	Use of Force	1	5	5	Use of Force
20-0423	King, Cory	4/14/20	4/17/20	4/16/20	Intake	CD	10/14/20	4/15/21	Use of Force	1	2	2	Use of Force
20-0432	Smith, Ebony	4/15/20	4/17/20	4/15/20	Intake	MB	10/14/20	4/15/21	Use of Force	1	3	6	Use of Force
20-0455	Angela Moseley	4/21/20	4/23/20	4/21/20	Intake	CD	10/20/20	4/20/21	Harassment/discrim.	1	2	2	Conduct towards others
20-0466	Johnson, Aiyahma et al.	4/24/20	4/25/20	4/24/20	Investigator	ED	10/26/20	4/23/21	Use of Force, Profiling	1	4	7	Use of Force, Discrimination
20-0471	Burns, Regina	4/26/20	4/29/20	4/26/20	Intake	CD	10/26/20	4/25/21	Harassment/General	1	1	2	Conduct towards other/Performance of Duty
20-0480	Martinez, Jose	4/28/20	4/29/20	4/28/20	Intake	CD	10/26/20	4/28/21	General	2	1	2	Performance of Duty
20-0483	Derouen, Kindra	4/27/2020	4/29/2020	4/27/2020	Intake	MB	10/26/2020	4/28/2021	Use of Force	1	1	1	Use of Force
20-0492	Malstrom, Melissa	4/28/20	4/28/20	4/28/20	Intake	MB	10/25/20	4/28/21	Other	2	1	2	Performance of Duty
20-0498	Cleveland, Kalbe	5/1/20	5/6/20	5/1/20	Intake	CD	11/2/20	4/30/21	Discrimination/ False arrest	1	1	2	Conduct Towards Others/Performance of Duty
20-0501	Burns, Ernestini	5/1/20	5/6/20	5/2/20	Intake	MB	11/2/20	5/2/21	Use of Force	1	1	1	Use of Force
20-0522	Hall, Darnell	5/6/20	5/8/20	5/6/20	Intake	CD	11/4/20	5/6/21	Service Complaint/Discrimination	1	2	2	Service Complaint/Conduct towards others
20-0512	Coleman, Sherida	5/4/20	5/6/20	5/4/20	Intake	MB	11/2/20	5/5/21	Other	2	1	3	Performance of Duty
20-0523	Funes, Ismael	5/6/20	5/8/20	5/7/20	Intake	CD	11/4/20	5/6/21	Use of Force	1	1	1	Use of Force
20-0528	McLaughlin, Gregory	5/7/20	5/13/20	5/7/20	Intake	MB	11/9/20	5/7/21	Profiling	1	4	1	Profiling
20-0538	Yanez, Conrad	5/9/20	5/13/20	5/9/20	Intake	CD	11/9/20	5/8/21	Use of Force	1	2	2	Use of Force

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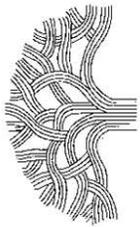


CITY OF OAKLAND  
**COMMUNITY POLICE REVIEW AGENCY**  
*Pending Cases (Sorted by 1-year Goal)*

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 (Total Pending = 94)

Case #	Complainant	Incident Date	Rcvd CPRA	Rcvd ID	Intake or Investigator	Assigned Staff	180-day Goal	1-year Goal	Type (604(f) or Other)	Class	Subject Officers	Allegation Count	Allegation(s)
20-0639	Anonymous	5/9/20	5/13/20	5/9/20	Intake	CD	5/9/20	5/6/21	Felony/Serious Misdemeanor	1	1	1	Obedience to laws
20-0544	Sims, Alvie	5/8/20	5/13/20	5/6/20	Intake	MB	11/9/20	5/9/21	Profiling	1	3	3	Profiling
20-0547	Penderstuckersonweloveryou, Babyegypt	5/11/20	5/13/20	5/11/20	Intake	CD	11/9/20	5/10/21	Use of Force/False arrest	2	3	6	Use of Force/Performance of Duty
20-0548	Dawkins, Shane	5/11/20	5/13/20	5/11/20	Intake	MB	11/9/20	5/11/21	Use of Force	1	1	1	Use of Force
20-0556	Campos, Dafney	5/12/20	5/14/20	5/13/20	Intake	CD	11/10/20	5/12/21	Demeanor/General	2	2	6	Conduct Toward Other/Performance of Duty
20-0546	Washington, Vincent	5/5/20	5/13/20	5/11/20	Intake	MB	11/9/20	5/12/21	Use of Force	1	1	3	Use of Force
20-0507	Sherman, Sierce	5/15/20	5/15/20	5/15/20	Intake	CD	11/11/20	5/14/21	Harassment and Discrimination	1	1	1	Conduct Toward Other
20-0581	Johnson, Prince	5/17/20	5/20/20	5/17/20	Intake	CD	11/16/20	5/18/21	Harassment and Discrim	1	2	2	Conduct towards others
20-0573	Suh, Stobhan and David	5/11/20	5/20/20	5/11/20	Intake	MB	11/16/20	5/18/21	Use of Force	1	1	3	Use of Force
20-0575	Chatman, Freddie	5/16/20	5/20/20	5/16/20	Intake	MB	11/16/20	5/17/21	Other	2	2	2	Performance of Duty
20-0589	Duncan, Daud	5/19/20	5/21/20	5/19/20	Intake	CD	11/17/20	5/18/21	Harassment and Discrim	1	1	1	Conduct towards other
20-0603	Chatham, Alyssa	5/21/20	5/23/20	5/21/20	Intake	MB	11/23/20	5/21/21	Use of Force	1	1	1	Use of Force
20-0622	Hill, Zumeiri	4/25/20	5/27/20	5/26/20	Intake	MB	11/23/20	5/27/21	Use of Force	1	1	1	Use of Force
20-0635	Thorn, Michelle	5/19/20	6/1/20	5/28/20	Intake	MB	11/28/20	5/28/21	Use of Force	1	1	3	Use of Force
20-0644	Lin Belle, Sarah	5/30/20	5/31/20	5/31/20	Intake	MB	11/27/20	5/30/21	Use of Force	1	1	2	Use of Force
20-0646	Brown, Makyla	5/31/20	6/2/20	6/1/20	Investigator	ED	11/29/20	5/31/21	Use of Force	1	1	2	Use of force, refusal to accept or refer complaint
20-0598	Perkins, Donisha	5/20/20	6/2/20	5/20/20	Intake	MB	11/29/20	6/2/21	Other	1	1	1	Obedience to Laws
20-0648	Kahwal, Toor	6/1/20	6/2/20	6/1/20	Intake	MB	11/29/20	6/2/21	Use of Force	1	1	2	Use of Force
20-0277	Hussain, Yaseen	2/22/20	3/10/20	3/6/20	Intake	CD	9/6/20	9/6/21	Use of Force	1	1	3	Use of Force
19-0739	Moses, Tina	7/22/19	5/2/20	7/22/19	Investigator	JS	N/A	7/20/202	Obedience to rules	1	1	3	Obedience to laws; Performance of Duty; Truthfulness
18-0335	Maxwell Thomas	4/4/18	4/12/18	4/4/18	Investigator	JS	10/4/18	Tolled	Use of Force	1	1	1	Use of Taser; PDRD violation.

