



OAKLAND POLICE COMMISSION

SPECIAL MEETING AGENDA

October 24, 2019

6:00 PM

City Council Chamber, 3rd Floor
1 Frank H. Ogawa Plaza, Oakland, CA 94612

I. Call to Order

Chair Regina Jackson

II. Roll Call and Determination of Quorum

Chair Regina Jackson

Excused Absence: Thomas Lloyd Smith

III. Public Comment on Closed Session Items

THE OAKLAND POLICE COMMISSION WILL ADJOURN TO CLOSED SESSION IN CITY HALL BUILDING BRIDGES ROOM, 3RD FLOOR AND WILL REPORT ON ANY FINAL DECISIONS IN THE CITY COUNCIL CHAMBER DURING THE POLICE COMMISSION'S OPEN SESSION MEETING AGENDA.

IV. Closed Session

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE - Gov't Code § 54957(b)

V. Determinations of Closed Session

- a. The Commission will report on any actions taken during Closed Session, as required by law.
- b. Public Comment

VI. Welcome, Purpose, and Open Forum (2 minutes per speaker)

Chair Regina Jackson will welcome and call public speakers. The purpose of the Oakland Police Commission is to oversee the Oakland Police Department's (OPD) policies, practices, and customs to meet or exceed national standards of constitutional policing, and to oversee the Community Police Review Agency (CPRA) which investigates police misconduct and recommends discipline.

VII. Welcome New Commissioners

The Commission will welcome two new members – Commissioner Henry Gage, III and Alternate Commissioner David Jordan. ***This is a new item.***

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

VIII. Police Officers Bill of Rights Training

CRPA Executive Director John Alden will deliver to the Commission training on the Police Officers Bill of Rights. ***This is a new item. (Attachment 8).***

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

IX. Review of Year-to-Date Figures and Future Projections on Commission and CPRA Budgets

The Commission will review the year-to-date figures on the Commission and CPRA budgets and may vote to act on some items. ***This is a new item.*** ([Attachment 9](#)).

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

X. Bey Case Review

The Commission may adopt a resolution authorizing the CPRA Executive Director to enter into a Professional Services Agreement with Knox & Ross Law Group for investigation and review of CPRA cases 07-0538, 13-1062, and 16-0147 for an amount not-to-exceed \$49,999. ***This was discussed on 9.13.18, 10.11.18, 3.14.19, 4.11.19, 5.9.19, 6.13.19, 6.27.19, 7.25.19, 8.22.19, 9.12.19, and 10.10.19.*** ([Attachment 10](#)).

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

XI. Vote to Accept Proposal from Raheem

On October 10, 2019 Raheem submitted a proposal to gather community feedback to inform a revised OPD Use of Force policy. The Commission will vote to accept the proposal and to direct staff to prepare a resolution. ***This was discussed on 10.10.19.*** ([Attachment 11](#)).

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

XII. Legal Counsel RFQ Process

The Commission will discuss the process used to engage outside legal counsel. ***This was discussed on 1.24.19, 4.25.19, and 6.13.19.*** ([Attachment 12](#)).

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

XIII. Subpoena Regarding OBOA Allegations of Racial Discrimination

The Commission will discuss and possibly take action on whether or not to serve a subpoena on Sgt. Smith relating to the Oakland Black Officers Association’s allegations of racial discrimination. ***This is a new item.***

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

XIV. Committee/Liaison/Other Commissioner Reports

This time is set aside to allow Commissioners to present a brief report on their own activities, including service on committees or as liaisons to other public bodies. No action may be taken as a result of a report under this section other than to place a matter for consideration at a future meeting. ***This is a recurring item.***

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

XV. Meeting Minutes Approval

The Commission will vote to approve minutes from May 23, June 13, and June 27, 2019. ***This is a recurring item. (Attachment 15).***

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

XVI. 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 16).***

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

XVII. Adjournment



This meeting location is wheelchair accessible. To request disability-related accommodations or to request an ASL, Cantonese, Mandarin, or Spanish interpreter, please e-mail jrus@oaklandca.gov or call 510-238-3325 or 711 at least five working days before the meeting. Please refrain from wearing scented products to this meeting as a courtesy to attendees with chemical sensitivities.

Esta reunión es accesible para sillas de ruedas. Si desea solicitar adaptaciones relacionadas con discapacidades, o para pedir un intérprete de en español, Cantones, Mandarín, o de lenguaje de señas (ASL) por favor envíe un correo electrónico a jrus@oaklandca.gov o llame al 510-238-3325 o 711 por lo menos cinco días hábiles antes de la reunión. Se le pide de favor que no use perfumes a esta reunión como cortesía para los que tienen sensibilidad a los productos químicos. Gracias.

會場有適合輪椅出入設施。需要殘障輔助設施, 手語, 西班牙語, 粵語或國語翻譯服務, 請在會議前五個工作天電郵 jrus@oaklandca.gov 或致電 510-238-3325 或 711。請避免塗搽香氛產品, 參加者可能對化學成分敏感。

Because some persons are sensitive to certain chemicals, persons attending this meeting are requested to refrain from wearing scented products.



POBRA and Related Laws

Two Main Sets of Laws

1. Penal Code – Sections 830.1 through 832.8 describe some basic rules about employing police officers, including taking complaints from the public about their performance.
2. Government Code – Sections 3300-3313 are called the “Public Safety Officers’ Procedural Bill of Rights.” Also known as POBR, POBAR, or POBRA. These rules control our investigations and discipline process in Oakland.

Obligation to Investigate

Penal Code § 832.5

Requires agencies who employ peace officers to investigate public complaints of alleged police misconduct.

These are considered administrative, not criminal, investigations. But they can look at materials gathered in criminal investigations.

Complaints and related reports or findings are retained for at least five years and are considered personnel records.

CPRA's Duty to Investigate

Oakland Charter

CPRA receives, reviews, and prioritizes **all** public complaints concerning alleged police misconduct.

Mandatory to investigate:

- Use of force
- In-custody deaths
- Profiling based on any protected category
- First Amendment assemblies
- Other possible misconduct, as directed by the Commission

CPRA retains some discretion regarding “other possible misconduct.”
E.g. – investigation of officer DUI

Confidentiality vs Public Disclosure of Investigation Findings

Confidentiality

Many investigation findings remain confidential under Penal Code §832.7.

- Records related to the investigations, or information obtained from those records, are confidential unless they fall within newly-adopted exceptions.
- Although the investigation findings are generally confidential, we can publish statistical data regarding the complaints, and we disclose whether allegations were sustained, not sustained, exonerated, or unfounded, without identifying any individuals who were involved.

Confidentiality vs Public Disclosure of Investigation Findings

Notice of Findings to Complainants

Penal Code § 832.7 requires written notification to complainant of the investigation's disposition within 30 days of the disposition.

There are no laws that say what the complainant can or cannot do with this information.

Confidentiality vs Public Disclosure of Investigation Findings

New Public Disclosure Rules

SB 1421: New public disclosure rules became effective on January 1, 2019, and added four categories of incidents now subject to public disclosure (amendments to Penal Code §§ 832.7 and 832.8).

Confidentiality vs Public Disclosure of Investigation Findings

New Public Disclosure Rules

Two categories may be subject to disclosure regardless of whether or not there are sustained findings:

- Any ***discharge of a firearm*** at a person by a police officer, whether or not there is sustained misconduct.
- Any ***use of force against a person that results in death or “great bodily injury”*** (GBI), whether or not there is sustained misconduct.

Confidentiality vs Public Disclosure of Investigation Findings

New Public Disclosure Rules

Two categories become public records only if there are sustained findings of misconduct, and only after the sustained findings become final – after all appeal processes have been completed or waived. (Penal Code § 832.8)

- Any sustained finding of the “**sexual assault**” of a member of the public by a police officer
- Any sustained finding of “**dishonesty**” by a police officer “directly relating to” 1) the reporting, investigation, or prosecution of a crime; or 2) the reporting or investigation of misconduct by “another officer.”

