

Office of the Inspector General
City of Oakland



**Public Synopsis:
Report of Review**

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OFFICE OF THE INSPECTOR GENERAL: REPORT OF REVIEW

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Date: Thursday, March 2, 2023

Dear City of Oakland Residents,

With voters' overwhelming support and passage of Measure S1, in 2020, the Office of the Inspector General (OIG) was established to independently audit the Oakland Police Department's (OPD) compliance with the law as well as its departmental policies and procedures. This was done so with the intent to strengthen the City's ability to decrease and manage instances of police misconduct. The OIG's oversight jurisdiction also includes, but is not limited to, auditing and reviewing the Community Police Review Agency's (CPRA or Agency) complaint and investigative process as well as their compliance with the City Charter and Oakland Municipal Code.¹ Upon the completion of an audit, review or evaluation, the OIG provides reports and recommendations to the Oakland Police Commission (Commission), or another action holder for consideration and implementation.

At the end of September 2022, the OIG received a telephone call from an Oakland resident inquiring about the availability of mediation programs for community members seeking to remedy an issue with an OPD officer. This request prompted the OIG to review the status of the required mediation program outlined in the Oakland Municipal Code – sections §2.45.070 and §2.46.060.

Mediation is a form of dispute resolution that allows space for impacted parties to meet and discuss ways to resolve a problem. An effective OPD mediation program would provide community members and the subject officer the opportunity to safely and directly discuss the resident's complaint, via a third-party mediator. This effort could greatly assist the OPD in bridging current gaps that exist between residents and officers. Through face-to-face discussions focused on the sharing of viewpoints, increased empathy, and reconciliation, parties are better equipped to find common ground. A mediation program would also offer an additional opportunity to resolve complaints from members of the public in a timely and appropriate manner, which directly aligns with Task 5-Complaint Procedures for the Internal Affairs Division.

¹ The Community Police Review Agency present day is generally referred to as the CPRA however, the Enabling Ordinance and City Auditors report refers to the Community Police Review Agency as the Agency. Therefore, the OIG wanted to ensure the reader understood that both CPRA and Agency refers to the Community Police Review Agency. Additionally, the particular section reference in the Municipal Code is referred to as the Enabling Ordinance.



OIG Review & Methodology

Review of the City Municipal Code (Enabling Ordinance)

The OIG identified two sections within the City of Oakland Municipal Code, that outlines the duties and functions of the Commission, CPRA, and OPD, as it relates to the development and implementation of a mediation program. This section of the Municipal Code is also referred to as the Enabling Ordinance.

Pursuant to the City of Oakland’s Enabling Ordinance Chapter §2.45 Oakland Police Commission, Section §2.45.070(N) – Functions and duties of the Commission states:

In association with the Agency Director and in consultation with the Chief or the Chief's designee, establish rules and procedures for the mediation and resolution of complaints of misconduct. To the extent required by law, the City will provide the employee unions with notice of such proposed bylaws prior to implementation.

Additionally, pursuant to the Enabling Ordinance Chapter §2.46 Community Police Review Agency, Section §2.46.060 – Mediation Program states:

Upon the agreement of the Chief, the Agency Director, the complainant(s) and the subject officer(s), the Agency Director shall appoint a qualified mediator with at least five (5) years of experience in mediating employment or other relevant disputes, from a conflict resolution company or association that employs mediators, to mediate a final resolution of the complaint in accordance with the Commission's established rules and procedures. Any Commissioner, City employee, or former Department sworn officer shall not be appointed mediator. Both the Chief and the Agency Director must approve of any settlement offer before it is proposed to the subject officer and/or before any such offer is accepted.

The above-referenced sections of the Enabling Ordinance were codified in 2018.²

Review of City Reports, Policies and Communications

To ensure relevancy, the OIG reviewed applicable City documents to capture the deferred timeline for the mediation program implementation. On June 1, 2020, the City Auditor published an audit report on the performance of the Commission and CPRA, as required by City Charter. In terms of the mediation program, the audit highlights that the Commission is tasked with establishing the rules and procedures of a Mediation program, per the Enabling Ordinance. In their public report, they state, “[t]he Commission has not established a mediation program for complaints” – and this remains true. The audit also emphasizes the need for the Commission to complete this task as a mediation program “promotes civilian understanding and saves the Agency investigative time.”

While the City Auditor’s report focuses on the Commission’s responsibility to establish rules and procedures of a mediation program; the OIG’s review focus was the responsibility, if any, of CPRA

² At the OIG’s request the City Attorney’s Office reviewed this document prior to public release



and OPD as they will be the primary implementers of the program. To date, the mediation program has not been given a timeline for application nor has the process been initiated.