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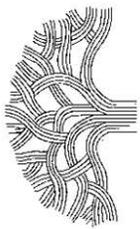


CITY OF OAKLAND  
**COMMUNITY POLICE REVIEW AGENCY**  
*Pending Cases (Sorted by Assigned Staff)*

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 (Total Pending = 94)

Case #	Complainant	Incident Date	Rcv'd CPRA	Rcv'd ID	Intake or Investigator	Assigned Staff	180-day Goal	1-year Goal	Type (604(f) or Other)	Cites	Subject Officers	Allegation Count	Allegation(s)
19-0075	Powell, Lakisha	7/31/19	8/5/19	8/5/19	Investigator	AL	2/1/20	7/30/20	Other	2	3	4	Service Complaint, No MOR, Misdemeanor, Performance of Duty
19-0091	Orozco, Jose	8/27/19	8/29/19	8/27/19	Investigator	AL	2/25/20	8/25/20	Use of Force	1	2	3	Use of Force, Performance of Duty
19-1093	Hodges, Demario	10/5/19	10/9/19	10/5/19	Investigator	AL	4/6/20	10/3/20	Use of Force	1	4	8	Performance of Duty
19-1311	Palacios, Augustin	11/14/19	11/26/19	11/14/19	Investigator	AL	5/24/20	11/13/20	Other	2	1	2	Performance of Duty
19-1920	Williams, Demont	11/24/19	11/26/19	11/24/19	Investigator	AL	5/24/19	11/22/20	Use of Force	1	2	4	Harassment and Discrimination, Use of Force,
19-1998	Kenney, Christopher	12/15/19	12/17/19	12/15/19	Investigator	AL	6/14/20	12/13/20	Use of Force	1	1	1	Use of Force
19-0085	Owens, Patrick	6/26/19	7/12/19	7/9/19	Investigator	AN	1/9/20	7/7/20	Other	2	3	9	Performance of Duty, Improper Search/Seizure
19-0877	Udovic, Olivia	8/19/19	8/21/19	8/19/19	Investigator	AN	2/17/20	8/17/20	Use of Force	1	2	5	Harassment and Discrimination/Race, Unlawful arrest, Use of Force,
20-0045	CPRA	1/29/19	2/8/19	1/29/19	Investigator	AN	8/7/19	8/31/20	Other	1	1	5	Performance of Duty, Truthfulness
19-1447	McQuarters, Orlando	12/26/19	12/31/19	12/26/19	Investigator	AN	6/28/20	12/24/20	Use of Force	1	2	2	Use of Force, Care of Property
20-0313	Santiago, Rosalina	3/14/20	3/17/20	3/15/20	Investigator	AN	9/13/20	3/15/21	Use of Force	1	3	5	Use of Force, False Arrest, Care of Property
20-0438	OPD (OIS)	4/16/20	4/16/20	4/16/20	Investigator	AN	10/13/20	4/15/21	Use of Force	1	5	5	Use of Force
19-1091	Dunbar, Louis et al.	10/4/19	10/9/19	10/4/19	Investigator	ED	4/6/20	10/2/20	Use of Force	1	3	8	Use of Force
19-1123	Gomez, Ernesto	10/10/19	10/15/19	10/11/19	Investigator	ED	4/12/20	10/9/20	Use of Force	1	8	27	Use of Force, misdemeanor, performance of duty
19-1169	Riles, Wilson	10/17/19	10/22/19	10/17/19	Investigator	ED	4/19/20	10/15/20	Use of Force, Profiling	1	3	11	Excessive force, false arrest, discrimination, Miranda violation
20-0050	Rodgers, D'Lano	1/14/20	1/16/20	1/14/20	Investigator	ED	7/14/20	1/14/21	Use of Force	1	2	9	Use of force, false arrest, improper search, improper handcuffing, Miranda violation
20-0106	Lacy, Dimonte	1/29/20	1/31/20	1/30/20	Investigator	ED	7/29/20	1/30/21	Use of Force	1	1	1	Use of Force
20-0466	Johnson, Aiyahma et al.	4/24/20	4/25/20	4/24/20	Investigator	ED	10/26/20	4/23/21	Use of Force, Profiling	1	4	7	Use of Force, Discrimination
