



# OAKLAND POLICE COMMISSION

## SPECIAL MEETING AGENDA

September 16, 2021

5:30 PM

Charter Section 604(a) provides that the Oakland Police Commission oversees the Oakland Police Department to ensure its policies, practices, and customs meet or exceed national standards of constitutional policing, and to oversee the Community Police Review Agency (CPRA) which investigates police misconduct and recommends discipline.

**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.**



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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/83722596537> 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 +1 346 248 7799 or +1 253 215 8782 or +1 312 626 6799 or +1 646 558 8656 or +1 301 715 8592  
Webinar ID: 837 2259 6537

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 [radwan@oaklandca.gov](mailto:radwan@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 [radwan@oaklandca.gov](mailto:radwan@oaklandca.gov).



# OAKLAND POLICE COMMISSION

## SPECIAL MEETING AGENDA

September 16, 2021  
5:30 PM

### I. Call to Order, Welcome, Roll Call and Determination of Quorum

Chair Regina Jackson

*Roll Call: Vice Chair José Dorado; Commissioner Henry Gage, III; Commissioner Sergio Garcia; Commissioner Brenda Harbin-Forte; Chair Regina Jackson; Commissioner David Jordan; Commissioner Tyfahra Milele; Alternate Commissioner Jesse Hsieh; Alternate Commissioner Marsha Peterson*

### II. Closed Session Item

The Police Commission will take Public Comment on the Closed Session items.

#### **Conference with Labor Negotiators**

Representatives: Garcia Hernandez Sawhney, LLP

Employee Organization: Oakland Police Officers Association

California Government Code § 54957.6

#### **Public Employees Discipline/Dismissal/Release**

California Government Code § 54957

**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.**

### III. Call to Order and Re-Determination of Quorum

Chair Regina Jackson

### IV. Open Forum Part 1 (2 minutes per speaker, 15 minutes total)

This item will begin when the Commission has completed Closed Session, and it anticipated to begin at 7:00 p.m. After ascertaining how many members of the public wish to speak, Chair Regina Jackson will invite the public to speak on any items not on the agenda but may be of interest to the public, and that are within the subject matter jurisdiction of the Commission. Comments on specific agenda items will not be heard during Open Forum but must be reserved until the agenda item is called. The Chair has the right to reduce speaking time to 1 minute if the number of speakers would cause this Open Forum to extend beyond 15 minutes. Any speakers not able to address the Commission during this Open Forum will be given priority to speak during Open Forum Part 2, at the end of the agenda.

### V. Vote to Ratify DGO K-03 Use of Force Policy. The Police Commission may take action to approve Meet and Confer revisions to the adopted Use of Force policy. ***This is a new item.*** ([Attachment 5](#)).

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



# OAKLAND POLICE COMMISSION

## SPECIAL MEETING AGENDA

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### VI. Update from Police Chief

OPD Chief Armstrong will provide an update on the Department. Topics discussed in the update may include crime statistics; an update on the Negotiated Settlement Agreement; 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 6).***

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

### VII. Develop RFQ w/ City Administrator's Office to Hire a Consultant re: the IAD-to-CPRA Transition.

CPRA Executive Director John Alden will report on the City Council's direction to retain a consultant regarding the transition of resources from IAD to CPRA. ***This is a new item.***

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

### VIII. Committee Reports

Representatives from Standing and Ad Hoc Committees will provide updates on their work. ***This is a recurring item. (Attachment 8).***

#### Missing Persons Ad Hoc (Commissioners Jackson, Jordan)

The Missing Persons Ad Hoc Committee is tasked with reviewing and updating the OPDs missing persons policy, to ensure that it is in line with the standards of constitutional policing and evolving community values. The resulting policy will be presented for review and approval to the full Police Commission, with the intent that it be formally adopted as the guiding policy for the investigations of missing persons by the OPD.

#### Rules of Procedure Ad Hoc (Commissioners Gage, Garcia, Harbin-Forte)

The Rules of Procedure Ad Hoc Committee has been formed to examine the organization and operation of the Commission, make recommendations designed to strengthen the Commission, improve the Commission's relationships with governmental partners, and better enable the Commission to fulfill its Charter-mandated oversight duties.



# OAKLAND POLICE COMMISSION

## SPECIAL MEETING AGENDA

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### **Community Policing Policy revision (15-01)** **(Commissioners Dorado, Harbin-Forte, Hsieh)**

The mission of the OPC Community Policing Ad Hoc Committee is to refine OPD's draft of its Proposed Policy 15-01 on Community Policing to ensure that the proposed policy will result in OPD's full implementation of City Council Resolution 79235 governing community policing. The Committee will ensure that OPD'S proposed policy reflects the ideal that community members should take the lead in identifying community priorities for OPD involvement, and that the policy includes specific procedures for, among other things, addressing Beat level challenges, developing Beat and block leaders into viable Citywide networks, expanding public access to information and resources, and increasing community involvement in the training of OPD's Community Resource Officers, other officers department-wide, and staff.

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

### **IX. Open Forum Part 2 (2 minutes per speaker)**

Chair Regina Jackson will invite public speakers to speak on items that were not on the agenda, and that are within the subject matter jurisdiction of the Commission, with priority given to speakers who were unable to address the Commission during Open Forum at the beginning of the meeting. Speakers who made comments during Open Forum Part 1 will not be permitted to make comments during this Open Forum. Comments previously made during public comment on agenda items may not be repeated during this Open Forum. The Chair has the right to reduce speaking time to 1 minute for reasons the Chair will state on the record. ***This is a recurring item.***

### **X. Agenda Setting and Prioritization of Upcoming Agenda Items**

The Commission will engage in a working session to discuss and determine agenda items for the upcoming Commission meeting and to agree on a list of agenda items to be discussed on future agendas. ***This is a recurring item.*** ([Attachment 10](#))

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

### **XI. Adjournment**

**NOTICE:** In compliance with the Americans with Disabilities Act, for those requiring special assistance to access the videoconference meeting, to access written documents being discussed at the Discipline Committee meeting, or to otherwise participate at Commission meetings, please contact the Police Commission's Chief of Staff, Rania Adwan, at [radwan@oaklandca.gov](mailto:radwan@oaklandca.gov) for assistance. Notification at least 48 hours before the meeting will enable the Police Commission to make reasonable arrangements to ensure accessibility to the meeting and to provide any required accommodations, auxiliary aids or services.



## CITY OF OAKLAND

## POLICE COMMISSION

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

## AGENDA REPORT

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**TO:** Police Commission

**FROM:** John Alden  
CPRA Executive Director

**SUBJECT:** Ratification of DGO K-03: Use of Force

**DATE:** September 13, 2021

### RECOMMENDATION

**Staff Recommends the Police Commission Ratify the new Use of Force Policy, DGO K-03.**

### PRIOR ACTION

On October 9, 2020, after extensive community engagement and input, the Police Commission unanimously adopted a new Oakland Police Department Use of Force Policy, titled Department General Order (“DGO”) K-03. The City of Oakland has now completed a compliant Meet and Confer process to bargain through all applicable impacts to working conditions imposed by the new policy. During meet and confer, the City requested approval for any proposed changes by consulting the Commission and seeking the Commission’s approval, based upon the Commission’s Charter role. Ratification of the proposed changes, which the Commission approved, remains the final step to ensure prompt implementation of the new policy.

### BACKGROUND

Throughout calendar year 2020, a Police Commission Ad Hoc Committee revised the Police Department’s Use of Force Policy, K-03. Extensive background on this important policy is available on the Police Commission Ad Hoc’s webpage at the following address: <https://www.oaklandca.gov/topics/opd-use-of-force-policy-ad-hoc-committee>.

On October 9, 2020, after extensive community engagement and input, the Police Commission unanimously adopted a new Oakland Police Department Use of Force Policy, titled Department General Order (“DGO”) K-03.

### TIMELINE

During Meet and Confer, the City sought the Commission’s approval for any proposed changes, based upon the Commission’s Charter role. Ratification of the proposed changes, which the Commission approved during Meet and Confer, remains the final step to ensure prompt implementation of the new policy.

Meet and Confer Proceeded According to the Following Timeline:

Police Commission  
Subject: Vote to Ratify DGO K-03 Use of Force Policy  
Date: September 13, 2021

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6/10/2021 – HR discussed UOF policy with Police Commission  
6/15/2021 – HR notice to OPOA  
6/29/2021 – Two meetings: (1) Meeting with HR, CPRA Executive Director, OPD Management, and OPOA. (2) Meeting with HR, OPOA, and OPD Management  
7/19/2021 – Comments received from OPOA and discussed with OPD Management.  
7/29/2021 – OPD and OPOA agreed on a draft document and concurred with forwarding it to the Police Commission  
8/12/2021 – Met with the Police Commission to share the draft document. Received comments.  
8/23/2021 – Sent Police Commission changes and comments to OPOA  
8/23/2021 – OPOA responded that the changes were acceptable

### **STAFF RECOMMENDATION**

Staff Recommends The Police Commission Vote to Ratify DGO K-03 Use of Force Policy as reflected in the attached draft.

Attachments (1): Revised DGO K-03 including edits reached in Meet & Confer process



## DEPARTMENTAL GENERAL ORDER

**K-03: USE OF FORCE**

Effective Date: XX MMM 20  
Coordinator: Training Division

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## DEPARTMENTAL GENERAL ORDER

**K-03: USE OF FORCE**

Effective Date: XX MMM 20  
Coordinator: Training Division

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**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.

The Oakland Police Department is committed to transformative, equitable policing that values and serves the entirety of our community.

**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.

The ultimate objective of every law enforcement encounter is the protection of human life. Officers shall use de-escalation tactics and techniques in order to reduce the need for force whenever safe and feasible.

**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. **This policy goes beyond the Constitutional minimum by requiring that *all* uses of force by Oakland Police officers not only be objectively reasonable but also *necessary and proportional to the situation (Section D)*.** Additionally, required actions such as identification and warnings, intervention in unreasonable force, and medical aid after the use of force are part of the framework of this policy, a framework which provides both direction and restriction well beyond that found in Constitutional case law.

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, respond to dangerous and violent 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, and shall comply with the provision of [DGO M-19](#), *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*.

#### **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 officers 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 officers 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 commands.

**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 **under the circumstances** 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**

Force options are different means of using force to defend against, control, overpower, restrain, or overcome the resistance of an individual. Depending on their intrusiveness and the manner in which they are used, force options may fall into different levels of force (see section **F**).

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<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).

Less-lethal force options authorized by the Department 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**.

Prohibited uses of force are enumerated in section **I**.

**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 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;

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



- 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;
- ~~Prior contact with individual;~~
- ~~Knowledge of the individual either via prior contact or from another officers or data;~~
- **Current, specific, facts about the engaged person known to the officer at the time of the engagement.**
- 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.

Resistance is a significant factor in the reporting and evaluation of force (reference [DGO K-04](#), *Reporting and Investigating the Use of Force*), and for this reason is specifically discussed in this policy in detail.

### **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.

### **B - 28. Vulnerable Populations**

Vulnerable populations are those persons who are particularly vulnerable or susceptible to use of force. Vulnerable populations include children (especially those under age 14); seniors (those over the age of 65); pregnant persons; people with physical, mental, or intellectual disabilities; people with limited English proficiency or other communication challenges; people of small or infirm stature; and persons experiencing mental health crises.

### **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.

The Department also recognizes that racial bias (even if implicit) and historic racial injustice involving policing are realities of the American experience. The Department's commitment to de-escalation is rooted in a commitment to equity, where the goals of de-escalation, protection of human life, and reduction in the need to use force are applied to every encounter in an equitable and just fashion, free from bias or prejudice of any type.

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.

An officer's conduct prior to the use of force, including the display of weapons, may be a factor which can influence the level of force necessary in a

given situation. Officers shall take reasonable care that their actions do not precipitate an unnecessary or disproportionate use of force.

#### **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.

➤ **Disengagement**

Disengagement is the act of leaving, ending an interaction, delaying contact, delaying custody, or planning to make contact at a different time or different circumstances. This de-escalation tactic may be used when the risks to the engaged person, the officer, or the public outweigh the need to continue with the police response.

~~Officers using disengagement as de-escalation under this policy shall neither be criticized nor disciplined for such disengagement.~~

**It is the policy of the department that the use of disengagement pursuant to this section is encouraged when immediate police action is unnecessary to protect public safety.**

While some situations require immediate police action, other circumstances may allow officers the opportunity to disengage. Under the appropriate circumstances, disengagement may improve officer safety, mitigate threats, reduce injuries, build public trust, and preserve life. The analysis of whether to disengage from a situation should take into account the seriousness of the offense or situation, the risk to the public if the police response is abandoned or delayed, and the proportionality of the police response goal versus the risks inherent in the continuation of response.

Officers should continually assess the situation as circumstances change and new information is received to determine if disengagement would be an appropriate and viable de-escalation strategy, including evaluating whether



further contact with the engaged person may result in an undue safety risk to the person, the public, and/or officers.

➤ **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:

- Mental Health Professionals working with Law Enforcement (e.g. Mobile Evaluation Team)
- Community Crisis Intervention Resources (e.g. Community Assessment Transport Team [CATT], Mobile Assistance Community Responders of Oakland [MACRO])
- 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.**

**Lethal force is strictly prohibited 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.

Nothing in this policy requires a member to retreat or be exposed to possible physical injury before applying reasonable force.

**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.

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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.

Warnings directed to members of vulnerable populations shall be modified to enhance the ability to communicate, if appropriate and feasible.

Officers shall warn that lethal force may be used before discharging firearms at a person, when feasible and without sacrificing officer, engaged person, or public safety; reference section **H-4**.

**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. Absent extraordinary circumstances, 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.

**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.

**D - 8. Reporting Use of Force**

Members shall report force pursuant to [DGO K-04](#), *Reporting and Investigating the Use of Force*. All uses of force by Department members are

treated with the utmost seriousness. Reporting the use of force promptly and in adherence with policy is central to the mission of the Department and is essential to public safety, the safety of officers, and maintaining the legitimacy of the Department's actions.

Members shall not harass, pressure, or publicly degrade another member for reporting force pursuant to policy. Retaliation is prohibited, in any form, against another member who intercedes in or reports any violation of this policy, or who cooperates with an investigation into a possible violation of this policy (reference Department Manual of Rules section 398.73, *Retaliation*).

## **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.

Resistance is a significant factor in the reporting and evaluation of force (reference [DGO K-04](#), *Reporting and Investigating the Use of Force*), and for this reason is specifically discussed in this policy in detail.

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 Weapon 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 Weapon Options

Less-lethal weapons 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 weapons alone cannot be expected to render an engaged person harmless.

Officers will only carry and use weapons 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 weapons most often fall into the level of Intermediate Less-Lethal Force, although certain weapons, 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 weapons, depending on the nature of the weapon 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 weapon. Important warnings regarding specific less-lethal weapons, 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 weapons 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 Weapon**

Uniformed sworn officers who are working field assignments shall carry at least one hand-held less-lethal weapon (e.g. ECW, impact weapon, and/or OC). **Department General Order C-4: Safety Equipment**

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

Officers are prohibited from using less-lethal weapons 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.

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:
  - 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.

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

#### **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 an **officer reasonably believes and can articulate, that 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. PROHIBITED USES OF FORCE**

### **I - 1. Carotid Restraint**

Officers are prohibited from using the carotid restraint.

### **I - 2. Chokeholds**

Officers are prohibited from using chokeholds.

## **J. CONSIDERATIONS AFTER FORCE**

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

### **J - 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.

### **J - 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 - 4. Community Impact of Force Incidents**

Depending on the nature and gravity of a force incident, the greater community may be affected beyond the person(s) and members(s) engaged. Supervisors and Commanders who respond to force incidents shall consider whether community response resources or strategies should be recommended or immediately implemented given the nature of the force incident. These resources include, but are not limited to:

- Referrals to community-based support organizations for force witnesses;
- Community force debriefs or town halls; and

- Resources made available by other governmental entities (e.g. the Department of Violence Prevention)

## **K. TRAINING**

### **K - 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.

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

All practical force and force option training for officers 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.

### **K - 3. Training Bulletins**

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

## **L. MUTUAL AID**

This policy shall remain in effect for officers when the Department provides or receives mutual aid. Reference **Training Bulletin III-G, Crowd Control and Crowd Management**, for information on receiving Mutual Aid during crowd control.

By order of

Susan Manheimer  
Interim Chief of Police

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



# Weekly Crime Report — Citywide

## 06 Sep. – 12 Sep., 2021

<b>Part 1 Crimes</b> <i>All totals include attempts except homicides.</i>	<b>Weekly Total</b>	<b>YTD 2019</b>	<b>YTD 2020</b>	<b>YTD 2021</b>	<b>YTD % Change</b> 2020 vs. 2021	<b>3-Year YTD Average</b>	<b>YTD 2021 vs. 3-Year YTD Average</b>
<b>Violent Crime Index</b> (homicide, aggravated assault, rape, robbery)	90	4,069	4,048	4,539	12%	4,219	8%
<b>Homicide – 187(a)PC</b>	2	48	62	86	39%	65	32%
<b>Homicide – All Other *</b>	-	3	5	4	-20%	4	0%
<b>Aggravated Assault</b>	52	1,921	2,229	2,522	13%	2,224	13%
Assault with a firearm – 245(a)(2)PC	9	209	306	440	44%	318	38%
<b>Subtotal - Homicides + Firearm Assault</b>	11	260	373	530	42%	388	37%
Shooting occupied home or vehicle – 246PC	4	174	257	392	53%	274	43%
Shooting unoccupied home or vehicle – 247(b)PC	2	89	133	196	47%	139	41%
Non-firearm aggravated assaults	37	1,449	1,533	1,494	-3%	1,492	0%
<b>Rape</b>	1	146	154	94	-39%	131	-28%
<b>Robbery</b>	35	1,954	1,603	1,837	15%	1,798	2%
Firearm	18	708	481	753	57%	647	16%
Knife	-	99	124	81	-35%	101	-20%
Strong-arm	11	863	710	556	-22%	710	-22%
Other dangerous weapon	1	64	54	49	-9%	56	-12%
Residential robbery – 212.5(a)PC	3	67	58	59	2%	61	-4%
Carjacking – 215(a) PC	2	153	176	339	93%	223	52%
<b>Burglary</b>	25	9,447	6,914	6,028	-13%	7,463	-19%
Auto	8	7,612	5,008	4,748	-5%	5,789	-18%
Residential	6	1,258	939	690	-27%	962	-28%
Commercial	6	457	787	390	-50%	545	-28%
Other (Includes boats, aircraft, and so on)	1	105	135	115	-15%	118	-3%
Unknown	4	15	45	85	89%	48	76%
<b>Motor Vehicle Theft</b>	84	4,508	6,324	6,086	-4%	5,639	8%
<b>Larceny</b>	37	5,021	4,534	3,701	-18%	4,419	-16%
<b>Arson</b>	1	100	137	125	-9%	121	4%
<b>Total</b>	237	23,148	21,962	20,483	-7%	21,864	-6%

**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 unbounding 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.



**2021 Year-to-Date Recovered Guns**

Recoveries through 12 Sep., 2021

<b>Grand Total</b>	<b>836</b>
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<b>Crime Recoveries</b>	
Felony	443
Felony - Violent	165
Homicide	22
Infraction	0
Misdemeanor	24
<b>Total</b>	<b>654</b>

<b>Crime Gun Types</b>	<b>Felony</b>	<b>Felony - Violent</b>	<b>Homicide</b>	<b>Infraction</b>	<b>Misdemeanor</b>	<b>Total</b>
Machine Gun		3				3
Other	2					2
Pistol	355	137	17		21	530
Revolver	12	5	2		1	20
Rifle	46	15	1		2	64
Sawed Off	5					5
Shotgun	15	1	1			17
Sub-Machinegun						0
Unknown/Unstated	8	4	1			13
<b>Total</b>	<b>443</b>	<b>165</b>	<b>22</b>	<b>0</b>	<b>24</b>	<b>654</b>

<b>Non-Criminal Recoveries</b>	
Death Investigation	16
Found Property	83
SafeKeeping	83
<b>Total</b>	<b>182</b>

<b>Non-Criminal Gun Types</b>	<b>Death Investigation</b>	<b>Found Property</b>	<b>SafeKeeping</b>	<b>Total</b>
Machine Gun		1		1
Other				0
Pistol	8	32	43	83
Revolver	6	24	18	48
Rifle		8	16	24
Sawed Off		1		1
Shotgun	2	11	6	19
Sub-Machinegun				0
Unknown/Unstated		6		6
<b>Total</b>	<b>16</b>	<b>83</b>	<b>83</b>	<b>182</b>



# OAKLAND POLICE DEPARTMENT

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

## CRIME ANALYSIS

Week: 06 Sep. to 12 Sep., 2021

**Weekly Total 14**

Crime Recoveries	This Week	Last Week	+/- Change	% Change
Felony	4	14	-10	-71%
Felony - Violent	10	5	5	100%
Homicide	0	1	-1	-100%
Infraction	0	0	0	PNC
Misdemeanor	0	0	0	PNC
<b>Total</b>	<b>14</b>	<b>20</b>	<b>-6</b>	<b>-30%</b>

Other Recoveries	This Week	Last Week	+/- Change	% Change
Death Investigation	0	0	0	PNC
Found Property	0	4	-4	-100%
Safekeeping	0	0	0	PNC
<b>Total</b>	<b>0</b>	<b>4</b>	<b>-4</b>	<b>-100%</b>

PNC = Percentage not calculated  
[\*Percentage cannot be calculated.\*](#)





**2021 vs. 2020 — Year-to-Date Recovered Guns**

Recoveries through 12 Sep.

Gun Recoveries	2020	2021	Difference	YTD % Change 2019 vs. 2020
<b>Grand Total</b>	<b>871</b>	<b>836</b>	<b>-35</b>	<b>-4%</b>

Crime Recoveries	2020	2021	Difference	YTD % Change 2019 vs. 2020
Felony	436	443	7	2%
Felony - Violent	162	165	3	2%
Homicide	40	22	-18	-45%
Infraction	0	0	0	PNC
Misdemeanor	35	24	-11	-31%
<b>Total</b>	<b>673</b>	<b>654</b>	<b>-19</b>	<b>-3%</b>

Non-Criminal Recoveries	2020	2021	Difference	YTD % Change 2019 vs. 2020
Death Investigation	19	16	-3	-16%
Found Property	75	83	8	11%
SafeKeeping	104	83	-21	-20%
<b>Total</b>	<b>198</b>	<b>182</b>	<b>-16</b>	<b>-8%</b>

PNC = Percentage not calculated  
[\*Percentage cannot be calculated.\*](#)



CITY OF OAKLAND

# AGENDA REPORT

**TO:** Edward D. Reiskin  
City Administrator

**FROM:** LeRonne L. Armstrong  
Chief of Police

**SUBJECT:** OPD NSA Status Update

**DATE:** August 16, 2021

City Administrator Approval 

Date: Aug 30, 2021

## RECOMMENDATION

**Staff Recommends That The City Council Receive An Informational Report From OPD On OPD's Progress Toward Compliance With The Negotiated Settlement Agreement (NSA) In The Case Of Delphine Allen, Et Al., V. City Of Oakland, Et Al., Including Any Projected Timeline For Full Compliance And End Of Oversight By The Independent Monitoring Team.**

## EXECUTIVE SUMMARY

OPD has initiated numerous strategies and practices over the past 18 years to achieve full compliance with the Negotiated Settlement Agreement (NSA), including developing comprehensive policies, building and strengthening administrative processes, organizing a robust risk management infrastructure, creating new data management systems, and implementing risk management strategies. In late 2020, the Department initiated an overhaul of its risk management program which includes policy development. Under the leadership of Chief Armstrong, in March 2021 the Department formed the Bureau of Risk Management (BRM) in a key strategic effort to lay the foundation for an improved, successful risk management program. The (BRM) unites Department policy, training, intervention, and accountability functions to facilitate Department-wide communication and use of personnel performance information and data trends.

This report provides the compliance status of all NSA tasks that are not yet in full compliance and the Department's efforts to achieve compliance and ensure long-term sustainability. Additional information about the Department's compliance efforts is included in the City's Court Filing for the September 1, 2021 Case Management Conference with the Honorable William H. Orrick (**see Attachment A**). The Department will provide bi-monthly verbal updates on the status of NSA compliance to the Public Safety Committee beginning November 2021.

## BACKGROUND

In 2003 the City of Oakland entered into a Negotiated Settlement Agreement (NSA) with the Plaintiffs to settle the *Allen v. City of Oakland* lawsuit (the "Riders" case). The NSA requires implementation of 51 tasks to promote police integrity and prevent unconstitutional policing. A court-appointed Monitor reviews and reports on compliance with each task and makes a determination of whether the task is "in compliance," "out of compliance," or "in partial compliance."

A request for a “Negotiated Settlement Agreement (NSA) Bi-Monthly Update” report was made at the October 24, 2019 Rules and Legislation Committee and a report and presentation were presented to the Public Safety Committee on January 14, 2020. OPD later released a “Bi-Monthly OPD NSA Status Update” memorandum (dated February 8, 2021) to the City Council and Mayor which is published on the City’s website<sup>1</sup>. The request for a bi-monthly update report was changed to a verbal bi-monthly update report at the May 11, 2021 Public Safety Committee. Later, a request for an informational report to the public safety committee on progress with the “Negotiated Settlement Agreement” (NSA) was made at the Rules Committee on July 22, 2021.

### **ANALYSIS AND POLICY ALTERNATIVES**

Currently, the Monitor has found OPD to be in compliance with 46 of the 51 original NSA tasks, in partial compliance with three tasks and out of compliance with two tasks.<sup>2</sup> The Monitor moved tasks 24 and 30 into full compliance in the [Seventy-Fourth Report](#)<sup>3</sup>, which was filed on August 23, 2021. Task 24 covers the requirements for reporting use of force and task 30 covers the requirements for the Executive Force Review Boards (EFRB). The Monitor noted in the [Seventy-Fourth Report](#) that the two EFRBs they observed were “well-run, thorough, and complete.”

The tasks that do not have a current assessment of full compliance are as follows:

Task	Out of Compliance
2	<p data-bbox="440 1108 1273 1140" style="text-align: center;"><b><u>Timeliness with Internal Affairs Division (IAD) Investigations</u></b></p> <p data-bbox="305 1178 1406 1373">Task 2 is composed of three separate sections dealing with timeliness of Internal Affairs Division (IAD) investigations and discipline, tracking of investigation timelines by OPD Command Staff, and the provision of sufficient staffing to the Internal Affairs Division to ensure timely completion of investigations. The Monitor has found OPD in compliance on timeliness of discipline, tracking of IAD timelines, and IAD staffing, but continues to find OPD out of compliance with timeliness of IAD investigations.</p> <p data-bbox="305 1413 1373 1509">As it pertains to task 2.1, the Compliance Standard for timeliness of IAD investigations is 85% of Class I investigations and 85% of Class II investigations to be completed within the internally set due date of 180 days of intake.<sup>4</sup></p>

<sup>1</sup> <https://www.oaklandca.gov/resources/info-memo>

<sup>2</sup> As described herein, the Monitor has deferred further assessment of one task which was last found out of compliance.

<sup>3</sup> All IMT Reports are available to the public here: <https://www.oaklandca.gov/resources/opd-independent-monitoring-team-imt-monthly-reports-2>

<sup>4</sup> Class I offenses are the most serious allegations of misconduct and, if sustained, result in disciplinary action up to and including dismissal and may serve as the basis for criminal prosecution. Class II offenses include all minor misconduct offenses.