In December 2022, the OIG sent requests for information to both OPD and CPRA regarding the status of the mediation program. OPD stated they believe the mediation program is an endeavor that should be spearheaded by CPRA. Upon CPRA initiation, OPD should be consulted during the development and implementation phase.³ It must be noted that the Internal Affairs Division departmental general order (DGO) M-3.1 outlines an Informal Complaint Resolution (ICR) process.⁴ According to DGO M-3.1, the ICR process may be used to informally address service complaints or alleged acts of Class II misconduct against departmental personnel that does not indicate a pattern of misconduct.⁵ The intent of the ICR process is to expedite the resolution of less serious types of complaints against members.

Similarly, the CPRA expressed the belief that a mediation program would benefit the community and OPD personnel; however, it does not appear to be a current priority for their office. It should be mentioned that CPRA has recently undergone leadership changes that may have impacted the prioritization of this program.

Lastly, the OIG reviewed the Commission's January 26, 2023, meeting agenda. Item 12 on the agenda, Upcoming/Future Agenda Items summarizes duties and responsibilities for the Commission, CPRA and the OIG. The document outlines that CPRA via §2.45.070(N) of the Enabling Ordinance is responsible for establishing rules and procedures for mediation or the resolution of complaints of misconduct. There is currently no timeline associated with this task.⁶

OIG Review of External Mediation Programs

The OIG plans to take advantage of national best practices through ongoing thought partnership with external agencies and oversight practitioners. Currently, some law enforcement and police oversight agencies have reported success with mediation programs including the Pasadena Police Department, the City of Seattle's Office of Police Accountability, and the Atlanta Citizen Review Board (ACRB), which are highlighted below.

Pasadena Police Department

In 2005, the Pasadena Police Department (PPD) created a mediation program with the goal to build better relationships and understanding between the Pasadena community and the police department.⁷ PPD's reputable program was also reviewed and celebrated by the Community Oriented Policing Services (COPS) of the U.S. Department of Justice in 2008.⁸ For this program, PPD partnered with the Western Justice Center (WJC) to help convene the mediation sessions

³ Enabling Ordinance §2.45 and §2.46 are specific to the Police Commission and Community Police Review Agency responsibilities respectfully.

⁴ <https://public.powerdms.com/oakland/tree/documents/442>

⁵ According to Training Bulletin V-T Discipline Policy: Class II offenses shall include all minor misconduct offenses

⁶ Police Commission Agenda for January 26, 2023, Agenda can be found at <https://www.oaklandca.gov/meeting/police-commission-regular-meeting-1-26-23>

⁷ <https://www.cityofpasadena.net/police/mediation-program/>

⁸ <https://cops.usdoj.gov/ric/Publications/cops-p147-pub.pdf>



between the PPD officer and community member, using an impartial third party as a facilitator for the session. Additionally, all police supervisors are offered ten hours of conflict resolution training.

PPD's mediation program has innovative concepts that Oakland could consider when creating its own mediation program, including but not limited to:

- Providing translation services during the mediation, which is critical for diverse communities like Oakland
- Ensuring a civilian's immigration status remains confidential throughout the mediation process
- Having a sound planning and design process that includes a broad spectrum of stakeholders such as the police unions, community members, and other subject matter experts

City of Seattle Office of Police Accountability

The mediation program for the Seattle Police Department (SPD) is housed within the Office of Police Accountability (OPA).⁹ The OPA is Seattle's investigative arm for SPD misconduct. Like PPD, their mediation program is a voluntary and confidential process that is facilitated by a neutral third party.

Additionally, participants of the mediation process are required to sign a legally binding confidentiality agreement. This is done while engaging in the process voluntarily and in good faith to obtain an outcome of mutual understanding. The mediators for the program are selected from a broad range of professional backgrounds that include racial justice, human resources, public service, and law. Mediators are contracted through the King County Office of Alternative Dispute Resolution.

OPA's mediation program presents additional concepts that Oakland could consider when creating its own program, such as:

- Selecting mediators, who are trained to spot existing power dynamics between participants, from a broad range of professions
- Setting clear expectations before participants agree to engage in the process of mediation
- Including an easily digestible flowchart that illustrates the mediation process from start to finish on their website¹⁰

Atlanta Citizen Review Board

On March 13, 2017, the Atlanta Citizen Review Board (ACRB) began a mediation program for the City of Atlanta, so residents and officers may discuss complaints in a neutral setting. In 2021, the National Association of Civilian Oversight of Law Enforcement (NACOLE) in partnership with COPS conducted a case study on ACRB.¹¹ The case study in part reviewed the mediation program services provided by the ACRB. Aspects of the ACRB's mediation program could be helpful to review as the Commission and CPRA explore mediation models for the City of Oakland.