20-0646	Brown, Makyla	5/31/20	6/2/20	6/1/20	Investigator	ED	11/29/20	5/31/21	Use of Force	1	1	2	Use of force, refusal to accept or refer complaint
20-0218	Bey, Saleem/John	10/29/18	2/25/20	2/25/20	Investigator	JA	8/23/20	2/24/21	Harassment/Discrimination	1	2	2	Harassment and Discrimination/Race, Failure to Investigate
19-0906	Simmons, Jo	8/26/19	8/28/19	8/26/19	Investigator	JS	2/24/20	8/24/20	Use of Force	1	1	3	Excessive force, handcuffing, misdemeanor
19-0851	Taylor, Crystal	7/1/19	7/8/19	7/1/19	Investigator	JS	1/4/20	8/28/20	Racial Profiling	1	1	6	Improper Stop, Failure to Provide Serial Number, Identity Profiling by Race or Ethnicity
19-1390	Perez-Rodriguez, Hector	12/8/19	12/13/19	12/12/19	Investigator	JS	6/10/20	12/10/20	Use of Force	1	1	3	Performance of Duty, Use of Force,
19-1391	Jacobs, Jonathan	12/13/19	12/19/19	12/13/19	Investigator	JS	6/14/20	12/11/20	Use of Force	1	2	4	Use of Force
20-0051	OPD	11/20/19	1/6/20	1/14/20	Investigator	JS	7/14/20	1/11/21	Other	1	1	1	Inaccurate report
20-0274	Bailey, Sarahia	3/4/20	3/4/20	3/5/20	Investigator	JS	8/29/20	3/6/21	Bias/discrimination; Performance of	1	1	2	Bias, Performance of Duty
19-0739	Moses, Tina	7/22/19	5/2/20	7/22/19	Investigator	JS	N/A	7/20/20	Obedience to rules	1	1	3	Obedience to laws; Performance of Duty; Truthfulness
19-0335	Maxwell Thomas	4/4/18	4/12/18	4/4/18	Investigator	JS	10/4/18	Tolled	Use of Force	1	1	1	Use of Taser, PDRD violation,
19-0619	McCallum, Phillip	6/24/19	7/18/19	6/24/19	Investigator	MM	1/14/20	6/22/20	Use of Force	1	2	11	Improper Search, Excessive Force, Performance of Duty
19-0869	Thompson, Darrell	8/18/19	8/21/19	8/21/19	Investigator	MM	2/17/20	8/18/20	Use of Force	1	2	2	Use of Force
19-1068	McGinnis, Felicia	9/30/19	10/2/19	10/2/19	Investigator	MM	3/30/20	9/29/20	Other	1	1	2	Performance of Duty
19-1153	Whaley, Marlin	10/17/19	10/17/19	10/17/19	Investigator	MM	4/15/20	10/15/20	Profiling	1	2	6	Identity Profiling by Race or Ethnicity, Unintentional/Improper Search or seizure, or arrest; Performance of Duty
19-1328	Evans, Kenjora	5/31/19	12/3/19	11/27/19	Investigator	MM	5/31/19	11/25/20	Profiling	1	1	2	Harassment and Discrimination, Performance of Duty, Truthfulness,
20-0322	Laux, Kaitlin	3/11/20	3/17/20	3/17/20	Investigator	MM	9/13/20	3/18/21	Other	2	1	1	Performance of Duty
20-0385	Gage, Henry	3/29/20	3/30/20	3/30/20	Investigator	MM	9/26/20	3/29/21	Use of Force	1	1	2	Use of Force
20-0161	Johnson, Donald	2/10/20	2/13/20	2/6/20	Intake	AL	8/11/20	2/7/21	Use of Force	1	1	1	Use of Force
19-1440	Ingram, Sean	12/24/19	12/27/19	12/24/19	Intake	CD	6/24/20	12/22/20	Use of Force	1	1	1	Use of Force

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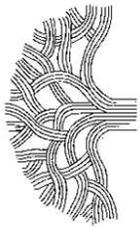


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**COMMUNITY POLICE REVIEW AGENCY**  
*Pending Cases (Sorted by Assigned Staff)*

6/19/2020  
 Page 2 of 3  
 (Total Pending = 94)

