

# CITY OF OAKLAND



## Oakland Police Commission

250 FRANK H. OGAWA PLAZA · OAKLAND, CALIFORNIA 94612

**TO:** NSA Parties

**FROM:** Oakland Police Commission (OPC)  
Dr. Tyfahra Milele, Chair

**SUBJECT:**

**DATE:** September XX, 2023

### **I. Introduction**

This memorandum provides an update to the work that the Oakland Police Commission (“Commission”) has done to reform the internal affairs investigation process of the Oakland Police Department (“OPD”) since the Commission’s previous memorandum dated March 30, 2023. This memorandum also outlines community-driven recommendations to OPD that target the cultural problems that OPD has been wrestling with since the Negotiated Settlement Agreement (“NSA”) began. It is not a discussion unique to Oakland; experts around the country have identified the need to address police culture to implement effective reform.<sup>1</sup>

The Commission has unique features as an oversight body. It is civilian-led and community centered. It is independent from the City of Oakland (“City”). A majority of the commissioners are selected by a panel of community members. The Commission regularly solicits community input and takes on community oversight priorities. In this way, the Commission provides a formal community voice to the issue of OPD oversight.

After the April 11, 2023 NSA case management conference in *Delphine Allen, et al., v. City of Oakland, et al.*, the Commission sought to address the concerns raised by the Court. Specifically, the Commission sought to bring a *community perspective* to the cultural problem of “OPD’s inability to police itself, to hold itself and its officers accountable without fear or favor.”<sup>2</sup>

The Commission’s advisory committee on the NSA (“ad hoc”) began a series of meetings in June 2023 to develop recommendations to the Commission for how OPD should tackle its cultural problems in the context of NSA Task 5 and 45. This memorandum will discuss these recommendations in Section III.

### **II. Follow-up items from March 30, 2023 OPC NSA Memorandum**

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<sup>1</sup> Highlights: Improving Police Culture in America, last accessed on September 9, 2023 at <https://www.brookings.edu/articles/highlights-improving-police-culture-in-america/>

<sup>2</sup> April 11, 2023, CMC TX 5:23-6:6.

On March 30, 2023, the Commission set forth the outline of a plan for the Commission to reform the internal affairs investigation process of OPD and ensure the City of Oakland is in sustained compliance with NSA Task 5 and 45. That plan included laying the groundwork for an eventual transition of the Court Monitor to Full Community Oversight of OPD by the Commission. That groundwork ensured that information was adequately and timely transmitted to the Commission so that it could engage in the community oversight envisioned by the drafters of Measure LL and Measure S1.

The recommendations in the Commission’s March 30, 2023 memorandum underscored a basic principle: in order to effectively oversee the Department, the Commission needs the same level of timely access to information about the Department as the Court Monitor does, especially when there are investigations into command level staff.<sup>3</sup> Only with the same level of access to information could the Commission fulfill the community oversight bestowed upon it by Measures LL and S1. The information gap the Commission found itself in earlier this year created an inability to exercise its functions and duties in a timely manner.

In line with that principle, on August 24, 2023 the Commission has voted to have Commission Counsel to:

- Formally request from the City of Oakland a broadened definition of “serious incident”<sup>4</sup> to include internal investigations into command-level staff;
- Invite the Court Monitor to give regular closed session briefings to the Police Commission, the CPRA, and the OIG on the status of Compliance Issues;
- Create a standard practice for the Commission to have access to confidential files and records related to its oversight function; and
- Create an improved system of managing requests for confidential records and files to ensure adequate responses have been given to the Commission’s requests for confidential documents.

### **III. NSA Memo 2.0**

As an initial matter, the ad hoc identified OPD’s current culture and identified goals for the culture in the future. As Oakland Mayor Sheng Thao stated at the April CMC, the best way to change OPD’s culture is by “continuing to weave the Department into the fabric of Oakland and Oakland’s culture” such that it is “part of the community and that it is truly sharing the community’s values.”<sup>5</sup> By identifying clear goals for the culture of OPD, the path to changing Oakland’s culture becomes clearer.

The ad hoc then identified three priorities for recommendations which are discussed below. These recommendations do not line up with the IAD procedures under scrutiny in Task 5 and Task 45. However, the ad hoc believes that these recommendations will change OPD in a way

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<sup>3</sup> While the Commission does have similar access to the Department as the Court Monitor, there are procedural steps to obtaining information that hamper the Commission’s timely access to such materials (e.g., a Commission vote on a request for information for a body that meets twice a month, Brown Act compliant notice of such a request.)

<sup>4</sup> Oakland Municipal Code § 2.45.010.

<sup>5</sup> April 11, 2023, CMC TX 47:9-21.

that will substantially improve the cultural problems in Task 5 and Task 45 that cannot be solved with changes in policy alone.