⁹ <https://cops.usdoj.gov/ric/Publications/cops-p147-pub.pdf>

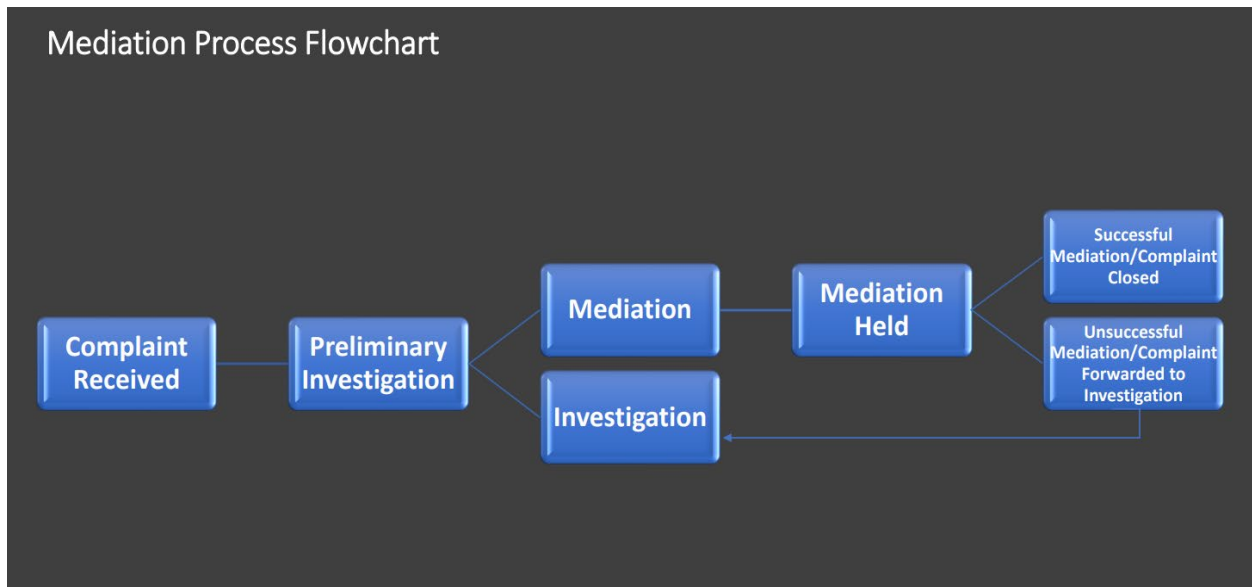
¹⁰ <https://seattle.gov/documents/Departments/OPA/Mediation-Flow-Chart.pdf>

¹¹ NACOLE. 2021. Atlanta Citizen Review Board: Atlanta, Georgia.

NACOLE Case Studies on Civilian Oversight. Washington, DC: Office of Community Oriented Policing Services.



Figure 1 ACRB Mediation Process Flowchart



The OIG also spoke to representatives of NACOLE, who offered ACRB’s model as an option for the City of Oakland to consider, among other mediation programs. Since the Oakland civilian oversight structure is so unique there are several successful mediation models that can be reviewed and taken into consideration as the city’s mediation program is being developed.

Considerations

Distinct from recommendations, considerations require additional research and internal discussion prior to the submission of an appropriate recommendation. The OIG submits the following considerations to the Commission for the development and implementation of Oakland’s mediation program:

- Consider partnering with neighboring civilian oversight entities that also wish to develop a mediation program – this could provide an avenue to share resources and contractual mediators
- Research various funding streams that are available to budding programs, which will help to alleviate any potential budgetary constraints
- Consider requesting technical assistance or guidance from NACOLE or other civilian oversight entities, who already have a solid and robust mediation program in place

Recommendations

The OIG submits the following recommendations for consideration by the Commission for the development and implementation of a required mediation program:

- The Commission, OPD, CPRA, and other key stakeholders should discuss and agree on the parameters of the program, and the priority of its implementation, and identify a pathway to ensure the sustainability of the mediation program



CITY OF OAKLAND

- The Commission, OPD, and CPRA must work together to ensure that a comprehensive implementation strategy and program design/plan are memorialized
- The Commission must collaborate with the OPD, CPRA, community members, and subject-matter experts during the planning and implementation process for an optimal mediation program to be realized

On the authority and context outlined above, the OIG respectfully submitted this report to the Commission on February 6, 2023, for review and response by February 17, 2023. To ensure timely and transparent delivery to Oakland residents, the OIG elected to release this public synopsis without a response from the Commission. The OIG acknowledges the Commission's significant responsibilities, as volunteers in this important work, and encourages the Commission to respond at their earliest convenience.

Sincerely,

Michelle N. Phillips, Inspector General

City of Oakland, Office of the Inspector General

CC: Honorable Mayor Sheng Thao
Honorable Members of the City Council
Honorable Members of the Police Commission
Interim City Administrator G. Harold Duffey