Case #	Complainant	Incident Date	Rcvd CPRA	Rcvd ID	Intake or Investigator	Assigned Staff	180-day Goal	1-year Goal	Type (604(f) or Other)	Class	Subject Officers	Allegation Count	Allegation(s)
20-0044	Zambano, Rosa	1/10/20	1/15/20	1/10/20	Intake	CD	7/13/20	1/8/21	Harassment/discrim.	1	3	3	Conduct towards others
20-0116	Delaney, Keith	1/22/20	2/4/20	1/20/20	Intake	CD	8/2/20	1/20/21	Harassment/discrim.	1	2	2	Conduct Towards Others / Performance of Duty
20-0171	Cardenas, Gustavo	2/12/20	2/18/20	2/13/20	Intake	CD	8/16/20	2/11/21	Use of Force	1	1	1	Use of Force
20-0196	Jones-Ferguson, Carol	2/19/20	2/20/20	2/19/20	Intake	CD	8/18/20	2/17/21	UOF/Harassment	1	2	6	UOF; Conduct towards others;
20-0211	Bailey, Alexander	2/23/20	2/23/20	2/23/20	Intake	CD	8/21/20	2/21/21	Harassment/discrimination	1	4	4	Conduct towards others
20-0206	Kirk, Sean	2/23/20	2/25/20	2/23/19	Intake	CD	8/23/20	2/23/21	General	2	1	4	Performance of Duty, Conduct Towards Others
20-0204	Merritt, Ardy	2/22/20	2/26/20	2/24/20	Intake	CD	8/24/20	2/24/21	Service Complaint	0	1	1	Service Complaint
20-0270	Kincald, Linda	11/18/19	3/2/20	2/25/20	Intake	CD	8/29/20	2/25/21	General	2	1	1	Performance of Duty
20-0268	Robins, Ken	2/28/20	3/5/20	2/28/20	Intake	CD	9/1/20	2/28/21	Harassment/General	1	2	5	Performance of Duty/Harassment & Discrimination
20-0258	Branch, Duan	3/2/20	3/4/20	3/3/20	Intake	CD	8/31/20	3/2/21	General	2	2	4	Performance of Duty
20-0325	Byrd, Draekar	3/17/20	3/18/20	3/17/20	Intake	CD	9/14/2020	3/18/21	Use of Force	1	1	2	Use of Force/Performance of Duty
20-0334	Sumler, Sayla	3/19/20	3/20/20	3/19/20	Intake	CD	9/16/2020	3/18/21	Performance of Duty	2	2	2	Performance of Duty
20-0355	Williams, Marlise	3/24/20	3/26/20	3/24/20	Intake	CD	9/22/20	3/23/21	Harassment/Discrim.	1	2	2	Conduct towards others
20-0366	Shunteen Jefferson	2/28/20	4/1/20	3/28/20	Intake	CD	9/28/20	3/27/21	Harassment/Discrim.	1	6	6	Conduct towards others
20-0367	Corazon Chaplin	3/28/20	4/1/20	3/29/20	Intake	CD	9/29/20	3/28/21	General	2	2	2	Performance of Duty
20-0374	Michael	3/29/20	4/1/20	3/29/20	Intake	CD	9/29/20	3/28/21	Demeanor	2	1	1	Conduct towards others
20-0375	Annie Thomas	3/0/20	4/1/20	3/20/20	Intake	CD	9/28/20	3/29/21	Use of Force/False arrest	1	2	4	Use of Force/Performance of Duty
20-0391	Rashidi, Kathyn	4/3/20	4/7/20	4/3/20	Intake	CD	10/4/20	4/2/21	Use of Force	1	3	3	Use of Force
20-0426	Meier, Axel	2/16/19	4/14/20	4/14/20	Intake	CD	10/11/20	4/13/21	General	2	1	1	Performance of Duty
20-0431	Singleton, Joel	3/18/20	4/17/20	4/15/20	Intake	CD	10/14/20	4/14/21	Use of Force	1	1	1	Use of Force
20-0423	King, Cory	4/14/20	4/17/20	4/16/20	Intake	CD	10/14/20	4/15/21	Use of Force	1	2	2	Use of Force
20-0455	Angela Moseley	4/21/20	4/23/20	4/21/20	Intake	CD	10/20/20	4/20/21	Harassment/discrim.	1	2	2	Conduct towards others
20-0471	Burns, Regina	4/26/20	4/29/20	4/26/20	Intake	CD	10/26/20	4/25/21	Harassment/General	1	1	2	Conduct towards other/Performance of Duty
20-0480	Martinez, Jose	4/28/20	4/29/20	4/28/20	Intake	CD	10/26/20	4/28/21	General	2	1	2	Performance of Duty
20-0498	Cleveland, Kabee	5/1/20	5/6/20	5/1/20	Intake	CD	11/2/20	4/30/21	Discrimination/ False arrest	1	1	2	Conduct Towards Others/Performance of Duty
20-0522	Hall, Darnell	5/6/20	5/8/20	5/6/20	Intake	CD	11/4/20	5/5/21	Service Complaint/Discrimination	1	2	2	Service Complaint/Conduct towards others
20-0523	Funes, Ismael	5/6/20	5/8/20	5/7/20	Intake	CD	11/4/20	5/6/21	Use of Force	1	1	1	Use of Force
20-0538	Yanez, Conrad	5/9/20	5/13/20	5/9/20	Intake	CD	11/9/20	5/8/21	Use of Force	1	2	2	Use of Force
20-0539	Anonymous	5/9/20	5/13/20	5/9/20	Intake	CD	5/9/20	5/8/21	Felony/Serious Misdemeanor	1	1	1	Obedience to laws
20-0547	Penderstuckersonweloveryou, Babygeypt	5/11/20	5/13/20	5/11/20	Intake	CD	11/9/20	5/10/21	Use of Force/False arrest	2	3	6	Use of Force/Performance of Duty
20-0556	Campos, Dafney	5/12/20	5/14/20	5/13/20	Intake	CD	11/10/20	5/12/21	Demeanor/General	2	2	6	Conduct Toward Other/Performance of Duty
20-0507	Sherman, Steree	5/15/20	5/15/20	5/15/20	Intake	CD	11/11/20	5/14/21	Harassment and Discrimination	1	1	1	Conduct Toward Other
20-0581	Johnson, Prince	5/17/20	5/20/20	5/17/20	Intake	CD	11/16/20	5/18/21	Harassment and Discrim	1	2	2	Conduct towards others
20-0589	Duncan, Daud	5/19/20	5/21/20	5/19/20	Intake	CD	11/17/20	5/18/21	Harassment and Discrim	1	1	1	Conduct towards other
20-0277	Hussain, Yaseen	2/22/20	3/10/20	3/6/20	Intake	CD	9/6/20	9/6/21	Use of Force	1	1	3	Use of Force
20-0311	Mepp-Parker, Belinda	3/13/20	3/13/20	3/13/20	Intake	MB	9/9/20	3/14/21	Use of Force	1	1	3	Use of Force
20-0379	Johnson, Henry	3/11/20	3/31/20	3/31/20	Intake	MB	9/28/20	4/1/21	Other	2	1	3	Performance of Duty
20-0394	Robinson, Gail	4/5/20	4/7/20	4/5/20	Intake	MB	10/4/20	4/8/21	Use of Force	1	3	6	Use of Force
20-0416	Avant, Destawen	4/10/20	4/16/20	4/10/20	Intake	MB	10/13/20	4/10/21	Other	2	1	1	Demeanor

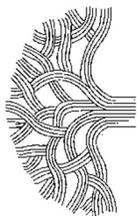
\* The Type (604(f) or Other) column addresses whether the investigation contains allegations for which a full investigation is mandated under Oakland City Charter Section 604 (Measure LL). The allegation types listed in this column are: DUJ, Profiling, Use of Force, In Custody Death, 1st Amendment Assembly or Other.



**CITY OF OAKLAND**  
**COMMUNITY POLICE REVIEW AGENCY**  
**Pending Cases (Sorted by Assigned Staff)**

Case #	Complainant	Incident Date	Rcv'd CPRA	Rcv'd ID	Intake or Investigator	Assigned Staff	180-day Goal	1-year Goal	Type (604(f) or Other)	Class	Subject Officers	Allegation Count	Allegation(s)
20-0413	Hevin, Lea	4/12/20	4/16/20	4/13/20	Intake	MB	10/13/20	4/14/21	Use of Force	1	2	8	Use of Force
20-0432	Smith, Ebony	4/15/20	4/17/20	4/15/20	Intake	MB	10/14/20	4/15/21	Use of Force	1	3	6	Use of Force
20-0483	Derouen, Kindra	4/27/2020	4/29/2020	4/27/2020	Intake	MB	10/26/2020	4/28/2021	Use of Force	1	1	1	Use of Force
20-0492	Malsitrom, Melissa	4/28/20	4/28/20	4/28/20	Intake	MB	10/25/20	4/28/21	Other	2	1	2	Performance of Duty
20-0501	Burns, Ernestini	5/1/20	5/6/20	5/2/20	Intake	MB	11/2/20	5/2/21	Use of Force	1	1	1	Use of Force
20-0512	Coleman, Sherida	5/4/20	5/6/20	5/4/20	Intake	MB	11/2/20	5/5/21	Other	2	1	3	Performance of Duty
20-0528	McLaughlin, Gregory	5/7/20	5/13/20	5/7/20	Intake	MB	11/9/20	5/7/21	Profiling	1	4	1	Profiling
20-0544	Sims, Alvie	5/8/20	5/13/20	5/8/20	Intake	MB	11/9/20	5/9/21	Profiling	1	3	3	Profiling
20-0548	Dawkins, Shane	5/11/20	5/13/20	5/11/20	Intake	MB	11/9/20	5/11/21	Use of Force	1	1	1	Use of Force
20-0546	Washington, Vincent	5/5/20	5/13/20	5/11/20	Intake	MB	11/9/20	5/12/21	Use of Force	1	1	3	Use of Force
20-0573	Suhl, Stobbhan and David	5/11/20	5/20/20	5/11/20	Intake	MB	11/16/20	5/16/21	Use of Force	1	1	3	Use of Force
20-0575	Chatman, Freddie	5/16/20	5/20/20	5/16/20	Intake	MB	11/16/20	5/17/21	Other	2	2	2	Performance of Duty
20-0603	Chatham, Alyssa	5/21/20	5/23/20	5/21/20	Intake	MB	11/23/20	5/21/21	Use of Force	1	1	1	Use of Force
20-0622	Hill, Zumeiri	4/25/20	5/27/20	5/26/20	Intake	MB	11/23/20	5/27/21	Use of Force	1	1	1	Use of Force
20-0635	Thorn, Michelle	5/19/20	6/1/20	5/28/20	Intake	MB	11/28/20	5/29/21	Use of Force	1	1	3	Use of Force
20-0644	Lin Belle, Sarah	5/30/20	5/31/20	5/31/20	Intake	MB	11/27/20	5/30/21	Use of Force	1	1	2	Use of Force
20-0698	Perkins, Donisha	5/20/20	6/2/20	5/20/20	Intake	MB	11/29/20	6/2/21	Other	1	1	1	Obedience to Laws
20-0646	Kahwal, Toor	6/1/20	6/2/20	6/1/20	Intake	MB	11/29/20	6/2/21	Use of Force	1	1	2	Use of Force

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CITY OF OAKLAND  
**COMMUNITY POLICE REVIEW AGENCY**

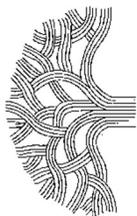
*Recently Completed Investigations*  
*(Allegations in bold were discovered by CPRA investigators)*

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(Total Completed = 23)