For each priority, the ad hoc sought to answer three (3) questions: 1) What is this topic and how does this recommendation contribute towards culture change? 2) How or what might the department do to implement this topic? 3) What sources or experts do we need to bring to the table to present?

a. Oakland Police Department's Culture.

From a public perspective, Oakland Police Department's culture is problematic. In April 2023, the court observed that there was "a cultural inability of OPD to police itself, to hold itself and its officers accountable without fear or favor; a culture that lacks integrity; a culture that plays favorites and protects wrongdoers that undercuts the foundations of constitutional policing."<sup>6</sup> In addition, members of the ad hoc also identified the following characteristics of that problematic culture:

- A history of racial profiling and racial disparities that still permeate today's culture;
- One that lacks demonstrated empathy for the community it serves;
- One that lacks professionalism;
- One whose actions fosters mistrust of the police in the community.

We hope that over time, Oakland Police Department's culture will be one that lives up to its own mission statement<sup>7</sup>, vision<sup>8</sup>, and core values<sup>9</sup> outlined in its strategic plan.<sup>10</sup> Mayor Thao also identified values she hoped would eventually be weaved into OPD: "a culture of compassion, a culture of service, and a culture of accountability."<sup>11</sup> In addition, members of the ad hoc also identified the following characteristics that they hoped OPD's future culture would have:

- Demonstrated empathy equitably applied across all people in a culturally competent manner;
- Ensuring the physical and mental wellness of officers so that they can be their best selves while serving the community;
- Inspire trust in the community through officer conduct, transparency, and accountability;
- A focus on customer service that allows the community to feel that justice is served, and public safety is achieved.

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<sup>6</sup> April 11, 2023, CMC TX 5:23-6:6.

<sup>7</sup> Mission Statement: "The Oakland Police Department's Mission is to provide police service focused on public safety and the *sanctity of life*, to hold ourselves accountable to a high standard of conduct, efficiency and efficacy, and to promote mutual respect between the Department and the Communities of Oakland." (emphasis in original)

<sup>8</sup> Vision: "We will work in partnership with our Community, recognize the successes of our staff, build a team of professionals who are trained and developed to provide top quality Service, hold ourselves and each other accountable, and continually seek to be the exemplar for 21<sup>st</sup> Century Constitutional Policing, Community engagement, and positive employee morale within the police profession."

<sup>9</sup> Core Values: Fairness, Integrity, Respect, Service, and Teamwork.

<sup>10</sup> Oakland Police Department Strategic Plan 2021-2024, accessed at <https://cao-94612.s3.amazonaws.com/documents/OPD-Strategic-Plan-Final-Armstrong-v2.pdf>.

<sup>11</sup> April 11, 2023, CMC TX 47:12-16.

b. Acknowledging bad past and bad past practices

i. What is this topic and how does this recommendation contribute towards culture change?

The first step in change is acknowledging the need for change. Here, OPD's need for change stems not just from the reforms required by the NSA, but the history of officer misconduct that have plagued OPD since the NSA began. Some of these include "The Riders," sexual abuse involving "Celeste Guap," the killing of Joshua Pawlik, the Instagram scandal of 2021, and the series of IAD investigations surrounding Sgt. Michael Chung and Det. Phong Tran. OPD should acknowledge its previous failures and integrate those failures and the lessons learned into all aspects of their organization: training, promotional interviews, assignment changes, and regular information updates. The Commission can hold hearings on this issue pursuant to its authority under Oakland City Charter section 604(b)(2), propose changes to procedure or custom under section 604(b)(4), or review and comment on such procedures and customs under 604(b)(6).

This recommendation would contribute to changing culture in multiple ways. First, it would instill a baseline knowledge of OPD's troubled past. This would ensure that OPD members understand why reform efforts have been underway and equip them with the historical knowledge to avoid the missteps and misconduct of their predecessors. It would also allow officers to have a deeper understanding of why the community mistrusts them, and to work towards changing that mistrust.<sup>12</sup>

Second, incorporating the bad past and bad past practices of OPD into examinations for career movement would incentivize officers to maintain ethical baselines in their work and their thinking. If OPD officers want to progress in their career at OPD or learn advanced skills in different assignments, they must demonstrate that have learned the lessons from OPD's past failures so that they are not doomed to repeat them.<sup>13</sup> In turn, this would encourage more officers to learn about OPD's sordid history with the community, deepening their understanding about the community's trauma in relation to OPD and increasing the chances that officers will empathize with the community, hopefully changing their thinking and their behavior.

ii. How or what might the department do to implement this topic?