	<p>The <a href="#">Seventy-Third Report</a> (June 2021) of the Independent Monitor showed 54% of Class I investigations and 82% Class II investigations completed within 180 days for the first quarter of 2021.</p> <p>Class I investigations showed a lower compliance rate with the 180-day timeline than the three preceding reports in which this task was assessed (67% in the <a href="#">Seventy-First</a>, 69% in the <a href="#">Sixty-Ninth</a>, and 65% in the <a href="#">Sixty-Eighth</a>), but still showed a notable improvement over the compliance rate in the three assessments through 2019 and early 2020 (29% in the <a href="#">Sixty-Second</a>, 35% in the <a href="#">Sixty-Fourth</a>, and 38% in the <a href="#">Sixty-Sixth</a>) after the task was reactivated in July 2019.</p> <p>Class II investigations showed a slight improvement from the 75% compliance rate in the second quarter of 2020 found in the <a href="#">Seventy-First Report</a> (Dec 2020), and are on par with the 84% in the <a href="#">Sixty-Ninth Report</a> (July 2020) and 81% from the <a href="#">Sixty-Eighth Report</a> (May 2020), all of which are large improvements over the 2019 and early 2020 assessments (23% in the <a href="#">Sixty-Second</a>, 36% in the <a href="#">Sixty-Fourth</a> and 66% in the <a href="#">Sixty-Sixth</a>) after the task was reactivated.</p> <p>Since task 2 was reactivated in the Monitor’s <a href="#">Sixty- Second Report</a> (July 2019), OPD has implemented improved timeline tracking systems and increased accountability around timeline requirements. One example of improved tracking is a change in the due dates for investigators. The Chief directed IAD to provide investigators with an IAD due date 30 days in advance of the 180-day due date to ensure enough time for reviewers and allow for additional work, if necessary.</p>
5	<p style="text-align: center;"><b><u>Internal Affairs Division (IAD) Complaint Procedures</u></b></p> <p>The Monitor reported, in the <a href="#">Seventy-Third Report</a>, that OPD gathered all relevant evidence, conducted interviews of all relevant witnesses, and did not disagree with any formal findings. The review included 16 cases closed between August and November 2020. The Monitor disagreed with the Department’s handling of one investigation, which the Monitor determined was inappropriately resolved through informal complaint resolution (ICR) by the former Interim Chief.</p> <p>Nevertheless, the Monitor deferred assessment of OPD’s compliance status with task 5, stating <i>“While the Department has made progress in this Task and has shown a capacity to better address internal investigations, OPD is currently challenged by investigations emanating from demonstrations last May and June – to include a Level 1 use of force – as well as an officer-involved shooting outside the City limits.”</i></p> <p>All investigations emanating from demonstrations in May and June 2020 have been completed, including the Level 1 uses of force. There were 59 cases emanating from the demonstrations, and 14 involved sustained findings for 33 officers.</p> <p>Additionally, OPD has published its updated Internal Affairs Policy and Procedures Manual, which includes changes recommended by the Monitor in their review of the officer involved shooting of Joshua Pawlik. OPD anticipates another compliance review of task 5 by the Monitor in an upcoming report.</p>

Task	Partial Compliance
25	<p data-bbox="667 390 1045 422" style="text-align: center;"><b><u>Use of Force Investigations</u></b></p> <p data-bbox="305 457 1377 621">The Monitor’s <a href="#">Sixty-Ninth Report</a> states that, “<i>OPD had been in compliance with Tasks 24 and 25 since 2015, and we were not actively reviewing these Tasks. In November 2018, as a result of concerns that we brought forward regarding the identification, potential underreporting, and investigation of uses of force, the Court reactivated Tasks 24 and 25.</i>”</p> <p data-bbox="305 659 1398 1024">The <a href="#">Seventy-Fourth Report</a> is the most recent report covering the Monitor’s compliance assessment of task 25. While the Monitor found the Department in full compliance with task 24 (use of force reporting), task 25 (use of force investigations) remained in partial compliance. The Monitor assessed 186 lower-level force reports from March 1 – October 31, 2020 and identified only one incident in which the force may not have been appropriate. The report noted that OPD had already initiated an investigation based on a complaint from the subject upon whom force was used. The report did not identify any instances where the use of force was not deescalated or stopped reasonably when resistance decreased. In three incidents, the Monitor believed officers could have made additional efforts to explain to subjects being detained why the detention was occurring prior to using force.</p> <p data-bbox="305 1062 1354 1226">The Monitor also expressed concerns about supervisory review of use of force, noting, “<i>While we are observing more instances where supervisory personnel are thoroughly preparing and reviewing these reports, we continue to find instances where they fail to identify and properly address concerns with body-worn camera activation, or other MOR violations.</i>”</p> <p data-bbox="305 1264 1382 1329">The Department has increased accountability measures for supervisors who do not identify and address policy violations during their review of use of force incidents.</p> <p data-bbox="305 1367 1398 1648">In early 2020, OPD established new policy intended to improve accuracy and consistency of reporting force used to overcome resistance of a person during an arrest or detention or defending against combative action. These are the lowest level reportable uses of force and are classified as “Type 32” uses of force. Unfortunately, in February 2020, OPD experienced a massive delay in calls for service when it implemented the new Type 32 reporting policy. As a result, and with the Monitor’s concurrence, OPD temporarily modified the reporting requirement and is currently capturing Type 32 uses of force using alternative methods (documented in crime reports and in VIEVU<sup>5</sup>) while it develops a more permanent solution.</p> <p data-bbox="305 1686 1333 1780">OPD and the Monitor have worked together on a solution for the reporting and reviewing requirements for Type 32 uses of force and a Special Order has been drafted and is currently in the review process.</p>

<sup>5</sup> VIEVU is the Department’s current body worn camera technology. Officers are required to tag video that captures a Type 32 use of force once they upload their video into the VIEVU video storage system.

<p>34</p>	<p style="text-align: center;"><b><u>Vehicle Stops, Field Investigation and Detentions</u></b></p> <p>Under the original terms of Oakland’s Negotiated Settlement Agreement in 2003, task 34 required the Oakland Police Department to collect what were at that time unprecedented amounts of information about all police stops, to include demographic information about the individuals stopped, reasons for the stop, and any searches, seizures or arrests arising from the stop. The amount of data collected regarding police stops has increased over the years and currently the Department’s collection efforts are much more comprehensive, due in part to <a href="#">California State Assembly Bill 953</a> mandates for the collection of stop data.</p> <p>Per the <a href="#">Fifty-Eighth Report</a> of the Independent Monitor, “<i>Compliance with this Task includes: (1) the collection of specific, detailed stop data; (2) staff analyses of the data to ascertain the presence or absence of indicators of disparate treatment among the population groups; and, where indicated, (3) the implementation of corrective measures – i.e., policy revisions, training, or other individualized intervention where warranted.</i>”</p> <p>The <a href="#">Sixty-Ninth Report</a> of the Independent Monitor found OPD in partial compliance with task 34, noting that “<i>The Negotiated Settlement Agreement’s requirements regarding stop data have become an integral part of the analysis and remediation of risk as described in Task 41.</i>” And that “<i>Assessing Risks is about asking questions... the Department’s risk management [process &amp; meetings] should provide an opportunity for more probing analysis.</i>”</p> <p>The Monitor’s previous assessment of this task in 2019 did not include an express finding on compliance status.</p> <p>OPD continues to refine its use and analysis of Stop Data to understand and reduce racial disparity and enhance and improve systems and processes through its departmental institutionalization of the risk management program. During monthly risk management meetings, OPD leadership reviews detailed data on stops, including the racial breakdown of those who are stopped, reasons for the stop, outcomes of the stop, and more. Partly due to the increased focus on data and discussions about strategies, such as “intelligence-led” stops and the Chief’s direction to focus on public safety stops rather than minor traffic violations, OPD officers have been stopping fewer people, with a dramatic decrease in stops beginning in 2017. For example, in 2017, there were 32,405 non-dispatch stops made by OPD officers. In 2020, 11,918 non-dispatch stops were made, a 63% decrease from the 2017 number.</p>
<p>45</p>	<p style="text-align: center;"><b><u>Consistency of Discipline</u></b></p> <p>Since the Monitor’s <a href="#">Twenty-First Report</a> in December 2014, OPD has been in partial compliance with the Consistency of Discipline task. OPD has followed the Court Appointed Investigator’s recommendations on improving OPD’s Disciplinary Process. Since January 2015, the Monitor has reviewed 488 disciplinary cases, 82 Skelly hearings and five arbitration findings. OPD has implemented all required</p>

<p>recommendations that resulted from the Court-appointed investigator's report. The Monitor found that OPD is doing what the task requires: maintaining an adequate system for tracking discipline and corrective action; imposing discipline within the Discipline Matrix, unless otherwise documented; and appropriately training <i>Skelly</i> officers.</p> <p>In the most recent report (<a href="#">Seventy-Fourth</a>), the Monitor reviewed 21 cases with sustained findings that were approved between January and April 2021 (several cases involved multiple sustained findings) and found that discipline proposed by OPD fell within the Discipline Matrix in effect at the time of the action for which the discipline was imposed for all cases reviewed. Additionally, the Monitor reviewed 15 <i>Skelly</i> hearings completed during the same period and found that they contained adequate justification for the results documented.</p> <p>However, the Monitor continued to find the Department in partial compliance with task 45 noting, <i>"We continue to closely follow the Department's response to the discipline disparity study conducted in 2020 by an external consulting firm on behalf of OPD. We have requested that the Department provide us with regular updates on its efforts to address the findings and implement the recommendations made in the report."</i></p> <p>OPD provides the Monitor and the Court with updates on the recommendations made by Hillard Heintze.</p>
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### ***NSA Sustainability***

In March 2021, Chief Armstrong established the Bureau of Risk Management (BRM), the goal of which is to centralize functions responsible for training, accountability, and risk management, with a focused effort toward full compliance and sustainability with the NSA and constitutional policing. The new Bureau, led by a Deputy Chief of Police, oversees the Internal Affairs Division, Office of Inspector General (OIG), Training Section, Personnel Assessment System (PAS) Unit, and a Risk Analysis/Impact Unit. Additionally, in response to increased violent crime in the City, the Chief established the Violent Crime Operations Center to provide a focused data driven approach and timely response to homicides, shootings and all gun-related crimes in support of OPD's Ceasefire strategy.

On July 6, 2021, Chief Armstrong released the [Oakland Police Department Strategic Plan 2021-2024](#)<sup>6</sup>, which embodies OPD's Mission, Vision, and Values, and serves as a guiding document in setting forth OPD's strategic framework to continue to enhance performance and service. The five goals included in the Strategic Plan are:

- Reduce crime to improve public safety;
- Improve community engagement and strengthen community trust;
- Develop, foster, and retain a high-quality, involved, and respected workforce;
- Demonstrate sustained compliance with the Negotiated Settlement Agreement; and

<sup>6</sup> <https://cao-94612.s3.amazonaws.com/documents/OPD-Strategic-Plan-Final-Armstrong-v2.pdf>

- Prepare for the future of police services delivery.

The action items for sustaining compliance with the NSA include setting achievable performance standards and plans for accomplishing those standards for each outstanding task, as well as working with the Police Commission to examine each NSA task to determine if the task still serves Oakland's public safety goals.

OPD continues to build upon its infrastructure to not only achieve and sustain full compliance with the NSA, but to ensure continuous assessment and improvement with the goal of being a model for law enforcement agencies across the nation. One example of this is the upgrade of OPD's body worn camera system. OPD is currently working on a contract to purchase new cameras with enhanced capabilities for recording and reviewing video that will lead to more efficient and effective supervision. The contract to procure and implement the new system will be presented to Council for approval in the coming months.

In addition to OPD's efforts to achieve sustainability with the NSA, the City of Oakland's Police Commission provides an important oversight function including the review and approval of NSA-related policies. The new Inspector General position, which will report to the Police Commission, will further this role by conducting audits of NSA-related policies and practices.

### ***Internal Race and Equity Work***

Since OPD's May 2020 release of the *Oakland Police Department Police Discipline Disparity Study*, OPD has implemented all recommendations with the final one being facilitated at the beginning of September 2021, a Cultural Competency Workshop series that focuses on equity, bias, and self-awareness. The Stanford researchers have completed the curriculum and are working with OPD to create the training schedule.

### ***Reducing Racial Disparities in Policing***

OPD continues to work to reduce racial disparities in its enforcement actions. For example, OPD has recently partnered with the Department of Transportation (DOT) to ensure that traffic stops for safety violations, which make up most of OPD's non-dispatch stops, are conducted along the High Injury Network (HIN) – this new practice helps to ensure that police stops are aligned with the citywide goal of enhancing traffic safety. Additionally, stop disparity think tank meetings occur regularly between the City Attorney's Office and OPD personnel. These meetings serve to identify new ways to understand stop data and reduce disparities wherever possible. OPD's revamped risk management process, which analyzes stops and use of force by race, ensures continued assessments of police performance are made through the study of data. These continuous assessments further contribute to the Department's progressive efforts in reducing unwarranted disparities.

### ***Policy Development and Publication***

OPD and the Police Commission continue to collaborate, develop and implement important policies that improve further progress towards NSA compliance. Below are NSA related policies that are currently under development or in the review process.



<b>POLICY</b>	<b>STATUS</b>
Internal Affairs Policy & Procedure Manual	Published on August 17, 2021
CID Level 1 Investigations Policy & Procedure	In development – OPD and the Monitor
Chief’s Directive Memorandum Re Administrative Leave and Modified Duty After Major Force Incidents	In development – OPD and the Monitor
Department General Order (DGO) R-01 – Risk Mitigation	In development – OPD and the Monitor
DGO K-03 – Use of Force Policy	Developed in collaboration with Police Commission and approved by the Commission. Meet and confer process complete. Policy being finalized by Employee Relations.
Special Order 9208 – Documentation of Type 32 Use of Force	In development – OPD and the Monitor

OPD’s efforts to develop processes and procedures to address all NSA tasks support the citywide priority of holistic community safety, as well as responsive, trustworthy government. These efforts support contemporary, procedurally just policing that promote police-community trust and public safety. OPD’s efforts to show progress with the NSA tasks, as outlined in this report, support the City’s efforts toward increased responsiveness and trust and community safety. The City details OPD’s compliance efforts in its Court Filing for the September 1, 2021 Case Management Conference with the Honorable William H. Orrick (***see Attachment A***).

### **FISCAL IMPACT**

This report is for informational purposes only and does not have a direct fiscal impact or cost.

### **PUBLIC OUTREACH / INTEREST**

No public outreach was necessary outside of standard Council noticing and publishing requirements.

### **COORDINATION**

OPD regularly consults with the City Administrator’s Office and the Office of the City Attorney on NSA matters and reports.

### **SUSTAINABLE OPPORTUNITIES**

***Economic:*** There are no economic opportunities associated with this report.

***Environmental:*** There are no environmental opportunities associated with this report.

***Race and Equity:*** In March 2019 OPD hired a consulting firm to conduct a review of potential disparities in the department’s internal investigations of police misconduct and any resulting discipline. In response to the Police Discipline Disparity Study conducted by the consulting firm

Edward D. Reiskin, City Administrator  
Subject: OPD NSA Status Update  
Date: August 16, 2021

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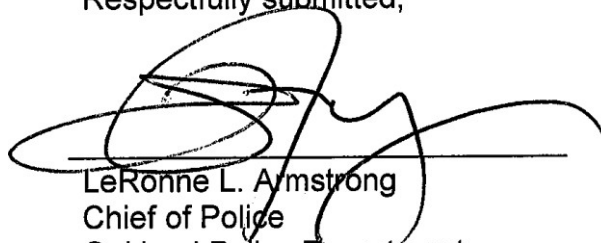
Hilliard Heintze, OPD created a working group and Steering Committee on Racial Disparity in conjunction with the Internal Race & Equity Team (IRET) and Stanford researchers. The purpose of this collaboration was to conduct an initial impact analysis of the Discipline Disparity Study and to identify quantitative and qualitative data sets to support OPD in measuring the effectiveness of the implemented strategies borne out of the Discipline Disparity Study. From this partnership, a Racial Disparity Working Group was formed and has since implemented the recommendations from the Discipline Disparity Study, with only a cultural competency workshop left to complete.

### **ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends that the City Council receive an Informational Report from OPD on OPD's progress toward compliance with the NSA in the case of Delphine Allen, Et Al., v. City of Oakland, Et Al., including any projected timeline for full compliance and end of oversight by the Independent Monitoring Team.

For questions regarding this report, please contact Kristin Burgess-Medeiros, Audit Supervisor, Office of Inspector General, at [kburgess@oaklandca.gov](mailto:kburgess@oaklandca.gov).

Respectfully submitted,



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Attachments (1)

*A: Joint Case Management Statement, Case No. 00-cv-04599 WHO, filed August 25, 2021).*

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 16 **UNITED STATES DISTRICT COURT**  
 17 **NORTHERN DISTRICT OF CALIFORNIA**  
 18 **SAN FRANCISCO DIVISION**  
 19

20 DELPHINE ALLEN, et al.	)	Case No. 00-cv-04599 WHO
	)	
21 Plaintiffs,	)	<b>JOINT CASE MANAGEMENT</b>
	)	<b>STATEMENT</b>
22 v.	)	
	)	Date: September 1, 2021
23 CITY OF OAKLAND, et al.,	)	Time: 3:30 p.m.
	)	Courtroom 2, 17th Floor
24 Defendant(s).	)	Hon. William H. Orrick
	)	
	)	
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1 **I. TASK 2 (TIMELINESS STANDARDS AND COMPLIANCE WITH IAD**  
2 **INVESTIGATIONS)**

3 Task 2 requires that the Internal Affairs Department (IAD) of the OPD  
4 complete internal investigations in a timely manner. This task was inactive  
5 between 2015 and 2019, before falling out of compliance once again. The Oakland  
6 Police Department has made concerted efforts to bring this task back into full  
7 compliance, and there has been objective progress on this task in the last year.

8 OPD policy requires that “at least 85% of Class I misconduct investigations  
9 and at least 85% of Class II misconduct investigations must be completed within  
10 180 days to be considered timely.” Per DGO M-03, Class I offenses “are the most  
11 serious allegations of misconduct and, if sustained, shall result in disciplinary  
12 action up to and including dismissal and may serve as the basis for criminal  
13 prosecution.”

14 The IMT reviewed 54 Class I misconduct cases during the period covered by  
15 the 73<sup>rd</sup> IMT Report and determined that just 29 of these cases were completed in a  
16 timely manner. This represents a 54% timely-completion rate, which is a  
17 downgrade from the 67% completion rate the last time the IMT assessed this Task  
18 in the 71<sup>st</sup> IMT report. The IMT previously described a 69% timely completion rate  
19 as “still far below compliance” (69<sup>th</sup> IMT Report, page 3), and the most recent  
20 compliance rate is even worse. Plaintiffs’ attorneys note that OPD’s timely-  
21 completion rate stood at a paltry 38% as recently as recently as the 66<sup>th</sup> IMT  
22 Report, indicating substantial improvement in the intervening months. On the  
23 other hand, the most recent figures remain well short of the 85% compliance  
24 threshold required by the NSA.

25 Of the 99 Class II cases reviewed by the IMT during the period covered by  
26 the 73<sup>rd</sup> IMT Report, 81 were in compliance with established timelines. This  
27 represents an 82% compliance rate with IAD policy and is barely short of the 85%  
28 compliance threshold mandated by the NSA. This 82% compliance rate for Class II



1 investigations remains similar to the previous two reporting periods, when the IMT  
2 determined OPD had completed 82% and 84% of Class II investigations in a timely  
3 manner.

4 Plaintiffs' can report that OPD is working systematically to meet their  
5 mandated timelines. OPD has informally communicated that the timely-completion  
6 rate for Class I and Class II investigations that are being closed right now are both  
7 at least at the 85% threshold required for compliance. Further, it appears that OPD  
8 has built support around investigating these cases promptly. Chief Armstrong and  
9 the Bureau of Risk Management Deputy Chief made changes to its IAD due dates  
10 in which Commanders must now adhere to strict IAD due dates which are earlier  
11 than the 180-day due dates, to ensure that investigations do not languish until the  
12 last minute, and to allow IAD ample time to review and close out cases before the  
13 180-day deadline.

14 It thus appears that the Department making progress toward once again  
15 achieving compliance with Task 2. Task 2 compliance is categorically different from  
16 the other Tasks that remain out of compliance insofar as the threshold for  
17 compliance is strictly mathematical: there is an objective, concrete target that OPD  
18 must meet, and there is objective progress in that direction. Unfortunately, the  
19 OPD has not yet surpassed the 85% bar that is required and must be maintained.  
20 OPD leadership, and IAD leadership appear to be narrowing this gap and moving  
21 back toward full compliance. Given that OPD was previously in compliance with  
22 this task for so long that it became inactive for four years, there is no reason OPD  
23 cannot reattain that status shortly.

## 24 **II. TASK 5 (COMPLAINT PROCEDURES FOR IAD)**

25 OPD is not in full compliance with Task 5, which pertains to Complaint  
26 Procedures for the Internal Affairs Division. On March 23, 2016, the Court issued  
27 an Order indicating that irregularities and potential violations of the NSA occurred  
28 in IAD investigation 15-0771. The Order noted that the investigation raised issues

1 of accountability and sustainability of compliance.

2 The IMT most recently assessed this task in the 73<sup>rd</sup> IMT Report. In this  
3 report, the IMT noted that “the Department has made progress in this Task and  
4 has shown capacity to better address internal investigations.” (73<sup>rd</sup> IMT report, p.  
5 9). The IMT nevertheless notes that “OPD is currently challenged by investigations  
6 emanating from demonstrations in May and June [2020] – to include a Level 1 use  
7 of force – as well as an officer-involved shooting outside City limits.” (73<sup>rd</sup> IMT  
8 report, p. 9).

9 Task 5 consists of several subtasks, and the IMT has determined that many  
10 of these are in compliance, including:

- 11 • Task 5.1, which requires that when a citizen wishes to file a complaint,  
12 the citizen is brought to a supervisor or IAD, or a supervisor is  
13 summoned to the scene.
- 14 • Task 5.2, which requires that if there is a delay of greater than three  
15 hours in supervisory response, the reason for the delay must be  
16 documented.
- 17 • Task 5.3, which requires that where a complainant refuses to travel to  
18 a supervisor, or wait for one, personnel make all reasonable attempts  
19 to obtain specific information to assist in investigating the complaint.
- 20 • Task 5.4, which requires that specific information be documented on a  
21 complaint form and submitted to the immediate supervisor or, in  
22 his/her absence, the appropriate Area Commander.
- 23 • Task 5.5, which requires that the supervisor or Area Commander  
24 notify Communications and forward any pertinent documents to IAD.

25 Every day, the Communications Division of OPD prepares Daily Incident  
26 Logs (DILs) that gather all the data required to evaluate compliance with these  
27 tasks. The IMT reports that this process has “significantly enhanced OPD’s ability  
28 to document compliance” (73<sup>rd</sup> IMT Report, p. 10) with these subtasks. Plaintiffs’

1 attorneys note that this streamlined, codified process is a marker of institutional  
2 commitment to Task 5 compliance and commend OPD consistency in this regard.

3 The crux of Task 5 compliance, ultimately, pertains to subtasks relating to  
4 the quality of IAD investigations (subtasks 5.15 to 5.19, and subtask 5.21).  
5 Subtasks 5.15 and 5.16 require that OPD gathers all relevant evidence, conducts  
6 appropriate follow-up interviews, considers all evidence, makes credibility  
7 assessments where feasible, and resolves inconsistent statements. In all of the  
8 cases the IMT reviewed during the period covered by the 73<sup>rd</sup> IMT report, the IMT  
9 determined that OPD gathered all available relevant evidence and reported that  
10 investigators did conduct follow-up interviews where necessary to resolve  
11 inconsistencies. OPD also made credibility assessments in three cases reviewed by  
12 the IMT, and the IMT agreed with all these credibility assessments. In two of these  
13 cases, body-worn camera (BWC) footage was “instrumental” in determining  
14 complainants and/or witnesses were not credible. This is a useful reminder that  
15 BWC footage safeguards the public and OPD personnel alike and is critical to  
16 sustaining public trust with the Department.

17 Despite these positive developments, Plaintiffs’ attorneys remain concerned  
18 about the alarming number of reports of failure to activate body worm cameras in a  
19 timely manner. These issues must be addressed and, if they continue, discipline  
20 must be imposed (as it was in one case reported by the IMT in their 74<sup>th</sup> Report). If  
21 such “mistakes” continue, it is only a matter of time before an officer does not use  
22 his/her camera in a serious incident, resulting in a significant liability risk to the  
23 City of Oakland.

24 Task 5.17 requires OPD to permanently retain all notes generated and/or  
25 received by OPD in their personnel file, and OPD has a “sustained history of 100%  
26 compliance with this subtask.” (73<sup>rd</sup> IMT Report, p. 8.). This was once again the case  
27 during the most recent reporting period evaluated by the IMT.

28 Tasks 5.18 and 5.19 require, respectively, that OPD “resolve each allegation

1 in a complaint investigation using the preponderance of evidence standard” (5.18)  
2 and necessitates “that each allegation of a complaint if identified’ be resolved with a  
3 disposition of “unfounded”, “sustained”, “exonerated”, “not sustained”, or  
4 administrative closure (5.19). The IMT did not disagree with any of the formal  
5 findings in any of the cases they reviewed during this period. Over the last year, it  
6 appears that the IMT has only disagreed with OPD findings in three cases.

7       Indeed, OPD reports that there has been no negative feedback from the IMT  
8 regarding the quality of IAD investigations in almost one year. Put another way:  
9 from a process standpoint, IAD investigations have been consistently up to the  
10 standards mandated by the NSA, and acceptable to the Monitor. There were at  
11 least two cases where the IMT appeared to disagree with the ultimate finding made  
12 by the then-Chief but determined that the investigative process leading up to the  
13 ultimate disposition was sufficient. Plaintiffs’ attorneys understand that, on  
14 occasion, the IMT and the final arbiter(s) at OPD may come to different conclusions  
15 about the disposition of an IA matter when looking at the same set of facts. OPD  
16 can nevertheless be commended from a process standpoint. A consistent, robust  
17 investigative framework is a fundamental pillar of Task 5 compliance, and OPD  
18 deserves praise for consistency in this regard.

19       On January 14, 2021, this Court issued an Order regarding Internal Affairs  
20 Case No. 21-0028 involving “serious matters that go to the heart of this case – the  
21 culture of the Oakland Police Department and the efficacy of internal oversight  
22 mechanisms within the Department, which were the primary reason for the  
23 imposition of the NSA in the first place.” (Dkt. 1419, page 1). This was connected to  
24 the revelation that current and former OPD employees, as well as other members of  
25 Bay Area law enforcement organizations, were active participants on a racist, sexist  
26 Instagram page with the online handle “@crimereductionteam” that was discussed  
27 at length during the previous Case Management Conference.

28       Many of the “@crimereductionteam” posts mocked OPD policies regarding use

1 of force reporting and police brutality, while others were overtly racist and  
2 misogynistic. Several posts were incorporated into Plaintiffs' portion of the most  
3 recent CMC Statement (see Dkt. 1423, pp. 6-12.)

4 Plaintiffs' attorneys do not know exactly when this Instagram account was  
5 created. However, Plaintiffs' attorneys are in possession of a Department-wide  
6 email from September 23, 2020 that states OPD command staff "have come across a  
7 page on Instagram that some officers in our department 'follow'", with appended  
8 screenshots of "@crimereductionteam" posts.

9 Further, as Plaintiffs' attorneys reported to this Court at the last Case  
10 Management Conference, it appears that OPD did not initiate an Internal Affairs  
11 investigation regarding the "@crimereductionteam" account until the contents were  
12 publicly reported by journalist Darwin Bond-Graham and others, even though OPD  
13 was on notice that personnel were engaging these accounts since at least September  
14 2020, when the Department-wide email regarding the @crimereductionteam  
15 Instagram account was circulated.

16 The 3304 date for the investigation of this Instagram fiasco apparently falls  
17 just days after this Case Management Conference. This Court wrote that the  
18 investigation into these matters "may well demonstrate the defendants'  
19 commitment to accountability and the sustainability of the reforms in the NSA."  
20 (Dkt. 1419). Plaintiffs' attorneys are eager to see if OPD can do so. While it is  
21 undeniably true that these Instagram posts echo long-standing cultural problems,  
22 Plaintiffs' Attorneys also recognize that it provides an opportunity for OPD to  
23 demonstrate that it can self-govern, and hold itself to account, as required by the  
24 Negotiated Settlement Agreement.

25 **III. TASKS 24 (USE OF FORCE REPORTING POLICY) & 25 (USE OF**  
26 **FORCE INVESTIGATIONS AND REPORT RESPONSIBILITY)**

27 OPD had been in compliance with Tasks 24 (Use of Force Reporting Policy)  
28 and 25 (Use of Force Investigations and Report Responsibility) of the NSA since

1 2015. In November 2018, this Court reactivated these Tasks as a result of Plaintiffs'  
2 and the Monitoring Team's concerns about systematic underreporting of weaponless  
3 defense techniques and incidents related to the pointing of firearms. Subsequently,  
4 the IMT found both Task 24 and Task 25 out of compliance. During the most recent  
5 (74<sup>th</sup>) IMT Report, OPD came back into compliance with Task 24.

6 OPD was able to reattain compliance with Task 24 by working with  
7 stakeholders, including Plaintiffs' attorneys, the IMT, and the Police Commission,  
8 to enact policy revisions related to such Use of Force reporting. Specifically, OPD  
9 published Special Order 9196, which clarified use of force policies regarding the  
10 pointing of a firearm. This Special Order supersedes relevant sections of  
11 Departmental General Orders (DGOs) K-3 (Use of Force) and K-4 (Reporting and  
12 Investigating Use of Force) by eliminating all references to "intention" related to an  
13 officer pointing his or her service weapon. OPD acknowledged that determining  
14 "intent", as well as language regarding the "low-ready" position", was  
15 "unnecessarily subjective and did not capture the spirit of the policy: reporting  
16 every time that an officer points a firearm at a person." (Special Order 9196, p. 1).  
17 Level 4, Type 22 Use of Force was thus redefined "Pointing a Firearm at a Person",  
18 where pointing means any incident, intentional or otherwise, where "the line of the  
19 muzzle intersects with the body of the subject such that, if the firearm were to  
20 discharge, the round would strike that person."

21 This led to a predictable increase in the total uses of force during 2020. Per  
22 the biweekly reports that the Department regular shares with the IMT and  
23 Plaintiffs' attorneys, there were 2,996 total uses of force in 2020, up from 1,555 in  
24 2019. Level 4 uses of force, which include "Pointing of a Firearm at a Person" as  
25 described above, were primary driver of this surge: while there were 1,429 total in  
26 2019, that figure jumped by over 1,200 to 2,631 in 2020.

27 As Plaintiffs have previously noted, the more recent numbers are largely a  
28 result of Special Order 9196, and more accurately reflect OPD's actual use of force

1 than data from previous years. The 2020 figures also provide a comprehensive  
2 baseline for subsequent comparison. According to the most recent (292<sup>nd</sup>) biweekly  
3 Compliance Update issued by OPD, there have been 851 Level 4 Uses of Force to  
4 date in 2021. This represents a dramatic year-to-year reduction: In 2020, to date,  
5 there had been 1654 Level 4 uses of force. Given that there is no indication that  
6 OPD is now undercounting certain kinds of force (especially Type 22, Pointing a  
7 Firearm at a Person), the Department deserves praise for the significant reduction  
8 in Level 4 Uses of Force.

9 Special Order 9196 also created several new Use of Force categories,  
10 including Level 4, Type 32 to ensure that any force used by OPD to “overcome  
11 resistance” was adequately documented. Such force includes moving subjects who  
12 had gone limp, guiding and/or pushing subjects into patrol vehicles, using  
13 restraining devices, removing people who are holding on to fixed objects, and  
14 forcibly handcuffing subjects who are resisting arrest.

15 Here, too, OPD must be commended. Plaintiffs’ attorneys do not know of  
16 another major-city police department that has taken steps to ensure that all the  
17 above-described uses of force must always be documented and codified this into  
18 their Use of Force policy. This reflects truly progressive policing, and it is a credit  
19 to the Department that all such uses of force are now reported

20 The IMT reviewed 186 Level 3 and Level 4 use of force reports during the  
21 reporting period covered by the draft 74<sup>th</sup> IMT report. There were 501 discrete uses  
22 of force across these 186 incidents, including 102 where weapons were pointed at a  
23 subject. In 93 of those 102 incidents (where a weapon was pointed at a subject),  
24 Level 4, Type 22 Use of Force was the only force used, and the IMT determined that  
25 this use of force was appropriate in all instances. Further, the IMT did not identify  
26 any instances where officer did not report Type 22 Uses of Force. It thus appears  
27 that the new policy regarding reporting the pointing of a firearm is working: Type  
28 22 force is now captured in UOF collection, is reported consistently, and is within

1 policy when used, according to the IMT, who determined that every instance of Type  
2 22 Force they reviewed during the period covered by the 74<sup>th</sup> IMT report was  
3 appropriate. (Draft 74<sup>th</sup> IMT Report, p. 10)

4 The IMT did, however, “identify nine instances where officers who assisted in  
5 restraining a combative person did not report a Type 32 UOF, and one where a  
6 Type 29 UOF was not reported.” (Draft 74<sup>th</sup> IMT Report, p. 10). This is, as  
7 described above, a new Use of Force category that is among the most progressive in  
8 the nation, and it is therefore likely that there will be hiccups related to reporting  
9 this previously unreported use of force at the outset of the new policy. OPD must  
10 nevertheless ensure that all officers are trained in the new force type and attendant  
11 reporting requirements, and Plaintiffs’ attorneys will monitor subsequent IMT  
12 reports for progress reporting Type 32 Uses of Force.

13 The Department also reports that the IMT has not deemed any Uses of Force  
14 out of compliance in many months. This is of a pattern with the IA investigations  
15 described above: The IMT has not expressed substantive concerns with the  
16 underlying process, even on the rare occasions where they disagree with an  
17 outcome. The IMT has, however, provided some feedback to OPD about the  
18 announcement and identification of officers during initial detention, late Body Worn  
19 Camera (BWC) activations, and boilerplate language regarding training and  
20 experience. These are important issues that were highlighted by OPD’s own Office  
21 of the Inspector General (OIG) in a 2019 Report titled “Special Report: An  
22 Assessment of the Oakland Police Department’s Use of Force Reporting, Usage of  
23 Portable Digital Recording Devices, and Supervision of Incidents During Arrests for  
24 Offenses Where There is a Significant Chance That force Would Be Used.”<sup>1</sup> It is  
25 incumbent on OPD to immediately address these issues since they have been on  
26 notice about such problems for years.

27 Even so, Plaintiffs’ attorneys agree with the IMT that OPD’s policies now

28 <sup>1</sup> <http://www2.oaklandnet.com/oakca1/groups/police/documents/report/oak072446.pdf>



1 meet the standard required by the NSA and are therefore in compliance with Task  
2 24 of the NSA. Future revisions and modifications will inevitably be needed,  
3 because policy standards are dynamic and commonly accepted best practices will  
4 continue to evolve. Indeed, changes to DGO K-3 were modified because of changes  
5 in the law, and in response to the wishes of the Police Commission following the  
6 murder of George Floyd. This is a necessary component of a self-sustaining, self-  
7 correcting, and progressive Police Department. Although OPD has not yet trained  
8 all officers on the revisions to DGO K-3, Plaintiffs' attorneys understand that all  
9 officers will be so trained within one month from when the revised document is  
10 published. The Police Commission and OPOA (Oakland Police Officers Association)  
11 are currently reviewing these changes, and Plaintiffs' attorneys are eager for this  
12 process to be completed. OPD has already completed trainings for revisions to other  
13 use of force policies.

14 Task 25 remains in partial compliance for the following reasons:

15 25.1 The IMT reports that while there has been a decline in the use of  
16 boilerplate language, they continue to "find numerous instances where officers  
17 justify their uses of force "based on my training and experience" without any further  
18 information or explanation as to what training and experience they are referring  
19 to."

20 25.2 The IMT finds that they continue to find concerns about the preparation  
21 and review of UOF reports by OPD supervisors and "we continue to find instances  
22 where OPD supervisors do not identify deficiencies in officer reporting and fail to  
23 identify or address MOR violations".

24 The IMT concludes their report on Task 25 by stating: "we continue to see  
25 reports where supervisors have failed to identify and address deficiencies by their  
26 personnel and in some cases failed to complete appropriate documentation. While  
27 we have continued to see improvements in those reports we reviewed for this period,  
28 there is still work to be done."

1 If OPD wants to attain NSA compliance, they must make the improvements  
2 specified by the IMT for this task. OPD had been “in compliance” before Judge  
3 Orrick reactivated this Task in November 2018 and has made improvements in this  
4 Task in the IMT’s most recent reports. The shortcomings here seem largely  
5 supervisory in nature. Perhaps Commanders should consider a directive to  
6 supervisors on this matter or those supervisors responsible for these shortcomings  
7 should obtain additional training. In any event, compliance appears to be in sight  
8 for this Task and OPD should carefully consider what it will take to attain  
9 compliance here.

#### 10 **IV. TASK 30 (EXECUTIVE FORCE REVIEW BOARDS)**

11 Task 30 pertains to Executive Force Review Boards (EFRBs), which consist of  
12 three command-level officer who review all Level 1 uses of force, as well as in-  
13 custody and pursuit-related deaths and serious injuries. Although OPD had been in  
14 compliance with this Task for some time, the IMT deferred a compliance finding for  
15 Task 30 following the Joshua Pawlik shooting incident, until they (the IMT) could  
16 observe additional EFRBs. The Pawlik EFRB was discussed at great length in  
17 previous Case Management Conferences. In short, Plaintiffs’ attorneys are in  
18 complete agreement with the IMT’s assessment that the Pawlik EFRB was deeply  
19 flawed and disagreed with the EFRB findings in the Pawlik matter.

20 OPD has convened three one EFRBs since the Pawlik matter: one related to a  
21 canine deployment in 2019, another related to an officer-involved shooting in  
22 Richmond, CA, and a third pertaining to a baton strike which occurred during the  
23 protests related to the murder of George Floyd in 2020. Plaintiffs’ attorneys were  
24 not involved in any of these EFRBs and defer to the IMT’s assessment that they  
25 were “well-run, thorough, and complete” (Draft 74<sup>th</sup> IMT Report, p. 22), and that  
26 they agreed with the findings (including some sustained findings related to officer  
27 actions during the vehicle pursuit that culminated in the officer-involved shooting  
28 in Richmond, CA). The IMT determined that all three of these EFRBs were in

1 compliance, and therefore determined that OPD is once again in compliance with  
2 Task 30 (Draft 74<sup>th</sup> IMT Report, p. 22). Plaintiffs' attorneys congratulate the  
3 Department on this achievement and expect that OPD can and will remain in  
4 compliance with this Task moving forward.

5 **VI. TASK 34 (STOP DATA/VEHICLE STOPS, FIELD INVESTIGATIONS**  
6 **AND DETENTIONS)**

7 At the outset of the NSA, the Oakland Police Department did not have any  
8 mechanism to review, approve, or assess the justifications for stops and searches by  
9 its officers. Indeed, this lack of oversight and accountability led directly to the  
10 abuses that precipitated Plaintiffs' attorneys' involvement in the NSA. Recent  
11 progress on this front is remarkable, and a credit to the Department and all other  
12 stakeholders diligently involved in this sphere.

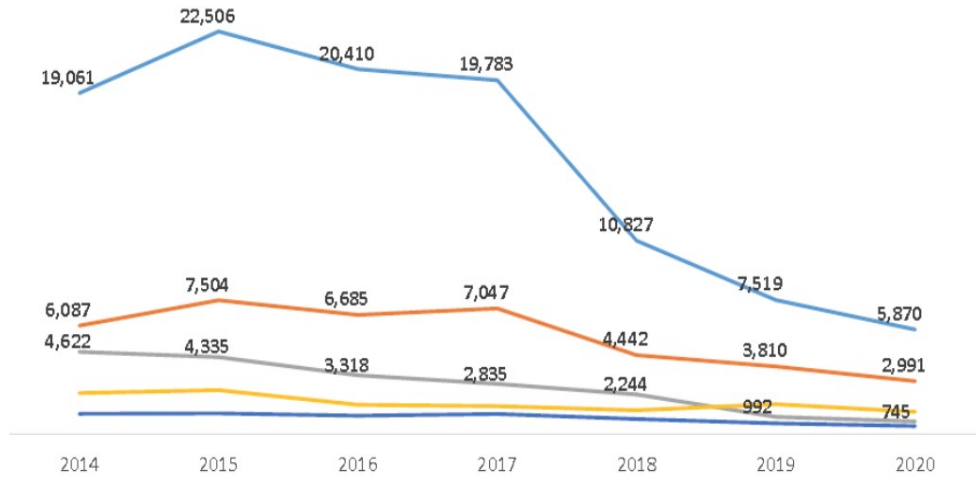
13 OPD recently demonstrated a commitment to "intelligence-led" stops, which  
14 greatly reduced the racial disparities in discretionary stops by Oakland Police  
15 officers. As recently as 2015, there were 22,506 non-dispatch stops of African  
16 Americans by Oakland police. That number has fallen year-over-year, to just 5,870  
17 in 2020. The number of stops for all racial categories were reduced over this period,  
18 but two figures are especially striking since 2015: A 74% reduction in the total  
19 number of African American stops (from 22,506 to 5,780) and the 60% reduction in  
20 the total number of Hispanic stops (from 7,504 to 2,991):

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Non-Dispatch Stops by Race 2014-2020

Race	2014	2015	2016	2017	2018*	2019	2020	2019-2020 # Change	2019-2020 % Change
Afr American	19,061	22,506	20,410	19,783	10,827	7,519	5,870	-1,649	-28%
Hispanic	6,087	7,504	6,685	7,047	4,442	3,810	2,991	-819	-27%
White	4,622	4,335	3,318	2,835	2,244	992	745	-247	-33%
Asian	2,320	2,484	1,667	1,588	1,366	1,701	1,279	-422	-33%
Other	1,168	1,190	1,061	1,152	871	627	476	-151	-32%
<b>Total</b>	<b>33,258</b>	<b>38,019</b>	<b>33,141</b>	<b>32,405</b>	<b>19,750</b>	<b>14,649</b>	<b>11,361</b>	<b>-3,288</b>	<b>-29%</b>

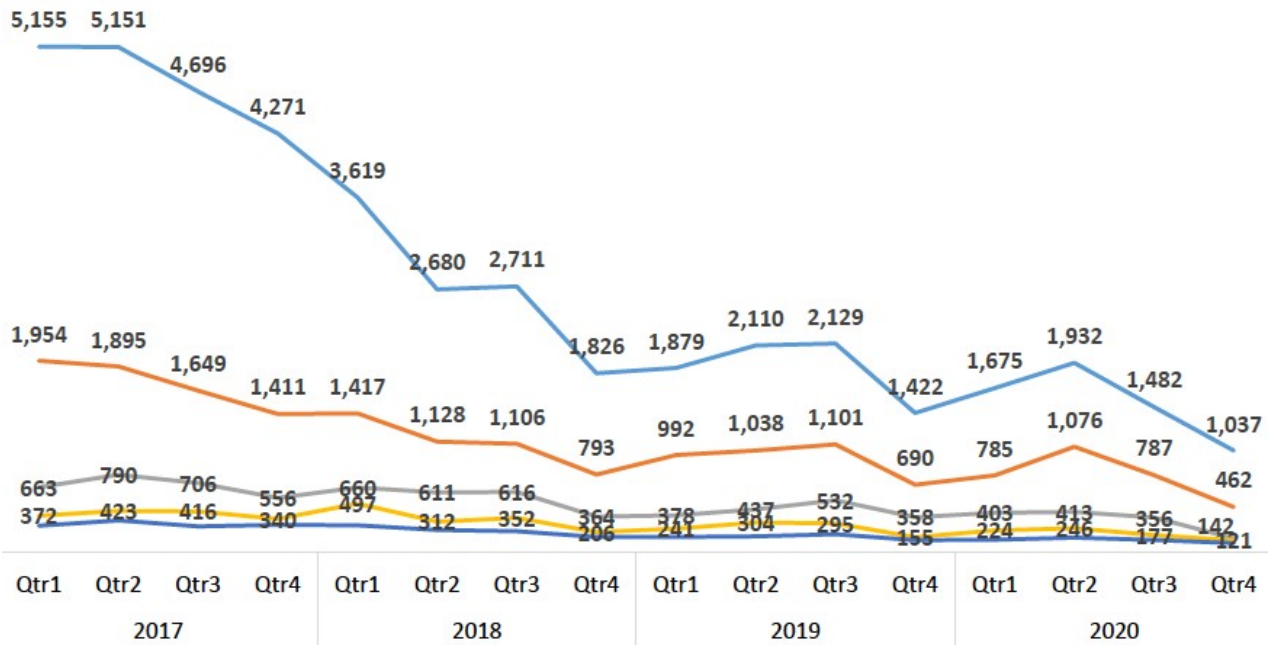


A more recent chart, recently shared by OPD personnel with Plaintiffs' attorneys, plots the number of non-dispatch stops in each quarter, and indicates that the positive momentum outlined above did not stall during the first year of the Covid-19 pandemic:

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### Non-Dispatch Stops by Race 2017-2020

Year	Afr American	Hispanic	White	Asian	Other	Total
2017	61% (19,273)	22% (6,909)	9% (2,715)	5% (1,551)	4% (1,141)	31,589
2018*	55% (10,836)	22% (4,444)	11% (2,251)	7% (1,367)	4% (873)	19,771
2019	51% (7,540)	26% (3,821)	12% (1,705)	7% (995)	4% (627)	14,688
2020	52% (6,126)	26% (3,110)	11% (1,314)	7% (768)	4% (497)	11,815



\*CA Assembly Bill 953 Stop Data Collection requirements began on 12/20/2018

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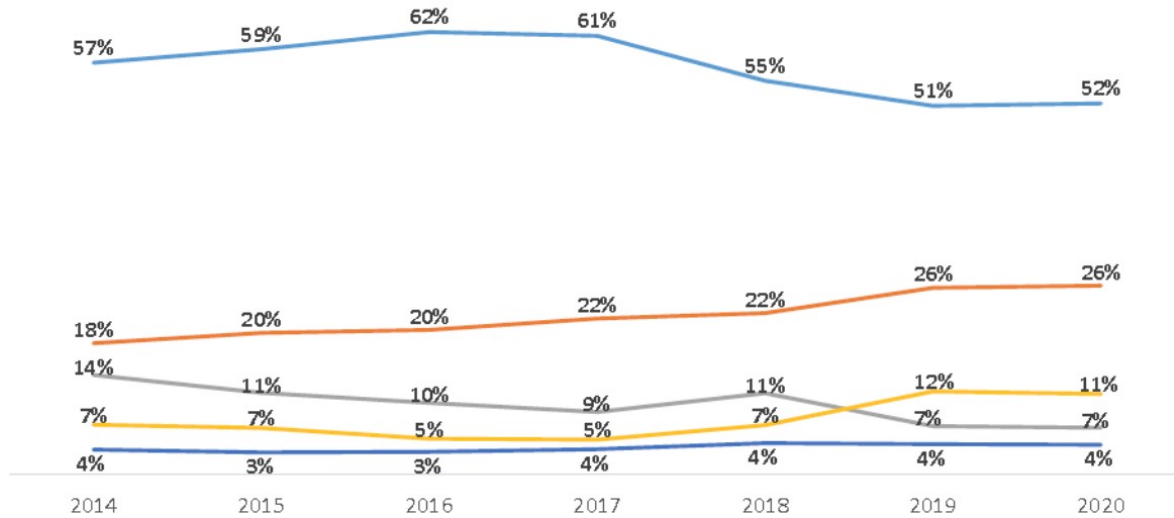
17 These decreases were accomplished with no compromise to officer safety, and  
 18 the above chart indicates that OPD substantially ameliorated disparate treatment  
 19 and/or outcomes during this period. OPD has also focused close attention to the  
 20 categories of stop outcomes, including searches, recoveries, and arrests. Sustained  
 21 high levels of arrests, for example, indicate that the intelligence-led policing model  
 22 is working. It also reflects the Department’s understanding that stops based  
 23 objective information has myriad benefits: it reduces the policing “footprint” within  
 24 the community by decreasing the likelihood of unnecessary police interactions while  
 25 also mitigating individual biases that may precipitate stops

26 Plaintiffs’ attorneys note that the data also shows that African Americans  
 27 continue to be stopped a higher rate than other demographic groups in Oakland:  
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**Non-Dispatch Stop Percentages by Race 2014-2020**

Race	2014	2015	2016	2017	2018*	2019	2020
Afr American	57%	59%	62%	61%	55%	51%	52%
Hispanic	18%	20%	20%	22%	22%	26%	26%
White	14%	11%	10%	9%	11%	7%	7%
Asian	7%	7%	5%	5%	7%	12%	11%
Other	4%	3%	3%	4%	4%	4%	4%



Even if the racial variance in stop data is not entirely attributable to OPD actions, there is much room for continued progress here, and the Department and City of Oakland have acknowledged as much in their most recent appearance in front of this Court. That said, the trend-line is undeniably positive, and the concrete data indicates that OPD is working to address some of the systemic biases within the Department.

The Risk Management Meetings which are discussed at greater length in the next section below, have been instrumental to the above-illustrated declines. Officers with significant numbers of stops of African Americans, with no yield or justification for the stop, are routinely identified and discussed and, when warranted, placed on supervisory monitoring or intervention. This process deals with discrete instances of biased policing and reinforces important cultural changes in the department by reminding all officers that OPD will not tolerate stops of

1 African Americans absent evidence- and/or intelligence-based justification for the  
2 stop.

3 It appears to Plaintiffs' attorneys that the Department is on the cusp of  
4 compliance with both the spirit and the letter of this Task, and OPD deserves  
5 congratulations for its significant, demonstrated progress on this Task. The year-  
6 over-year trend in the data speaks to institutionalized, sustainable change within  
7 OPD.

8 **VII. TASK 41 (USE OF PERSONNEL ASSESSMENT SYSTEM AND RISK**  
9 **MANAGEMENT)**

10 Task 41 pertains to the Use of a Personnel Assessment System (PAS) and  
11 Risk Management and requires OPD to develop a risk management system to audit  
12 the performance of specific members, employees, supervisors, managers, units, and  
13 the Department as a whole. The IMT's most recent review of Task 41 (the Draft  
14 74<sup>th</sup> IMT Report, dated August 2021) determined that OPD is once again in  
15 compliance with this task.

16 When the IMT issued their 72<sup>nd</sup> Report, they indicated that approximately  
17 80% of Vision reports and 66% of reports related to the PAS risk review process  
18 have been completed. (72<sup>nd</sup> IMT Report, page 24) For more than a year, the new  
19 PAS system was beset with data-retention and transition issues. Much time, effort,  
20 and money has been spent migrating from the original risk management database  
21 (IPAS) to its successor (Prime) to the newly implemented Vision. It now appears  
22 that Vision is largely functional, and that it can fulfil its required role as a  
23 relational database and early-warning system than can intervene to mitigate risks  
24 in a meaningful way. The road to this point involved much complex, expensive, and  
25 time-consuming work, but now that it largely complete, Plaintiffs' attorneys are  
26 optimistic that Vision is to become the comprehensive and durable risk  
27 management tool it was designed to be and concur with the IMT's assessment in the  
28 Draft 74<sup>th</sup> Reports that "while many of the issues relevant to Vision have been

1 addressed, risk management data issues remain.” (Draft 74<sup>th</sup> IMT Report, p. 28).  
2 This is why, even though the IMT has determined that OPD is “in compliance,  
3 although we are concerned that the potential of the system is, for now, surpassing  
4 its efficacious use.” (Draft 74<sup>th</sup> IMT Report, p. 29)

5 As the Court knows, there were many staffing-related delays in previous  
6 months and years. The Department recently informed Plaintiffs’ attorneys that  
7 these issues have been remedied. The City of Oakland also hired a data manager,  
8 Dr. Leigh Grossman, who has stressed her commitment to a sustainable, risk  
9 management process where every dimension related to PAS is reported out in a  
10 comprehensive manner. Dr. Grossman compiles a monthly Risk Analysis Report  
11 that is shared with major stakeholders. Although it is admittedly a work in  
12 progress, the data included so far is comprehensive, and includes citywide numbers,  
13 as well as data at the Area level, for Ceasefire, for the Violent Crimes Operation  
14 Center (VCO), and the Criminal Investigations Division. The most recent report  
15 also included non-intel led traffic stop percentages, as well as data regarding  
16 officers and staff who are on PAS monitoring. The very point of a risk management  
17 system is to filter information and process it toward solutions, including  
18 highlighting outlier officers (or groups of officers), and this is a solid step in that  
19 direction. Members of the Stanford team have also commended Dr. Grossman’s  
20 “rigorous cleanup” of data pertaining to potential disparities in the Department’s  
21 internal discipline process. This will be discussed at greater length in Task 45,  
22 below.

23 The data that underlies Vision underpins the Department’s entire risk  
24 management apparatus, including the Risk Management Meetings (RMMs) that  
25 take place at all supervisory levels of the Department. Plaintiffs’ attorneys have  
26 attended many of these meetings and are consistently impressed by the use of data  
27 to discuss stop data, possible patterns of bias in stops, complaints, the ratio of  
28 intelligence-based and non-intelligence-based stops, pursuits, and, perhaps most



1 crucially, officers who are under supervisory monitoring and/or intervention. It is  
2 clear that there is real institutional buy-in to this process, which is reinforced by the  
3 presence of command-level officers who oversee drilldowns into specific officers and  
4 squads. This is a crucial feature of the RMM process, and OPD must commit to  
5 continuing this process in the coming years. All told, Plaintiffs' attorneys can report  
6 that RMMs are an unequivocal force for positive change at OPD.

7 Finally, Plaintiffs' attorneys offer two suggestions to the Department as it  
8 nears compliance with this task. First, OPD must ensure that all twenty (20)  
9 components of Task 40 of the NSA are incorporated into Vision. While most of  
10 these elements are already captured and have been discussed extensively by all  
11 parties over the years (stop data, pursuits, complaints), it is not clear that every  
12 required element is. Specifically, Plaintiffs' attorneys have previously highlighted  
13 three components of Task 40 that have never been discussed at any RMM they have  
14 attended, and may not be fully integrated into the Vision system:

- 15 • "All civil suits and/or tort claims related to members' and  
16 employees' employment at OPD, or which contain allegations which  
17 rise to the level of a Manual of Rules violation" (Task 40, item #7)
- 18 • "All charges of resisting or obstructing a police officer, assault on a  
19 police officer, or assault-with-a-deadly-weapon on a police officer."  
20 (Task 40, item #13).
- 21 • "Criminal cases dropped due to concerns with member veracity,  
22 improper searches, false arrests, etc." (Task 40, item #19)

23 Please note: Assault/Battery on a Police Officer & Obstruction/Resisting a  
24 Police Officer (sole charges) was discussed at the Risk Management Meeting on  
25 August 25, 2021. (Slide 8.1 at the August 25, 2021 Risk Management Meeting).  
26 Very recently, Plaintiffs' Attorneys have also become aware of documents that show  
27 outreach by the OPD to both the Public Defender and District Attorney regarding  
28 identification on officers that have come to the attention of these entities and who

1 they believe cause problems. Plaintiffs' attorneys have no information on what was  
2 done with this information. We will endeavor to find the answer to this question  
3 and report on it at the Case Management Conference scheduled for September 1,  
4 2021.

5 Second, Plaintiffs' once again urge the Department to codify the very robust  
6 RMM process via a general order and/or training bulletin that details what a Risk  
7 Management Meeting is, and that outlines the roles it demands of participants and  
8 subjects. The Department has been proactive about using the risk management  
9 data it has available since the Vision system came online. The buy-in to this  
10 process by nearly every single supervisor has been nothing short of remarkable.

11 Plaintiffs' attorneys remember the role that Doctors Eberhardt and Monin,  
12 the IMT and Plaintiffs' Attorneys played as a driving force for conducting  
13 investigations and drilldowns into this data. One day all these people will be gone  
14 and the OPD will be responsible for the Risk Management process. We believe that  
15 the OPD can accomplish this task (particularly under the leadership of Chief  
16 Armstrong), but slippage in this area cannot be tolerated by the current and future  
17 leadership in the Oakland Police Department.

18 The surest way to ensure that the current RMM system is maintained in the  
19 medium- to long-term future of the Department is to codify it, including specific  
20 requirements that at least one command-level officers attend Area-level RMMs, and  
21 that focused drilldowns into problematic officers and/or squads continue. Absent  
22 such action, the entire Risk Management apparatus is subject to the whims of  
23 future OPD commanders. Chief Armstrong recently attended a Risk Management  
24 Meeting that "failed to meet the quality" (Draft 74<sup>th</sup> IMT Report, p. 33) that the  
25 IMT and Plaintiffs' attorneys have come to expect. At the conclusion of the meeting,  
26 Chief Armstrong expressed his displeasure to all participants. We agree with the  
27 IMT that "this measure of reflective, quick action on the part of the Chief is the type  
28 of leadership that the Department has needed." Draft 74<sup>th</sup> IMT Report, p. 33) In

1 fact, within days, at a subsequent Area 3 Risk Management Meeting, “drill downs”  
2 were discussed in detail while a Deputy Chief was present.

3 It is not lost on Plaintiffs’ attorneys that a future Chief, overseeing OPD after  
4 the NSA has mercifully drawn to a close, might tolerate (or even prefer) a hollowed-  
5 out RMM process that is not as probing and expansive as the current iteration.  
6 Plaintiffs’ attorneys once again encourage OPD to take the commonsense step of  
7 institutionalizing all aspects of the robust RMM process that currently exists into  
8 permanent OPD policy.

9 In addition, there is a preliminary draft of the Risk Management policy that  
10 has been reviewed by Plaintiffs’ Attorneys. We hope that the final document will  
11 stress, at a minimum: (1) the need to “drill down” by supervisors and to report  
12 outliers as has been done repeatedly in the Risk Management Meetings; (2) that a  
13 Deputy Chief and/or Chief attend every Risk Management Meeting; and (3) a plan  
14 as to what will be done with those officers who “live” on the charts as outliers in  
15 stops without yields and other issues that have made them stay there. As Chief  
16 Joshi said in one of his last Risk Management Meetings prior to becoming Chief of  
17 the Alameda Police Department, outliers cannot “live” on the charts as outliers  
18 without some appropriate action being taken by supervisors and commanders.

19 Vision is the main repository for data that is germane to virtually all the  
20 NSA tasks and is the key to compliance with the NSA itself. The Department must  
21 be lauded for moving back into compliance with Task 41. The recent progress here  
22 is undeniable, and truly critical to the NSA moving forward.

### 23 **VIII. TASK 45 (CONSISTENCY OF DISCIPLINE POLICY)**

24 OPD is in partial compliance with Task 45, which requires that discipline is  
25 imposed in a fair and consistent manner. The Hillard Heintze “Police Discipline  
26 Disparity Study” (Disparity Study) has been the major locus of Plaintiffs’ attorneys  
27 Task 45 discussions since it was issued in April 2020.

28 This report determined that “black sworn employees were more likely to have

1 their allegations result in a sustained finding than other employees.” Specifically,  
2 this report found that:

- 3 • “Over the five-year time period, black employees were 37% more  
4 likely to have an allegation against them result in a sustained  
5 finding.” (Disparity Study, p. 10).
- 6 • For Class One complaints (the most serious complaints), black  
7 individuals are almost 39% more likely to have the complaint  
8 sustained, while controlling for gender and years of service.”  
9 (Disparity Study, p. 10).
- 10 • The IAD policy allowed sergeants to be “fact finders and  
11 adjudicators has the potential to lessen an investigator’s neutrality”  
12 and that this system “is not consistent with promising practices  
13 used in departments similar in size to Oakland.” (Disparity Study,  
14 p. 11)
- 15 • “Twice as many black trainees were released [from OPDs Academy]  
16 than white or Hispanic trainees. (Disparity Study, p. 41)
- 17 • FTO (Field Officer Training) completion rates for black and Asian  
18 trainees lagged behind those for Hispanic and white trainees.”  
19 (Disparity Study, p. 42)
- 20 • Just 18.68% of sworn respondents believe that OPD’s disciplinary  
21 process is fair, while 81.32 percent of respondents disagreed with  
22 the statement “OPD’s disciplinary process is fair.” (Disparity Study,  
23 p. 17)

24 At the time these apparently damning findings were published, Plaintiffs’  
25 attorneys described them as a violation of NSA Task 45, which requires consistency  
26 of discipline. Judge Orrick subsequently described “racial disparities” as the  
27 “hardest” issue, as well as the issue that “started this case.” (09.22.20 WHO CMC  
28 Transcript, p. 49), and City of Oakland and OPD leadership promised to address the

1 disparities uncovered by the Hillard Heintze Report. The Disparity Study  
2 concluded with series of 14 recommendations that it urged the OPD to adopt, and  
3 OPD now reports that all but one of these recommendations have now been  
4 implemented, with each of these recommendations codified in OPD policy and  
5 procedure. A Racial Disparity Study working group was also established. This  
6 group was tasked with working with Oakland's Data Manager, Dr. Grossman, and  
7 the Stanford University SPARQ (Social Psychological Answers to Real-world  
8 Problems) team, to determine how OPD could use the data at its disposal to  
9 mitigate racial disparities. The SPARQ team has also developed a curriculum  
10 called "Cultural Competency Training", that will be assigned to all OPD sworn  
11 personnel.

12 In the period since Plaintiffs' last Case Management Conference Statement  
13 to this Court, Stanford University professors Dr. Eberhardt and Dr. Monin have  
14 reported to Plaintiffs' attorneys, and the Department, that much of the data  
15 underlying the original Disparity Study was not supportive of the findings. More  
16 specifically, it was discovered that when the City of Oakland had given both  
17 personnel files and IAB files to create the data that was given to Hillard Heintze,  
18 they inadvertently counted some discipline that appeared in both these documents  
19 twice, with the result that many of the data relied on by Hillard Heintze was flawed  
20 and thus their findings may have been distorted too.

21 Plaintiffs' attorneys are, admittedly, not data scientists, and defer to the  
22 Stanford SPARQ team's determination that the dataset that OPD originally  
23 provided to Hillard Heintze was not reliable. In addition, we are encouraged that  
24 Doctor Grossman has apparently provided a fix in VISION that will prevent this  
25 duplication from occurring again.

26 On very short notice (and while both stricken with COVID and on a vacation)  
27 Dr. Monin, as part of the Racial Disparity Working Group, performed a preliminary  
28 analysis on the "clean" data (which he describes as "rigorously cleaned up" by Data

1 Manager Dr. Grossman and Captain Lau of IAD). This is a “very different dataset”  
 2 from the data OPD provided to Hillard Heintze. It incorporates fewer allegations,  
 3 over a two-year period (2019-2020) that does not overlap with the data that was  
 4 provided to the Hillard Heintze firm (2014-2018).

5 Dr. Monin’s review of this data suggests that disparities in discipline  
 6 outcomes do remain. Although the disparities are nowhere near as large as those  
 7 reported in the Hillard Heintze Discipline Study, Dr. Monin’s preliminary findings  
 8 suggest that “in most analyses allegations against African Americans seem to be  
 9 slightly more likely to be sustained, though this differs quite a bit between the two  
 10 years analyzed (2019 and 2020), and even whether the disparities appear more in  
 11 division-level or in IA investigations varies between 2019 and 2020, making it hard  
 12 to locate disparities conclusively with this limited dataset.” Specifically, African  
 13 American officers:

14  
 15 *“...seem to benefit slightly less often than other groups from the*  
 16 *“summary finding” – which in 99% of cases means a non-sustained*  
 17 *case. Whereas the average for all 4 groups is 14.8% for DLI SF, it’s only*  
 18 *12.4% for Blacks (vs. 17.2% for Hispanics). And whereas the average for*  
 19 *IAD “summary finding” for all 4 groups is 2.0%, it’s only 1.2% for*  
 20 *Blacks (vs. 2.6% for Whites). This deserves some attention as it could be*  
 21 *hiding disparities. Again the concern is that some groups may benefit*  
 22 *more often from a summary finding (which again means in 99% of the*  
 23 *cases that the allegation is not sustained), which would remove them*  
 24 *from the other counts. (Dr. Monin IAD – August 2021 Preliminary*  
 25 *Analyses, p. 3)*

26 However, Dr. Monin also found large year-to-year discrepancies in the data.  
 27 Based on the small sample size, and the fluctuations between the two years, Dr.  
 Monin requests data from more years to get a more robust picture of potential  
 discipline disparities within OPD. It is imperative that OPD provide such data to  
 Dr. Monin and the SPARQ team as quickly as possible.

A subsequent preliminary report by Data Manager Dr. Grossman analyzed



1 Division Level Investigations and Internal Affairs Investigations at the case and  
2 officer level, and determined:

3  
4 *For Division Level Investigations, the percentage of sustained cases*  
5 *varies year to year for Black officers. In 2019, their sustained rate is*  
6 *higher than any other race and in 2020, their sustained rate is in line*  
7 *or lower than the other races. Overall, for Division Level Investigations*  
8 *(2019 & 2020 combined), the Black sustained rate is slightly higher*  
9 *than the other races.*

10 *For Internal Affairs Investigations, the sustained rate for Black officers*  
11 *is relatively stable, while for officers of other races, the sustained rate*  
12 *fluctuates. It is important to note the number of Internal Affairs*  
13 *Investigations is much smaller than the number of Division Level*  
14 *Investigations. A small increase or decrease in the number of sustained*  
15 *cases could have a fairly large impact on the sustained percentage. For*  
16 *2019, the sustained percentage for Black officers is below the*  
17 *percentage for White officers. In 2020, the sustained percent decreases*  
18 *for all races except Black officers. Overall, for 2019 and 2020, the*  
19 *sustained rate for Black officers is higher than the sustained rate for*  
20 *officers of other races.*

21 . (Dr. Grossman IAD Racial Disparity Preliminary Findings, 08/17/21,  
22 p. 1)

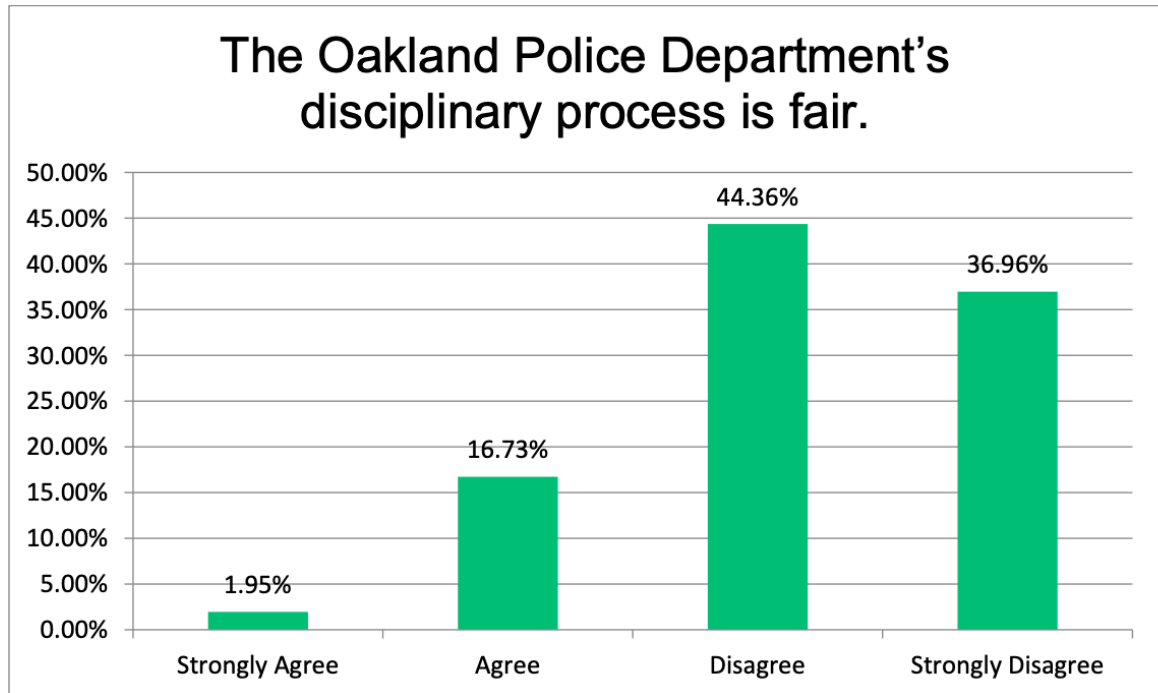
23 Now that OPD and other stakeholders are working with an apparently  
24 reliable dataset, it appears that the Department is much better positioned to  
25 monitor disparities in the IAD process. The preliminary findings excerpted above  
26 appear to provide a firm foundation for future analyses of discipline disparities at  
27 OPD.

28 Lastly, Plaintiffs' attorneys must once again emphasize that discipline  
disparities can take multiple forms. During Plaintiffs' attorneys many years of  
involvement with OPD, we have noticed that supervisors and command staff often  
receive lighter discipline, if any, than rank-and-file officers. Those in charge of Risk  
Management Meetings often direct their gaze down the organizational chart, and  
command staff are rarely discussed with the brutal, antiseptic honesty reserved for  
the lowest-level patrol officers. Discrimination by rank may well be as important a



1 disparity as discrimination by race. This is suggested in the survey of officers by  
 2 Hillard Heintze, which found that more than four-out-of-five respondents (including  
 3 many white and Asian officers) disagreed with the statement “OPD’s disciplinary  
 4 process is fair.” (Hillard Heintze Report, p. 7):

5  
 6 Only 18.68 percent of the sworn respondents agreed or strongly agreed that the disciplinary process is fair.



18 *(Note: Although these survey results appear in the same Discipline Disparity Study*  
 19 *that was grounded in the “bad” data provided by OPD, the surveys of sworn officer*  
 20 *regarding their subjective assessments of discipline at OPD was unrelated to said*  
 21 *data, and therefore remains a valid data point.)*

22 Supervisory accountability and equitable treatment regardless of rank are  
 23 critical to the OPD discipline process. To the Department’s credit, there are some  
 24 recent indicators of progress on this front. Each Report of Internal Investigation  
 25 (ROI) now includes a section that specifically pertains to a supervisor’s  
 26 responsibility for the alleged misconduct of the officer(s) they command. Dr.  
 27 Grossman performed a study of allegations related to the George Floyd/Black Lives  
 28 Matter protests last summer that determined “the sustained rate for allegations

1 against supervisors was almost twice as high as the sustained rate for officers”: (Dr.  
2 Grossman Protest Analysis, August 23, 2021, p. 1)

4 **Allegations Against Named OPD Officers and Supervisors/Commanders**

	Sustained Allegations	Not-Sustained	Exonerated	Unfounded	Admin Closed	Total Allegations
<b>May 29, 2020</b>						
Officers	9% (5)	13% (7)	35% (19)	41% (22)	2% (1)	54
Supervisors/Commanders	14% (2)	7% (1)	36% (5)	43% (6)	0	14
<b>May 30, 2020</b>						
Officers	20% (1)	0	80% (4)	0	0	5
Supervisors/Commanders	0	0	100% (1)	0	0	1
<b>May 31, 2020</b>						
Officers	20% (10)	12% (6)	47% (23)	20% (10)	0	49
Supervisors/Commanders	25% (7)	36% (10)	29% (8)	11% (3)	0	28
<b>June 1, 2020</b>						
Officers	17% (12)	31% (22)	53% (38)	0	0	72
Supervisors/Commanders	37% (7)	0	37% (7)	26% (5)	0	19
<b>Total</b>						
Officers	16% (28)	19% (35)	47% (84)	18% (32)	1% (1)	180
Supervisors	26% (16)	18% (11)	34% (21)	23% (14)	0% (0)	62

14 Dr. Grossman concedes that this one example is “not the perfect measure of  
15 accountability”, but it is a data point that may indicate OPD’s progress in holding  
16 supervisors to account at the same standard as subordinate officers. Time will tell  
17 if this is an isolated example or indicative of new era of supervisory accountability  
18 within the Department.

19 **CONCLUSION**

20 When Chief Armstrong was sworn-in immediately prior to our last Case  
21 Management Conference before this Court, he promised: “Under my leadership,  
22 OPD will have a laser focus on getting each [NSA] task in compliance, while  
23 practicing constitutional policing, fair and unbiased treatment of our community.  
24 This reflects the strong values of the City of Oakland. Moving the Department into  
25 compliance with the Settlement Agreement is one of my top priorities. But in order  
26 to achieve that goal, it requires a cultural change within the organization. And that  
27  
28

1 change starts today.”<sup>2</sup>

2 Six months into his tenure, Plaintiffs’ attorneys are pleased to report that his  
3 actions, and those of the personnel he oversees, reflect Chief Armstrong’s pledge.  
4 The IMT likewise commended Chief Armstrong’s “strong leadership” in their most  
5 recent IMT Report. (Draft 74<sup>th</sup> IMT Report, p. 33). OPD has attained compliance  
6 with three NSA Tasks since the last Case Management Conference and is closer to  
7 compliance in several other Tasks than it was in February 2021, including what are  
8 arguably the two most important tasks in the NSA, Task 5 (Internal Affairs) and  
9 Task 34 (Stop Data). After years of backsliding, there is real momentum toward  
10 substantive compliance with multiple outstanding NSA tasks.

11 OPD’s progress is reflected in studies performed by police reform activists  
12 monitoring OPD and other similar-sized police departments in the United States.  
13 The activists at Campaign Zero, one such organization, advocate criminal justice  
14 reform and use data to measure progress. They examined the rate of police  
15 shootings, fatal and non-fatal alike, per 10,000 arrests in 39 police departments  
16 with jurisdictions of 400,000 people. Oakland had the lowest rate of all cities that  
17 were surveyed:

18 ///

27 \_\_\_\_\_  
28 <sup>2</sup> <https://sanfrancisco.cbslocal.com/2021/02/08/oakland-native-leronne-armstrong-sworn-in-as-chief-of-police-in-emotional-ceremony/>

## Police Shootings Rates in Cities

Rate of police shootings (fatal and nonfatal) per 10k arrests among police depts with jurisdictions of over 400k population.

	2013	2014	2015	2016	2017	2018	2019
DENVER, CO	4.0	2.0	3.3	4.0	2.0	2.7	3.8
JACKSONVILLE, ..	2.7	3.5	4.2	4.8	4.1	2.3	3.7
ALBUQUERQUE,..	4.3	3.1	4.1	2.9	4.3	4.5	3.6
MILWAUKEE, WI	3.3	2.5	4.4	2.9	2.1	2.6	3.6
DALLAS, TX	4.7	6.0	4.1	3.8	2.2	1.3	3.4
EL PASO, TX	1.5	0.5	3.3	1.8	1.2	1.2	3.1
LOS ANGELES, ..	5.0	3.8	4.2	4.0	2.6	2.6	2.9
ARLINGTON, TX	2.3	1.2	2.9	0.9	7.1	2.1	2.9
CHARLOTTE-ME..	2.6	3.0	2.0	5.1	2.1	2.3	2.8
SAN JOSE, CA	3.3	2.3	7.4	3.8	5.7	3.9	2.7
PHOENIX, AZ	4.4	3.5	3.3	5.6	4.2	8.4	2.7
MEMPHIS, TN	2.7	2.3	3.2	2.8	1.3	2.6	2.6
BALTIMORE, MD	2.5	2.4	4.3	4.4	3.4	2.3	2.4
LONG BEACH, CA	8.2	3.1	5.8	5.4	6.6	3.0	2.4
SAN FRANCISC..	4.6	5.4	5.4	2.0	4.3	3.6	2.1
AUSTIN, TX	2.4	1.1	2.1	2.6	3.2	4.5	2.1
CHICAGO, IL	6.0	7.3	5.9	7.6	5.9	3.9	2.0
SAN DIEGO, CA	2.2	2.2	3.3	1.7	2.0	1.8	2.0
INDIANAPOLIS, ..	2.0	5.3	5.0	4.3	2.0	1.2	2.0
TUCSON, AZ	2.8	1.9	1.9	2.4	0.7	3.5	1.9
LAS VEGAS ME..	1.7	2.3	2.4	1.5	3.2	2.9	1.8
VIRGINIA BEAC..	1.6	0.9	2.0	0.0	2.1	0.6	1.8
MINNEAPOLIS, ..	0.7	1.2	2.0	0.8	1.7	2.6	1.7
SACRAMENTO, ..	1.6	2.5	1.1	1.8	3.6	1.4	1.5
NEW YORK, NY	1.1	0.9	1.1	1.3	0.9	0.8	1.3
MESA, AZ	1.2	2.1	2.3	3.5	2.1	5.3	1.2
MIAMI, FL	1.6	0.3	1.2	1.2	0.5	1.0	0.5
OMAHA, NE	3.1	2.5		3.7		2.6	0.5
OAKLAND, CA	6.6	0.0	6.5	0.0	1.0	1.1	0.0

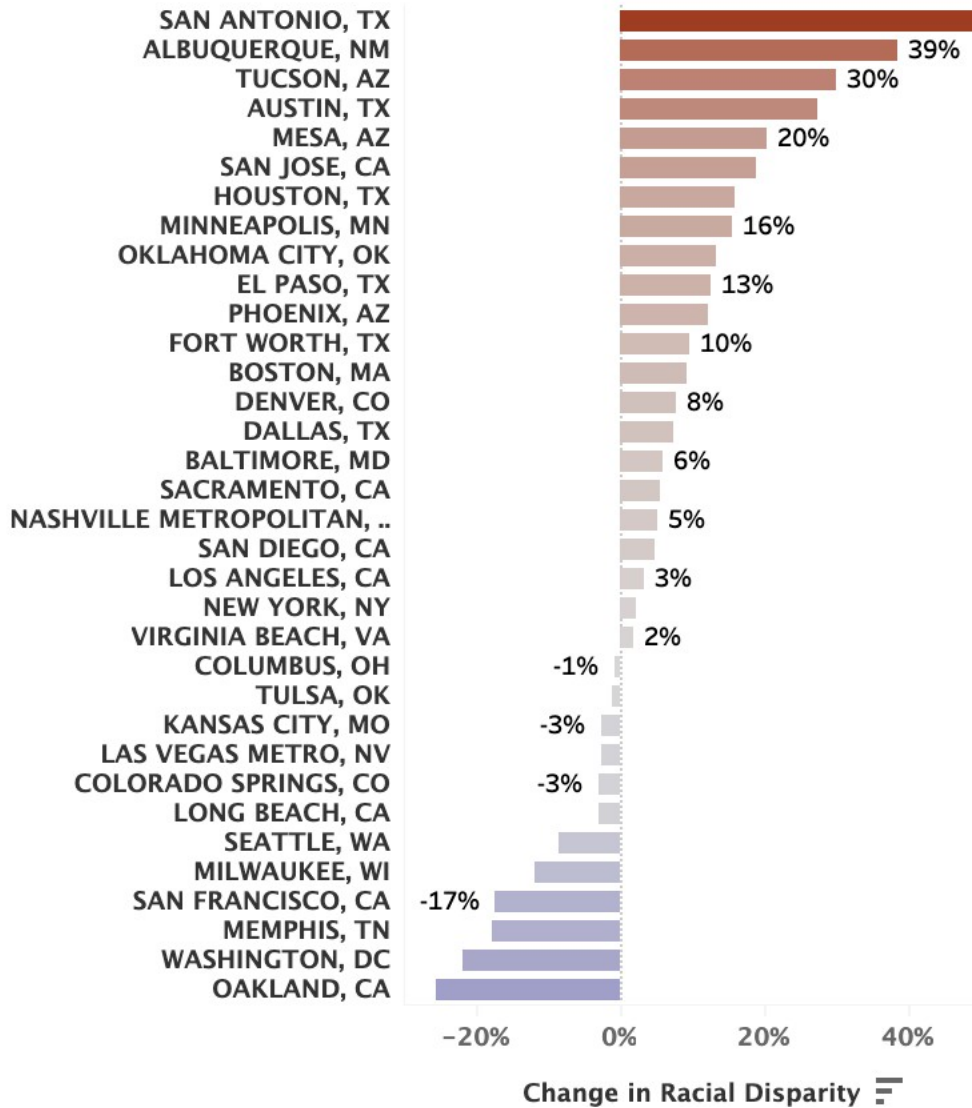
(<https://public.tableau.com/app/profile/ssinyangwe/viz/PoliceScorecard/PoliceShootings>)

Campaign Zero also found that among these police departments, Oakland did the most to reduce black-white arrest disparities in the period between 2013-2019. This aligns with the laudable progress on Stop Data that is covered earlier in this Case Management Conference Statement:

///

# Arrest disparities haven't reduced.

Change in Black-white arrest disparity from 2013-19 in jurisdictions with 400k+ population. UCR arrests data and demographics from 2013 and 2019 US Census ACS.



(<https://public.tableau.com/app/profile/ssinyangwe/viz/PoliceScorecard/DrugArrestDisparities>)

There is more good news. The IMT reports it did not disagree with **any** of the findings in the FRB reports they reviewed in their 74<sup>th</sup> Report. Similarly, there was no disagreement with **any** of the Internal Affairs findings in the George Floyd

1 Protests.

2 Of course, there are also real obstacles. As noted above, Plaintiffs' attorneys  
3 are eager to review the results of the IA investigation into the offensive Instagram  
4 memes under the handle "@crimereductionteam", which is due just days after this  
5 Case Management Conference. The quality of this investigation will be a critical  
6 barometer of the Department's progress toward Task 5 compliance. In light of the  
7 Hillard Heintze fiasco, Task 45 compliance will ultimately require fuller analysis of  
8 discipline disparities within OPD, not only because a comprehensive investigation is  
9 overdue, but also to demonstrate that OPD is able to holistically compile, refine,  
10 and analyze the data its risk management apparatus produces. External  
11 institutions that can support and verify OPD's future compliance with the core  
12 tenets of the NSA long after Plaintiffs' attorneys' role draws to a close, including the  
13 Inspector General and the Police Commission, are expanding their capacities. Both  
14 entities can and should audit the Department as necessary.

15 Similarly, the Oakland Police Department, the elected officials that oversee  
16 the Department, and the external institutions like the Police Commission and  
17 Inspector General, and the Independent Monitoring Team must build on the  
18 progress documented in this Case Management Conference Statement. It is now  
19 time to run through the finish line and bring OPD into full and final compliance  
20 with all outstanding Tasks mandated by the NSA.

21 Toward that end Plaintiffs' Attorneys are initiating talks with City Officials  
22 to set up meetings for purposes of discussing next steps forward and what final  
23 compliance might look like. The details are being worked out, and we expect talks to  
24 begin within several weeks. Plaintiffs' Attorneys are mindful that talks of this  
25 nature began in 2015 and the end of the NSA was projected for June, 2016. The sex  
26 scandal that rocked OPD put an end to these talks. This case is now approaching  
27 21 years in length, while the NSA has entered its nineteenth year of existence.

28 As the above charts indicate, the Oakland Police Department has moved from

1 being the one of the worst police departments in the San Francisco Bay Area to  
2 being one of the best police departments in comparable cities in the country.  
3 Assuming the Instagram case is handled appropriately, there is no reason that the  
4 Sustainability Period cannot start very soon.

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## THE CITY'S STATEMENT

### OVERVIEW

1  
2  
3 In his first six months, Oakland Police Chief Armstrong has exhibited the  
4 strong leadership this Department needs to sustain reform and cultural change in  
5 the Department. While commanding the Department's response to the increase in  
6 violent crime, Chief Armstrong has simultaneously continued to drive forward the  
7 Department's commitment to fair and equitable policing to achieve compliance with  
8 all NSA tasks. The City is proud to see this commitment reflected in the Monitoring  
9 Team's recent report moving the Department into full compliance on Use of Force  
10 Reporting (Task 24), Executive Force Review Board (Task 30), and Use of Personnel  
11 Assessment System (PAS) (Task 41). The City is confident that under Chief  
12 Armstrong's leadership, the Department will achieve full compliance on the tasks  
13 that are in partial compliance—Use of Force Investigations and Report  
14 Responsibility (Task 25), Vehicle Stops, Field Investigations, and Detentions (Stop  
15 Data) (Task 34), and Consistency of Discipline Policy (Task 45), and bring the two  
16 remaining out of compliance tasks into full compliance—Timeliness with Internal  
17 Affairs investigations (Task 2) and Internal Affairs Complaint Procedures (Task 5).  
18 The City includes in its filing an updated list of Department commanders  
19 responsible for task compliance. Ex. 1, *Oakland Police Department NSA Task*  
20 *Compliance Responsibility Chart* (Aug. 25, 2021).

21 In this status report, the Department and the City's leadership respectfully  
22 update the Court on the following: (1) the City's efforts to ensure racial equity  
23 within the Department (Task 45), (2) the Department's efforts to reduce racial  
24 disparities in policing (Task 34), (3) policy development and publications, (4) the  
25 Department's progress on force investigations and report responsibility (Task 25),  
26 (5) the Department's progress toward meeting Internal Affairs investigation  
27 timelines (Task 2), and (6) the Department's completion of special force boards  
28 related to Summer 2020 protests (Task 26).



1 **I. THE CITY'S ONGOING EFFORTS TO REDUCE RACIAL**  
2 **DISPARITIES**

3 The City remains acutely aware that “the nut of this case remains what it  
4 was in the beginning, which is racial disparity.” Dkt. 1404 at 3:22-23, Sept. 22, 2020  
5 Court Hr’g Tr. The Department’s guiding principles center on fairness and  
6 procedural justice. Addressing racial equity both internally and externally is  
7 critically important to uphold and promote these principles and to cement the  
8 Department’s foundation of sustainable reform.

9 **A. Internal Race and Equity Work**

10 The Department-commissioned *Oakland Police Department Police Discipline*  
11 *Disparity Study* (May 2020) made fourteen recommendations, many particularly  
12 focused on racial equity, to infuse fairness in internal misconduct investigations and  
13 outcomes, as well as in the Academy and Field Training Programs. The Department  
14 developed an internal working group to champion implementation of the  
15 recommended measures as well as discuss, develop, and implement additional  
16 practices to ensure equity in internal investigations and training. The working  
17 group meets regularly, typically once a month, with a steering committee which  
18 includes stakeholders outside of the Department, including the Director of the City’s  
19 Department of Race and Equity, representatives from police officer associations  
20 advocating racial equity, the Stanford research team, and the plaintiffs’ attorneys in  
21 this case.

22 The Department has implemented nearly all of the Study’s fourteen  
23 recommendations and designed and implemented additional measures as set forth  
24 in the attached chart, *Race and Equity Work in Discipline Disparity Study*  
25 *Recommendations (Aug. 2021)*. Ex. 2. Updates occurring between February and  
26 August 2021 are featured in gold.

27 Over the last several months, the Department completed a pilot program  
28 separating the fact finder and adjudicator in a subset of internal investigations. In

1 each investigation, the fact finder submitted to the reviewing supervisor only the  
2 facts found during the investigation and did not submit an ultimate recommended  
3 finding (e.g., sustained, unfounded). The reviewing supervisor reviewed the case  
4 and made a recommended finding. The Department is still in the process, however,  
5 of reviewing the results of the cases in the pilot program to determine the impact, if  
6 any, of separating the fact finder and adjudicator. Regardless of whether the  
7 Department decides to more widely implement the practice followed in the pilot  
8 program, at a minimum, supervisors will be required to make independent  
9 recommendations and articulate the facts that support the recommended  
10 determinations without deference to investigators' recommended determinations.

11 The Department has also expanded the practice it developed and  
12 implemented more than a year ago of anonymizing, where possible and appropriate,  
13 the demographic information about Department members who are the subjects of  
14 internal investigations. The Department practices anonymization in internal affairs  
15 case presentations to command staff for both case outcome decisions (i.e., whether  
16 an allegation should be sustained against a member) and disciplinary  
17 determinations. In addition, the Internal Affairs Captain has extended this practice  
18 to the Captain's review of Division Level Investigations (DLIs). The IA Captain  
19 admonishes sergeants or other supervisors presenting DLI facts and  
20 recommendations to the Captain or the Captain's designee that presenters must  
21 refrain from identifying the name, gender, race, or ethnicity of the subject member.

22 The final remaining item is rolling out specific training for investigators and  
23 supervisors regarding race and equity in internal investigations. The Department  
24 has determined that it will use a Stanford-developed cultural competency  
25 curriculum. The Department's internal race and equity team in collaboration with  
26 the City's Department of Race and Equity determined that the cultural competency  
27 curriculum is more consistent with and better reflects the City's race and equity  
28 training modules than the originally planned procedural justice (level three)

1 curriculum. The curriculum also adds a homework component to the traditional  
2 lecture format to allow members to think about each training module, develop  
3 questions, improve critical thinking about the material, and receive feedback from  
4 trainers. While there has been a slight delay in implementing the training due to  
5 curriculum planning and changes, the Department intends to begin training no  
6 later than Fall 2021.

7 **1. First Look at 2019-2020 Internal Affairs Division (IAD)**  
8 **Case Outcome Data**

9 The Department with the assistance of Stanford's Dr. Monin worked this past  
10 year to establish a clean and usable dataset containing IAD case outcome  
11 information for 2019-2020. This dataset will allow us to analyze racial disparities in  
12 the years following the 2014-2018 Study period. Based on this dataset, the City  
13 offers a first look and preliminary analysis of the 2019-2020 case outcome data.

14 The data in the tables below reflects investigation outcomes for sworn officers  
15 in the four largest racial groups<sup>3</sup> represented in the Department in the following  
16 types of investigations: Division Level Investigation (DLI),<sup>4</sup> Division Level  
17 Summary Finding, Internal Affairs (IA) Investigation, and Internal Affairs  
18 Summary Finding.<sup>5</sup> The following investigation types were not included in the  
19 analyses primarily because they involve a different investigation process: Collision

20 <sup>3</sup> The analysis excludes allegations against American Indian, Filipino, or Unknown  
21 to allow for better comparisons among Asian, African American or Black, Hispanic,  
and white officers.

22 <sup>4</sup> A DLI is a formal investigation into allegations of misconduct that is conducted  
23 outside the Internal Affairs Division. DLIs are subject to the same investigative  
24 requirements as those conducted by IAD investigators. DLIs, typically involve only  
Class II allegations of misconduct.

25 <sup>5</sup> A Summary Finding is an abbreviated internal investigation in which a finding  
26 can be reached without conducting a full, formal internal investigation because the  
27 correct finding can be determined with little or minimal follow-up based on the  
28 existing documentation, evidence, statements, and crime information data (e.g.,  
Offense Report, Use of Force Report, video or digital recordings, complainant's  
statement, radio purge, Law Enforcement Records Management System (LRMS)  
records).