Assigned Inv.	Case #	Incident Date	Completion Date	1-year goal	Officer	Allegation	Finding
MM	19-1005	5/7/19	6/19/20	6/20/20	Subject Officer 1	Performance of Duty – General	Exonerated
					Subject Officer 2	Performance of Duty – General	Exonerated
ED	19-0593	6/15/19	6/12/20	6/14/20	Subject Officer 1	Use of Force	Exonerated
						Use of Force	Exonerated
						Use of Force	Exonerated
						Use of Force	Not Sustained
						Performance of Duty – Unintentional/ Improper Search, Seizure or Arrest	Exonerated
					Subject Officer 2	Use of Force	Exonerated
						Use of Force	Exonerated
						Use of Force	Unfounded
						Use of Force	Exonerated
						Performance of Duty – Unintentional/ Improper Search, Seizure or Arrest	Exonerated
					Subject Officer 3	Use of Force	Exonerated



CITY OF OAKLAND  
**COMMUNITY POLICE REVIEW AGENCY**

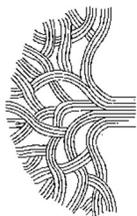
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(Total Completed = 23)

Assigned Inv.	Case #	Incident Date	Completion Date	1-year goal	Officer	Allegation	Finding
					Unidentified Officer	Performance of Duty – Unintentional/ Improper Search, Seizure or Arrest	Exonerated
						Use of Force	No Finding
JS	19-0628	6/20/19	6/5/20	6/20/20	Subject Officer 1	Performance of Duty – Unintentional/ Improper Search, Seizure or Arrest	Not Sustained
						<b>Performance of Duty – Unintentional/ Improper Search, Seizure or Arrest</b>	<b>Sustained</b>
						<b>Performance of Duty</b>	<b>Sustained</b>
						<b>Performance of Duty – PDRD</b>	<b>Sustained</b>
ED	19-0597	6/13/19	6/9/20	6/14/20	Subject Officer 1	Performance of Duty – Unintentional/ Improper Search, Seizure or Arrest	Exonerated
						Performance of Duty – General	Exonerated
						Performance of Duty – Unintentional/ Improper Search, Seizure or Arrest	Unfounded
						Performance of Duty – General	Unfounded
						Use of Force	Exonerated
					Subject Officer 2	Performance of Duty – Unintentional/ Improper Search, Seizure or Arrest	Exonerated
						Performance of Duty – General	Exonerated



CITY OF OAKLAND  
**COMMUNITY POLICE REVIEW AGENCY**

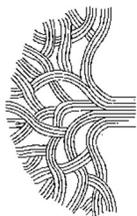
*Recently Completed Investigations*  
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(Total Completed = 23)

Assigned Inv.	Case #	Incident Date	Completion Date	1-year goal	Officer	Allegation	Finding
					Subject Officer 3	Performance of Duty – Unintentional/ Improper Search, Seizure or Arrest	<i>Exonerated</i>
						Performance of Duty – General	<i>Exonerated</i>
AL	19-0753	7/26/19	6/4/20	7/25/20	Subject Officer 1	Conduct Toward Others – Demeanor	<i>Sustained</i>
						Use of Force – Level 4	<i>Sustained</i>
						Use of Force – Level 1	<i>Not Sustained</i>
						Department Property and Equipment – Improper Use/Care/Failure to Carry	<i>Sustained</i>
						Obedience to Laws – Felony/Serious Misdemeanor	<i>Sustained</i>
						General Conduct	<i>Sustained</i>
ED	19-0878	6/27/19	5/7/20	8/19/20	Subject Officer 1	Performance of Duty – Unintentional/ Improper Search, Seizure or Arrest	<i>Exonerated</i>
						<b>Performance of Duty – General</b>	<b><i>Exonerated</i></b>
						Performance of Duty – Miranda Violation	<i>Exonerated</i>
						Use of Force	<i>Exonerated</i>
						Performance of Duty – General	<i>Unfounded</i>



CITY OF OAKLAND  
**COMMUNITY POLICE REVIEW AGENCY**

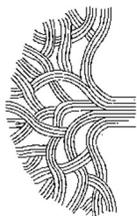
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6/19/20

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(Total Completed = 23)

Assigned Inv.	Case #	Incident Date	Completion Date	1-year goal	Officer	Allegation	Finding
					Subject Officer 2	Performance of Duty – Unintentional/ Improper Search, Seizure or Arrest	Exonerated
						<b>Performance of Duty – General</b>	<b>Unfounded</b>
						Performance of Duty – Miranda Violation	Exonerated
						Use of Force	Exonerated
						Performance of Duty – General	Unfounded
						<b>Performance of Duty – Unintentional/ Improper Search, Seizure or Arrest</b>	<b>Unfounded</b>
						Conduct Toward Others – Demeanor	Unfounded
						Refusal to Accept or Refer a Complaint (Intentional)	Unfounded
					Subject Officer 3	Use of Force	Unfounded
						Use of Force	Unfounded
						Performance of Duty – Unintentional/ Improper Search, Seizure or Arrest	Exonerated
						Performance of Duty – Care of Property	Not Sustained
					Subject Officer 4	Use of Force	Unfounded

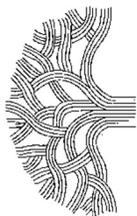


CITY OF OAKLAND  
**COMMUNITY POLICE REVIEW AGENCY**

*Recently Completed Investigations*  
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6/19/20  
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 (Total Completed = 23)