OPD should conduct department-wide training to all staff, sworn and non-sworn, on every scandal and major failure since the NSA began. This training should include the historic facts,

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<sup>12</sup> "A community member shared a relevant anecdote with the ad hoc. The community member spoke to a young and upstanding officer who did not understand the tension between the community and OPD. The community member suggested to the officer that to learn about the history between the community and OPD the officer should read "The Riders Come Out at Night," a book by Ali Winston and Darwin BondGraham. The young officer declined." To the community member, this exchange reflected the officer's lack of empathy and lack of understanding about the historical trauma that OPD had inflicted on the local community. This, in turn, would lead to greater potential divisions between the officer and community members in future interactions. Other community members shared their concerns that it reflected the officer's unwillingness to learn a truth other than what they learned on the job or in the academy.

<sup>13</sup> An OPD representative shared an observation that while most officers are aware of the mission statement, vision, and core values of the Department, only those who are taking exams for career advancement can express a deeper understanding of what those ideals mean and how to incorporate them into daily practice.

the violations of policy, the ethical problems underlying those violations, and the changes to policy and practice that have resulted from officer misconduct.

OPD currently has two trainings that could be adapted to fit this new training: 1) a smaller module for recruits going through the police academy where Jim Channin, Ali Winston, and Darwin BondGraham come and speak to the recruits about the NSA, and 2) Project Reset<sup>14</sup>, a four (4) week course developed in 2021 that seeks to empower police officers to become culture change agents within the department. These trainings should be developed in conjunction with local members of the community with the intent to change culture.<sup>15</sup>

As a second recommendation, OPD should take those key lessons from each example of major misconduct and incorporate them into every examination that involves a promotion, lateral movement, or assignment out of the default patrol assignment. This does not require that OPD members be tested on historical facts of these scandals, but they could if they so choose and should consider doing so. At a minimum, they should be examined with hypotheticals presenting similar ethical quandaries so that the lessons learned from these incidents are demonstrated by the officer candidates.

As a third recommendation, OPD should regularly debrief major misconduct incidents and exemplary ethical conduct, to the extent possible, with command staff, mid-level managers, and line officers. This includes activity that occurs within OPD, in other local departments, or those that have reached national news.

iii. What sources of experts do we need to bring to the table to present?

The ad hoc recommends the following sources or experts to develop these changes:

- Experts in Organizational Change to help OPD implement this recommendation
- Jennifer Eberhardt: who has developed previous studies and reports on OPD and is the Co-Director of the Stanford SPARQ program
- Keith Ellison, Minnesota Attorney General and author of the book: Break the Wheel: Ending the Cycle of Police Violence.
- Jim Chanin and John Burris, Plaintiffs' Attorneys in the NSA
- Ali Winston and Darwin BondGraham, authors of the book "The Riders Come Out at Night"
- Darlene Flynn, Executive Director of the Race and Equity Department in the City of Oakland
- Community members as presenters

c. Revising the Discipline Policy and Discipline Matrix

i. What is this topic and how does this recommendation change culture?

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<sup>14</sup> Project Reset is a training program kicked off in 2021 with a pilot group of officers. Developed in conjunction with resources from the Stanford SPARQ program (Co-Director Jennifer Eberhardt). "The main purpose of the training is to harness the science of culture - how it can be created, reinforced, and changed - to empower police officers to become change agents within the department."

<sup>15</sup> The ad hoc recognizes that there are many logistical challenges presented when recommending a department-wide training, including who creates the training, how much it will cost, and how it will be implemented. It is the intent of the ad hoc to continue developing this training in the weeks after the September CMC.

There is a perception that officers escape discipline and accountability due to loopholes and accountability gaps in general policy, discipline policy, and the discipline matrix. There is also a perception that progressive discipline<sup>16</sup> allows misconduct to persist because it permits misconduct to escape severe punishment. Thus, the NSA ad hoc recommends that OPD examine the discipline policy and discipline matrix to ensure that these loopholes are fixed and perceptions dispelled. The Commission can hold hearings on this issue pursuant to its authority under Oakland City Charter section 604(b)(2), propose changes to procedure or custom under section 604(b)(4), or review and comment on such procedures and customs under 604(b)(6).

Closing loopholes and accountability gaps in the discipline matrix will ensure that OPD members that violate policy do not escape discipline. The consistent application of discipline will deter future violations of OPD policy, especially in those areas where progressive discipline has been eliminated. This has the effect of creating a culture of accountability.

ii. How or what might the department do to implement this recommendation?

In connection with community partners, OPD should examine the discipline policy and discipline matrix to ensure that it covers all of the misconduct it seeks to punish, has appropriate discipline ranges for said misconduct, uses progressive discipline in appropriate scenarios, and whether OPD should integrate other discipline options as described in the Reimagining Public Safety Task Force Report recommendation #32.

iii. What sources or experts do we need to bring to the table to present?