POBRA – The Statute Governing Administrative Investigations of Police Officers

Government Code § 3300, et seq. is known as the Public Safety Officers Procedural Bill of Rights Act (POBR, POBAR, or POBRA) and provides rights and responsibilities as to administrative investigations into alleged misconduct.

- Covers all employees defined as “peace officers” under the Penal Code. That includes Oakland Police Officers, but not professional non-sworn staff of the Oakland Police Department.
- Does not apply to officers under criminal investigation. But those officers are usually the subject of a separate administrative investigation, which is then subject to POBRA.

Interrogation Rights and Procedures

When Do Rights Apply?

For CPRA purposes, the key provision is that these rights apply because CPRA interrogations can lead to punitive action.

And the Oakland Charter provides that all officers are afforded their “due process and statutory rights,” which includes their POBRA rights.

Interrogation Rights and Procedures

Notice About Nature of the Investigation

The Rule

Officer must be advised of the “nature of the investigation,” reasonably in advance of the interrogation.

Officer is not entitled to a copy of the complaint or to evidence gathered by the investigator the first time they are interviewed.

Interrogation Rights and Procedures

Rights of Subject Officer If Interviewed More Than One Time

Officer is entitled to “notes and recordings,” including any transcribed copies of a prior interview.

Santa Ana ruling in 2017 held that officers are additionally entitled to “any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential.”

CPRA has challenged this ruling and litigation is in process.

Interrogation Rights and Procedures

Timing of the Interrogation

Interrogation should occur during on-duty hours if possible.

Interrogation must be of reasonable length, and officer must be allowed to attend to physical necessities.

Interrogation Rights and Procedures

Right to Representation

Officers have the right to the representative of their choice.

The representative cannot be a person subject to the same investigation.

CPRA cannot question the representative about any information received from the officer.

Officers cannot unreasonably delay the interrogation based on unavailability of a chosen representative.

Representative is more than a “mere observer” and is allowed to speak for the officer.

Interrogation Rights and Procedures

Information That Must Be Provided in Advance of Interrogation

Name and job title of the investigator in charge of the interrogation

Name and job title of any other interrogating investigator

- There cannot be more than two questioners

Names of all other parties in attendance

Other Interrogation Rules

No offensive language.

No threats of punitive action other than threats of disciplinary action for non-cooperation.

Interrogation Rights and Procedures

Right Against Self-Incrimination – Fifth Amendment Right to Remain Silent & “Lybarger” Admonitions

What Triggers the Admonitions?

For the 5th Amendment warning, if, prior to or during an interrogation it is contemplated that an officer may be charged with a criminal offense, the officer must be immediately informed of their Constitutional rights.

For *Lybarger* the admonition is given if an investigation may result in a criminal charge based on misconduct; **or** whenever an officer refuses to answer on grounds the answer may be self-incriminating.

Interrogation Rights and Procedures

*Right Against Self-Incrimination –
Fifth Amendment Right to Remain Silent & “Lybarger” Admonitions*

5th Amendment & Lybarger Warning Elements:

Officer has the right not to incriminate themselves; **but**

Silence may be deemed insubordination and result in discipline in the administrative case, not the criminal case; **and**

Any statement given in administrative interview – “coerced” by the threat of discipline – cannot be used in the prosecution case in chief in subsequent criminal proceedings. (*Lybarger*)

Rights Related to Discipline Decisions

Once the City of Oakland makes its decision to impose discipline, the department must notify the officer in writing within 30 days of that decision.

The first step in that process is known as a *Skelly* hearing.

After the *Skelly* hearing, the discipline is imposed, assuming the City prevails. If the officer prevails, there is no appeal for the City.

Officers subjected to punitive action after the *Skelly* must be given an opportunity for administrative appeal. In Oakland, the POA MOU dictates that this appeal is an arbitration hearing.

Other Rights

Privacy Rights

Officer has absolute right to decline a polygraph.

Qualified right to privacy in financial records.

No disclosure of home address, phone, or photo to the media.

No search of locker or other assigned storage area, except in the officer's presence, with consent; or pursuant to a valid search warrant.

Personnel Files

Officers have the right to inspect and respond to adverse comments in personnel files.

Right to Go To Court

POBRA gives officers the right to go to court to challenge alleged denial of any of the rights afforded in POBRA *before* the administrative case is concluded.

This is unusual in that most other public employees have to wait for the discipline process to conclude. Police Officers can go to court in the middle of that process.

POBRA affords attorney's fees to any party that prevails in that litigation.

3304 Limit– One Year Plus Tolling

Discipline has to be noticed to the officer within one year of the discovery of wrongdoing by someone with authority to initiate an investigation.

That year can be extended, or “tolled,” by any one of eight conditions listed in 3304(d)(2). TOLLING IS OPTIONAL.

The one-year deadline is met by service of a notice of discipline on the officer. 3304(d)(1).

The ultimate discipline can be imposed more than a year later.

The Eight Tolling Provisions – 3304(d)2

- (A) If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution.
- (B) Written waiver by the officer.
- (C) Multijurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.
- (D) The investigation involves more than one employee and requires a reasonable extension.
- (E) The employee is incapacitated or otherwise unavailable.
- (F) Civil litigation where the officer is named as a party defendant.
- (G) Criminal litigation where the complainant is a criminal defendant.
- (H) An allegation of workers' compensation fraud on the part of the public safety officer.

Reopening An Investigation After 3304 Has Passed - 3304(g)

Can reopen after one-year limitations has passed, **only** if both of the following exists:

1. Significant new evidence comes to light that would likely affect the outcome of the investigation;

AND

2. This evidence could not have been discovered during the one-year timeframe; **OR** new evidence came to light during the *Skelly* process.

Police Commission FY 2019-20 Adopted Departmental Budget

(Highlighted Items are expenditure specific and cannot be changed)

	Current
Personnel	\$ 146,320.00
52211 - Stationery and Office Supplies	\$ -
52212 - Minor Furniture and Office Equipment (No Asset Number Not Capitalized)	\$ -
52213 - Minor Computer Hardware and Software (No Asset Number Not Capitalized)	\$ -
52614 - Books	\$ -
52911 - Bottled Water and Food for Human Consumption	\$ -
52919 - Supplies: Miscellaneous and Commodities	\$ -
53116 - Telephone	\$ -
53219 - Rental: Miscellaneous	\$ -
53312 - Public Relations	\$ -
53314 - Advertising and Promotion	\$ -
53611 - Postage and Mailing	\$ -
53719 - Miscellaneous Services	\$ -
54011 - Contract Contingencies (Budgetary Only)	\$ 103,000.00
55111 - Non-City Vehicle Rentals	\$ -
55112 - Commercial Transportation	\$ -
55114 - Per Diem and Lodging	\$ -
55119 - Miscellaneous Travel Expenditures (Tips Parking)	\$ -
55212 - Registration and Tuition	\$ -
ISF	\$ 21,956.00
48727 - Other Revenue: Other Income	
Personnel	\$ 2,399,550.00
52211 - Stationery and Office Supplies	\$ 20,000.00
52212 - Minor Furniture and Office Equipment (No Asset Number Not Capitalized)	\$ 3,000.00
52213 - Minor Computer Hardware and Software (No Asset Number Not Capitalized)	\$ 3,750.00
52614 - Books	\$ 1,200.00
52911 - Bottled Water and Food for Human Consumption	\$ 3,500.00
52919 - Supplies: Miscellaneous and Commodities	\$ -
53116 - Telephone	\$ 6,000.00
53219 - Rental: Miscellaneous	\$ -
53312 - Public Relations	\$ 10,000.00
53314 - Advertising and Promotion	\$ 3,500.00
53611 - Postage and Mailing	\$ 5,000.00
53719 - Miscellaneous Services	\$ 12,000.00
54011 - Contract Contingencies (Budgetary Only)	\$ 246,000.00
54722 - Advertising: Classified	\$ -
54919 - Services: Miscellaneous Contract	\$ -
55111 - Non-City Vehicle Rentals	\$ -
55112 - Commercial Transportation	\$ 9,000.00
55114 - Per Diem and Lodging	\$ 15,250.00
55119 - Miscellaneous Travel Expenditures (Tips Parking)	\$ -
55212 - Registration and Tuition	\$ 15,650.00
55219 - Miscellaneous Educational Expenditures	\$ 15,000.00
55312 - Memberships: City	\$ -
ISF	\$ 121,421.00
Personnel	\$ 649,204.00
ISF	\$ 10,561.00
	\$ 4,101,998.00

Discretionary O&M - Police Commission	\$ 103,000.00
Discretionary O&M (minus legal fees) - Community Police Review Agency	\$ 368,850.00
Carryover from FY 18/19	\$ 178,929.00
Total Discretionary O&M with Carryover (minus legal fees)	\$ 650,779.00

Non-contract Contingency O&M - Police Commission	\$ -
Non-contract Contingency O&M - Community Police Review Agency	\$ 122,850.00
Total Contract Contingency O&M with Carryover	\$ 527,929.00

Attachment 9

ACCOUNT	ACCT_DESC	Sum of APPN	Sum of ENCUMB	Sum of YTD_BALANCE	Sum of AVAIL
51111	Civilian: Regular	63,634.00	-	16,323.74	47,310.26
51511		18,901.00	-	3,804.25	15,096.75
51611	Civilian: Retirement Accrual	34,004.00	-	8,409.77	25,594.23
51613	Civilian: Fringe Benefits Accrual	29,781.00	-	7,362.15	22,418.85
51911	Adjustments: Miscellaneous Payroll Adjustments (Subject to Retirement)	-	-	286.80	(286.80)
52911	Bottled Water and Food for Human Consumption	3,000.00	-	1,130.81	1,869.19
54011	Contract Contingencies (Budgetary Only)	100,000.00	-	-	100,000.00
54511	Legal Fees	281,136.00	-	-	281,136.00
56111	Special Setups	6,475.00	-	-	6,475.00
56113	Facilities: General Support	13,814.00	-	-	13,814.00
56123	City Accounting Services	581.00	-	-	581.00
56124	City Contract Compliance Dept-Purchasing Services	1,022.00	-	-	1,022.00
56211	Modifications: Telephone and Installations	23.00	-	-	23.00
56311	Printing	41.00	-	10.25	30.75
		552,412.00	-	37,327.77	515,084.23
51111	Civilian: Regular	1,038,874.00	-	185,116.55	853,757.45
51122	Temporary: Regular Part Time	-	-	20,582.72	(20,582.72)
51212	Civilian: Other Overtime	-	-	1,079.60	(1,079.60)
51219	Civilian: Overtime	-	-	15,695.04	(15,695.04)
51231	Civilian: Comp Time Earned 1.5x	-	-	7,351.86	(7,351.86)
51312	Allowance: Meal	-	-	144.00	(144.00)
51313	Allowance: Auto Flat (1, 2, Partially 3)	4,200.00	-	1,750.00	2,450.00
51412	Acting Pay	-	-	247.15	(247.15)
51428	Premium: Bilingual	4,680.00	-	1,330.65	3,349.35
51511		308,563.00	-	45,461.48	263,101.52
51611	Civilian: Retirement Accrual	557,072.00	-	99,643.05	457,428.95
51613	Civilian: Fringe Benefits Accrual	486,161.00	-	87,756.23	398,404.77
51627	Retirement Contributions	-	-	796.57	(796.57)
51821	Disability: Paid to Employees	-	-	127.44	(127.44)
51911	Adjustments: Miscellaneous Payroll Adjustments (Subject to Retirement)	-	-	3,054.11	(3,054.11)
51912	Adjustments: Miscellaneous Payroll (Not Subject to Retirement)	-	-	90.18	(90.18)
52211	Stationery and Office Supplies	20,000.00	4,570.48	1,358.74	14,070.78
52212	Minor Furniture and Office Equipment (No Asset Number, Not Capitalized)	3,000.00	-	-	3,000.00
52213	Minor Computer Hardware and Software (No Asset Number, Not Capitalized)	9,409.39	6,228.60	10,866.59	(8,155.99)
52614	Books	1,200.00	-	-	1,200.00
52911	Bottled Water and Food for Human Consumption	3,500.00	-	380.01	3,119.99
52919	Supplies: Miscellaneous and Commodities	3,000.00	744.92	1,682.60	572.48
53116	Telephone	6,000.00	-	-	6,000.00
53312	Public Relations	10,000.00	-	-	10,000.00
53314	Advertising and Promotion	3,500.00	-	-	3,500.00
53611	Postage and Mailing	2,000.00	-	304.85	1,695.15
53719	Miscellaneous Services	12,000.00	-	3,702.05	8,297.95
54011	Contract Contingencies (Budgetary Only)	236,000.00	-	-	236,000.00
54511	Legal Fees	95,062.29	-	31,289.11	63,773.18
55112	Commercial Transportation	27,000.00	-	1,503.73	25,496.27
55113	Meals	-	-	346.88	(346.88)
55114	Per Diem and Lodging	53,616.62	-	1,587.38	52,029.24
55119	Miscellaneous Travel Expenditures (Tips, Parking)	1,135.85	-	-	1,135.85
55212	Registration and Tuition	46,355.00	-	4,354.70	42,000.30
55219	Miscellaneous Educational Expenditures	15,000.00	-	-	15,000.00
56111	Special Setups	35,808.00	-	-	35,808.00
56113	Facilities: General Support	76,395.00	-	-	76,395.00
56123	City Accounting Services	3,214.00	-	-	3,214.00
56124	City Contract Compliance Dept-Purchasing Services	5,649.00	-	-	5,649.00
56211	Modifications: Telephone and Installations	130.00	-	-	130.00
56311	Printing	225.00	-	56.25	168.75
		3,068,750.15	11,544.00	527,659.52	2,529,076.44
		3,621,162.15	11,544.00	564,987.29	3,044,160.67
61122	Civilian: Vacation Leave Recoveries	-	-	(1,450.17)	1,450.17
61123	Civilian: Sick Leave Recoveries	-	-	(923.80)	923.80
61125	Other Paid Leaves Recoveries	-	-	(1,430.28)	1,430.28
61222	Civilian & Sworn: Vacation Leave Taken	-	-	140.02	(140.02)
61223	Civilian & Sworn: Sick Leave Taken	-	-	220.04	(220.04)
61225	Civilian & Sworn: Other Paid Leaves Taken	-	-	900.12	(900.12)
		-	-	(2,544.07)	2,544.07
61122	Civilian: Vacation Leave Recoveries	-	-	(17,069.48)	17,069.48
61123	Civilian: Sick Leave Recoveries	-	-	(11,556.44)	11,556.44
61125	Other Paid Leaves Recoveries	-	-	(16,835.56)	16,835.56
61222	Civilian & Sworn: Vacation Leave Taken	-	-	10,395.41	(10,395.41)
61223	Civilian & Sworn: Sick Leave Taken	-	-	8,262.38	(8,262.38)
61224	Civilian & Sworn: Compensatory Time Taken	-	-	8,490.46	(8,490.46)
61225	Civilian & Sworn: Other Paid Leaves Taken	-	-	24,542.20	(24,542.20)
		-	-	6,228.97	(6,228.97)
		-	-	3,684.90	(3,684.90)
		3,621,162.15	11,544.00	568,672.19	3,040,475.77

Spending Plan 2019-2020 re: Contract Contingencies

Available FY 2019-20 Budgetary Allocations including Carryforward:		
	Police Commission	\$103,000
	CPRA	\$246,000
	Carryforward from FY 2018-19	\$178,929
Available FY 2019-20 Budget Authority		\$527,929
Contract and Contingency Expenditures for CPRA/Investigations:		
	Transcription Services (Commission Meetings and Interviews)	\$15,000
	Translation Services for Investigations (estimated for year)	\$5,000
	Contracts related to document processing - Investigations (Discipline Committee Box account, digitization services, etc.)	\$5,000
	Other contracts and expenditures related to staffing without line-account budgets (Commissioner and Staff Background Checks, Expenses related to staffing & hiring, etc.)	\$5,000
	Subtotal:	\$30,000
Expenditures Discussed by the Commission this Fiscal Year to date:		
	<i>Commission Retreat – Walker Group</i>	\$15,000
	<i>Conversion of Comp. Inv. II to Comp. Inv. III</i>	\$30,000
	Bey Investigation	\$49,999
	Mason Group CPRA Audit	\$49,999
	Raheem Outreach Proposal	\$40,000
	Subtotal:	\$184,998
Potential Future Expenditures to Budget:		
	OBOA Investigation Contract	\$49,999
	Outreach Expenses for Public Meetings, especially Use of Force	\$45,000
	Subtotal:	\$94,999
 Total Previously Discussed and Potential Expenditures		 \$309,997
 Remainder:		 \$217,932



OAKLAND POLICE COMMISSION

Agenda Report

Subject:	Bey Case Review
Date:	October 21, 2019
Requested by:	Police Commission Vice Chair
Prepared by:	Chrissie Love, Administrative Analyst II
Reviewed by:	John Alden, CPRA Executive Director

Action Requested:

That the Police Commission adopt a resolution authorizing the CPRA Executive Director to enter into a Professional Services Agreement with Knox & Ross Law Group to investigate if there is enough evidence to reopen the CPRA cases 07-0538, 13-1062, and 16-0147, for an amount not-to-exceed \$49,999.

Executive Summary:

Per Municipal Code Section 2.04.022, the CPRA Executive Director has the authority, on behalf of the City of Oakland, to enter into professional services agreements approved by the Police Commission via Resolution. By adopting the proposed Resolution, the Police Commission grants and directs the CPRA Executive Director to enter contract negotiations and finalize a scope of work with Knox & Ross Law Group to investigate if there is enough evidence to reopen the CPRA cases 07-0538, 13-1062, and 16-0147, collectively referred to as the Bey Case Review.

Staff anticipates the total contract amount to not exceed \$49,999, which qualifies this contract award under the informal bidding requirements of the City’s Purchasing System. In meeting the informal bidding requirements, bids must be solicited to at least three qualified firms, which was completed in this case.

Per the City’s requirements, four (4) affirmative votes are required to adopt the proposed Resolution.

Background:

Staff compiled the following timeline of events related to the Bey Case Review.

- On September 13, 2018, the Commission approved a motion to direct counsel to research whether the Commission has jurisdiction to reopen CPRB case 13-1062.
- On October 11, 2018, the Commission approved a motion to ask the Policies and Procedures Ad Hoc Committee to examine options for an appellate process to re-examine issues on complaints which come before the Commission.

- On March 14, 2019, the Commission approved a motion to send a letter to Robert Warshaw to provide notice of the Bey's complaint and request that the Independent Monitor investigate the substance of the complaint.
- On April 11, 2019, the Commission approved a motion to request the advice of outside counsel on the appellate process.
- On June 13, 2019, the Commission approved a motion to accept bids for investigative services on the Bey case at its next meeting.
- On June 27, 2019, the Commission approved a motion to hire an independent investigator to review CPRA cases 07-0538, 13-1062, and 16-0147 for violations related to complaints of racial and religious profiling.
- On July 16, 2019, the Oakland City Council granted the Commission contracting authority through adoption of Ordinance No. 13547 C.M.S.
- On July 25, 2019, the bids for services from Henry Gage, III and the Law Offices of Amy Oppenheimer were withdrawn.
- On September 12, 2019, the Commission received training from Deputy City Administrator Stephanie Hom on the City's contracting policies and procedures.
- On October 10, 2019 the Commission approved a motion to engage the services of Jason Ross from Knox & Ross Law Group to investigate if there is enough evidence to reopen the CPRA cases 07-0538, 13-1062, and 16-0147, and not to exceed \$49,999.

As part of the process to engage the services of Knox & Ross Law Group to investigate if there is enough evidence to reopen the Bey Cases, adoption of the proposed Resolution is required.

Enclosures:
Resolution 19-01

OAKLAND POLICE COMMISSION

RESOLUTION NO. 19-01

RESOLUTION AUTHORIZING THE COMMUNITY POLICE REVIEW AGENCY (“CPRA”) EXECUTIVE DIRECTOR TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH KNOX & ROSS LAW GROUP FOR INVESTIGATION AND REVIEW OF CPRA CASES 07-0538, 13-1062, AND 16-0147 FOR AN AMOUNT NOT-TO-EXCEED \$49,999.

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

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

WHEREAS, the Oakland City Council adopted Ordinance No. 2.04.022 on July 9, 2019, amending Oakland Municipal Code Chapter 2.04 *Purchasing System*, to add section 2.04.022 to authorize the Police Commission to enter Professional Service Agreements necessary to fulfill its duties as defined in Measure LL, codified in section 604 of the Oakland City Charter; and

WHEREAS, all Police Commission contract approvals require an affirmative vote of four (4) or more members of the Commission who are designated to vote at the time the action is taken to approve a contract; and

WHEREAS, the Community Police Review Agency (“CPRA”) Executive Director is authorized on behalf of the City of Oakland to enter into Professional Services Agreements properly approved by the Commission and shall be the contract administrator; and

WHEREAS, all contracts approved by the Police Commission are subject to the competitive and other processes and procedures required under Oakland Municipal Code Chapter 2.04 *Purchasing System*; and

WHEREAS, on May 9, 2019, the Police Commission voted to direct the CPRA Executive Director to contract with an outside investigator in review of CPRA cases 07-0538, 13-1062, and 16-0147; and

WHEREAS, the Police Commission solicited and received three bids from Henry Gage, III, Knox & Ross Law Group, and Law Offices of Amy Oppenheimer for investigation and review of CPRA cases 07-0538, 13-1062, and 16-0147; and

WHEREAS, on July 25, 2019, the Police Commission was informed that Henry Gage, III and Law Office of Amy Oppenheimer had withdrawn their proposals from further consideration; and the Commission chose to continue to search for an outside investigator; and

WHEREAS, Knox & Ross Law Group being the sole responsible bidder is being recommended to perform investigation and review of CPRA cases 07-0538, 13-1062, and 16-0147; and

WHEREAS, on October 10, 2019, the Police Commission voted to engage the services of Jason Ross from Knox & Ross Law Group to investigate if there is enough evidence to reopen the CPRA cases 07-0538, 13-1062, and 16-0147; now, therefore be it

RESOLVED, that the Oakland Police Commission authorize the CPRA Executive Director to enter into a Professional Services Agreement with Knox & Ross Law Group for investigation and review of CPRA cases 07-0538, 13-1062, and 16-0147; and be it

FURTHER RESOLVED, the total amount of the Agreement shall be for a not-to exceed amount of \$49,999; and be it

FURTHER RESOLVED, that the said Agreement with Knox & Ross Law Group shall be executed contingent upon available funding; and be it

FURTHER RESOLVED, that the CPRA Executive Director has identified available funding in the amount of \$49,999 in General Purpose Fund (1010), Police Commission Organization (66111), Administrative Project (1003737), Program (IP06); and be it

FURTHER RESOLVED, that the CPRA Executive Director is authorized to negotiate and finalize a scope of services with Knox & Ross Law Group for investigation and review of CPRA cases 07-0538, 13-1062, and 16-0147.

IN POLICE COMMISSION MEETING, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES –

NOES –

ABSENT –

ABSTENTION –

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

Raheem & Oakland Police Commission
Scope of Work Proposal: Use of Force Project
October 2019

I. About the challenge

93 percent of people who experience police violence do not report it. As a result, government agencies tasked with overseeing the police are missing key opportunities to inform policies with the full range of experiences of their community, particularly from people most harmed by police.

Raheem, an Oakland-based nonprofit, is an independent service for reporting police conduct in the United States, giving people who have been directly impacted by police a platform to influence the policies that govern use-of-force and other harmful police behavior in their community. Raheem has helped thousands of people report police in over 30 states, connecting more than 275 officers to police violence within our first 100 days of launching.

II. About the partnership

The Oakland Police Commission is rewriting the Use Of Force policy that will govern the policing practices of the Oakland Police Department. The Commission is a committee led by nine members of the community tasked with overseeing the Oakland Police Department (OPD) and the Community Police Review Agency (CPRA). In recognition of the limitations of the biweekly public forum through which the Commission receives community feedback, the Commission has articulated the critical importance of including greater community insight into their policymaking process, especially as they move to craft a policy regarding the Use of Force.

Raheem will bridge this gap in resources, and expand the Commission's insight into the community it serves. By providing access to and analysis of Raheem reports made regarding Oakland police, Raheem will enable Oakland Police Commission to inform its Use of Force policy with the experience of a larger, more representative group.

III. About the team at Raheem

Brandon Anderson - Founder

Brandon Anderson, Founder & CEO, founded Raheem after losing his partner to police violence during a routine traffic stop. He is a U.S. Army veteran, 2019 TED Fellow, and Smithsonian Ingenuity Award Nominee. Bradon's work has been honored by The Economist, CNBC, TED, Google, CNN, The Atlantic, and more. He graduated from Georgetown University in 2015.

Samuel Sinyanwe - Data & Policy

Samuel Sinyangwe, Data Strategist at Raheem, is a policy analyst who founded Mapping Police Violence, the first national database of police killings in the U.S. Samuel graduated from Stanford University in 2012.

Raheem & Oakland Police Commission
Scope of Work Proposal: Use of Force Project
October 2019

Ariel Matos - Marketing

Ariel Matos, Growth Strategist at Raheem, ran content strategy for FADER and Refinery29 (where she increased revenue over \$100 million). Ariel graduated from the University of San Francisco in 2013.

Nadav Savio - Product

Nadav Savio, Head of Product at Raheem, has over 20 years of experience including leading product design for Google Search and user experience for Google.org. He previously ran his own design firm.

Ellie Dehghan - Programs/Legal

Ellie Dehghan has worked with communities surviving violence and seeking justice through a variety of pathways. She is currently the Sr. Director of Legal at Callisto, a nonprofit utilizing tech to combat sexual assault & advance justice. Ellie is a graduate of Stanford Law School, and UC Berkeley.

IV. Deliverables

Raheem Delivers

- Tailored canvassing and digital outreach to Oakland residents, contingent upon receipt of arrest and stop data from the Commission
- Monthly progress reports on data collected from Oakland police interactions
- Assistance to residents in filing formal complaints, where appropriate
- Final report, including: (1) an analysis of detailed findings, including frequency and severity of Use of Force in Oakland, & (2) Use of Force policy recommendations based directly on input from residents
- Access to raw data regarding Oakland police interactions during the time of the Use of Force Project (November 2019 - January 2020)
- Access to Raheem in languages required to serve Oakland residents (English, Spanish, Chinese, Vietnamese, Tagalog)

The Commission Provides

- Arrest and stop data
- Input on key data capture, including locations, demographics & specific questions
- Collaboration on the analysis (led by Raheem)

Raheem & Oakland Police Commission
Scope of Work Proposal: Use of Force Project
October 2019

V. Timeline and Cost

Timeline

November 1: Kickoff of Use of Force Project

November - December: Outreach to Oakland residents, contingent on arrest & stop data received by the Commission, & simultaneous collection of reports through Raheem

January 2020: Analysis of data

Jan 23, 2020: Final report & access to raw data

Cost

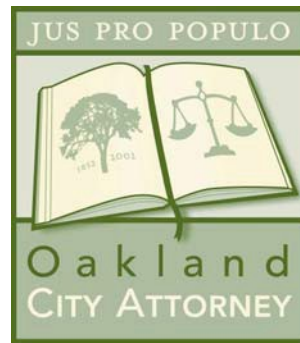
Canvassing & digital outreach, including the hiring of contract staff, running digital outreach strategies and making Raheem available in the required languages - \$15,000

Assisting Raheem reporters in the filing of formal complaints, where appropriate - \$7,500

Analysis and final reporting, including details on learnings during the Project and policy recommendations based on data collected - \$7,500

Project management, including implementation of specific requests for information to be collected in Raheem reports, and coordination with the Commission on the collection of data, facilitation of outreach - \$10,000

Total: \$40,000



CITY OF OAKLAND
OFFICE OF THE CITY ATTORNEY
BARBARA J. PARKER, CITY ATTORNEY

REQUEST FOR QUALIFICATIONS
FOR THE LEGAL SERVICES:

Outside Counsel for Oakland Police Commission

Please respond by June 15, 2019

Contact Person: Mark Forte
Phone Number: (510) 238-2960
E-mail Address: mforte@oaklandcityattorney.org

Issued: May 2, 2019

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INTRODUCTION

In November 2016, Oakland voters overwhelmingly passed Measure LL, an amendment to the Oakland City Charter which established an Oakland Police Commission (“Commission”) consisting of seven regular and two alternate members and a Community Police Review Agency (“CPRA”). The Office of the Oakland City Attorney is responsible for providing all legal services for the Commission and is responsible for engaging outside counsel to advise the Commission in conjunction with the City Attorney’s Office.

The Commission oversees the Oakland Police Department (“OPD”). The Commission is charged with reviewing, proposing changes to, and holding annual public hearings on OPD’s policies and procedures. The Commission also must report annually to the Mayor, the City Council, and to the public regarding the Commission’s business.

The CPRA investigates all public complaints against OPD officers involving use of force, in-custody deaths, profiling and public assemblies, and other possible misconduct as directed by the Commission. The CPRA’s Director reports to and may be terminated by the Commission. The Commission, as a body or by committee, reviews certain CPRA cases and provides direction to the Director on case closure, sustained findings and/or the imposition discipline. The Commission meets in closed session to discuss the CPRA Director’s performance.

The City Attorney wishes to retain outside counsel to the City Attorney to advise the Commission and provide periodic training on Brown Act compliance, parliamentary procedure, and other matters as assigned. Outside counsel must be available to sit at the dais during the Commission’s regular and special meetings. Regular meetings are held the second and fourth Thursdays of each month at 6:30 p.m. in Oakland City Hall. The City Attorney requests detailed information regarding the qualifications of attorneys or law firms interested in providing legal services to the Commission to make this appointment and to establish a list of qualified attorneys or law firms from which future outside counsel may be selected.

In general, the City Attorney is interested in hiring a diverse group of firms/individuals that will provide high-quality services while containing legal costs. We seek to build ongoing relationships with firms that share our commitment to quality and to cost containment, as well as expand and strengthen our relationships with Oakland-based firms that are committed to diversity.

Selection of outside counsel for all matters is based on the quality of their work, commitment to controlling costs, adherence to budgets, and commitment to providing equal opportunities for people of color and women, persons with disabilities and regardless of sexual orientation or other protected class status. We encourage innovative approaches to billing proposals, such as fixed rate per project, blended hourly rate per project, discounted rates, contingency fees, or some other methodology. When we select a firm to represent the City of Oakland we decide which attorneys will be working on our matters, and we require advance approval of any changes in assignments.

All firms that we retain must enter into Oakland’s standard Professional Services Agreement (PSA), and complete and provide the following schedules and documentation.

- Combined Schedules: C-1: Declaration of Compliance with the American Disabilities Act, Schedule P: Nuclear Free Zone Disclosure, Schedule U: Compliance Commitment Agreement, Schedule V: Affidavit of Non-Disciplinary or Investigatory Action, Schedule;
- Schedule B-2: Arizona Resolution
- Schedule D: Ownership Ethnicity and Gender Questionnaire;
- Schedule E: Project Consultant Team;
- Schedule N: Declaration of Compliance for the City’s Living Wage Ordinance;
- Schedule N-1: Equal Benefits Declaration of Nondiscrimination,;
- Schedule O: Contractor Acknowledgment of City of Oakland Campaign Contribution Limits;
- Proof of Insurance on the ACORD form showing the types and amounts of and insurance coverage required in Schedule Q, Insurance Requirements; and
- Current Oakland Business Tax certificate or application in progress.

In addition to the PSA, selected firms will be required to enter into a Scope of Service/Retention Agreement for each specific matter. Each Scope of Service / Retention Agreement includes a written work plan or case handling plan, a capped “not to exceed” amount and the names of the individuals in the law firm assigned to work on the matter and their hourly rates. The Scope of Service / Retention Agreement becomes a part of the overall agreement and cannot be modified without the advance written approval of the City Attorney, a Chief Assistant City Attorney or a Special Counsel. The Office of the City Attorney will not approve bills/invoices that are in excess of budget, absent prior approval. All invoices must set forth the billing amount, the cap, and the amount remaining on the contract. The documents listed above are included as an attachment.

Selected firms must be current on the payment of Oakland business taxes. This tax is based on income from work the firm performs in Oakland. Selected firms must have or obtain an Oakland Business Tax Certificate regardless of where the firm is located. See the attached Outside Counsel Policy Guide for more information.

REQUESTED INFORMATION (FIRM DATA & INFORMATION)

Respondents should provide the following background information for each attorney in the firm who wishes to be qualified to provide advice or assist in providing advice to the Commission. Please provide two copies of the responses and please identify the partner or shareholder who would be in charge of the representation. For purposes of providing background information, “peace officers” include all law enforcement officers, including but not limited to police officers, deputy sheriffs, highway patrol officers, and corrections officers.

1. Describe your professional experience in the areas of public meetings / hearings and parliamentary procedure.
2. Describe your professional experience in the areas of oversight and policy development for a peace-officer department or agency.
3. Describe your professional experience in the area of public-employee misconduct and discipline.
4. Have you ever represented a client in a claim or lawsuit against a peace-officer department or agency? If so, please describe the timing and nature of the representation(s).
5. Have you ever represented a peace-officer department or agency in a law suit? If so, please describe the timing and nature of the representation(s).

6. Have you ever represented a peace officer in a civil or criminal matter for alleged on-the-job misconduct? If so, please describe the timing and nature of the representation(s).
7. Have you ever represented a peace officer or a peace officer employee association in a discipline matter or collective bargaining dispute? If so, please describe the timing and nature of the representation(s).

In addition, Respondents should include the following information:

1. Your office's availability to work as outside counsel to the Commission, including number of hours per week/month the lead attorney can personally commit, availability of attorneys for Commission meetings, any regular time constraints or competing commitments, and availability of associate attorneys to advise the Commission in the absence of the lead attorney.
2. The diversity of the firm in terms of women, minorities, persons with disabilities, sexual orientation (LGBT), etc..
3. A description of the nature and scope of specific projects handled by each qualified attorney, or significant matters that may be relevant to representation of the City of Oakland in such disputes.
4. An agreement not to engage in litigation against the City of Oakland or represent clients that have interests that are directly adverse to the City of Oakland without first informing the Office of the City Attorney and obtaining written permission from City to do so.
5. A firm resume or brochure.

FEE STRUCTURE

Respondents should provide hourly rates for each attorney seeking qualification, as well as paralegals and other professionals who will assist in the representation.

The quote hourly rate should include all salary and compensation, and all overhead expenses, profits and other employee costs, including but not limited to clerical and word processing expenses. Respondents should list all expenses they propose to bill in addition to legal fees and the basis for such expenses. The contract will provide for usual and customary reimbursement of third party costs based on the actual expense. The City does not reimburse for additional overhead on third party costs.

If rates the firm/attorney proposes to adjust rates during the course of representation, please describe the method for such adjustment. Respondents should include alternatives to hourly billing, including fixed price representation and contingency fee arrangements. The City Attorney will establish with selected firms legal fees and expense budgets for each assigned matter. Please see the attached Outside Counsel Policy Guide for more information.

REVIEW OF SUBMISSIONS

The City Attorney's Office will develop a list of firms to conduct work on behalf of the Office based upon its evaluation of the responses to this Request for Qualifications. Price will not be the controlling factor in selecting firms for the list, but price will be a factor in making work assignments. A firm is not entitled to be placed on the list or entitled to work solely on the basis of submission of a low price quotation. The City Attorney will evaluate the responses in the areas of Scope of Service / Scope of Representation, Firm Data and Information and Fee Structure.

Once the list is established, specific firms and individual attorneys may be selected from the list for execution of the PSA, required schedules and Scope of Service / Retention Agreement as the need for legal services arises or in anticipation of the need for such services. Execution of the PSA and related documents will not guarantee that any case or matter or the number of cases or matters will be assigned to outside counsel. The City will make the decision to retain outside counsel on a case-by-case or matter-by-matter basis. Contracts will remain in effect for a period of not less than one year from the date of execution thereof unless they are terminated before expiration by providing written notice, or unless they are renewed or extended. Fee structures should take this time period into account.

RESPONDENT’S PERSONNEL

The City Attorney intends to reserve the right to designate a specific attorney(s) in a contracting law firm to work on a specific case or matter as lead counsel or as associate lead counsel for the services rendered pursuant to any contract, and further intends to reserve the right to terminate the contract if the lead counsel leaves employment of the firm.

CONFIDENTIALITY OF PROPOSAL INFORMATION WAIVER

Respondents specifically and categorically agree that, as a condition for the opening and review of their responsive submittals, the information relating to fees and fee structure submitted by every other respondent is confidential and proprietary information insofar as such Respondent is concerned.

Respondents are further advised that upon execution of an agreement, all the terms and conditions, including fees and fee structures, forming part of such agreement shall become a public record of the City and be subject to full disclosure; and each Respondent waives any right to object to any such disclosure.

CITY’S RESERVATION OF RIGHTS

This Request for Qualifications does not constitute a commitment by the Office of the City Attorney or by the City Attorney to enter into any agreement or contract, or to pay any costs associated with the preparation of responses, submittals or other documents or any related-work by any Respondent. The City Attorney reserves the right to enter into agreements for legal services with persons or firms who do not respond. The City Attorney further reserves the right to waive responses to any part of this request if, in her/his sole judgment, s/he determines that it is in the best interests of the City to do so. The City Attorney may require any Respondent to participate in negotiations and to submit such other information or documentation as it may deem necessary as conditions of awarding a contract. The City Attorney reserves the right to vary or waive requirements for different Respondents as shall fit the City’s needs.

STATEMENT OF INTEREST AND QUALIFICATIONS (SOQ)

Submit Proposal to:

City of Oakland, Office of the City Attorney
One Frank H Ogawa Plaza, 6th Floor Oakland, CA 94612

2 copies of the SOQ must be enclosed in a sealed package and marked as follows:

Confidential Documents / Attn: Mark Forte

For questions concerning this SOQ contact mforte@oaklandcityattorney.org

CITY OF OAKLAND OUTSIDE COUNSEL POLICY

The Office of the Oakland City Attorney (OCA) brings affirmative litigation to protect the civil and human rights of Oakland residents. The City Attorney retains outside counsel for three types of matters I cases: (1) cases that require specialized expertise that our office does not have in-house; (2) cases that present conflict of interest issues; and, (3) cases that we cannot handle due to lack of capacity due to reductions to the City Attorney's Office budget. The City of Oakland engages Outside Counsel only through the Office of the City Attorney.