Assigned Inv.	Case #	Incident Date	Completion Date	1-year goal	Officer	Allegation	Finding
						Performance of Duty – Care of Property	Not Sustained
						<b>Conduct Toward Others – Demeanor</b>	<b>Unfounded</b>
					Subject Officer 5	Performance of Duty – Care of Property	Not Sustained
					Unknown Officer	No MOR Violation	No MOR Violation
	19-0585						
JS	(consolidated w/ 19-0688)	6/11/19	6/2/20	6/11/20	Subject Officer 1	Conduct Toward Others – Demeanor	Not Sustained
						Performance of Duty – Unintentional/ Improper Search Seizure or Arrest	Not Sustained
						Conduct Toward Others – Demeanor	Unfounded
						Conduct Toward Others – Harassment and Discrimination	Not Sustained
					Subject Officer 2	Conduct Toward Others – Demeanor	Not Sustained
						Conduct Toward Others – Demeanor	Unfounded
						Performance of Duty – Unintentional/ Improper Search, Seizure or Arrest	Not Sustained
						Use of Force	Not Sustained



CITY OF OAKLAND  
**COMMUNITY POLICE REVIEW AGENCY**

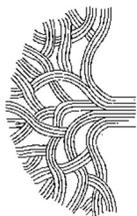
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(Total Completed = 23)

Assigned Inv.	Case #	Incident Date	Completion Date	1-year goal	Officer	Allegation	Finding
						Use of Force	<i>Exonerated</i>
						Conduct Toward Others – Harassment and Discrimination	<i>Not Sustained</i>
					Subject Officer 3	Conduct Toward Others – Demeanor	<i>Not Sustained</i>
						Performance of Duty – Unintentional/Improper Search, Seizure or Arrest	<i>Not Sustained</i>
						Conduct Toward Others – Harassment and Discrimination	<i>Not Sustained</i>
AN	19-0693	6/24/19	6/3/20	7/10/20	Subject Officer 1	Conduct Toward Others – Demeanor	<i>Sustained</i>
						Performance of Duty – Unintentional/Improper Search, Seizure or Arrest	<i>Exonerated</i>
						Use of Force – Level 3	<i>Exonerated</i>
						Use of Force – Level 1	<i>Not Sustained</i>
					Subject Officer 2	Refusal to Accept or Refer a Complaint	<i>Sustained</i>
						Use of Force – Level 4	<i>Exonerated</i>
						Reports and Bookings	<i>Unfounded</i>
					Subject Officer 3	Performance of Duty – General	<i>Sustained</i>



CITY OF OAKLAND  
**COMMUNITY POLICE REVIEW AGENCY**

*Recently Completed Investigations*

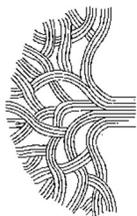
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(Total Completed = 23)

Assigned Inv.	Case #	Incident Date	Completion Date	1-year goal	Officer	Allegation	Finding
					Subject Officer 4	Performance of Duty – General	<i>Sustained</i>
					Subject Officer 5	Performance of Duty – PDRD	<i>Sustained</i>
						Performance of Duty – General	<i>Not Sustained</i>
					Subject Officer 6	Performance of Duty – Unintentional/ Improper Search, Seizure or Arrest	<i>Exonerated</i>
						Use of Force – Level 1	<i>Unfounded</i>
					Subject Officer 7	Use of Force – Level 4	<i>Exonerated</i>
MM	19-0601	6/17/19	5/21/20	6/15/20	Subject Officer 1	Use of Force – Level 3	<i>Sustained</i>
						Use of Force – Level 4	<i>Exonerated</i>
					Subject Officer 2	Use of Force	<i>Exonerated</i>
					Subject Officer 3	Conduct Toward Others – Demeanor	<i>Unfounded</i>
						Use of Force – Level 4	<i>Unfounded</i>
					Subject Officer 4	Use of Force – Level 3	<i>Unfounded</i>
						Use of Force – Any	<i>Exonerated</i>



**CITY OF OAKLAND  
COMMUNITY POLICE REVIEW AGENCY**

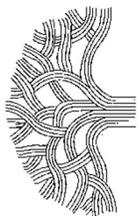
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(Total Completed = 23)

Assigned Inv.	Case #	Incident Date	Completion Date	1-year goal	Officer	Allegation	Finding
CD	20-0160	2/7/20	6/19/20	2/5/21	Subject Officer 1	Use of Force	<i>Unfounded</i>
MB	20-0364	3/26/20	6/18/20	3/25/21	Subject Officer 1	Performance of Duty – General	<i>Unfounded</i>
MB	20-0359	3/26/20	6/18/20	3/25/21	Subject Officer 1	Use of Force	<i>Unfounded</i>
MB	20-0361	No Date Provided	6/18/20	3/25/21	Unidentified Officer	Service Complaint	<i>Complainant Uncooperative</i>
					Unidentified Officer	Service Complaint	<i>Complainant Uncooperative</i>
					Unidentified Officer	Service Complaint	<i>Complainant Uncooperative</i>
					Unidentified Officer	Service Complaint	<i>Complainant Uncooperative</i>
CD	20-0098	1/29/20	6/15/20	1/27/21	Subject Officer 1	Performance of Duty – General	<i>Unfounded</i>
					Subject Officer 2	Performance of Duty – General	<i>Unfounded</i>
					Subject Officer 3	Performance of Duty – General	<i>Unfounded</i>
					Subject Officer 4	Performance of Duty – General	<i>Unfounded</i>
					Subject Officer 5	Performance of Duty – General	<i>Unfounded</i>
					Subject Officer 6	Performance of Duty – General	<i>Unfounded</i>



CITY OF OAKLAND  
**COMMUNITY POLICE REVIEW AGENCY**

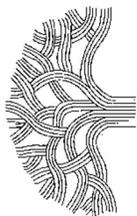
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(Total Completed = 23)

Assigned Inv.	Case #	Incident Date	Completion Date	1-year goal	Officer	Allegation	Finding
					Subject Officer 7	Performance of Duty – General	<i>Unfounded</i>
					Subject Officer 8	Performance of Duty – General	<i>Unfounded</i>
					Subject Officer 9	Use of Force	<i>Unfounded</i>
						Performance of Duty - General	<i>Unfounded</i>
					Subject Officer 10	Performance of Duty – General	<i>Unfounded</i>
CD	20-0088	1/25/20	6/5/20	1/23/21	Subject Officer 1	No Duty / No MOR Violation	No MOR Violation
						Conduct Toward Others – Harassment and Discrimination (Race)	<i>Unfounded</i>
						Performance of Duty – General	<i>Unfounded</i>
CD	20-0104	1/30/20	6/5/20	1/28/21	Unknown Officer	No Duty / No MOR Violation	No MOR Violation
						No Duty / No MOR Violation	No MOR Violation
CD	20-0125	2/1/20	6/5/20	1/30/21	Subject Officer 1	No Duty / No MOR Violation	No MOR Violation
						Performance of Duty – Unintentional/Improper Search, Seizure or Arrest	<i>Exonerated</i>
						Performance of Duty – General	<i>Exonerated</i>



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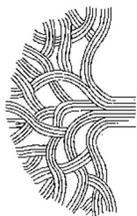
*Recently Completed Investigations*  
*(Allegations in bold were discovered by CPRA investigators)*

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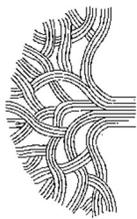
Assigned Inv.	Case #	Incident Date	Completion Date	1-year goal	Officer	Allegation	Finding
CD	20-0082	11/28/19	6/3/20	1/21/21	No Officer	No Duty /No MOR Violation	No MOR Violation
					Subject Officer 1	Performance of Duty – General	Unfounded
						Use of Force	Unfounded
					Subject Officer 2	Performance of Duty – General	Unfounded
						Use of Force	Unfounded
MB	20-0236	2/26/20	6/2/20	2/24/21	Subject Officer 1	Performance of Duty – Unintentional/ Improper Search, Seizure or Arrest	Exonerated
						Performance of Duty – General	Exonerated
						Use of Force	Unfounded
					Subject Officer 2	Performance of Duty – Unintentional/ Improper Search, Seizure or Arrest	Exonerated
						Performance of Duty – General	Exonerated
MB	20-0042	1/10/20	5/29/20	1/8/21	Unknown Officer	No Duty / No MOR Violation	No MOR Violation
						No Duty / No MOR Violation	No MOR Violation
					Subject Officer 1	Performance of Duty – General	Exonerated



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Assigned Inv.	Case #	Incident Date	Completion Date	1-year goal	Officer	Allegation	Finding
					Subject Officer 2	Performance of Duty – General	<i>Exonerated</i>
CD	19-1444	Not Reported	5/29/20	12/18/20	Unknown Officer	Performance of Duty – General	<i>Complainant Uncooperative</i>
MB	20-0272	3/4/20	5/21/20	3/3/21	Subject Officer 1	Use of Force	<i>Unfounded</i>
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						Use of Force	<i>Exonerated</i>
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						Conduct Toward Others	<i>Unfounded</i>
MB	20-0228	2/23/20	5/21/20	2/21/21	Unknown Officer	Performance of Duty – General	<i>No Jurisdiction</i>



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*Recently Completed Investigations*  
*(Allegations in bold were discovered by CPRA investigators)*

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**CPRA Made the following Training Recommendations with Respect to Investigations in this Report**

**Training Recommendation(s)** The CPRA recommends that OPD consider implementing a policy that addresses the expectations and responsibilities of officers to communicate about the placement of children when involved in incidents involving parents and children

**CPRA Made the following Policy Recommendations with Respect to Investigations in this Report**

The CPRA recommends that OPD work with the proper legal advisers to bring DGO O-6 – Missing Persons up to date as quickly as is practicable, including the following specific edits:

- a) The DGO references Penal Code section 14213 for the definition of an “at risk” individual; in 2017, the Legislature renumbered that section and the definition is now contained in Penal Code section 14215.
- b) The DGO references Penal Code section 14205, and talks about steps to take when a missing person is under the age of 16 or “at risk”. That section was renumbered in 2015, and also revised to include persons under the age of 21, not 16.

Additionally, the department should independently double-check the DGO against current law, and consult with current subject matter experts for recent changes in best practices.

The CPRA recommends that officers taking statements should be required to activate their PDRDs in order to have video available for subsequent review. Such language was included in the last proposed edits to the Department’s PDRD policy, however that policy has not yet taken effect.

The CPRA recommends that the Department continue to review its social media policy and make recommendations for appropriate revisions. Those should include:

- a) Comparing OPD policy to that of other jurisdictions for best practices;
- b) Creating specific guidance in missing persons cases as to when social media should and should not be used, including consultation with family members of the missing person;
- c) Having a central mid-level member (likely professional, not sworn) designated to monitor the overall use of the Department’s social media platforms with an eye towards ensuring consistent messaging to the community about the Department’s priorities.