The ad hoc recommends the following sources or experts to develop these changes:

- Training Bulletin V-T.1 and V-T.2 and Discipline Matrix
- Internal Investigation Procedure Manual
- April 23, 2020 Oakland Police Department Police Discipline Disparity Study<sup>17</sup> by Hillard Heintz
- CURYJ – violence interrupters; why is there untruthfulness; why is this happening.
- Kevin Grant, Oakland Unite’s Violence Prevention Coordinator<sup>18</sup>
- Reygen Cunningham, Co-Director at The California Partnership for Safe Communities, former City of Oakland Ceasefire Project Manager
- Former OPD Captain Ersie Joyner
- Pastor Michael McBride, Live Free USA
- Family Violence Law Center
- Reimagining Public Safety Task Force Report recommendation #32 - MOR and Discipline Matrix both need to undergo a comprehensive update.

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<sup>16</sup> A process that employers use to correct performance or behavior involving a series of increasingly formal steps that provide clear and constructive feedback to give employees an opportunity to correct issues before escalating punishment.

<sup>17</sup> Accessed at

<https://cao-94612.s3.amazonaws.com/documents/Hillard-Heintze-Report-for-the-Oakland-Police-Department-04-23-20-1.pdf>

<sup>18</sup> <http://oaklandunite.org/blog/kevin-grant-honored-with-california-peace-prize/>.

- Contact person: Christina Petersen ([christina.r.petersen@hotmail.com](mailto:christina.r.petersen@hotmail.com)), OPD Organization and Culture, Accountability/Discipline WG
  - Recommendation Summary: ([https://drive.google.com/file/d/1L2k9\\_Vr3zm3ZUOd\\_y0b9q56SctZ3pb2K/view](https://drive.google.com/file/d/1L2k9_Vr3zm3ZUOd_y0b9q56SctZ3pb2K/view))
  - Recommendations: (<https://drive.google.com/file/d/1NTrxKGhpEbGxJKjylfB8ImUXABhK7U8f/view>)
- d. Promoting ethical leadership and management for low- to mid-level managers (aka sgts) (also mentioned in NSA Memo 1.0)
- i. What is this topic and how does this recommendation change culture?

In organizations like police agencies, culture is enforced, maintained, and protected by employees within four (4) to eleven (11) years. The most important group of those employees in a police agency are field training officers and sergeants. Field training officers and sergeants promote culture and behavior in the manner they supervise, manage, and train. They guide newer officers in the way they police and the standards they enforce.

Promoting ethical candidates to field training officers and sergeants leads to ethical leadership and management, which in turn leads to enforcing ethical standards. Training field training officers and sergeants to ethically lead and manage their subordinates will instill such ethical behavior in officers.

Although the NSA has tasks devoted to these subjects (Task 42, Task 43), the ad hoc determined that additional focus should be on promoting ethical leadership and management for these low- to mid-level managers. Although OPD is in compliance with Task 42 and Task 43, the ad hoc determined that the NSA tasks have reached the limit on the amount of culture change they can create and sought to go further. The Commission can hold hearings on this issue pursuant to its authority under Oakland City Charter section 604(b)(2), propose changes to procedure or custom under section 604(b)(4), or review and comment on such procedures and customs under 604(b)(6).

- ii. How or what might the department do to implement this topic?

OPD should examine its current screening and promotional exams for field training officers, sergeants, and captains. It should ensure that a significant component of the screening and examination centers around ethical behavior.<sup>19</sup> OPD should integrate community input in screening and promotional exams for field training officers and sergeants so that screening for ethical behavior is not just based on the number of official complaints that have been made.

OPD should also examine how it manages and trains its field training officers, sergeants, and captains. It should examine its supervisory training courses to ensure that it reinforces the ethical behavior it expects, create scenario based ethics training and testing, develop non-standard organizational leadership trainings, and closely monitor and supervise field training officers,

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<sup>19</sup> This recommendation is also in line with the Reimagining Public Safety Task Force Recommendation #22 – Updating the Promotional Process for OPD officers.

sergeants, and captains to ensure that its values of integrity and accountability are being reinforced throughout the entire department.

iii. What sources or experts do we need to bring to the table to present?

- IACP Code of Ethics;<sup>20</sup>
- Chief Charles Ramsey
- The President's Task Force on 21<sup>st</sup> Century Policing<sup>21</sup> (May 2015);
- Reimagining Public Safety Task Force # 22:  
<https://drive.google.com/file/d/19ETpSnGMqAc6nVqgVD5tN-wLyBI2mlaU/view>
- Jim Chanin and John Burris, Plaintiffs' Attorneys in the NSA
- Ali Winston and Darwin BondGraham, authors of the book "The Riders Come Out at Night"
- Deacon Reginald W. Lyles

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<sup>20</sup> <https://www.theiacp.org/resources/law-enforcement-code-of-ethics>.

<sup>21</sup> [https://cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf)