

# CITY OF OAKLAND



## Oakland Police Commission

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**TO:** NSA Parties

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

**SUBJECT:** Discussion Outline of  
Reform Plan to Bring the City  
of Oakland Into Sustained  
NSA Compliance

**DATE:** March 30, 2023

### **Introduction**

This memorandum sets forth the outlines of a plan for the Oakland Police Commission (“Commission”) to reform the internal affairs investigation process of the Oakland Police Department (“OPD”) and ensure the City of Oakland is in sustained compliance with the goal of resolving the need for the Negotiated Settlement Agreement (“NSA”).

The proposals outlined in this memorandum operate on a parallel track with OPD’s own efforts to implement the recommendations made in the Reports of Investigation issued by Clarence Dyer Cohen, LLP related to IAD Numbers 22-0858 and 22-0443 (collectively, “CDC Report”). Those policies will make their way to the Police Commission under its Charter authority to approve or modify OPD policy changes, pursuant to Oakland City Charter Section 604(b)(5). In addition to OPD’s policy changes originating from the CDC Report, the Commission also has identified other policy areas for review during three public forum meetings and a formal solicitation to the public for written submissions in the month of March. Engaged stakeholders have proposed OPD policy changes, among other items, related to sworn officer use of Department-owned vehicles, the Department’s Discipline Matrix, disappearing messaging apps on cell phones, untruthfulness, coverups, failure to report, and body-worn cameras.

This plan builds on the current work by looking at deeper systemic and cultural issues, including those revealed by the major compliance incidents that were the subject of the CDC Report, and by focusing on the Commission’s unique Charter authorities to address those issues over time.

To formulate a final plan to address the issues outlined below, the Commission will identify information gaps the City and OPD can address, grapple in its public meetings with important policy questions, survey its relevant Charter and Municipal Code

authorities, and compile a final incident response plan for review by the NSA Parties and the Court.

The scope of reforms applies to all entities with authority over policing in Oakland, including the Commission itself and the entire City. Years of NSA Court transcripts warn us against artificially separating OPD from the City in implementing needed reforms.

## OUTLINE OF ISSUES AND REFORM PLAN

### A. SYSTEMIC AND STRUCTURAL ISSUES

#### 1. Issue: Transition of the Monitor's Role to Full Community Oversight

Long after the NSA was entered, the overwhelming majority of Oakland voters passed two successive ballot measures to amend the Oakland City Charter (Measure LL in 2016 and Measure S1 in 2020) to create the Commission and codify its authority to oversee the OPD “to ensure that its policies, practices, and customs conform to national standards of constitutional policing.” These ballot measures make clear that Oakland residents want Oaklanders to oversee OPD.

**Proposed Solution:** To honor the will of Oakland voters, the Commission is committed to performing the same functions as the IMT is currently doing, with the eventual goal of ensuring constitutional policing is maintained by monitoring the NSA tasks even after NSA ends. The Commission can exercise all of its Charter authority and can give direction to the two civilian oversight agencies that now report to the Commission as a result of the Charter amendments: the Community Police Review Agency (CPRA), and the Office of the Inspector General (OIG). As envisioned in the Oakland City Charter, the Commission’s exercise of its civilian oversight authority can be informed by directing the OIG to perform audits of a subset of completed IAD investigations (as the IMT is currently doing) to ensure that the public policy goals expressed in Task 5 are being met, and report the audit findings to the Commission so Commission can direct OPD to implement new or revised policies if needed.

Although the CPRA typically investigates public complaints of misconduct and recommends discipline, the Commission has authority to direct the CPRA to conduct parallel investigations of what would otherwise be solely internal affairs investigations, and report its investigation results and proposed discipline to the Commission so that the Commission can take appropriate action. The Charter provides that the CPRA “shall also investigate any other possible misconduct or failure to act of a Department sworn employee, whether or not the subject of a public complaint, as directed by the Commission.” (Oakland Charter Section 604(f)(1)).

The Commission also has authority, with City Council approval, to establish a permanent standing committee that can monitor compliance with all existing NSA tasks (not just Tasks 5 and 45) during Sustainability and in preparation for the eventual resolution of the NSA, after which the standing committee will continue its monitoring work on these same tasks. The Commission previously announced its intention to establish such a standing committee, and that plan is still in place. In short, the Commission should be allowed to exercise its Charter authority to perform the compliance work being done by the Monitor and the Independent Monitoring Team (IMT).

## **2. Issue: Untimely or Absent Notifications and Referrals to the Commission and CPRA**

Dozens of high profile IAD investigations have been handled by outside firms, yet there is no comprehensive policy that formally standardizes these referrals, governs the details of required notice to the other Charter entities in Oakland, or details the process and timeline for the City to implement discipline based on them, particularly discipline of the Police Chief or other non-union police officers. The City has been applying individual provisions of M-03, the OPD General Order for processing and investigating allegations of Department employee misconduct, which on its face does not contemplate dozens of outside referrals.

The Oakland Charter Section 604(f)(1) provides in pertinent part:

[T]he [Community Police Review] Agency shall receive, review and prioritize all public complaints concerning the alleged misconduct or failure to act of all Department sworn employees, including complaints from Department non-sworn employees.

The Agency shall not be required to investigate each public complaint it receives, beyond the initial intake procedure, but shall investigate public complaints involving uses of force, in-custody deaths, profiling based on any of the protected characteristics identified by federal, state, or local law, untruthfulness, and First Amendment assemblies.

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

As a result of CPRA's mandate to investigate *public* complaints, IAD only sends CPRA complaints made by members of the public. Complaints that are initiated within the Department, considered "internal complaints," are not sent to CPRA for investigation.

The Commission could have referred the IAD investigations that were the subject of the CDC Report to the CPRA in early 2022 had the Commission known about the outside referral at the time the City Administrator and Office of the City Attorney referred them to Clarence Dyer Cohen, LLP. Prompt referral to the CPRA would have given its investigators enough time to fully investigate the matter in parallel with the outside investigation and not miss any state-imposed completion deadlines.

**Proposed Solution:** The internal affairs investigation policy, including any policies as part of the M-03 series and those related to referrals to outside investigations, must be reformed. In addition, a broader multi-pronged approach is needed to address the issue. The Chair of the NSA Ad Hoc Committee also serves as Chair of the CPRA Policies Ad

Hoc Committee, and is hereby proposing to fold several conceptual ideas proposed by the CPRA Director into this set of proposed solutions, as follows:

- The Commission should review the referral process for the CPRA to take up non-civilian complaints, as well as the CPRA's policies and approach for taking on complaints that are traditionally handled internally by the Department.
- The City should enter into an MOU to require it to notify the Commission Chair and CPRA in writing whenever an internal complaint is referred to an outside agency for investigation. Such notification shall include sufficient information for the Commission and CPRA to understand all allegations that need to be investigated. The City shall also provide the Commission Chair and the CPRA a copy of any contract entered into with the outside agency.
- The Commission should direct OPD to report to the Commission on a monthly basis the number of public and internal IAD complaints, to track against the CPRA's monthly reported number.
- The Commission should direct OPD to submit all internal Complaint Investigation Reports (CIRs) to the CPRA via email, within 24 hours of initiation, with detailed allegations including brief narratives sufficient for the CPRA to clearly understand the allegations and the applicable policies and provisions of OPD's Manual of Rules.
- The Commission should direct OPD to notify the CPRA via email, within 24 hours of determination, of any criminal allegations or implications that arise during the course of an administrative investigation.
- The Commission should direct OPD to notify the CPRA via email, within 24 hours of any decision being made, to have an outside entity investigate issues or allegations of police misconduct.
- The Commission should direct CPRA to document the numbers, types, and brief narratives of the internal complaints received from IAD.
- The Commission should direct CPRA to investigate mandated allegations for the internal complaints in the same manner as is done with mandated allegations for public complaints.
- The Commission should direct CPRA to investigate any mandated and non-mandated allegations against executive level supervisors ranked Captain or higher.
- The Commission should direct CPRA to determine if there is an administrative investigation that should be conducted in relation to any criminal investigation and to document the rationale for the decision.
- The Commission should direct CPRA to reopen a case and conduct an investigation if the Commission decides, based on a brief narrative of the closed internal cases, that reopening is merited.

### **3. Issue: Lack of a Clear City Administrator Protocol for Serious Incident Notifications to OPC Chair, IG, and CPRA Director**

Related to the general problem of untimely notifications is the lack of a proper protocol for alerting the OPC Chair, CPRA, and the Inspector General of an internal affairs investigation of the Chief of Police, the Assistant Chief, or any Deputy Chief. Such an investigation should be considered a “serious incident,” which is very narrowly defined in the Municipal Code. The City Administrator is responsible under the Municipal Code for developing a “protocol for notifying the Commission Chair, the Agency Director and the Inspector General of serious incidents within forty-eight (48) hours of the Chief knowing or having a reasonable suspicion that a serious incident has occurred.” (OMC 2.45.075.) The protocol also must include “a confidential status report to the Chair of the Commission, the Agency Director, and the Inspector General within ten (10) calendar days of the date on which the serious incident occurred, and a second confidential status report to the Chair of the Commission, the Agency Director and the Inspector General within forty-five (45) calendar days of the date on which the serious incident occurred.”

**Proposed Solution:** As a medium or long-term strategy, the City Council should consider broadening the definition of “serious incident” to include any internal affairs investigation of the Chief, Assistant Chief, and Deputy Chiefs. Recommendation of this revision falls squarely within the Commission’s Charter authority in Charter Section 604(h). If such a protocol is developed while the Monitor is still in place, the City Administrator should include a notification protocol for the City to follow when the Monitor notifies the City that he or the IMT suspect a serious incident has occurred.

### **4. Issue: Lack of City, Monitor, and IMT Coordination with OPC and CPRA**

The lack of thorough and repeated Commission briefings about the Monitor’s concerns in early 2022 calls out for reform in overall approach to empowering civilian oversight. The Commission should have been brought into this matter at a far earlier stage, rather than learning about it from the Monitor’s public status reports. Without prompt and comprehensive notice about the substance of OPD compliance concerns, the Police Commission cannot know what documents to formally request (as it has Charter authority to do) to properly exercise all of its Charter authorities. Delayed notifications, in turn, prevent the Commission from promptly introducing new reforms at the same speed that fast-moving compliance incidents arise (as the Monitor does). For instance, the Commission could have promptly set about reforming investigation policies in early 2022, regardless of whether any OPD officer was ultimately sustained for discipline or dismissal. These revised policies could have already been implemented even before the CDC Report was issued.

**Proposed Solution:** In the short term, the City and OPD (and for the period of time when the Monitor is standing in the shoes of OPD) must immediately be required to provide

regular closed session briefings to the Police Commission and its direct reports on the status of compliance issues that pose a risk to the City's resolution of the NSA.

Over the medium term, the Commission and the City should coordinate to develop a recurring Commission agenda item that requests to receive all personnel documents from the City and OPD related to all its Charter authorities, consistent with Section 604(f)(2), and all three of the Department Heads under the Commission's authority should routinely recommend any confidential files and records related to the Commission's Charter authority that they believe the Commission should be requesting to successfully carry out its oversight authority.

Over the long term, the City may need to revisit Section 604(f)(2) of the Charter and determine if it is inconsistent with the purpose of civilian oversight for the Commission to be required to know about a confidential document it does not have before it can lawfully request and access that document.

## **B. CULTURAL ISSUES:**

### **1. Issue: Chain of Command Instilling a Fear of Insubordination If Subordinate Officers Speak Up**

Subordinate officers fear the prospect of insubordination, which chills their willingness to speak up, even when doing so would help keep Oakland in compliance with its reform tasks. This is a cultural issue that calls for a review of management training and a rethink of any aspects of chain of command culture that could compromise investigation integrity.

**Proposed Solution:** The Commission should review relevant aspects of OPD's management training and help its leadership conduct a rethink of any aspects of chain of command culture that could compromise investigation integrity. OPD and the City should develop an anonymous channel to report investigation integrity issues, so subordinate officers feel more comfortable that they will not face adverse actions for calling attention to compliance concerns. The Commission, the Office of the Inspector General, and the CPRA should have access to the anonymous channel reports to ensure it can properly exercise Department oversight. Establishing this anonymous channel would be consistent with Recommendation #8 in the 2021 report issued by the City's Reimagining Public Safety Task Force, which also mentions anonymous reporting (<https://cao-94612.s3.amazonaws.com/documents/Oakland-RPSTF-Report-Final-4-29-21.pdf>).

### **2. Issue: Lack of Distributed Leadership and Accountability at OPD**

Distributed leadership is a leadership model favoring the shared responsibility and accountability of multiple individuals within a workplace. Under a distributed leadership model, the CDC Report's findings about the Police Chief would have extended to the

entire leadership team, including those who had knowledge of the pertinent events. There should have been documented standards setting the expectation of accountability for every individual in the decision-making chain, as well as witnesses to the decisions, that led to the Department failures culminating in the December 23, 2021 meeting.

**Proposed Solution:** OPD and the Commission must set the expectation going forward that all participants in the chain of decision-making related to internal investigations will be held to account for any issues they observed that compromise investigation integrity and best practices. In the medium term, the Commission should consider whether to require that every level of the chain of decision-makers involved in any given investigation must sign and be responsible for the finished product.

### **3. Issue: Availability of Mental Health Services and Support for Sworn Officers**

Mental health challenges inherent to police work, if left unaddressed, lead to major compliance incidents. One investigation subject described another's symptoms to include night terrors related to job duties. Oakland's officers should get the best support and services we can offer. Untreated mental health issues on a police force have deleterious effects on individual officers, the culture of the entire police force, as well residents and community the force serves.

The City Council vested the Commission with the authority to review, comment, and propose the Department's budget for "the management of job-related stress, and regarding the signs and symptoms of post-traumatic stress disorder, drug and alcohol abuse, and other job-related mental and emotional health issues." (Oakland Municipal Code § 2.45.070(C), (D).)

**Proposed Solution:** The Commission should determine what services are offered and whether proactive outreach ensures officers feel supported in using the services. The Commission should also work to set about fostering a Department culture that rewards officers for self-care and commends them for seeking out and accepting needed services. Accepting mental health services should be standard operating procedures. The Department should explore whether there should be mandated mental health evaluations on a periodic basis. With everyone having to undergo mental health evaluations, there will be less stigma attached to seeking services voluntarily.

### **4. Issue: OPD Officer Perception of Alleged Favoritism in Discipline**

Related to Task 45, the NSA Plaintiffs tie the findings and conclusions in the CDC Report to a general perception among a supermajority of officers that OPD's discipline is not fair. One oft-cited but ambiguous quote from OPD employees is: "who you know, and to which cliques you belong, influence whether an investigation will be sustained and what level of discipline will be administered."

**Proposed Solution:** OPD needs far more granular information about the widely expressed perception of unfair discipline, including information about what OPD



employees perceive as “cliques.” The Commission currently has an Ad Hoc Committee that is tasked with investigating allegations made by the members of the Oakland Black Officers Association (OBOA) that they are subject to more severe discipline than other officers, and will continue to work with an outside investigating firm to review these claims.

## **Conclusion**

The Police Commission is designed to replace the proactive compliance work currently imposed by the Monitor and the Independent Monitoring Team, as the singular civilian oversight body with authority to make policy changes for OPD related to all NSA tasks, and the sole entity named in the City Charter that “shall oversee the Oakland Police Department.” (Charter Section 604(a)(1).)

Without committing to an exclusive list, the Commission should implement its final proposed plan using the following official actions:

- formal action by the Police Commission;
- official MOUs between the Commission, OPD, City officials, City agencies, and any other relevant Charter entities or stakeholders which will be made available to the public;
- new or revised OPD policies, procedures, training bulletins;
- recommendations pursuant to Charter Section 604(h) to the City Council to revise Sections 2.45.00 and 2.46.00 of the Municipal Code;
- seeking budget allocations to ensure and that cost savings from the transition of oversight from the Monitor and IMT are used to fully fund staff for the Commission, as well as the CPRA and the OIG, so they can all carry out their Charter obligations and maintain a proactive approach to reform; and
- recommendations to the City Council to put an additional ballot measure before the voters of Oakland.

Going forward, after the Police Commission approves a plan, implementation must, under the Charter, run through a public-facing, policy-specific ad hoc process that ensures significant input and engagement from members of the public as well as the full Commission, with all final actions to take place after the April 4 Joint Case Management Conference Statement deadline.