1 Boards, Pursuit Boards, Force Boards, Administrative Closures, and Informal  
2 Resolutions.

3 It is important to keep in mind that this first look at the data only uses the  
4 single variable of an officer's race. Many other variables may impact whether an  
5 allegation is sustained against an officer. Further analyses may aim to measure the  
6 impact or correlation of additional variables to the extent possible and appropriate.

7 **a. Case Level Preliminary Findings**

8 Tables 1 and 2 reflect outcomes of DLIs or IA Investigations in 2019 and 2020  
9 for officers at the case level. Frequently, misconduct investigations involve multiple  
10 officers and multiple allegations for each officer. Breaking the data down by  
11 complaint investigation is not helpful in a racial disparity analysis because a  
12 complaint may involve officers of various races. Conversely, breaking the data down  
13 to the allegation level may result in the race of an individual officer with multiple  
14 allegations related to the same incident having an inflated impact on the data.  
15 Therefore, the initial preliminary analysis set forth below considers each instance  
16 when an officer was the subject of an internal misconduct case—recognizing that in  
17 many of these instances there were multiple allegations investigated—and  
18 determining whether an officer was sustained for one or more allegations in that  
19 case. Presenting the data this way yields results that are less sensitive to the  
20 number of allegations made against a particular officer in a particular instance and  
21 tends to be more in line with the central question of whether African American or  
22 Black officers are sustained for misconduct more often than other races.<sup>6</sup>

23 ///

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26 <sup>6</sup> As a reminder, the most significant finding of the 2020 Study was that between  
27 2014 and 2018 Black or African American officers were on average 37% more likely  
28 to have an investigated misconduct allegation sustained against them than officers  
of other races. Once a case was sustained, however, there were no disparities in  
imposed sanctions.

**Table 1: Division Level Investigations Including Summary Findings<sup>7</sup>**

	White		Black		Hispanic		Asian		Total n	Total %
	n	%	n	%	n	%	n	%		
<b>2019</b>	296	100%	139	100%	227	100%	121	100%	783	100%
No Allegation Sustained	275	93%	115	83%	206	91%	109	90%	705	90%
1 or More Allegation Sustained	21	7%	24	17%	21	9%	12	10%	78	10%
<b>2020</b>	254	100%	142	100%	285	100%	131	100%	812	100%
No Allegation Sustained	233	92%	131	92%	259	91%	118	90%	741	91%
1 or More Allegation Sustained	21	8%	11	8%	26	9%	13	10%	71	9%
<b>2019 &amp; 2020</b>	550	100%	281	100%	512	100%	252	100%	1,595	100%
No Allegation Sustained	508	92%	246	88%	465	91%	227	90%	1,446	91%
1 or More Allegation Sustained	42	8%	35	12%	47	9%	25	10%	149	9%

**Table 2: Internal Affairs Investigations Including Summary Findings**

	White		Black		Hispanic		Asian		Total n	Total %
	n	%	n	%	n	%	n	%		
<b>2019</b>	60	100%	19	100%	41	100%	23	100%	143	100%
No Allegation Sustained	43	72%	14	74%	32	78%	19	83%	108	76%
1 or More Allegation Sustained	17	28%	5	26%	9	22%	4	17%	35	24%
<b>2020</b>	98	100%	29	100%	78	100%	23	100%	228	100%
No Allegation Sustained	83	85%	21	72%	68	87%	21	91%	193	85%
1 or More Allegation Sustained	15	15%	8	28%	10	13%	2	9%	35	15%
<b>2019 &amp; 2020</b>	158	100%	48	100%	119	100%	46	100%	371	100%
No Allegation Sustained	126	80%	35	73%	100	84%	40	87%	301	81%
1 or More Allegation Sustained	32	20%	13	27%	19	16%	6	13%	70	19%

For Division Level Investigations, the percentage of sustained cases varied year to year for Black officers. In 2019, the sustained rate for Black officers was higher than any other race, but in 2020, the sustained rate was the same as or lower than other races. Overall, for Division Level Investigations (2019 and 2020 combined), the sustained rate for Black officers was slightly higher (2-4%) than the rates for other races.

<sup>7</sup> The tables provide comparison by raw number (n) and percentage (%) of sustained outcome rates among the four largest racial groups of sworn officers.

1 For Internal Affairs Investigations, the sustained rate for Black officers was  
2 relatively stable, while for officers of other races the sustained rate fluctuated. It is  
3 important to note the number of IA investigations is much smaller than the number  
4 of DLIs. Thus, a small increase or decrease in the number of sustained cases has a  
5 fairly significant impact on IA sustained percentage rates. In 2019, the sustained  
6 rate for Black officers was lower than for white officers. In 2020, the sustained rate  
7 decreased for all races except Black officers. Overall, from 2019-2020, Black officers  
8 were sustained at a higher rate than officers of other races. Given the year to year  
9 fluctuation and the small number of data, it may be helpful to include data from  
10 additional years to complete a more robust and useful analysis.

11 **b. Allegation Level Preliminary Findings**

12 Tables 3 and 4 display findings at the allegation level. At the allegation level  
13 the sustained rate generally decreases for each race, however there are trends  
14 similar to those reflected at the case and officer level. The allegation level analysis  
15 also allows us to view the disposition for each allegation. This may be a useful way  
16 to analyze the data, particularly if we are able to consider whether there are certain  
17 types of allegations that more often lead to particular outcomes.

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**Table 3: Division Level Investigations Including Summary Findings**

	White		Black		Hispanic		Asian		Total n	Total %
	n	%	n	%	n	%	n	%		
<b>2019</b>	498	100%	228	100%	386	100%	237	100%	1,349	100%
Sustained	22	4.4%	26	11.4%	23	6.0%	14	5.9%	85	6.3%
Not Sustained	26	5.2%	16	7.0%	25	6.5%	10	4.2%	77	5.7%
Exonerated	241	48.4%	97	42.5%	180	46.6%	119	50.2%	637	47.2%
Unfounded	195	39.2%	74	32.5%	143	37.0%	85	35.9%	497	36.8%
Admin Closure	4	0.8%	6	2.6%	4	1.0%	3	1.3%	17	1.3%
Informally Resolved	10	2.0%	9	3.9%	11	2.8%	6	2.5%	36	2.7%
<b>2020</b>	436	100%	241	100%	498	100%	221	100%	1,396	100%
Sustained	22	5.0%	15	6.2%	27	5.4%	15	6.8%	79	5.7%
Not Sustained	24	5.5%	10	4.1%	26	5.2%	11	5.0%	71	5.1%
Exonerated	226	51.8%	133	55.2%	264	53.0%	125	56.6%	748	53.6%
Unfounded	146	33.5%	76	31.5%	163	32.7%	63	28.5%	448	32.1%
Admin Closure	10	2.3%	1	0.4%	5	1.0%	3	1.4%	19	1.4%
Informally Resolved	8	1.8%	6	2.5%	13	2.6%	4	1.8%	31	2.2%
<b>2019 &amp; 2020</b>	934	100%	469	100%	884	100%	458	100%	2,745	100%
Sustained	44	4.7%	41	8.7%	50	5.7%	29	6.3%	164	6.0%
Not Sustained	50	5.4%	26	5.5%	51	5.8%	21	4.6%	148	5.4%
Exonerated	467	50.0%	230	49.0%	444	50.2%	244	53.3%	1,385	50.5%
Unfounded	341	36.5%	150	32.0%	306	34.6%	148	32.3%	945	34.4%
Admin Closure	14	1.5%	7	1.5%	9	1.0%	6	1.3%	36	1.3%
Informally Resolved	18	1.9%	15	3.2%	24	2.7%	10	2.2%	67	2.4%

**Table 4: Internal Affairs Investigations Including Summary Findings**

	White		Black		Hispanic		Asian		Total n	Total %
	n	%	n	%	n	%	n	%		
<b>2019</b>	135	100%	39	100%	95	100%	46	100%	315	100%
Sustained	30	22.2%	6	15.4%	23	24.2%	5	10.9%	64	20.3%
Not Sustained	11	8.1%	7	17.9%	6	6.3%	8	17.4%	32	10.2%
Exonerated	40	29.6%	14	35.9%	30	31.6%	13	28.3%	97	30.8%
Unfounded	54	40.0%	12	30.8%	36	37.9%	20	43.5%	122	38.7%
<b>2020</b>	198	100%	61	100%	158	100%	38	100%	455	100%
Sustained	24	12.1%	13	21.3%	16	10.1%	2	5.3%	55	12.1%
Not Sustained	9	4.5%	5	8.2%	7	4.4%	3	7.9%	24	5.3%
Exonerated	82	41.4%	19	31.1%	74	46.8%	14	36.8%	189	41.5%
Unfounded	80	40.4%	24	39.3%	60	38.0%	19	50.0%	183	40.2%
Admin Closure	3	1.5%	0	0.0%	0	0.0%	0	0.0%	3	0.7%
Informally Resolved	0	0.0%	0	0.0%	1	0.6%	0	0.0%	1	0.2%
<b>2019 &amp; 2020</b>	333	100%	100	100%	253	100%	84	100%	770	100%
Sustained	54	16.2%	19	19.0%	39	15.4%	7	8.3%	119	15.5%
Not Sustained	20	6.0%	12	12.0%	13	5.1%	11	13.1%	56	7.3%
Exonerated	122	36.6%	33	33.0%	104	41.4%	27	32.1%	286	37.1%
Unfounded	134	40.2%	36	36.0%	96	37.9%	39	46.4%	305	39.6%
Admin Closure	3	0.9%	0	0.0%	0	0.0%	0	0.0%	3	0.4%
Informally Resolved	0	0.0%	0	0.0%	1	0.4%	0	0.0%	1	0.1%

These analyses provide a solid first step from which to begin to analyze Internal Affairs discipline data. Due to the work conducted as part of the Racial Disparity Working Group, going forward it will be very easy to extract this data. A

1 report has been created in Vision that anyone with access can pull. The tables  
2 included herein can easily be reproduced to identify new trends in the data.

3 **c. Comparison with 2014-2018 Data and Study Findings**

4 The Department cannot meaningfully compare its initial 2019-2020 data  
5 analysis with the 2020 Study findings. A preliminary review of the data shows that  
6 the 2019-2020 dataset is significantly different from the dataset used to complete  
7 the 2020 Study. For example, the raw numbers alone are markedly divergent. The  
8 Study's data included roughly 25,000 allegations against sworn officers over a 5-  
9 year period—approximately 5,000 cases per year. The 2019-2020 dataset consists of  
10 4,062 allegations in a 2-year period. This difference is likely the result of a number  
11 of measures used to clean up the 2019-2020 data including removing duplicate  
12 entries.<sup>8</sup> In addition, the 2020 Study controlled for years of service and gender,  
13 while the preliminary analysis of the 2019-2020 data looked only at race as the sole  
14 variable. Therefore, while it would be fair to say that the Department's more recent  
15 internal investigation outcome data appears to indicate that there was less racial  
16 disparity in discipline outcomes from 2019-2020 than the Study found between  
17 2014-2018, any comparison of the magnitudes of disparity would be flawed.

18 The City appreciates that this is an initial look at the 2019-2020 data. The  
19 Department will continue to work with the Stanford team to further analyze the  
20 data to determine whether there are important differences between IAD  
21 investigation outcomes versus DLI investigation outcomes, differences between  
22 outcomes for Class I and Class II misconduct investigations, and if there is a way to  
23 meaningfully include or otherwise analyze allegations arising from Boards,

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25 <sup>8</sup> It appears that the dataset used to complete the 2020 Study may have contained  
26 an unknown number of duplicate allegation entries as well as outcomes from  
27 investigation types that involve significantly different processes which likely  
28 impacted the results to an unknown and probably unknowable degree. Nevertheless, it is important to the Department that its internal investigations and outcomes are fair and equitable. The Department intends to continue to prioritize equity in discipline, implement measures to improve equity at key points in the process, and measure the outcome data to monitor the efficacy of its work.



1 Summary Finding, Informal Resolution, and Administrative Closure cases.

2 **2. The Academy and Recruiting**

3 The Department continues to work to identify and mitigate potential bias in  
4 the academy and field training programs. The Department's training division, in  
5 collaboration with the Stanford team, identified areas of risk that may contribute  
6 to, reflect, or correlate with potential bias impacting police officer trainees. The  
7 training division now routinely tracks these areas of risk on a regularly updated  
8 spreadsheet to help identify and mitigate the risk of bias and ensure equitable  
9 treatment of police officer trainees in the academy and field training programs.

10 In July 2021, the Department commenced its 186th Basic Academy. Tables 5  
11 and 5.1 reflects the demographics of the police officer trainees who entered the  
12 186th Academy.

13 **Table 5: OPD's 186th Basic Academy Demographics (Jul. 12, 2021)**

14

Gender		Race/Ethnicity		Residency		Language		Education	
Female	7	Asian	4	Oakland	5	Spanish	13	High School	6
Male	25	Black or African American	7	Other	27	Cantonese	1	Some College	3
		Hispanic	15			Punjabi	1	AA/AS	6
		White or Caucasian	5			Tagalog	1	BA/BS	16
		Other	1			Twi	1	MA/MS	1
						Other	1		
<b>Total</b>	<b>32</b>	<b>Total</b>	<b>32</b>	<b>Total</b>	<b>32</b>			<b>Total</b>	<b>32</b>

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**Table 5.1: Race/Ethnicity & Gender in OPD's 186th Academy (Jul. 12, 2021)**

Race/Ethnicity	Female	Male
Asian	0	4
Black or African American	2	5
Hispanic	5	10
White or Caucasian	0	5
Other	0	1
<b>Total</b>	<b>7</b>	<b>25</b>

During the first week of the academy, five police officer trainees resigned. In mid-August, a sixth trainee was removed from the academy, leaving 26 trainees remaining in the 186th Basic Academy class. Table 6 reflects the gender and race of the remaining 26 trainees. More than 92% of current trainees in the 186th Academy are non-white.

**Table 6: Race/Ethnicity and Gender in OPD's 186th Academy (Aug. 19, 2021)**

Race/Ethnicity	Female	Male
Asian	0	3
Black or African American	2	5
Hispanic	4	9
White or Caucasian	0	2
Other	0	1
<b>Total</b>	<b>6</b>	<b>20</b>

One of the methods that the Department employs in its effort to “recruit officers who reflect the diversity of Oakland in all of its forms” is to host recruiting booths at City events that draw a significant crowd. Dkt. 1426 at 5:14-15, Feb. 22, 2021 Court Hr’g Tr. While the lack of planned and permitted large scale events during the pandemic has afforded the Department fewer opportunities to recruit in this manner, it looks forward to increasingly resuming this practice as more events are scheduled. The Department recently recruited for the 187th Academy at the “Stand Up for a Safe Oakland” rally on July 10 which drew crowds estimated at 500-600 people, and the Department plans to recruit at anticipated upcoming events such as Oakland Pride (September), the Oakland Black Cowboy Parade

1 (October), the Black Joy Parade (February), and the Oakland Running Festival  
2 (March). The Department also staffs a recruiting booth at selected<sup>9</sup> Oakland  
3 Athletics baseball games; the booth is located at the Coliseum entry gate with the  
4 most foot traffic (Gate D). Through its engagement at these events, the Department  
5 seeks to connect with those who live, work, visit, rally, and celebrate in Oakland,  
6 and attract academy applicants from that diverse array of people.

7 **3. The Department is in Partial Compliance with Task 45,**  
8 **Consistency of Discipline Policy**

9 The Monitoring Team assessed Task 45, Consistency of Discipline Policy, in  
10 its most recent report and determined that the Department is in partial compliance  
11 with this task. *See* Dkt. 1465 at 33, *74th Report* (Aug. 23, 2021).

12 To assess this task, the Monitoring Team reviewed all cases that resulted in  
13 sustained findings between January and April 2021. *Id.* at 31. In each case, unless  
14 otherwise documented in writing, the discipline fell within the range set forth in the  
15 Discipline Matrix. *Id.* The Monitoring Team also reviewed all *Skelly* hearing records  
16 for hearings completed between January and April 2021. *Id.* *Skelly* hearings are  
17 held for sustained misconduct cases in which discipline of one-day suspension or  
18 greater was recommended. The *Skelly* hearing reports each contained adequate  
19 justification for the results documented. *Id.* The Monitoring Team noted that the  
20 Internal Affairs Policy & Procedure Manual (Manual) as well as Training Bulletins  
21 that reflect Internal Affairs practices incorporate the requirements of Task 45. *Id.*  
22 at 30. As set forth in the Policy Development and Publication Update below, the  
23 City is pleased to report that on August 17, 2021 the Department published the  
24 revised Manual which is now effective. Training will be updated accordingly,  
25 consistent with the revised Manual.

26 Finally, the Monitoring Team noted that it continues to closely follow the  
27 Department's response to the 2020 Discipline Disparity Study. *Id.* at 33. As detailed

28 <sup>9</sup> Staff associated with the Oakland Athletics select the games.

1 above, once the Department completes the cultural competency training, it will  
2 have implemented all of the Study's recommendations plus two additional  
3 measures. The Department expects that its progress will have a positive impact on  
4 consistency of discipline as well as in many other areas of the Department. The  
5 Department hopes to receive an assessment of full compliance on this task in the  
6 near term.

7 **B. Reducing Racial Disparities in Policing**

8 The Department continues to sustain and further improve its previous  
9 reduction in racial disparity in police stops. In the second quarter of 2021, the  
10 Department further reduced its non-dispatch stop rate of African Americans to 47%.  
11 See Fig. 1, *Non-Dispatch Stop Percentages by Race, Jan. 2016 to June 2021*.  
12 This is the lowest quarterly non-dispatch stop rate for African Americans  
13 documented by the Department. The rate is 8-9% lower than the stop rates reported  
14 in the previous two quarters. And before this quarter, the lowest documented stop  
15 rate for African Americans was 50%, achieved in the third quarter of 2019.

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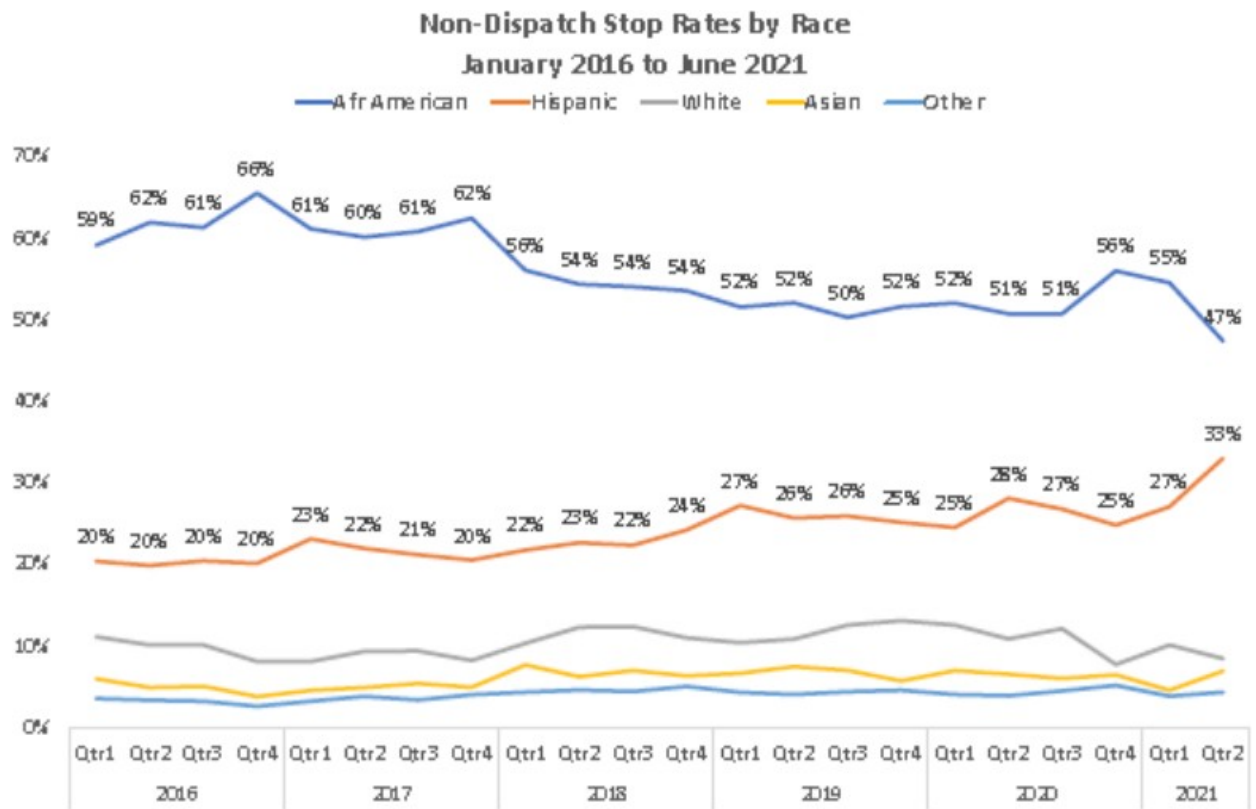
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Fig. 1

The Department recognizes, however, that the second quarter of 2021 also reflects a 6% increase in the stop rate for Hispanics. The Department is continuing to analyze the upward trending stop rate for this group. Notably, however, while it appears that the stop *rate* for Hispanics is trending upward, the *number* of stops continues to trend lower year over year, despite an uptick in the number of stops in the second quarter of 2021. See Fig. 2, *Non-Dispatch Stops by Race, Jan. 2016 to June 2021*. As discussed more fully in previous filings, as the overall number of non-dispatch stops continues to decline, the reduction in footprint has the most significant impact on African Americans and Hispanics, leading to the greatest reductions in the past several years in the raw number of stops of members of each group. See, e.g., Dkt. 1358 at 19, *Joint Case Management Statement* (Feb. 18, 2020).  
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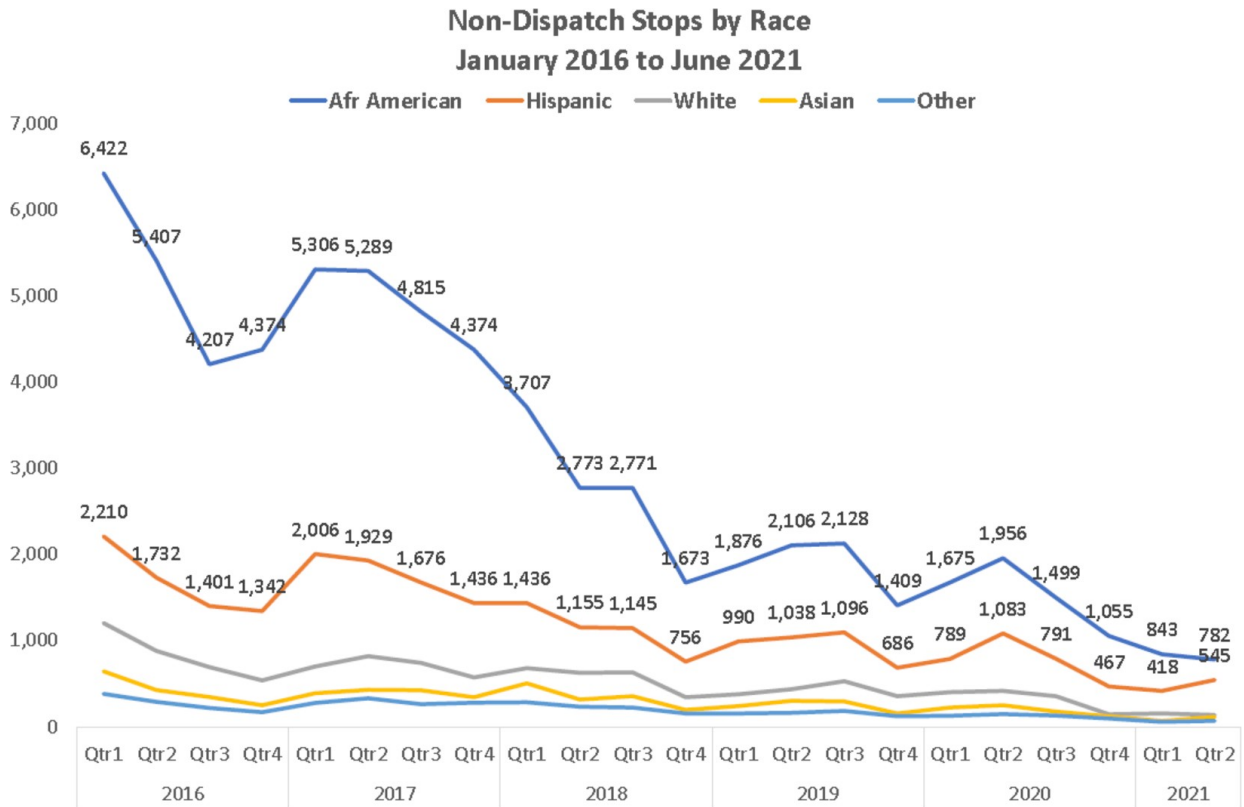


Fig. 2

While the overall number of non-dispatch stops have declined significantly, the Department’s intelligence-led (intel-led),<sup>10</sup> non-dispatch stops are up 6% from last year for the year-to-date ending July 2021. See Fig. 3, *Monthly Risk Analysis Report—Citywide, Through July 31, 2021* (excerpted). The increase of intel-led stops and the overall decline of non-dispatch stops when taken together results in a dramatic decrease of in the number of non-intel-led, non-dispatch stops. From January to July 2020, the Department made 5,446 non-intel-led, non-dispatch stops. See *id.* This year, however, from January to July 2021, the Department made only 2,217 non-intel led, non-dispatch stops. See *id.* This is significant because non-intel-led, non-dispatch stops are the types of stops where police officers typically exercise the most discretion. For dispatch stops police have been called to respond to

<sup>10</sup> Intelligence-led policing means requiring officers to have some nexus to criminal activity before they effect stops of vehicles or people. *Id.* at 21:19-23

1 reported criminal activity, and for intel-led stops police must have knowledge of an  
2 existing nexus to criminal activity prior to making the stop.

### 3 **Monthly Risk Analysis Report – Citywide** 4 **Through July 31, 2021**

	Jan-Jun Ave	July 2021	% Change	YTD 2020	YTD 2021	% Change
<b>Stops</b>						
Dispatch Stops	700.5	636	-9%	6,392	4,839	-24%
Non-Dispatch Stops	532.8	498	-7%	8,251	3,695	-55%
% Intel Led	40%	40%	0%	34%	40%	+6%
% Non-Intel Led African American	44%	44%	0%	47%	44%	-3%
% Non-Intel Led Hispanic	33%	37%	+4%	30%	33%	+3%
% Non-Intel Led Traffic Stops	83%	85%	+2%	80%	84%	+4%
Total Stops	1,233.3	1,134	-8%	14,643	8,534	-42%

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11 *Fig. 3*

#### 12 **1. The Department is a Leader in the Bay Area and in the Nation**

13 Other law enforcement agencies in the Bay Area look to the Department as a  
14 pioneer in evaluating and reducing racial disparities in police stops. The  
15 Department has been asked to give presentations to police agencies and city  
16 leadership in Berkeley, San Francisco, and Vallejo to share how the Department  
17 has sustained a significant decrease in stop rate disparity and how it promotes and  
18 uses intelligence-led policing and risk management data and meetings to achieve  
19 and sustain improvement.

20 Comparison of law enforcement agencies nationwide exhibits the Department  
21 as a leader among cities of similar size in reducing racial disparities in policing. See  
22 Fig. 4, *Arrest Disparities Haven't Reduced*, chart graphic reprinted from  
23 <https://policescorecard.org/findings#racial-disparities-persist> (last visited on August  
24 24, 2021).<sup>11</sup> Although the chart's title reflects the nationwide trend that between  
25

26 <sup>11</sup> The Police Scorecard is the first nationwide public evaluation of policing in the  
27 United States. The Scorecard calculates levels of police violence, accountability,  
28 racial bias and other policing outcomes for over 16,000 municipal and county law  
enforcement agencies, covering nearly 100% of the U.S. population. The Police  
Scorecard integrates data on police arrests, personnel, funding, incarceration rates  
and homicide clearance rates from official federal and state databases such as the

2013 and 2019 “Arrest disparities haven’t reduced,” the chart could be accurately retitled as “Oakland has reduced racial disparities in arrests the most while disparity increased in cities nationwide.”

### Arrest disparities haven't reduced.

Change in Black-white arrest disparity from 2013-19 in jurisdictions with 400k+ population. UCR arrests data and demographics from 2013 and 2019 US Census ACS.

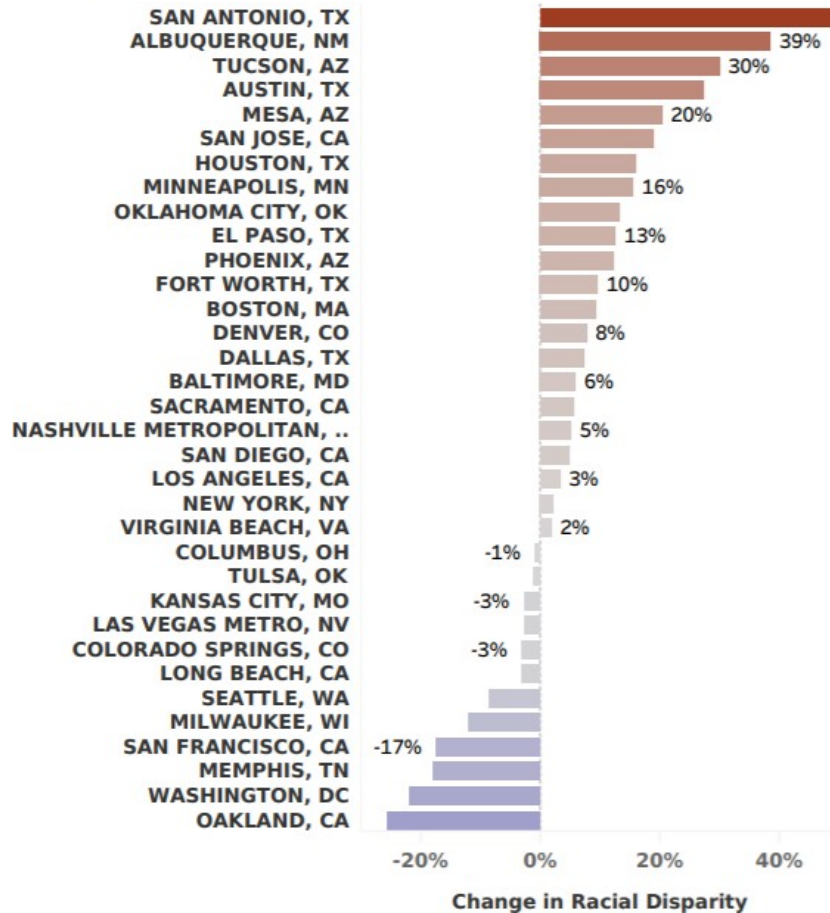


Fig. 4

From 2013 to 2019, Oakland outperformed every other city of similar size reducing overall Black-white arrest disparity by 26% and Black-white disparity in drug possession arrests by 36%. The city that did second best, Washington D.C.,

FBI Uniform Crime Report (UCR), the Bureau of Justice Statistics’ Annual Survey of Jails, the U.S. Census Bureau’s Survey of State and Local Government Finances and the California Department of Justice’s OpenJustice database. See <https://policescorecard.org/about>.



1 reduced Black-white arrest disparity overall by 23% and drug possession arrest  
 2 disparity by 22%. During that same seven-year span, the Department averaged the  
 3 fewest officer-involved shootings per number of arrests among similarly sized cities.  
 4 See Fig. 5, *Police Shooting Rates in Cities*, chart graphic reprinted from  
 5 <https://policescorecard.org/findings#clear-pattern> (last visited on August 24, 2021).

## 6 Police Shootings Rates in Cities

7 Rate of police shootings (fatal and nonfatal) per 10k arrests among police depts with jurisdictions of over 400k population.

	2013	2014	2015	2016	2017	2018	2019
DETROIT, MI	14.9	13.4	13.8	9.2	20.6	6.6	7.5
OKLAHOMA CIT..	4.7	7.2	5.1	3.8	4.6	7.6	7.0
HOUSTON, TX	4.3	5.2	5.7	4.5	3.2	4.2	5.6
FORT WORTH, ..	2.4	3.1	4.1	4.5	3.5	4.5	5.4
TULSA, OK	9.8	4.7	10.8	14.0	3.9	3.0	4.8
LOUISVILLE ME..	0.6	1.7	1.5	0.5	1.9	2.2	4.8
SEATTLE, WA	4.6	6.8	2.8	2.7	4.1	1.3	4.7
LOS ANGELES, ..	5.0	3.4	5.9	5.1	6.0	4.7	4.1
SAN ANTONIO, ..	2.2	2.3	2.6	3.1	2.3	2.1	4.0
WASHINGTON, ..	5.9	3.8	7.2	4.6	4.5	1.5	4.0
DENVER, CO	4.0	2.0	3.3	4.0	2.0	2.7	3.8
JACKSONVILLE, ..	2.7	3.5	4.2	4.8	4.1	2.3	3.7
ALBUQUERQUE,..	4.3	3.1	4.1	2.9	4.3	4.5	3.6
MILWAUKEE, WI	3.3	2.5	4.4	2.9	2.1	2.6	3.6
DALLAS, TX	4.7	6.0	4.1	3.8	2.2	1.3	3.4
EL PASO, TX	1.5	0.5	3.3	1.8	1.2	1.2	3.1
LOS ANGELES, ..	5.0	3.8	4.2	4.0	2.6	2.6	2.9
ARLINGTON, TX	2.3	1.2	2.9	0.9	7.1	2.1	2.9
CHARLOTTE-ME..	2.6	3.0	2.0	5.1	2.1	2.3	2.8
SAN JOSE, CA	3.3	2.3	7.4	3.8	5.7	3.9	2.7
PHOENIX, AZ	4.4	3.5	3.3	5.6	4.2	8.4	2.7
MEMPHIS, TN	2.7	2.3	3.2	2.8	1.3	2.6	2.6
BALTIMORE, MD	2.5	2.4	4.3	4.4	3.4	2.3	2.4
LONG BEACH, CA	8.2	3.1	5.8	5.4	6.6	3.0	2.4
SAN FRANCISC..	4.6	5.4	5.4	2.0	4.3	3.6	2.1
AUSTIN, TX	2.4	1.1	2.1	2.6	3.2	4.5	2.1
CHICAGO, IL	6.0	7.3	5.9	7.6	5.9	3.9	2.0
SAN DIEGO, CA	2.2	2.2	3.3	1.7	2.0	1.8	2.0
INDIANAPOLIS, ..	2.0	5.3	5.0	4.3	2.0	1.2	2.0
TUCSON, AZ	2.8	1.9	1.9	2.4	0.7	3.5	1.9
LAS VEGAS ME..	1.7	2.3	2.4	1.5	3.2	2.9	1.8
VIRGINIA BEAC..	1.6	0.9	2.0	0.0	2.1	0.6	1.8
MINNEAPOLIS, ..	0.7	1.2	2.0	0.8	1.7	2.6	1.7
SACRAMENTO, ..	1.6	2.5	1.1	1.8	3.6	1.4	1.5
NEW YORK, NY	1.1	0.9	1.1	1.3	0.9	0.8	1.3
MESA, AZ	1.2	2.1	2.3	3.5	2.1	5.3	1.2
MIAMI, FL	1.6	0.3	1.2	1.2	0.5	1.0	0.5
OMAHA, NE	3.1	2.5		3.7		2.6	0.5
OAKLAND, CA	6.6	0.0	6.5	0.0	1.0	1.1	0.0

21 *Fig. 5*

22 Remarkably, during roughly the same time that the Department reduced  
 23 racial disparities and refrained from using firearms, from 2012 to 2017 the City also  
 24 experienced a 43% reduction in homicides and a 50% reduction in non-fatal  
 25 shootings. See Braga, A., et al., *Oakland Ceasefire Evaluation Final Report, May*  
 26 *2019*, at 101, [https://cao-94612.s3.amazonaws.com/documents/Oakland-Ceasefire-](https://cao-94612.s3.amazonaws.com/documents/Oakland-Ceasefire-Evaluation-Final-Report-May-2019.pdf)  
 27 [Evaluation-Final-Report-May-2019.pdf](https://cao-94612.s3.amazonaws.com/documents/Oakland-Ceasefire-Evaluation-Final-Report-May-2019.pdf) (last visited Aug. 24, 2021).

1                   **2. The Department is in Partial Compliance with Task 34,**  
2                   **Vehicle Stops, Field Investigations and Detentions (Stop**  
3                   **Data)**

4                   The Monitoring Team last assessed Task 34 in July 2020. *See* Dkt. 1387 at  
5 22-23, *69th Report*. The Monitoring Team found the Department in partial  
6 compliance, noting that “[a] goal of a risk management system should be to  
7 continually seek more comprehensive understanding of risk, its distribution, its  
8 impact, and its reduction.” *Id.* at 23.

9                   The Department has risen above other agencies nationwide because it  
10 prioritizes critical review of its stop data and has achieved the most significant  
11 reductions in racial disparity. Racial disparity in police stops is an area without  
12 established and generally accepted standards. As a result, the Department is  
13 constantly resetting its own goalposts beyond the gains it achieves and seeks  
14 inventive ways to better understand the data and reduce disparities. The  
15 Department will never cease its work to reduce racial disparity in policing. It will  
16 continue that work while simultaneously working to improve the quality of each  
17 interaction once a stop has occurred. In this way, the Department’s work to improve  
18 in these areas will never be “finished.” But it is important to differentiate the  
19 “finish line” for purposes of NSA Task 34 from the Department’s own ever-moving  
20 goalposts as it continues to advance leading agencies nationwide in reducing racial  
21 disparity in police stops.

22                   **II. POLICY DEVELOPMENT AND PUBLICATION UPDATE**

23                   The City provides the chart below to update the Court on the current status  
24 of the remaining policy items discussed with the Court at the prior status  
25 conference and in the City’s April and May 2021 reports. *See* Dkts. 1433 & 1447.

26  
27  
28  
///

TITLE	STATUS
<b>Internal Affairs Policy &amp; Procedure Manual, Policy 21-01</b>	Published and effective August 17, 2021.
<b>CID Level 1 Investigations Policy &amp; Procedure, Policy 19-01</b>	Remains in development. Received multiple rounds of feedback from Monitoring Team and plaintiffs' counsel. Next step is to incorporate latest feedback and sending back to Monitoring Team for further review.
<b>Chief's Directive Memorandum Re Administrative Leave</b>	Remains in development. Received multiple rounds of feedback from Monitoring Team. Next step is publication.
<b>DGO R-01, Risk Mitigation</b>	Remains in development. Received initial feedback on the Department's draft from the Monitoring Team and plaintiffs' counsel. Engaged in incorporating feedback.
<b>DGO D-17, Personnel Assessment System (PAS)</b>	The Department has reviewed existing policy. D-17 still accurately reflects current PAS data use and processes. In light of the anticipated robust content of the risk mitigation policy the Department is developing (DGO R-01), the Department's Policy & Publication Unit does not recommend revising D-17, but rather referencing it as appropriate in DGO R-01. In addition, the Bureau of Risk Management plans to add a memorandum to complement D-17 to support supervisors' ability to immediately address performance-related problems without the need for preliminary review by the PAS panel.
<b>Special Order 9208 re Type 32 Force Reporting</b>	Remains in development. Continuing to meet with Monitoring Team to try to achieve consensus on single remaining issue.

### III. FORCE INVESTIGATIONS AND REPORT RESPONSIBILITY—TASK 25

The Monitoring Team's current assessment is that the Department is in partial compliance with Task 25, Force Investigations and Report Responsibility. Dkt. 1465 at 15, 74th Report.

The Monitoring Team "continued to see improvements" in Level 3 and Level 4 use of force reports. *Id.* at 15. Despite the executive team's communication of its expectations for members who prepare and review use of force reports, through

1 policy revisions, training, and follow-up emails, there remain use of force reports for  
2 which supervisors fail to identify and address subordinates' deficiencies and fail to  
3 complete appropriate documentation. *Id.* Members reviewing the supervisor reports  
4 have also failed to identify and address these concerns on a number of occasions. *Id.*  
5 at 14. The more significant oversights include failures to identify deficiencies in  
6 officer reporting and failing to identify or address Manual of Rules (MOR)  
7 violations, including body-worn camera violations. *See id.* Other reporting issues  
8 include members using "training and experience" to justify a use of force without  
9 articulating what specific knowledge, training, or experience supports their actions.  
10 The Department is working to address this issue and the Monitoring Team has  
11 "begun to see instances where officers are more descriptive." *Id.*

12       Significantly, of the 186 lower-level use of force reports most recently  
13 reviewed by the Monitoring Team, it identified only one incident where force may  
14 not have been appropriate. *Id.* (based on inspection of 186 Level 3 and Level 4 use of  
15 force reports prepared from March-October 2020).<sup>12</sup> The Monitoring Team noted,  
16 however, that to the Department's credit, it had already initiated an internal  
17 investigation of that use of force. *See id.* In addition, the Monitoring Team did not  
18 identify any instances where the use of force was not de-escalated or stopped when  
19 resistance decreased. *Id.* The Monitoring Team remarked on the continued efforts of  
20 members to attempt to de-escalate situations prior to using force. *Id.* The  
21 Monitoring Team reported "significant improvement" compared to its early  
22 assessment of the Department's use of verbal commands prior to using force. *Id.* at  
23 5. There has also been a reduction in the number of incidents where officers did not  
24 identify themselves as police officers when it was appropriate to do so. *See id.* at 14  
25 ("the number of these incidents has decreased since our earlier reviews").

26 <sup>12</sup> Notably, in the 186 Level 3 and Level 4 use of force reports the Monitoring Team  
27 reviewed from March-October 2020, the percentage of force incidents involving  
28 African Americans decreased by 4%, and force incidents involving Latinos decreased  
by 2%. *Id.* at 4.

## A. Improvement in Body-Worn Camera Activations

Body-worn camera activations appear to be improving, though progress has somewhat slowed. As an initial matter, body-worn camera violations are now rarely failures to activate but typically activations delayed by seconds or minutes. The most recent Monitor Report calculated a 17% delayed activation rate in the 186 use of force incidents it reviewed from March-October 2020. *74th Report* at 7. That is a decrease from the 21% delayed activation rate reported in the Monitor's previous assessment. *See id.* An additional issue, however, is that approximately half of the delayed activations were not caught by supervisors or second level reviewers. *Id.*

The Department has continued to conduct follow up on each body-worn camera activation concern raised by the Monitoring Team. *Id.* The Department is not only holding officers accountable, it is also "holding supervisors to account when they fail to identify and address these types of concerns." *Id.*

In addition to continuing to train, remind, and discipline<sup>13</sup> members to encourage timely body-worn camera activations, the Department also anticipates assistance from new technology will enhance its progress. The Department is employing VirTra virtual de-escalation training which includes prompts to officers to timely activate body-worn cameras and to announce themselves as police officers. Repetitive training forcing an officer to take each of these steps in every encounter should at some point make these steps automatic for every officer, making it less likely that officers may forget or neglect to take these actions in the field. The City has also approved funding for the Department to purchase a body-worn camera system upgrade. Features of the new system will enhance body-camera activation and video review. Events such as unholstering a firearm or taser, activating a police vehicle's emergency siren, releasing a shotgun from its vehicle rack, or opening a police vehicle door<sup>14</sup> will trigger automatic body-worn camera activation. In

<sup>13</sup> The Department imposes progressive discipline for members who exhibit a pattern of misconduct, including patterns of late or non-activations.

<sup>14</sup> This feature is programmable for select vehicle doors. Automatic activation in

1 addition, body-worn camera activation may also be triggered remotely allowing for  
2 supervisors or command staff who may not be on scene to activate body-worn  
3 cameras. The system will also allow reviewers to play multiple videos from different  
4 officers' body-worn cameras on a single screen, synchronized. This will make video  
5 review faster and more efficient, allowing reviewers to view use of force incidents  
6 from multiple angles simultaneously.

7 While the Department appreciates the Monitoring Team's recognition of the  
8 progress it has made, and the Monitor's assessment that the Department's steps to  
9 address proper force reporting "have been fruitful," *id.* at 8, the Department  
10 remains focused on improving body-worn camera activation, officer announcements  
11 when appropriate, and, most significantly, consistent quality use of force report  
12 review at every level of the organization.

#### 13 IV. INTERNAL AFFAIRS TIMELINES—TASK 2

14 The Monitoring Team last evaluated the Task 2 timelines in June 2021 and  
15 found that the Department remains out of compliance. Dkt. 1455 at 3, *73rd Report*.  
16 The Department must complete 85% of Class I and 85% of Class II investigations  
17 within 180 days to be in compliance with this task. In addition, in cases with a  
18 sustained finding, the discipline recommendation process must be completed within  
19 30 calendar days of the sustained finding. *See* DGO M-03, Complaints Against  
20 Departmental Personnel or Procedures.

21 The Department was previously in compliance with the timelines but fell  
22 below the 85% completion rate in 2018. The Department saw improvement through  
23 early 2020, completing 69% of Class I cases and 84% of Class II cases within the  
24 180-day timeline. Dkt. 1387 at 3, *69th Report*. More recent Monitor Reports,  
25 however, reflect some decline in progress, particularly for Class I cases. For the  
26 second quarter of 2020, the Monitor reported timely completion rates of 67% for

27  
28 most cases will likely not be tied to the driver's door which may open and close  
innumerable times during an officer's shift.

1 Class I cases and 75% for Class II cases. Dkt. 1416 at 3, *71st Report*. And for the  
2 first quarter of 2021, the Monitor reported timely completion rates of 54% of Class I  
3 cases and 82% of Class II cases. Dkt. 1455 at 3, *73rd Report*. On a positive note, for  
4 sustained cases the Department has routinely completed all discipline  
5 recommendations within 30 days. *See 71st Report* at 4; *73rd Report* at 3.

6 The Department continues to work toward compliance with the case  
7 completion timelines. The Department's progress was slowed by the volume of  
8 complaints stemming from the Summer 2020 protests following the murder of  
9 George Floyd in Minneapolis. The four-day period from May 29-June 1, 2020  
10 required the Department to respond to 134 complainants and open 59 internal  
11 investigation cases. For comparison, for the entire month of April 2020, the  
12 Department opened an estimated 115 internal investigation cases, including service  
13 complaints, and on average in the four months preceding the protest period, the  
14 Department opened approximately 123 cases each month.

15 The volume of complainants and case investigations that came in over a four-  
16 day period was unprecedented. The Department lacked the experience with an  
17 event of this scale that would allow it to predict with adequate accuracy the amount  
18 of staff time necessary to interview this volume of complainants and complete the  
19 investigations. This led to a decline in timely Task 2 completion rates in the last  
20 year.

21 On a positive note, the Department gained important knowledge that will  
22 allow it to more accurately assess its resource and staffing needs in the future in  
23 response to a sudden influx of complaints and cases of this volume. In addition, for  
24 Division Level Investigations (DLIs), investigating sergeants are no longer told  
25 what the 180-date is but instead receive deadlines determined by IAD that build in  
26 extra time for case investigation review. The Department therefore not only  
27 anticipates that following this temporary dip it will achieve compliance in the near  
28 term, but that if faced with an event of similar magnitude in the future it is now

1 much better prepared to complete investigations within the 180-day timeline.

2 Based on IAD's current review of the data from the second quarter of 2021,  
3 IAD projects that 76% of Class I investigations and 81% of Class II investigations  
4 meet the 180 date. Excluding misconduct allegations associated with crowd events  
5 and protests, however, the Department's timeliness rises to 90% for Class I cases  
6 and 85% for Class II cases. Thus, absent the unanticipated voluminous influx of  
7 investigations stemming from protests and crowd events this past year, the  
8 Department would be in compliance with the Task 2 timelines.

9 **V. SPECIAL FORCE REVIEW BOARDS RELATED TO SUMMER**  
10 **2020 PROTESTS—TASK 26**

11 The Department has completed all investigations and Force Review Boards  
12 (Boards) arising from the Summer 2020 protests.<sup>15</sup> Over the four-day period from  
13 May 29-June 1, 2020, Oakland experienced widespread protests and, in some  
14 instances, civil unrest, including acts of violence and destruction of property. *See*  
15 *74th Report* at 19. Many tactics were used to address both the peaceful protests and  
16 acts of civil unrest, among them the use of chemical munitions. *Id.* Chemical  
17 munitions are classified as Level 3 uses of force and therefore not normally subject  
18 to Boards, which are convened for Level 2 uses of force. The Department, however,  
19 chose to hold special Boards to review each of the 263 deployments.<sup>16</sup>

20 The Monitoring Team appreciated that the "review of these events was a  
21 massive undertaking." *Id.* at 20. In addition, the Monitoring Team "commended . . .  
22 this initiative," recognizing that the unique design of these Boards "demonstrate the  
23 level of importance the Department placed on its commitment to provide a thorough  
24 review of these events." *Id.* at 19. Each Board was chaired by a Deputy Chief. And

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25 <sup>15</sup> The discipline recommendation for the final remaining case is scheduled for  
26 presentation to the Chief and the Community Review Police Agency (CPRA) on  
September 3, 2021.

27 <sup>16</sup> In instances where a supervisor specifically authorized a deployment, that is also  
28 considered a use of force and is evaluated for justification. Therefore, a single  
deployment could be assessed twice. *Id.* at 21.



1 each Board reviewed a day's worth of activity involving multiple disparate incidents  
2 occurring over several hours and in varying locations. *See id.* While the Boards did  
3 not formally review other lower level uses of force associated with these incidents,  
4 when appropriate the Boards identified and further examined certain instances  
5 where force may have been used to ensure that all force was properly reported and  
6 investigated. *See id.* at 20.

7 Collectively, the Boards assessed 263 chemical munitions deployments. *Id.* at  
8 21. The Monitoring Team disagreed with one in-compliance finding for one of the  
9 chemical deployments. *See id.* at 20. In that instance, individuals threw bottles at a  
10 police vehicle traveling to another scene to assist other officers at a skirmish line.  
11 *Id.* The officers stopped the vehicle and an officer got out and threw a handheld  
12 chemical device at the individuals to dissuade them from continuing to throw  
13 bottles at the vehicle. *Id.* Other than this instance, the Monitoring Team concurred  
14 with all of the findings of all of the Boards, including the 33 deployments the Boards  
15 found out of compliance with policy. *See id.* at 20 & 21 (noting that 32 of the not-in-  
16 compliance findings stemmed from the Board which reviewed the activities of June  
17 1, 2020).

18 The Monitoring Team acknowledged that overall, the Boards were "well-run."  
19 *Id.* at 20. In addition, the Monitoring Team found that each of the reports  
20 documenting the Boards' activities was complete and well-written. *Id.* at 21. As a  
21 result of its review of 16 Board reports completed from December 2020-May 2021,  
22 including the special protest Board reports, the Monitoring Team assessed the  
23 Department remains in full compliance with Task 26, Force Review Boards. *Id.* at  
24 17 & 21.

## 25 CONCLUSION

26 Both the pandemic and surge in violent crime continue to challenge Oakland  
27 residents, Department sworn and non-sworn members, and City staff.  
28 Nevertheless, the Department's commitment to Constitutional policing shines

1 through in its response to every challenge. The City looks forward to further  
2 discussing the foregoing issues at the upcoming Case Management Conference.

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1 NSA compliance and how the OPOA can assist in the effort.

2 The meeting with Chief Armstrong was open, candid and productive. The  
3 representatives of the OPOA engaged in an honest and direct exchange with Chief  
4 Armstrong and expressed the OPOA's intense desire to enhance and accelerate  
5 efforts to address the continued need to achieve cultural change in the Department.

6 Since the March 24<sup>th</sup> meeting the OPOA has actively engaged the  
7 Department in its ongoing efforts to seek cultural change and compliance with the  
8 NSA. There have been ongoing conversations between the command staff and  
9 representatives of the OPOA to enact measures to resolve any lingering doubt as to  
10 the intentions of the OPOA to reach out to rank-and-file members and communicate  
11 the urgency of effectuating continued cultural change.

12 The OPOA remains committed to further the interests of the City by  
13 continued collaboration with all parties.

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Respectfully submitted,

Dated: August 25, 2021

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\*Per Local Rule 5-1(i)(3), the filer attests that concurrence in the filing of the document has been obtained from each of the other Signatories

# EXHIBIT 1

**OAKLAND POLICE DEPARTMENT  
NSA TASK COMPLIANCE RESPONSIBILITY CHART  
AUGUST 25, 2021**

<b>Task</b>	<b>Task Name</b>	<b>Compliance Accountability</b>
1	IAD Staffing & Resources	Captain Wilson Lau
2	Timeliness Standards & Compliance w/IAD Investigations	Captain Wilson Lau
3	IAD Integrity Tests	Captain Wilson Lau
4	Complaint Control System for IAD	Captain Wilson Lau
5	Complaint Procedures for IAD	Captain Wilson Lau
6	Refusal to Accept or Refer Citizen Complaints	Captain Wilson Lau
7	Methods for Receiving Citizen Complaints	Captain Wilson Lau
8	Classification of Citizen Complaint	Captain Wilson Lau
9	Contact of Citizen Complaint	Captain Wilson Lau
10	IAD Manual	Captain Wilson Lau
11	Summary of Citizen Complaints Provided to OPD Personnel	Captain Wilson Lau
12	Disclosure of Possible Investigator Bias	Captain Wilson Lau
13	Documentation of Pitchess Responses	Captain Wilson Lau
14	Investigation of Allegations on MOR Violations	Captain Wilson Lau
15	Reviewing Findings & Disciplinary Responses	Captain Wilson Lau
16	Support IAD Process-Supervisor/Managerial Accountability	Captain Wilson Lau
17	Audit, Review, and Evaluation of IAD Functions	Captain Wilson Lau
18	Arrest Approval and Report Review	DC Christopher Bolton
19	Unity of Command	DD Kiona Suttle
20	Span of Control for Supervisors	DC Christopher Bolton
21	Members, Employees & Supervisors Performance Reviews	DC Christopher Bolton
22	Management Level Liaison	DD Kiona Suttle
23	Command Staff Rotation	DC Drennon Lindsey
24	Use of Force Reporting Policy	AC Darren Allison
25	Use of Force Investigation and Report Responsibilities	DC Eric Lewis
26	Force Review Board	DC Angelica Mendoza
27	OC Log and Check-out Procedures	DD Suttle
28	Use of Force – Investigation of Criminal Misconduct	DC Drennon Lindsey
29	IAD Investigation Priority	Captain Wilson Lau
30	Executive Force Review Board	DC Angelica Mendoza
31	Officer-Involved Shooting Investigation	DC Drennon Lindsey
32	Use of Camcorders	Not Applicable

33	Reporting Procedures for Misconduct	Captain Wilson Lau
34	Vehicle Stops, Field Investigation and Detentions	DC Christopher Bolton/ DC Drennon Lindsey
35	Use of Force Witness Identification	DC Eric Lewis
36	Transporting Detainees and Citizens	DC Eric Lewis
37	Internal Investigations Retaliation Against Witnesses	Captain Wilson Lau
38	Citizens Signing Statements	DC Eric Lewis
39	Personnel Arrested, Sued, or Served	Captain Wilson Lau
40	PAS Purpose	DC Angelica Mendoza
41	Use of PAS	DC Angelica Mendoza
42	Field Training Program	DC Angelica Mendoza
43	Academy Training Program	DC Angelica Mendoza
44	Personnel Practices	DD Kiona Suttle
45	Consistency of Discipline	Chief LeRonne Armstrong/ AC Darren Allison
46	Promotional Consideration Review	DD Kiona Suttle
47	Community Policing	DC Christopher Bolton
48	Departmental Annual Management Reports	AC Darren Allison
49	Monitor Selection/Compensation	Chief LeRonne Armstrong
50	Compliance Unit Liaison Policy	Chief LeRonne Armstrong/ AC Darren Allison
51	Compliance Audits and Integrity Tests	Chief LeRonne Armstrong/ AC Darren Allison
Compliance Director (CD) 1 12/12/12 Order	Resolve/Reduce incidents that may involve unjustified force, OIS, pointing of firearms	DC Eric Lewis
CD2 12/12/12 Order	Resolve/Reduce incidents that may involve racial profiling and bias-based policing	DC Christopher Bolton
CD3 12/12/12 Order	Resolve/Reduce Citizen Complaints	Captain Wilson Lau
CD4 12/12/12 Order	Resolve/Reduce high speed pursuits	DC Angelica Mendoza



# EXHIBIT 2

# RACE AND EQUITY WORK ON DISCIPLINE DISPARITY STUDY Attachment 4

## RECOMMENDATIONS (Aug. 2021 Update)

REC. NO.	RECOMMENDED ACTION	STATUS
1	Regularly audit and spot check processes and monitor data regarding <b>internal investigation outcomes and discipline</b> to measure progress in eliminating disparities based on race.	<p>Implemented.</p> <p>Auditing and spot check procedures tracking investigation outcomes and discipline are in place and monitored by IAD. Completed preliminary first look analysis of 2019-2020 internal investigation outcome data. Engaged with Stanford team to achieve a more in-depth analysis of the data.</p>
2	Exercise caution in using the IAD investigator as both <b>fact finder and adjudicator</b> , as this raises challenges to principles of investigative neutrality and may contribute to perceptions of investigator bias. The fact finder for an internal investigation should not be the same individual who makes the determination of the finding. At a minimum, the next-level supervisor should read the investigative report and decide as to the finding of the complaint.	<p>Implemented.</p> <p>Completed pilot program separating the factfinder and adjudicator. Reviewing the results of the cases that went through the pilot program to determine the impact of separation and whether and how the Department may or may not implement such separation on a wider scale. At a minimum, supervisors will read the investigative report and independently determine appropriate finding rather than defer to the investigator.</p> <p>In addition, when Division Level Investigations (DLIs) are presented to the IAD Captain, presenters anonymize demographics of subject Department members, analogous to the measure practiced in IA case presentations to the executive team (see last two entries below).</p>
3	Have the lieutenant or command staff member who approved the sustained finding present the <b>reasoning for the investigation's outcome</b> to the Chief's disciplinary	Implemented.

RACE AND EQUITY WORK ON DISCIPLINE DISPARITY STUDY ~~Attachment A~~

## RECOMMENDATIONS (Aug. 2021 Update)

	roundtable, rather than the investigator. The investigator should be available for questions.	
4	Explore the possibility of assigning an <b>administrative sergeant</b> within a division to assist with DLIs.	Implemented.  Exploration ongoing but complicated by budget and reimagining public safety initiatives.
5	Increase the number of <b>DLI sergeants</b> in the IAD to conduct more of the preliminary work related to a DLI and to aid field sergeants assigned to investigate complaints.	Implemented.  Added DLI sergeant. Request to City for additional staffing. Added sergeant from patrol to respond to need to investigate influx of complaints.
6	Have field sergeants and IAD investigators provide <b>additional training</b> on internal investigation techniques, including report writing and guidance to ensure that complainant, subject member or witness statements are not written in the first person. Statements should be attributed properly to avoid a charge that the investigator is biased when choosing a perspective to believe. Training should also include guidance on how to incorporate procedural justice concepts into the internal investigation and discipline process.	Partially implemented.  Increased sergeant training on internal investigations. In lieu of procedural justice (level 3) curriculum the Department will use the cultural competency curriculum developed by the Stanford team which is consistent with the City's Department of Race and Equity training module. The projected start date for the cultural competency training is anticipated to begin Late Summer/Early Fall 2021.
7	Increase the <b>transparency</b> of internal investigation and disciplinary outcomes by distributing quarterly summaries of open cases, cases closed with a finding, and disciplinary outcomes. While protecting the identity of accused Department members, the summaries should include brief fact patterns and reference the number of prior sustained findings when discussing case outcomes.	Implemented.  IAD will continue to explore ways to improve quarterly summaries.

RACE AND EQUITY WORK ON DISCIPLINE DISPARITY STUDY ~~Attachment A~~

## RECOMMENDATIONS (Aug. 2021 Update)

8	Ensure that PDRs only include disciplinary history of sustained cases within the <b>five-year period</b> , consistent with statutes in the California Peace Officer Bill of Rights.	Implemented.
9	Have the academy integrate opportunities for <b>FTOs</b> to engage with the candidates before they are formally released to the Field Training Program to establish some familiarity and rapport. This could be accomplished through guest lecture opportunities or meet-and-greets on topics and scenarios to expect when the recruits enter the FTO stage.	Implemented.  Academy has mentoring program for trainees and guest lecturers who are currently Field Training Officers (FTOs).
10	Ensure that command staff have some consistent <b>visibility</b> at the academy to provide new officers with a familiarity of their command structure prior to graduation.	Implemented.  The Department holds a command staff forum every other week and is mindful about including additional command staff interaction with trainees when possible and appropriate. Began this practice in the 184th Academy; the Department is currently holding its 186th Academy.
11	Start the OPD's mentoring program for trainees at the beginning of the academy and continue through the Field Training Program to provide additional assistance or mentoring as the trainees move through various stages of the process.	Implemented.  Implemented initially by Background/Recruiting and further modified by Training Division.
12	Expand the practice of conducting focus groups of trainees in the Field Training Program to include additional feedback mechanisms such as pre- and post-surveys and listening sessions. Continue to conduct confidential exit interviews with trainees who did not successfully complete the academy or field training program.	Implemented.  Increased involvement at the Captain level. The Captain meets with the Field Training Unit weekly to discuss each trainee's performance development plan.
13	Develop a policy that states that once a decision is made to release a trainee from probation during the Field Training Program, the trainee should be placed on administrative	Implemented.  Department General Order (DGO) B-08, <i>Field Training Program</i> , provides guidance

RACE AND EQUITY WORK ON DISCIPLINE DISPARITY STUDY ~~Attachment A~~

## RECOMMENDATIONS (Aug. 2021 Update)

	leave or in an assignment that does not involve public contact until all appropriate paperwork is completed.	on removing a trainee from field training, to include administrative leave.
14	Expand the tracking of trainees after completion of their training program so that leadership can gain additional feedback about the success rate of individuals who leave the program, especially those who have been provided additional chances to meet training standards. This expands upon the recommendation of the OPD's Inspector General to prioritize an electronic system of record keeping allowing for a quick and comprehensive review of all trainees and academy performance.	Implemented.  The Training Division in collaboration with the Stanford team identified areas of risk that may contribute to, reflect, or correlate with potential biases impacting police officer trainees. The Training Division now routinely tracks via a regularly updated spreadsheet these areas of risk for police officer trainees in the academy and field training programs.
<b>Additional Measure</b>	Hiring and Background process: anonymize demographic information in Character Review to minimize potential bias based on the race and gender of the applicant.	Implemented.
<b>Additional Measure</b>	IA Case Presentations: when possible and appropriate, anonymize demographic information about the subject officer or professional staff to minimize potential bias based on race and gender of the subject officer.	Implemented for both presentations of sustained cases and disciplinary determinations.

# EXHIBIT A

**From:** Barry Donelan [mailto:donelan@opoa.org]  
**Sent:** Monday, March 01, 2021 1:06 PM  
**To:** Armstrong, Leronne  
**Subject:** Meeting

Chief Armstrong

As you know the OPOA has consistently partnered with the Department and the City in efforts to achieve NSA compliance. As a follow up from the CMC hearing last week, I am requesting a meeting between the OPOA Executive Board and your executive command staff.

The OPOA has taken Judge Orrick's comments seriously and in response, have some specific concepts that we would like to discuss with you. Together we can address the steps to ensure implementation of the five key tasks laid out by Judge Orrick. Among other things, we believe that the OPOA can collaborate with the Department in crafting a social media policy for the Department and expand on the OPOA's current social media lesson plan to the entire Department.

Also attached is a letter to the President of the Oakland City Council supporting the City's efforts to have firefighters respond to mental health calls that police officers currently respond to.

I look forward to the meeting.

Take care.  
Barry

# EXHIBIT B





Meeting Agenda

March 24, 2021 @ 1330hrs

Chief

Ahead of your meeting tomorrow and to maximize our time and advance our collective efforts of NSA Compliance I provide the following agenda:

- Cultural Change
  - o Outline steps to address and improve cultural competencies among the membership and address racism and sexism within the ranks.
- Social Media
  - o The OPOA seeks to collaborate on the crafting and implementation of department-wide social media policy.
  - o Consider OPD taking and applying the ten (10) social media rules to department wide training by command staff.
- NSA Compliance
  - o Learn what your blueprint for compliance is and how the OPOA can assist with it.

Take care see you tomorrow.

Barry Donelan  
President  
Oakland Police Officers Association





CITY OF OAKLAND

# AGENDA REPORT

**TO:** Edward D. Reiskin  
City Administrator

**FROM:** LeRonne L. Armstrong  
Chief of Police

**SUBJECT:** Informational Report On OPD Training  
Academies

**DATE:** August 16, 2021

City Administrator Approval

Date: Aug 25, 2021

## RECOMMENDATION

**Staff Recommends That The City Council Receive An Informational Report From The Oakland Police Department On Efforts To Improve Retention And Graduation Rates Of Academy Recruits To Become Officers In The Oakland Police Department, Including Data Regarding What Has Been Implemented And Planned Interventions To Improve Rates Of Completion Of Field Training; Also Provide Information On Plans To Improve Selection Of Applicants, Especially Oakland Residents, Who Are More Likely To Remain And Succeed.**

## EXECUTIVE SUMMARY

The Oakland Police Department (OPD) presented an oral report to the City Council at the July 26, 2021 meeting. The oral report was responsive to the Rules Request titled "Informational Report on OPD Academies" from Vice Mayor Rebecca Kaplan. At the July 26, 2021 meeting, the City Council requested additional information. This report is responsive to City Council's motion.

## BACKGROUND/LEGISLATIVE HISTORY

At the July 26, 2021 City Council meeting, staff was asked to provide the following additional information related to OPD officer training, attrition, and recruitment:

- Recruitment for diversity, with an emphasis in the recruitment of women, and opportunities for recruitment partnerships
- Background criteria that may impact acceptance to OPD's Basic Training Academy, including credit scores, drug use, or family members with criminal backgrounds
- Training academy attrition and success rates, and ongoing officer attrition and retention data and related factors
- Policy options regarding being paid back fully when people leave the academy or resign
- Recruitment and training related to Recommendation #37 from the Reimagining Public Safety Task Force, which creates a collaborative and multidisciplinary approach to crisis response using cross functional teams

Public Safety Committee  
September 14, 2021

## **ANALYSIS AND POLICY ALTERNATIVES**

The following are procedures OPD has employed to address sworn officer recruitment and attrition, which will contribute towards advancing the citywide priorities of holistic community safety and responsive, trustworthy government. Prioritizing Diversity and the Recruitment of women and people with connections to Oakland will help OPD advance holistic community safety. Recruitment efforts that support transparency and efficiency support the City's goal of responsive and trustworthy government.

### ***POST Certification***

California peace officers undergo an extensive selection process before they are hired by law enforcement agencies. The role of the California Commission on Peace Officer Standards and Training (POST) includes establishing minimum selection standards for peace officers in California and conducting research that results in the development of the tests and procedures used by local law enforcement agencies to adhere to these minimum selection standards. The minimum peace officer selection standards are set forth in Government Code Sections 1029<sup>1</sup> and 1031<sup>2</sup>.

Government Code 13510 gives POST the authority to establish minimum selection standards for peace officers employed by agencies that participate in the POST program. These peace officers must, at a minimum, meet the selection standards outlined in the Government Code, and pass the POST selection requirements contained in Commission Regulations 1950-1955<sup>3</sup> prior to hire.

### ***Recruitment for Diversity, with an Emphasis in the Recruitment of Women, and Opportunities for Recruitment Partnerships***

Historically, OPD held two POST certified basic police academies per year in order to keep pace with the average attrition it has experienced over the past five years. However, two academies is not enough to meet the recent surge in attrition that has impacted not only OPD, but also the law enforcement profession.

Police departments are struggling to retain and attract officers, amid growing calls for police reform and a national debate over deadly use of force. OPD is not immune from what many have agreed is a hiring crisis in the law enforcement profession. To tackle this challenge, OPD has enhanced its recruitment efforts to include prioritizing the hiring of women and candidates from diverse cultural backgrounds. Some of the recruitment strategies OPD has implemented include:

<sup>1</sup> [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=1029](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=1029)

<sup>2</sup> [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=1031](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=1031).  
[tps://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=1031.&lawCode=GOV#:~:text=Each%20class%20of%20public%20officers,2267%20of%20the%20Vehicle%20Code](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1031.&lawCode=GOV#:~:text=Each%20class%20of%20public%20officers,2267%20of%20the%20Vehicle%20Code).

<sup>3</sup>

[https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=IDF540AC0D45111DEB97CF67CD0B99467&originationContext=documenttoc&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=IDF540AC0D45111DEB97CF67CD0B99467&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default))

- Resuming Police Officer Trainee (POT) testing to attract Oakland residents and candidates who have a connection to Oakland.
- Hosting Zoom informational seminars to include specific topics on women in law enforcement and "Meet an OPD Recruiter" so that hiring information is accessible to candidates who cannot attend in-person recruitment events.
- Advertising POT positions with salary information on social media platforms.
- Setting up recruitment booths at Lake Merritt to network with community members and provide hiring information about becoming a POT.
- Advertising POT positions at various colleges, including California State University, Cal State East Bay, Holy Names University, Merritt College, and Laney College in Alameda County and Diablo Valley College in Contra Costa County.
- Outreach to various community organizations to include:
  - Girls, Inc.
  - 100 Black Men
  - Youth Uprising
  - Acts Full Gospel Church
  - Allen Temple Baptist Church
  - Asian Health Services
  - Black Church Project
- Currently in the process of securing an advertising campaign with, which will highlight "Be the difference you want to see at OPD!"

OPD anticipates understaffing for some time to come despite the enhanced recruitment efforts. There are a number of contributing factors including the pandemic, the national outcry over the death of George Floyd in Minneapolis, and a lack of funding to increase the number of yearly Oakland police academies.

***Background Criteria That May Impact Acceptance To OPD Basic Training Academies, Including Credit Scores, Drug Use, Or Family Members With Criminal Backgrounds***

OPD recognizes that recruitment alone is not enough to increase its workforce. OPD has implemented, in conjunction with enhanced recruitment efforts, what is known as the "whole person assessment approach" when conducting backgrounds of prospective candidates. The whole person assessment approach is a process by which the background investigator does not automatically disqualify a candidate based on negative or derogatory incidents that have occurred in the past. Instead, the process considers available, reliable information about the person's past and present behavior, favorable and unfavorable, when reaching a determination about whether the candidate should proceed in the hiring process. When evaluating the relevance of an individual's conduct, the background investigator considers the following factors:

1. The nature, extent, and seriousness of the conduct;
2. The circumstances surrounding the conduct;
3. The frequency and recency of the conduct;
4. The individual's age and maturity at the time of the conduct;
5. The extent to which participation was voluntary;
6. The presence or absence of rehabilitation and other permanent behavioral changes;
7. The motivation for the conduct;
8. The potential for pressure, coercion, exploitation, or duress; and

9. The likelihood of continuation or recurrence.

These factors are considered in conjunction with the applicable disqualifying and mitigating conditions listed in the POST background dimensions<sup>4</sup>. Events such as arrests, certain misdemeanor offense convictions, employment terminations, or any other self-admitted or discovered derogatory information will be carefully considered against the candidate's response to said events. The candidate's personal ownership of, or the expression of sincere remorse for any such events AND the careful consideration of time between such events will be reasonably considered when determining whether the candidate should proceed in the hiring process.

Candidates who have shown significant personal growth, maturation, development, and responsibility in the time following any such events will not be automatically screened out of the hiring process. The Department recognizes this assessment to be an uncommon approach for law enforcement hiring but sees the value in engaging in a hiring practice that is reasonable, fair, and equitable for all.

OPD does not require POT candidates to have unblemished backgrounds, consistent with the whole person assessment approach. OPD understands that people make mistakes, especially early in life. However, as a law enforcement agency trusted to maintain public safety and the respect of all residents and visitors, OPD must recruit candidates who behave honestly and hold themselves to high ethical standards. Police officers are entrusted to protect the public and use force (including deadly force) when necessary. OPD, like all police agencies, has a public mandate to ensure each candidate invited to a training academy can be trusted to serve the public with a high level of honesty, integrity, and passion for public service. The following summaries explain how the Recruiting and Background Unit (R&B Unit) reviews particular issues that may be cause for disqualification from entering a basic training academy as part of its whole person assessment approach:

- Past marijuana use – OPD does not eliminate candidates due to past marijuana usage. OPD does require that applicants have not recently used marijuana or other illegal substances, as all recruits must demonstrate that they are prepared to follow not only local but national laws.
- Debt – OPD does not eliminate candidates due to having debt. OPD reviews all debt to assess a candidate's financial integrity. The information is not used to eliminate candidates from the process. OPD only uses the data to evaluate how candidates deal with extreme debt situations.
- Association to people with criminal records – OPD does not eliminate candidates due to connections to individuals with criminal records. If the candidate themselves has a criminal record, OPD assesses each record on an individual basis. If the candidate is related to, either by family or close associations, to someone with a criminal record, they are not screened out of the process because of such connections.
- Out-of-school suspensions, dismissal from school, or poor academic performance within reasonable contexts – OPD does not eliminate candidates due to out-of-school suspensions, dismissal from school, or poor academic performance within reasonable contexts. There are many factors that could cause a student to perform poorly in school. The City does not request nor obtain applicant school disciplinary records. Therefore, , when the Department of Human Resources Management (DHRM) screens applications

<sup>4</sup> <https://post.ca.gov/background-investigation-manual-guidelines-for-the-investigator>

for minimum qualifications and processes candidates through to the testing portion of the hiring process, records of being expelled and/or suspended are not considered. However, OPD and DHRM do evaluate if the candidate meets the minimum qualifications and has the POST-required high school diploma or general educational development (GED) in order to be eligible for the process.

POT candidates who are disqualified due to the background investigation process will receive a non-select letter. This letter does not provide specific reasons why the candidate was not chosen to advance in the process. The letter does explain that the candidate is welcome to contact the OPD Sergeant in the R&B Unit. The letter gives the name, telephone number, and email of the Sergeant. The R&B Unit Sergeant shares with applicants who contact the office, which POST dimension(s) led to the disqualification. The Sergeant also provides general recommendations on how to improve their candidacy in regard to any particular POST dimension.

### ***Training Academy Attrition And Success Rates, And Ongoing Officer Attrition And Retention And Data And Related Factors***

The Training Division is in the process of finalizing a pre-academy to increase the success rate of POTs in the POST-required basic recruit academy. This pre-academy, is set to begin immediately before the 187<sup>th</sup> Academy in November 2021. As a result, POTs entering the 187<sup>th</sup> Academy will receive guidance and instruction in areas that have traditionally had a higher academy failure rate. Topics will include:

- First aid and CPR;
- Force options, de-escalation, law, policy;
- Vehicle driving; and
- An early introduction to OPD (staff hopes that this introduction for recruits and their families will reduce the number of early resignations).

The pre-academy is not a POST mandate. However, OPD staff believe that with the unique combination of physical, cognitive, emotional, and interpersonal instruction the POTs will receive, it will enhance their success in the academy and OPD and the City of Oakland will reap the benefits of increased academy completion rates among POTs, beginning with the 187<sup>th</sup> and continuing with subsequent academies.

Additional retention efforts include:

- Revision of the OPD Academy Policy Manual to achieve greater consistency with POST training standards.
- To mitigate the possibility of unfair and biased treatment towards recruits by members of the Field Training Officer (FTO) Program and/or other organizational members, access to information related to recruit performance is limited to and ONLY shared between the Academy Director, Training Sergeant, and Recruit Training Officers (RTO).
- Establishing a mentoring program designed to empower academy applicants, POTs, and newly sworn police officers by permitting these groups to select from a list of senior officers who have volunteered to be career mentors. Mentor selection is based upon biographical information about the senior officer (mentor).
- Confidential exit interview assessments are required in order to obtain comprehensive insight from a recruit who fails to complete the academy. This meeting and the

information gleaned from it is used to improve subsequent academy planning and training.

- Elimination of the 960-hour limitation on recruit academy training per student, per fiscal calendar year, which enables the Department to hire POTs prior to the beginning of the academy and provide them with pre-training to enhance academy success.
- Build out advancing racial equity academy modules into the academy.
- Provide more reality-based training that mirrors contemporary events that law enforcement contends with.

Below are the number of POTs who entered and completed basic recruit academies from 2018 to present, excluding the current 185<sup>th</sup> academy that began July 12, 2021, broken down into categories of female, male, and race/ethnicity:

**Table 1: Female OPD POT Entrants Demographics; 2018-Present**

Race	Started the Academy (2018-Present)	Completed the Academy: 2018-Present	Percent	Did Not Complete the Academy: 2018-Present	Percent
Asian	8	5	62.50%	3	37.50%
Black	6	2	33.33%	4	66.67%
Hispanic	28	17	60.71%	11	39.29%
Other	0	0	n/a	0	n/a
White	14	10	71.43%	4	28.57%
<b>Total</b>	<b>56</b>	<b>34</b>	<b>60.71%</b>	<b>22</b>	<b>39.29%</b>

**Table 2: Male OPD POT Entrants Demographics; 2018-Present**

Race	Started the Academy (2018-Present)	Completed the Academy: 2018-Present	Percent	Did Not Complete the Academy: 2018-Present	Percent
Asian	50	37	74.00%	13	26.00%
Black	48	28	58.33%	20	41.67%
Hispanic	87	60	68.97%	27	31.03%
Native American	1	1	100.00%	0	0.00%
Other	3	2	66.67%	1	33.33%
White	55	39	70.91%	16	29.09%
<b>Total</b>	<b>244</b>	<b>167</b>	<b>68.44%</b>	<b>77</b>	<b>31.56%</b>

Enhancements have also been made to the FTO program with an emphasis on retention, which includes:

- A 6-week transitional course that provides newly sworn officers with additional instruction. The course provides new teachings, as it reinforces and builds on academy training.
- A focus group feedback that provides the FTO program with information input.
- Confidential exit interview assessments are required in order to obtain comprehensive insight from the officer trainee who fails to complete FTO. This meeting, and the



information gleaned from it, are used to improve subsequent planning and training for the FTO Program.

- FTO Inner Perspective and Federal Bureau of Investigation – Law Enforcement Executive Development Association (FBI-LEEDA) instructional and leadership training is provided to FTOs to increase their skillset by making them more effective trainers.

Below are the number of officers who entered and completed the FTO program from 2018 to present, excluding the current 185<sup>th</sup> academy that began July 12, 2021, broken down into categories of female, male, and ethnicity.

**Table 3: Female FTO Entrants Demographics; 2018-Present**

Race	Started the Academy (2018-Present)	Completed the Academy: 2018-Present	Percent	Did Not Complete the Academy: 2018-Present	Percent
Asian	2	2	100%	0	0%
Black	1	1	100%	0	0%
Hispanic	13	13	100%	0	0%
Other	1	1	100%	0	0%
White	9	9	100%	0	0%
<b>Total</b>	<b>26</b>	<b>26</b>	<b>100%</b>	<b>0</b>	<b>0%</b>

**Table 4: Male FTO Entrants Demographics; 2018-Present**

Race	Started the Academy (2018-Present)	Completed the Academy: 2018-Present	Percent	Did Not Complete the Academy: 2018-Present	Percent
Asian	27	16	59.26%	11	41%
Black	24	16	66.67%	8	33%
Hispanic	49	33	67.35%	16	33%
Other	10	9	90.00%	1	10%
White	21	18	85.71%	3	14%
<b>Total</b>	<b>131</b>	<b>92</b>	<b>70.23%</b>	<b>39</b>	<b>30%</b>

As stated earlier in this report, amid growing calls for police reform and national debate over deadly use of force, police departments are struggling to retain and attract officers, and OPD is not immune from what many have agreed is a hiring crisis in the law enforcement profession. However, OPD will continue to work towards attracting a diverse police force, increasing success rates in the academy and FTO program, and addressing factors that lead to an increase in attrition in order retain a workforce reflective of the community of Oakland.

### ***Policy Options Regarding Refunds from Trainees who Resign from OPD Academies***

The Memorandum of Understanding (MOU) between the City of Oakland and the Oakland Police Officers' Association outlines the process related to repayment of training cost for POTs who separate from the Department before five years of service. Below is the excerpt from the MOU detailing this process:

*“Police Office Trainee Training Costs. The parties recognize that in the past a substantial number of persons have accepted the benefit of training at the Oakland Police Academy and then have voluntarily separated from service to join other safety agencies or have decided for personal reasons that police work is not their preference. The purpose of this provision is to insure that the recruit either accept a commitment of service to the City or be responsible for costs associated with Academy training. Thus, the parties agree that any member who, prior to completing five years of service, voluntarily separates from service with the department shall be responsible for reimbursing the City, on a full or prorata basis, for up to \$11,000 of the cost of his/her training at the Police Academy. To the extent this amount exceeds the maximum that may be legally, recovered, the City shall be entitled to recover only the maximum allowable under the law. A schedule of the members' reimbursement responsibility is set forth as follows:*

*Length of Service - Percentage of Repayment Due:*

*Separation prior to 1 year: 100% repayment of the \$11,000;  
 Separation after 1 year, but before completing the second year: 80% repayment of the \$11,000;  
 Separation after 2 years, but before completing the third year: 60% repayment of the \$11,000;  
 Separation after 3 years, but before completing the fourth year: 40% repayment of the \$11,000;  
 Separation after 4 years, but before completing the fifth year: 20% repayment of the \$11,000.  
 Separation after 5 years: 0% repayment.*

*Repayment shall be due and payable at the time of separation and the City shall deduct any amounts owed under this provision from the employee's final paycheck. If said deduction does not fully reimburse the City for outstanding costs, the balance shall thereupon be due and owing.*

*A member shall not be deemed to have voluntarily separated under this provision if the member can demonstrate that at the time of separation a personal emergency or other extreme facts requiring an absence from service which could not be reasonably accommodated by either a leave of absence or a request for re-employment upon cessation of the emergency or extreme facts. A demonstrated health problem of member or of a person in the member's immediate family is an example of such an emergency.”*

The City cannot collect more than the \$11,000 in training costs, as outlined in the MOU, for police officers who do not adhere to the five-year commitment requirement.

***Recruitment and training related to Recommendation #37 from the Reimagining Public Safety Task Force, which creates a collaborative and multidisciplinary approach to crisis response using cross functional teams.***

Recommendation #37 from the Reimagining Public Safety Task Force recommends instituting a cross functional team to approach crisis response, including OPD, the Department of Violence Prevention, and community partners. The academy offers a minimum of 20 hours of cultural competency and community relations training. In this training, instructors often invite community members to speak or serve on a panel. Additionally, OPD requires that recruits in academies participate in community projects. The current academy will participate in Dimond District 2-Star Market's Thanksgiving Outreach program. Trainees will also participate in the Oakland Police Officer Association's Christmas basket program, where toys and food are given to those in need.

### **PUBLIC OUTREACH / INTEREST**

No public outreach was necessary for this report beyond standard City Council noticing requirements. However, this report addresses OPD efforts to

### **COORDINATION**

There was no interdepartmental coordination involved in the preparation of this report.

### **SUSTAINABLE OPPORTUNITIES**

***Economic:*** There are no economic opportunities identified in this report.

***Environmental:*** There are no environmental opportunities identified in this report.

***Race and Social Equity:*** This report provides valuable information to the Oakland community regarding efforts to ensure the inclusion of under-represented groups in OPD. This report contains information of public interest as it directly relates to OPD efforts to recruit and hire a highly qualified and diverse workforce that reflects the Oakland Community and improves police-community relationships.

Edward D. Reiskin, City Administrator  
Subject: Informational Report On OPD Training Academies  
Date: August 16, 2021

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**ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That The City Council Receive An Informational Report From The Oakland Police Department On Efforts To Improve Retention And Graduation Rates Of Academy Recruits To Become Officers In The Oakland Police Department, Including Data Regarding What Has Been Implemented And Planned Interventions To Improve Rates Of Completion Of Field Training; Also Provide Information On Plans To Improve Selection Of Applicants, Especially Oakland Residents, Who Are More Likely To Remain And Succeed.

For questions regarding this report, please contact Kiona Suttle, Deputy Director, Bureau of Services, at [ksuttle@oaklandca.gov](mailto:ksuttle@oaklandca.gov).

Respectfully submitted,



LeRonne L. Armstrong  
Chief of Police  
Oakland Police Department

Reviewed by:  
Kiona Suttle, Deputy Director  
OPD, Bureau of Services

Prepared by:  
Bruce Stoffmacher, Legislation + Privacy Manager  
OPD, Research and Planning Section



# SAFE RE-OPENING UPDATE

A safe & healthy workplace for City employees and the public



CITY OF  
OAKLAND

#oaklandlovelife

August 26, 2021

## City Drafts Mandatory Employee Vaccination Policy *Proof of vaccination will be required by October 15*

Dear City Staff,

To provide a safe and healthy workplace for our employees and their families, protect the public we serve, and reduce the risk of community transmission—and in alignment with public health guidance—today I released a [Draft Mandatory Vaccination Policy](#) to our labor partners for their review and comment.

The public health data is clear: vaccination is the most effective tool we have to prevent the spread of the COVID-19 virus, protect against hospitalizations and death, and bring an end to this pandemic that has killed 4.4 million people around the globe. Vaccinations are safe and effective and, at this point, essential; they are free and [easy to get](#).

Public health experts at the Federal, State, and local levels warn that COVID-19 poses a more significant risk to individuals who are not fully vaccinated. Current cases in Alameda County are [more than three times higher among individuals who are not vaccinated](#) compared to those who are.

Under the policy, all employees must, as a condition of employment: (1) report their vaccination status to the City no later than October 15, 2021; and (2) be fully vaccinated and verify that vaccination status to the City not later than November 1, 2021, unless the employee has applied for an exemption, and unless stricter State or Federal legal requirements apply. In summary:

- **The Decision** to mandate vaccination as a condition of employment is based on strong recommendations from Alameda County Public Health, the California Department of Public Health, the CDC, and the recent rise in COVID-19 cases.
- **The Goal** is to secure employee and community health and safety.
- **Who is Covered.** The policy applies to all City workers, both full- and part-time, interns, and volunteers.
- **Deadline for Verification.** The City is requiring employees to submit their vaccination status by October 15, 2021. This allows sufficient time for the final vaccination dose to become effective and for the employee to achieve “fully vaccinated” status by the November 1, 2021, effective date.
- **Effective Date of Full Vaccination Status.** November 1, 2021 is the effective date of the requirement for employees to be fully vaccinated (as defined in the policy).
- **On Paid Time.** City workers can take up to 2 hours paid time to for each vaccination.

- **Exemption.** The policy incorporates a system for requesting exemptions for medical reasons or for sincerely held religious beliefs.
- **Testing in lieu of vaccination (limited to those granted exemption).** Accommodations for exemptions may include frequent periodic testing.
- **Deadline for Exemption Request.** Application for an exemption must also be submitted by October 15, 2021, to allow for consideration and processing of exemption requests before the November 1, 2021 fully vaccinated effective date.
- **Union Partners.** The City is working closely with our labor partners for comment and impacts discussion.

In addition to requesting feedback from our labor partners, we are in the process of testing a new online portal for employees to upload their proof of vaccination. Following the comment period and launch of the portal, the final policy will be announced and implemented.

Thank you for your continued vigilance about wearing masks, washing hands, getting vaccinated, and following public health guidance. By following these practices, we can reduce transmission of COVID-19; keep ourselves, each other, our families, and our community healthy; and move past this pandemic that has disrupted every aspect of our lives. We **will** get through this—together.

Ed

## Vaccination News

- On Monday, the U.S. Food and Drug Administration ([FDA](#)) [approved the first COVID-19 vaccine](#), formerly known as Pfizer-BioNTech and now called Comirnaty, for individuals 16 years and older. In a statement, the FDA said, “The public can be very confident that this vaccine meets the high standards for safety, effectiveness, and manufacturing quality the FDA requires of an approved product.”
- [How High Vaccination Rates are Protecting Parts of California](#)—a report from the New York Times shows that “counties with above-average levels of vaccination have some of the lowest COVID-19 hospitalization rates.”
- COVID vaccines are safe, free, and effective. Click [here](#) to find out where to get a vaccine and get answers to your questions.



OPD NEWS: August 30, 2021

## OPD Investigators Need Your Help After A Violent Weekend

The Oakland Police Department (OPD) is working diligently to solve two homicides from last weekend. The first homicide occurred just after 2:30 AM, on August 27, 2021, in the 1400 block of 20th Avenue. The second, occurred just after 2:30 AM on August 29, 2021, in the 1900 block of Broadway. In both instances, the victim's identity is being withheld pending notification to the next-of-kin.

Anyone with information can contact the Homicide Section at (510) 238-3821 or the TIP LINE at (510) 238-7950.

Officers are also investigating nearly a dozen shootings that occurred citywide. One incident left the victim with life-threatening injuries, after being shot just before 6:00 PM on August 28, 2021, in the 5200 block of College Avenue. A second victim was listed in critical condition. Officers are looking for the person(s) responsible for that shooting.

Investigators are also looking into a reported shooting during a sideshow in East Oakland early this morning. Officers made two arrests, recovered two firearms and towed four vehicles at the illegal sideshow.

Today Chief LeRonne L. Armstrong spoke with community members and business owners in some of the impacted areas on how the community can partner with OPD to address the violence. To hear the Chief's full statement click the YouTube link <https://youtu.be/CLYGqYnEaVw> .

**#OPDCARES** initiative is about working together as a community to help stop the tragic loss of life and reduce the level of violence in our city. Collectively, we want to ensure Oaklanders and our visitors are safe in our community. When there is a loss of life in Oakland, it impacts us all.





## **Additional Officers Will be Added to OPD's Homicide Section**

**OPD NEWS: September 2, 2021**

Today, Oakland Police Chief LeRonne L. Armstrong discussed the increase in the city's violent crimes and homicides. At the start of the news conference, Chief Armstrong held a moment of silence for 87 seconds, one second for each life lost in Oakland this year. That's one life lost every three days in Oakland. This same time last year, 64 lives were lost in our City.

The Oakland Police Department (OPD) Homicide Section has investigated 87 homicides so far in 2021. That's more than in all of 2014 (79), in all of 2015 (83), in all of 2016 (85), in all of 2017 (71), in all of 2018 (67), in all of 2019 (75). Due to the increasing number of homicides, Chief Armstrong has reassigned six officers to work in the homicide section.

OPD investigators are working around the clock to solve these cases. In August, OPD arrested seven homicide suspects, all of whom were charged by the Alameda County District Attorney's Office.

Assaults with a firearm are also on the rise; OPD has investigated more than 400 incidents this year. That's up nearly 50% over the same time in 2020.

The Department is also seeing a surge in armed robberies and carjackings. There have been more than 700 robberies and an increase of carjackings by 100% to 329 for the year.

Investigators say a recent trend in robberies is where multiple suspects are driving in vehicle(s) and confronting victims. In several cases, one or two suspects exit the vehicle and commit the crime while the driver waits in the vehicle. Once the robbery is completed, the suspects re-enter the vehicle and drive off.

Investigators arrested 19 robbery suspects last month, and 195 so far this year. Investigators point to multiple [tips to reduce your risk](#) and encourage residents and businesses to enroll in [Oakland's Camera Registry](#)

Also, officers have recovered more than 800 firearms from Oakland Streets.

The Chief is committed to working with community members, business owners, and clergy to reduce violent crime in Oakland.

You can see the Chief's full news conference at the link below.



**OPD News: September 10, 2021**

### **Community Members Assist Police in Arresting a Suspected Drunk Driver Who Critically Injured Two Children**

The Oakland Police Department is investigating a traffic collision that occurred on September 9, 2021, just after 8:30 PM, in the area of 38<sup>th</sup> Avenue and International Boulevard. Upon arrival, officers discovered three vehicles were involved in the crash. Two children were ejected from one of the involved vehicles.

The preliminary investigation indicates that a minivan with nine victims was traveling northbound on 38<sup>th</sup> Avenue approaching International Boulevard. At that same time, a Pontiac G6 was traveling eastbound on International Boulevard in the bus lane at a high rate of speed. Through video surveillance, evidence, and witness statements, it appears that the Pontiac G6 ran the red light as the minivan was traveling through the intersection. The Pontiac G6 collided with the minivan. The force of the impact caused two children to be ejected from the minivan. The Pontiac G6 came to a stop after colliding with a third parked vehicle which was occupied.

The Oakland Fire Department and Falck Ambulance arrived at the scene and rendered emergency aid. In all 10 people were transported to area hospitals. Six of those injured were children in the minivan. The two (ages 9 and 2) who were ejected are listed in critical condition with severe head trauma.

The driver of the Pontiac G6 attempted to leave the area on foot after the collision. Thankfully, residents in the area were able to detain him until OPD officers arrived on the scene.

It appears alcohol is a factor in this collision. The driver of the Pontiac G6 is being held for DUI and hit and run.

This incident is still under investigation. Anyone with information is asked to contact the Oakland Police Department Traffic Investigation Unit at (510) 777-8570.

To reduce and deter excessive speeding on our main thoroughfares, OPD has held 10 Traffic Safety Special Operations in East Oakland within the last 12 months. The most recent Traffic Safety Operations occurred on August 27<sup>th</sup> and September 3<sup>rd</sup>. Working with Alameda County Sheriff's Office, OPD issued 35 citations ranging from DUI arrests to Cellphone violations.

We ask our community members to continue reaching out and informing OPD regarding excessive speeding across the city.



**CITY OF OAKLAND | POLICE COMMISSION**  
250 FRANK H. OGAWA PLAZA, SUITE 6302 • OAKLAND, CA 94612

### Current Committees

Standing Committee	Commissioners
Outreach	Dorado, Hsieh, Jordan
Personnel	Jackson

Ad Hoc Committee	Commissioners
Annual Report	Jackson
Budget	Dorado, Jackson
Community Policing OPD 15-01	Dorado, Harbin-Forte, Hsieh
CPRA Director Performance Evaluation	Dorado, Milele, Jackson
Inspector General Search	Jackson, Milele, Peterson
Mental Health Model	Dorado
Militarized Police Equipment	Gage, Garcia, Jordan
Missing Persons Policy	Jackson, Jordan
OBOA Allegations Investigation	Harbin-Forte, Jackson
Police Chief Goals and Evaluation	Garcia, Milele, Peterson
Racial Profiling Policy	Dorado, Jackson, Milele
Rules of Procedure	Gage, Garcia, Harbin-Forte
White Supremacists and Other Extremist Groups	Dorado, Harbin-Forte, Jackson



## CITY OF OAKLAND

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

Police Commission

To: Oakland Police Commission  
From: Rules of Procedure Ad Hoc Committee  
Date: 16 September 2021  
RE: New Chapter 8 for Commission Rules of Procedure

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### **RECOMMENDATION**

The Rules of Procedure Ad Hoc Committee (Committee) requests that the Oakland Police Commission (Commission) adopt the attached amendments to the Commission's Rules of Procedure to add Chapter 8, titled "Ad Hoc Committees."

### **BACKGROUND**

The Rules of Procedure Ad Hoc Committee is comprised of Commissioners Henry Gage III (Co-Chair), Brenda Harbin-Forte (Co-Chair), and Sergio Garcia. The Committee was formed to propose improvements to Commission operations and to formalize Commission procedures by drafting and proposing amendments to the Commission's Rules of Procedure.

The Committee is engaged in a three-phase project designed to provide a formal framework for the future operation of Commission ad hoc committees. Phase One, outlined in the attached document, proposes guidelines that will act as a foundation for ad hoc committee management. Phase Two, (not yet presented for debate) will include a framework for policy review activities conducted by Committees. Phase Three (not yet presented for debate) will include guidance for public engagement conducted by Committees engaged in policy review activities.

These planned amendments to the Commission's Rules of Procedure are intended to provide consistency to committee activities and ensure that Commissioners, city stakeholders, and the public have a clear understanding of how to participate in Commission policy review and track the Commission's policy workflow.

### **SUMMARY**

The Commission lacks sufficient staff support to field standing committees for the majority of its policy review projects. As a result of this resource limitation, the Commission has relied heavily on ad hoc committees to conduct policy review activities, and to make recommendations for Commission action. While ad hoc committees have provided the Commission with a necessary degree of flexibility, their use has also resulted in justified criticism.

Under the Brown Act, standing committees must hold open meetings and provide notice of their meetings to the public in the same way that a regular or special Commission meeting must be agendaized and noticed. Ad hoc committees are not subject to the same publicity requirements, and the lack of agendas and other permanent written materials makes it difficult for the public to keep track of ad hoc committee activities. Until the Commission is adequately staffed, the continued use of ad hoc committees should be made more consistent, and subject to reasonable requirements for reporting and

public engagement.

The attached proposal provides a necessary set of foundational rules. If adopted, these rules will:

- Ensure that the task and purpose of an ad hoc committee is clearly stated when the committee is formed;
- Outline the authority of all committee members (both Commissioners and Featured Community Participants);
- Set minimum intervals within which committees are expected to meet;
- Require written reporting from committees when updating the Commission on the progress of their activities; and
- Require the Commission to dissolve committees when they have completed their assigned tasks.

## **ANALYSIS**

The Police Commission has been entrusted with the authority to set policy for the Oakland Police Department, subject to the limitations of City Charter Section 604. The exercise of this power requires that the Commission delegate a great deal of responsibility to its constituent committees. It is in the best interests of the Commission to develop a clear, standardized protocol for how committees are expected to conduct their business.

The proposed rules represent a modest, but important step towards creating a more consistent policy review workflow, providing opportunities for varying levels of public engagement, and ensuring the creation of a permanent record of committee activities that can be referenced by future members of the Commission and the public at large.

Oakland Police Commission  
16 September 2021  
Item: \_\_\_\_\_

**CITY OF OAKLAND  
POLICE COMMISSION  
RULES OF ORDER**

**ORIGINAL VERSION APPROVED 12.27.2017  
AMENDED 8.23.2018  
AMENDED 9.13.2018  
AMENDED 5.19.2019  
AMENDED 2.25.2021  
AMENDED 9.16.2021**

**DRAFT**

## **CHAPTER 8 - AD HOC COMMITTEES**

**Rule 8.1 Formation of Ad Hoc Committees.** The Commission Chair shall appoint and remove members of committees in accordance with Rule 2.15 of the Commission's Rules of Order. When forming an ad hoc committee ("Committee"), the Chair shall clearly state the Committee's task and purpose. When making appointments, the Chair shall ensure a balanced allocation of Committee assignments so that all Commissioners handle a fair share of Commission work.

**Rule 8.2 Ad Hoc Committee Chair.** Commissioners serving on a Committee shall select one of their number to serve as Committee Chair. Committee Chairs shall have responsibility and discretion for the preparation and presentation of committee reports, the scheduling and management of Committee meetings, the scheduling and management of any public hearings conducted by the Committee, and the solicitation of Featured Community Participants.

**Rule 8.3 Authority of Commissioners Serving on Ad Hoc Committees.** Commissioners serving on a Committee have full voting authority on each such Committee. Only Commissioners may make motions or engage in other parliamentary procedures, and only Commissioners may vote on motions.

**Rule 8.4 Featured Community Participants in Ad Hoc Committees.** Upon recommendation of a Committee Chair, the Commission Chair shall appoint members of the public, including former Commissioners, to serve on Committees. Such appointees shall be referred to as Featured Community Participants in a particular Committee. Featured Community Participants shall provide advice and suggestions for the consideration of the Committee, and may participate in discussions and debate. Featured Community Participants are not considered "public officials" when serving on a Committee, and shall not make motions, vote on Committee action, or engage in other parliamentary procedures. Individuals who serve as Featured Community Participants shall follow the direction of the Committee Chair, and shall not disseminate Committee information or documents without the express written permission of the Committee Chair.

**Rule 8.5 Ad Hoc Committee Meetings.** Committees shall meet at least once per month, unless the Committee votes that a particular monthly meeting is unnecessary. The Committee Chair shall set the schedule and frequency of Committee meetings, and shall have discretion to determine how to engage public participation, and whether a meeting of the Committee shall be open to the public generally or limited to Featured Community Participants.

**Rule 8.6 Ad Hoc Committee Recommendations.** A Committee shall determine, by majority vote of its voting members, all proposals and recommendations to be presented to the Commission for review and adoption. Committee recommendations to the Commission shall be accompanied by a brief memorandum that includes: (1) the Committee's recommendation and the action requested of the Commission, (2) a summary of the effect of the recommendation, if adopted, and (3) the Committee's reasoning in support of its recommendation.

**Rule 8.7 Ad Hoc Committee Status Updates.** The Chair of the Commission shall agendaize a status update from each Committee at least once per month, unless the Committee has presented or will present a formal recommendation for final Commission action within the same month. Status updates shall be accompanied by a brief memorandum that includes, at minimum: (1) an explanation of the current status of the Committee's projects, (2) the steps necessary to bring the project back to the Commission for further action, and (3) the date by which the Committee plans to present a proposal for recommended action to the Commission. If the Committee has completed its task, the update shall also include a request for the Commission to dissolve the Committee.



~~ORIGINAL VERSION APPROVED 12.27.17  
AMENDED 8.23.18  
AMENDED 9.13.18  
AMENDED 5.19.19  
AMENDED 2.25.21~~

~~CITY OF OAKLAND~~

~~POLICE COMMISSION~~

~~RULES OF ORDER  
Resolution Adopting Amended Rules of Order  
for the Oakland Police Commission~~

~~ORIGINAL VERSION APPROVED 12.27.2017  
AMENDED 8.23.2018  
AMENDED 9.13.2018  
AMENDED 5.19.2019  
AMENDED 2.25.2021  
AMENDED 9.16.2021~~

~~Resolution Adopting Amended Rules of Order  
for the Oakland Police Commission~~

~~Introduced by Oakland Police Commission Ad Hoc Rules Committee  
(Commissioner Henry Gage, Co-Chair, Commissioner Brenda Harbin-Forte,  
Co-Chair, and Commissioner Sergio Garcia)~~

~~WHEREAS, the Police Commission of the City of Oakland hereby declares that the  
business before it is to be conducted in an orderly, efficient and collaborative manner  
to facilitate sound Commission and public deliberation and decision making; and~~

~~WHEREAS, the following Rules of Order seek to provide for: (1) reasonable time for  
public input and comment on agenda items at Commission meetings; (2) thorough  
consideration of policy proposals; (3) problem-solving opportunities among staff,  
Commissioners and the public; (4) an agenda that is managed efficiently and  
effectively; and (5) predictable discussion times for debate regarding agenda items;  
and~~

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~~WHEREAS, in recognition of these goals, the Commission desires to establish these Amended Rules of Order for the conduct of Commission operations and meetings; and~~

~~WHEREAS, the Brown Act (Government Code Section 54950, et seq.) and Oakland's Sunshine Ordinance (Oakland Municipal Code Section 2.45.040) authorize the Commission to prescribe reasonable rules and regulations for conducting its meetings; and~~

~~WHEREAS, in December 2017, August 2018, September 2018, and May 2019, the Commission properly previously adopted and amended various rules of procedure, and now desires to further amend these rules; now therefore be it~~

~~RESOLVED: That the Commission hereby adopts these Amended Rules of Order in their entirety; and be it~~

~~FURTHER RESOLVED: That in accordance with the Oakland City Charter and the Oakland Municipal Code, the following are established as the Amended Rules of Order for the conduct of Oakland Police Commission operations and meetings.~~

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**Police Commission Pending Agenda Matters List**

	A	B	C	D	E	F	G	H
1	Pending Agenda Matter	Date Placed on List	Duties/Deliverables	Additional Information/Details	Priority Level	Timeline/Deadline	Scheduled	Lead Commissioner(s), if any
2	Commissioner Trainings	1/1/2018	<p>Complete trainings mandated by City Charter section 604 (c)(9) and Enabling Ordinance section 2.45.190</p> <p>Some trainings have deadlines for when they should be completed (within 3 months, 6 months, etc.)</p> <p>Several trainings were delivered in open session and have been recorded for future use</p>	<p>The following trainings must be done in Open Session:</p> <ol style="list-style-type: none"> <li>1. California's Meyers Milias Brown Act (MMBA) and Public Employment Relations Board's Administration of MMBA (done 3.12.20)</li> <li>2. Civil Service Board and Other Relevant City Personnel Policies and Procedures (done 2.27.20)</li> <li>3. Memoranda of Understanding with Oakland Police Officers Association and Other Represented Employees (done 4.22.21)</li> <li>4. Police Officers Bill of Rights (done 12.12.19; 2021)</li> </ol>	<b>High</b>	<b>COMPLETED (as to current commissioners)</b>		

Police Commission Pending Agenda Matters List

	A	B	C	D	E	F	G	H
1	Pending Agenda Matter	Date Placed on List	Duties/Deliverables	Additional Information/Details	Priority Level	Timeline/Deadline	Scheduled	Lead Commissioner(s), if any
3	Confirming the Process to Hire Staff for the Office of Inspector General	5/17/2019	Per the Enabling Ordinance: The City shall allocate a sufficient budget for the OIG to perform its functions and duties as set forth in section 2.45.120, including budgeting one (1) full-time staff position comparable to the position of Police Program and Audit Supervisor. Within thirty (30) days after the first Inspector General is hired, the Policy Analyst position and funding then budgeted to the Agency shall be reallocated to the OIG. All OIG staff, including the Inspector General, shall be civil service employees in accordance with Article IX of the City Charter.	This will require information presented from the City Administrator's Office.	High			
4	Finalize Bylaws and Rules	1/24/2019			High	COMPLETED		Gage
5	Hire Inspector General (IG)	1/14/2019	Hire IG once the job is officially posted	Pending Measure LL revisions to be included in the November 2020 ballot. Recruitment and job posting in process.	High			Jackson
6	Modify Code of Conduct from Public Ethics Commission for Police Commission	10/2/2018		On code of conduct for Commissioners there is currently a code that was developed by the Public Ethics Commission.	High	COMPLETED		
7	Neighborhood Opportunity and Accountability Board (NOAB) Update	5/13/2021	Receive a report on the Neighborhood Opportunity and Accountability Board which launched in April 2020	Tabled from May 13, 2021 meeting	High	July 22, 2021		

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8	Notification of OPD Chief Regarding Requirements of Annual Report	1/1/2018	Commission must notify the Chief regarding what information will be required in the Chief's annual report	<p>The Chief's report shall include, at a minimum, the following:</p> <ol style="list-style-type: none"> <li>1. The number of complaints submitted to the Department's Internal Affairs Division (IAD) together with a brief description of the nature of the complaints;</li> <li>2. The number of pending investigations in IAD, and the types of Misconduct that are being investigated;</li> <li>3. The number of investigations completed by IAD, and the results of the investigations;</li> <li>4. The number of training sessions provided to Department sworn employees, and the subject matter of the training sessions;</li> <li>5. Revisions made to Department policies;</li> <li>6. The number and location of Department sworn employee-involved shootings;</li> <li>7. The number of Executive Force Review Board or Force Review Board hearings and the results;</li> <li>8. A summary of the Department's monthly Use of Force Reports;</li> <li>9. The number of Department sworn employees disciplined and the level of discipline imposed; and</li> <li>10. The number of closed investigations which did not result in discipline of the Subject Officer.</li> </ol> <p>The Chief's annual report shall not disclose any information in violation of State and local law regarding the confidentiality of personnel records, including but not limited to California Penal Code section 832.7</p>	<b>High</b>	June 14, 2018 and June 14 of each subsequent year		Jackson
9	OPD to Provide a 30 Day Snapshot on the Effectiveness of SO 9202	2/27/2020		On 2.27.20, at the request of OPD the Commission considered and approved SO 9202 which amends the section in SO 9196 regarding Type 32 reportable force	<b>High</b>			



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10	Performance Reviews of CPRA Director and OPD Chief	1/1/2018	Conduct performance reviews of the Agency Director and the Chief	The Commission must determine the performance criteria for evaluating the Chief and the Agency Director, and communicate those criteria to the Chief and the Agency Director one full year before conducting the evaluation. The Commission may, in its discretion decide to solicit and consider, as part of its evaluation, comments and observations from the City Administrator and other City staff who are familiar with the Agency Director's or the Chiefs job performance. Responses to the Commission's requests for comments and observations shall be strictly voluntary.	High	Annually; Criteria for evaluation due 1 year prior to review		Jackson
11	Prioritization of OPD Policies for Review	5/13/2021	Discuss and prioritize OPD policies for review	Tabled from May 13, 2021 meeting; discussed June 24, 2021 - Gage to reorganize by category	High			
12	Recommendations for Community Engagement	5/13/2021	Discuss recommendations for community engagement	Tabled from May 13, 2021 meeting	High			
13	Reports from OPD	10/6/2018	Commission to decide on what reports are needed prior to receiving them.	Receive reports from OPD on issues such as: response times; murder case closure rates; hiring and discipline status report (general number for public hearing); any comp stat data they are using; privacy issues; human trafficking work; use of force stats; homelessness issues; towing cars of people who sleep in their vehicles	High	Ongoing as appropriate		

**Police Commission Pending Agenda Matters List**

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1	Pending Agenda Matter	Date Placed on List	Duties/Deliverables	Additional Information/Details	Priority Level	Timeline/Deadline	Scheduled	Lead Commissioner(s), if any
14	Request City Attorney Reports	1/1/2018	Request the City Attorney submit semi-annual reports to the Commission and the City Council	Request the City Attorney submit semi-annual reports to the Commission and City Council which shall include a listing and summary of: 1. To the extent permitted by applicable law, the discipline decisions that were appealed to arbitration; 2. Arbitration decisions or other related results; 3. The ways in which it has supported the police discipline process; and 4. Significant recent developments in police discipline. The City Attorney's semi-annual reports shall not disclose any information in violation of State and local law regarding the confidentiality of personnel records, including but not limited to California Penal Code 832.7	High	Semi-annually Next one should be October, 2021		Jackson
15	Sloan Report	5/13/2021	Discuss the independent review commissioned by the City as part of a Step 3 Grievance procedure related to the Pawlik investigation	Tabled from May 13, 2021 meeting, discussed June 24, 2021 -- Commission counsel submitted report	High	COMPLETED		
16	Training on Brown Act, Sunshine Ordinance, and Parliamentary Procedure	5/21/2021	Receive a training session for Commissioners to understand rights and obligations under the Brown Act, the Sunshine Ordinance, Robert's Rules of Order, and the Commission's Rules		High	COMPLETED		
17	Community Policing Task Force/Summit	1/24/2019			Medium			Dorado

**Police Commission Pending Agenda Matters List**

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18	CPAB Report			Receive any and all reports prepared by the Community Policing Advisory Board (hereinafter referred to as "CPAB") and consider acting upon any of the CPAB's recommendations for promoting community policing efforts and developing solutions for promoting and sustaining a relationship of trust and cooperation between the Department and the community.	Medium			
19	Determine Outstanding Issues in Meet and Confer and the Status of M&C on Disciplinary Reports	10/6/2018		Need report from police chief and city attorney. Also need status report about collective bargaining process that is expected to begin soon.	Medium			
20	Free Gun Trace Service	1/27/2020		This service was mentioned at a meeting in 2019.	Medium			Dorado
21	Offsite Meetings	1/1/2018	Meet in locations other than City Hall	The offsite meetings must include an agenda item titled "Community Roundtable" or something similar, and the Commission must consider inviting individuals and groups familiar with the issues involved in building and maintaining trust between the community and the Department.	Medium	Annually; at least twice each year		Dorado, Jackson
22	OPD Supervision Policies	10/2/2018		Review existing policy (if any) and take testimony/evidence from experts and community about best practices for supervisory accountability. Draft policy changes as needed. In addition, IG should conduct study of supervisor discipline practices. In other words, how often are supervisors held accountable for the misconduct of their subordinates.	Medium			
23	Public Hearing on OPD Budget	1/1/2018	Conduct at least one public hearing on the Police Department's budget	Tentative release date of Mayor's proposed budget is May 1st of each year.	Medium	COMPLETED for 2021		
24	Report from OPD Regarding Found/Confiscated Items	7/12/2019	OPD will report on the Department's policy for disposition of found/confiscated items.	This came about through a question from Nino Parker. The Chief offered to present a report at a future meeting.	Medium			

**Police Commission Pending Agenda Matters List**

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25	Report Regarding OPD Chief's Report	1/1/2018	Submit a report to the Mayor, City Council and the public regarding the Chief's report in addition to other matters relevant to the functions and duties of the Commission	The Chief's report needs to be completed first.	Medium	Annually; once per year		
26	Review Budget and Resources of IAD	10/10/2018		In Discipline Training it was noted that many "lower level" investigations are outsourced to direct supervisors and sergeants. Leaders in IAD have agreed that it would be helpful to double investigators and stop outsourcing to Supervisors/Sgts. Commissioners have also wondered about an increase civilian investigators. Does the Commission have jurisdiction over this?	Medium			
27	Review Commission's Outreach Policy	4/25/2019			Medium			Dorado
28	Revise Contracts with CPRA and Commission Legal Counsels	10/10/2018		The contract posted on the Commission's website does not comport with the specifications of the Ordinance. As it stands, the Commission counsel reports directly to the City Attorney's Office, not the Commission. The Commission has yet to see the CPRA attorney's contract, but it, too, may be problematic.	Medium			
29	Revisit Standing and Ad Hoc Committee Assignments	10/29/2019	The chair will create adhoc and staff standing committees as appropriate		Medium	Ongoing		Jackson
30	Amendment of DGO C-1 (Grooming & Appearance Policy)	10/10/2018		DGO C-1 is an OPD policy that outlines standards for personal appearance. This policy should be amended to use more inclusive language, and to avoid promoting appearance requirements that are merely aesthetic concerns, rather than defensible business needs of the police department.	Low			
31	Annual Report	1/1/2018	Submit an annual report each year to the Mayor, City Council and the public		Low	Spring, 2022		Jackson

**Police Commission Pending Agenda Matters List**

	A	B	C	D	E	F	G	H
1	Pending Agenda Matter	Date Placed on List	Duties/Deliverables	Additional Information/Details	Priority Level	Timeline/Deadline	Scheduled	Lead Commissioner(s), if any
32	Assessing Responsiveness Capabilities	10/6/2018		Review OPD policies or training regarding how to assess if an individual whom police encounter may have a disability that impairs the ability to respond to their commands.	Low			
33	CPRA Report on App Usage	10/10/2018		Report from staff on usage of app.	Low	August, 2021		
34	Creation of Form Regarding Inspector General's Job Performance	1/1/2018	Create a form for Commissioners to use in providing annual comments, observations and assessments to the City Administrator regarding the Inspector General's job performance. Each Commissioner shall complete the form individually and submit his or her completed form to the City Administrator confidentially.	To be done once Inspector General position is filled.	Low			
35	Discipline: Based on Review of MOU	10/6/2018		How often is Civil Service used v. arbitration? How long does each process take? What are the contributing factors for the length of the process? How often are timelines not met at every level? How often is conflict resolution process used? How long is it taking to get through it? Is there a permanent arbitration list? What is contemplated if there's no permanent list? How often are settlement discussions held at step 5? How many cases settle? Is there a panel for Immediate dispute resolution? How many Caloca appeals? How many are granted? What happened to the recommendations in the Second Swanson report?	Low	2023		

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1	Pending Agenda Matter	Date Placed on List	Duties/Deliverables	Additional Information/Details	Priority Level	Timeline/Deadline	Scheduled	Lead Commissioner(s), if any
36	Discipline: Second Swanson Report Recommendations – Have These Been Implemented?	10/6/2018		Supervisor discipline Process for recommending improvements to policies, procedures and training, and to track and implement recommendations Tracking officer training and the content of training Comparable discipline imposed – database of discipline imposed, demonstrate following guidelines IAD civilian oversight for continuity in IAD Improved discovery processes Permanent arbitration panel implemented from MOU OPD internal counsel Two attorneys in OCA that support OPD disciplines and arbitration Reports on how OCA is supporting OPD in discipline matters and reports on arbitration Public report on police discipline from Mayor’s office OIG audit includes key metrics on standards of discipline	Low			
37	Feedback from Youth on CPRA App	10/10/2018		Get some feedback from youth as to what ideas, concerns, questions they have about its usability.	Low			
38	OPD Data and Reporting			Review and comment on the Department’s police and/or practice of publishing Department data sets and reports regarding various Department activities, submit its comments to the Chief, and request the Chief to consider its recommendations and respond to the comments in writing.	Low			
39	Outreach Committee: Work with Mayor's Office and City Admin to Publicize CPRA App	10/10/2018			Low			
40	Overtime Usage by OPD - Cost and Impact on Personal Health; Moonlighting for AC Transit	1/1/2018		Request Office of Inspector General conduct study of overtime usage and "moonlighting" practices.	Low			

**Police Commission Pending Agenda Matters List**

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1	Pending Agenda Matter	Date Placed on List	Duties/Deliverables	Additional Information/Details	Priority Level	Timeline/Deadline	Scheduled	Lead Commissioner(s), if any
41	Proposed Budget re: OPD Training and Education for Sworn Employees on Management of Job-Related Stress	1/1/2018	Prepare for submission to the Mayor a proposed budget regarding training and education for Department sworn employees regarding management of job-related stress. (See Trauma Informed Policing Plan)	Review and comment on the education and training the Department provides its sworn employees regarding the management of job-related stress, and regarding the signs and symptoms of posttraumatic stress disorder, drug and alcohol abuse, and other job-related mental and emotional health issues. The Commission shall provide any recommendations for more or different education and training to the Chief who shall respond in writing consistent with section 604(b)(6) of the Oakland City Charter. Prepare and deliver to the Mayor, the City Administrator and the Chief by April 15 of each year, or such other date as set by the Mayor, a proposed budget for providing the education and training identified in subsection (C) above.	Low	4/15/2021		
42	Public Hearings on OPD Policies, Rules, Practices, Customs, General Orders	1/1/2018	Conduct public hearings on Department policies, rules, practices, customs, and General Orders; CPRA suggests reviewing Body Camera Policy		Low	Annually; at least once per year		Dorado
43	Social Media Communication Responsibilities, Coordination, and Policy	7/30/2019		Decide on social media guidelines regarding responsibilities and coordination.	Low			