SELECTION OF COUNSEL

The goal is to establish a list of qualified firms and individuals in a variety of practice areas for work that we may need during a fiscal year. We are interested in hiring a diverse group of firms/individuals that will provide high-quality services and that are dedicated to containing legal costs. We seek to build ongoing relationships with firms that share our commitment to quality and cost containment, as well as expand and strengthen our relationships with Oakland-based firms, small firms and firms that are committed to diversity.

Selection of outside counsel for all matters - large and small - is based on the quality of their work, commitment to controlling costs, adherence to budgets and commitment to providing opportunities for minorities, women, and persons with disabilities, regardless of sexual orientation. We encourage innovative approaches to billing, fixed rate per project, blended hourly rate per project, discounted rates, contingency fee arrangements, etc.

When we select a firm to represent the City we decide which attorneys will be working on our matters, and we require advance approval of any changes in assignments.

GENERAL EXPECTATIONS

It is the policy of OCA that the City Attorney has the ultimate responsibility for managing every legal matter affecting the City of Oakland. All strategic and tactical decisions must be approved in advance by the responsible in-house attorney. It is expected that firms hired as outside counsel observe the highest ethical standards when they represent the City and that the firms discuss potential conflicts with OCA as soon as they recognize them. Outside counsel must fully understand the objectives to be achieved and their role in achieving them. This includes participation in establishing a strategy and a budget.

Outside counsel must keep OCA advised of significant developments as they occur, and obtain the approval of the City Attorney, Chief Assistant City Attorneys or Special Counsel before they perform services that would cause the contractual budget to be exceeded. Further, outside counsel must avoid overstaffing, rotating the attorneys assigned to the City's matters, and multiple representation at meetings, depositions, hearings and court appearances. We discourage changes in the individual attorneys who are working on our matters and we must be consulted in advance of any proposed changes.

Drafts of all briefs and submissions to courts and agencies should be provided to the responsible in-house attorney. It is important that OCA receive drafts sufficiently in advance of the due date to provide adequate time for review and comment. OCA also expects to receive the final version of briefs, filings and legal memos.

CONFLICTS OF INTEREST

We expect that OCA will be notified immediately if outside counsel becomes aware of an actual or potential conflict. OCA recognizes that on occasion outside counsel will be asked to represent clients whose interests are inconsistent with the City's, and that outside counsel may even be asked to represent parties whose interests are in direct conflict with the City. OCA will generally waive conflicts when no issues of significant City policy are involved and when there is no connection between matters in which outside counsel has represented the City and matters in which outside counsel has been retained by other clients. Whenever OCA waives a conflict, the waiver will be conditioned on written agreement by the other client that it will not object to outside counsel representing the City in any pending or future matter. OCA generally will **not** waive a conflict if the matter is related to a matter in which outside counsel has represented the City, or if your firm has access to relevant confidential information of the City, or if your representation of the other client involves issues of important City of Oakland policy.

ASSIGNMENT OF ATTORNEY

Before OCA contracts with outside counsel, OCA expects a commitment with respect to the attorneys who will be representing the City. If subsequently it becomes necessary to substitute an attorney or add additional attorneys, outside counsel must receive prior approval before doing so. Significant roles should not be given to other attorneys without OCA's prior concurrence.

While OCA expects senior attorneys to perform those tasks that require substantial experience, OCA expects that outside counsel will attempt to minimize legal expenses by relying on junior attorneys and paralegals for less demanding tasks.

STRATEGY AND BUDGET

For every new matter outside counsel and the responsible in-house attorney must prepare a strategy and a budget. The budget should estimate total fees and expenses to see the matter to its conclusion. If outside counsel anticipates a change in the budget after the agreement is executed outside counsel must discuss it with the City Attorney, Special Counsel or an Assistant City Attorney before the work is done or the expense is incurred. OCA will not approve bills/invoices that are in excess of budget absent prior approval.

Litigation strategy should identify alternate methods of disposing of the case, including ADR (Alternative Dispute Resolution) and settlement. An outline should be made of the proposed course of litigation, including dispositive pretrial motions, the scope of discovery and the trial strategy. If it appears that a case will go to trial, an estimate of costs should be sent to the responsible in-house attorney no later than the close of discovery, if possible. The detail of all plans (litigation and otherwise) will be dictated by the significance of the matter.

LITIGATION

Advance approval from the City Attorney, Special Counsel or an Assistant City Attorneys is required before:

- Preparing pretrial motions;
- Preparing a cross-complaint which adds new parties to the action; Selecting and retaining expert witnesses;
- Preparing motions during trial, post-trial motions or appeals;
- Undertaking any unusual activity, such as a major research memorandum;
- Agreeing to alternative dispute resolution processes;
- Agreeing to settlement.

Outside counsel must consult with the in-house attorney concerning the strategy for taking depositions and other discovery. The deposition plan should include a brief explanation of the proposed deponent's location, his or her involvement in the matter, and the purpose of the deposition.

Outside counsel must exercise restraint in discovery and legal research conducted in routine small matters. We will not return to a firm that allows costs to approach - much less exceed- the City's exposure or potential recovery.

Litigation counsel must evaluate ADR as a substitute for full-scale litigation. OCA expects that ADR techniques will be given active consideration from the commencement of litigation. OCA does not view ADR as an alternative to be considered only when trial is imminent and after months or years of costly discovery and pretrial battles.

RATE STRUCTURE

Billing rates will be established at the outset of each matter. In establishing the billing rates it is expected that outside counsel will consider the competitive climate in the practice of law and the fact that OCA assures prompt payment.

OCA must provide advance consent of changes in billing rates and the existing agreement will need to be amended. OCA assumes that the rates agreed upon are as low as those offered to any other government/public agency client; if any other clients enjoy more favorable billing rates, OCA expects to be told how to qualify for similar billing treatment.

If the billing method is hourly rates, the rates should contain all overhead and internal charges associated with outside counsel's practice, such as administration, secretarial, docket, word processing, accounting, library and other clerical time. If outside counsel customarily makes separate charges for any of these functions; the billing arrangement must be specifically approved in advance by the responsible in-house attorney and the amount must be factored into the overall budget. OCA expects that the hourly rates of outside counsel who bill separately for secretarial or other services will be less than those of competitive firms that include all overhead in their billing rates.

BILLING/INVOICING

Separate bills/invoices are required for each specific matter. Absent an express agreement to the contrary, bills/invoices must be submitted monthly, unless another arrangement is agreed to in advance, or unless the matter is inactive.

All bills/invoices should include hours spent (to nearest fraction), a brief description of the services rendered and the individual who provided the services. A summary of the total hours by individual with his/her billing rate also should be included.

All bills/invoices for services and disbursements must conform to the format of the budget per the Scope of Service Agreement, i.e., the bill/invoice must be in a form that will enable the Office of the City Attorney to compare the items that made up the budget with the items that appear on the bill/invoice.

All bills/invoices must include an accounting showing the original budget amount per the Scope of Service Agreement the billed/invoiced amounts to date and the amount remaining on the original budget. Bills not including this accounting will be returned unpaid.

OCA will not approve bills/invoices that are in excess of budget absent prior approval.

If travel time is devoted to working for one or more clients in addition to the City, OCA should not be billed for the time devoted to other clients. Billing for time spent in transit should not include time that would be spent in normal commute to your office unless agreed to in advance, OCA should not be billed for time away from home or the office, which is not in transit or spent performing legal services.

Any travel that requires an overnight stay or transportation by an airline must be approved in advance. If an overnight stay is necessary, OCA has the right to approve the accommodations. Reimbursement for meals will be made at the City's per diem rate (Breakfast \$11.00, Lunch \$16.00 and Dinner \$29.00 or \$56.00 per day). If airline travel is necessary, the OCA will reimburse at the coach rate.

As noted above, bills/invoices for disbursements must be detailed and must reflect only the amounts that were paid.

If outside counsel charges separately for fax services, duplicating, computer-assisted research, for a special word-processing project that was approved in advance, the bill/invoice must show the way in which the charge was developed (for example, in the case of fax and duplicating charges, the bill/invoice must show the number of pages and the per-page charge; in the case of Westlaw or Lexis research the bill/invoice must show the amount that was charged to outside counsel).

All disbursement charges must be accompanied by a copy of the invoice or statement to verify the charges. OCA will not pay charges that exceed the market rate for any service such as messengers, depositions, expert witness, etc.

COMMUNICATION

Outside counsel must contact the responsible in-house attorney if any issue arises that is not covered by this policy, or if outside counsel wishes to deviate from any of the stated policies.



OAKLAND POLICE COMMISSION

MEETING MINUTES - DRAFT

May 23, 2019

6:30 PM

City Council Chamber, 3rd Floor
1 Frank H. Ogawa Plaza, Oakland, CA 94612

I. Call to Order

Chair Regina Jackson

The meeting started at 6:36 p.m.

II. Roll Call and Determination of Quorum

Chair Regina Jackson

Commissioners Present: Mubarak Ahmad, José Dorado, Ginale Harris, Regina Jackson, Edwin Prather, and Thomas Smith. Quorum was met.

Alternate Commissioners Present: Chris Brown

Commissioners Excused: Tara Anderson

Counsel for this meeting: Sergio Rudin

III. Welcome, Purpose, and Open Forum

Comments were provided by the following public speakers:

Bruce Schmiechen
Henry Gage, III
Saleem Bey
Mary Vail
Maureen Benson
Lorelei Bosserman

IV. Pawlik Investigation Update

The Commission discussed CPRA's recently completed Pawlik investigation.

Comments were provided by the following public speakers:

Saleem Bey
Rashidah Grinage
Henry Gage, III
Bruce Schmiechen
Oscar Fuentes
Mary Vail
Maureen Benson

A motion was made by Edwin Prather, seconded by Ginale Harris, to accept the CPRA report on the Pawlik investigation. The motion failed by the following vote:

Aye: Jackson and Prather
No: Dorado and Harris
Abstained: Ahmad and Smith

V. Review of CPRA and Commission Budgets

The Commission reviewed the budgets for CPRA and the Police Commission and discussed the recent meeting with the Finance Department staff.

Comments were provided by the following public speakers:

Rashidah Grinage
Mary Vail
Henry Gage, III
Bruce Schmiechen
Saleem Bey

A motion was made by Edwin Prather, seconded by Regina Jackson, to submit a budget proposal of \$2,000,000 to the City Council. The motion carried by the following vote:

Aye: Dorado, Harris, Jackson, and Prather
No: 0
Abstained: Smith

VI. Submission of Candidate for CPRA Interim Executive Director

The Commission voted to approve submission of Mike Nisperos to the City Administrator for consideration to serve as Interim Executive Director of the Community Police Review Agency (CPRA).

Comments were provided by the following public speakers:

Henry Gage, III
Saleem Bey

A motion was made by José Dorado, seconded by Ginale Harris, to approve the submission of Mike Nisperos to serve as Interim Executive Director of CPRA. The motion carried by the following vote:

Aye: Dorado, Harris, Jackson, Prather, and Smith
No: 0

IX. Crisis Assistance Helping Out on the Streets (CAHOOTS) of Oregon Presentation (*this item was taken out of order*)

The Commission discussed exploring whether CAHOOTS, which is praised by the community, police, fire, and city administration as an effective, compassionate, and money saving program, would be beneficial in Oakland.

Comments were provided by the following public speakers:

Elise Bernstein
Rashidah Grinage
Reisa Jaffe
Saleem Bey
Bruce Schmiechen

A motion was made by Edwin Prather, seconded by Regina Jackson, to draft and send a letter to the City Council stating that the Commission endorses efforts within the Council to fund a study on how Oakland might implement and benefit from a program based on Eugene's (OR) CAHOOTS program. The motion carried by the following vote:

Aye: Dorado, Harris, Jackson, Prather, and Smith

No: 0

VII. Public Hearing on OPD Budget

OPD staff presented the Department's budget for the Commission to review. The Commission also conducted a public hearing on the budget per City Charter Section 604(b)(7).

Comments were provided by the following public speakers:

Reisa Jaffe
Mary Vail
Bruce Schmiechen
Lorelei Bosserman
Rashidah Grinage
Maureen Benson
Henry Gage, III
Oscar Fuentes
Cathy Leonard

A motion was made by José Dorado, seconded by Regina Jackson, to extend the meeting for 30 minutes. The motion carried by the following vote:

Aye: Dorado, Harris, Jackson, and Prather

No: Smith

No motion was made on this item.

VIII. Rules of Order Addition – Rule 2.19

The Commission discussed a potential amendment to the Rules of Order. New Rule 2.19 would create a procedure around the Commission's Chief of Police For Cause Assessment.

Comments were provided by the following public speakers:

Rashidah Grinage
Saleem Bey

A motion was made by Edwin Prather, seconded by José Dorado, to adopt Rule 2.19 Chief of Police For Cause Assessment as drafted in Agenda attachment eight. The motion carried by the following vote:

Aye: Dorado, Harris, Jackson, Prather, and Smith
No: 0

X. Report from Ad Hoc Committee on CPRA Appellate Process

The Ad Hoc Committee on CPRA Appellate Process presented its on-going analysis on a potential appellate process for closed CPRA and/or CPRB cases.

Commissioner Smith stepped out and during that time Chair Regina Jackson designated Alternate Commissioner Chris Brown as a voting member. Shortly thereafter, Commissioner Smith returned.

Comments were provided by the following public speakers:
Saleem Bey
Henry Gage, III

No motion was made on this item.

A motion was made by Edwin Prather, seconded by Regina Jackson, to table items XII, XIII, XIV, XV, and XVI to the next agenda. The motion carried by the following vote:

**Aye: Dorado, Harris, Jackson, Prather, and Smith
No: 0**

- XI. Recess (*this item did not occur*)**
- XII. Pro Bono Legal Services Agreement (*this item was tabled to the next agenda*)**
No public comments were provided on this item.
- XIII. Commission Letter to City Council Regarding OPD Contract with Michael Palmertree (*this item was tabled to the next agenda*)**
No public comments were provided on this item.
- XIV. Committee/Liaison/Other Commissioner Reports (*this item was tabled to the next agenda*)**
No public comments were provided on this item.
- XV. National Association for Civilian Oversight of Law Enforcement (NACOLE) Annual Conference (*this item was tabled to the next agenda*)**
No public comments were provided on this item.
- XVI. Agenda Setting and Prioritization of Upcoming Agenda Items (*this item was tabled to the next agenda*)**
No public comments were provided on this item.

XVII. Adjournment

A motion was made by Regina Jackson, seconded by Thomas Smith, to adjourn the meeting at 11:43 p.m. The motion carried by the following vote:

Aye: Dorado, Harris, Jackson, Prather, and Smith

No: 0



OAKLAND POLICE COMMISSION MEETING MINUTES - DRAFT

June 13, 2019

6:30 PM

City Council Chamber, 3rd Floor
1 Frank H. Ogawa Plaza, Oakland, CA 94612

I. Call to Order

Chair Regina Jackson

The meeting started at 6:32 p.m.

II. Roll Call and Determination of Quorum

Chair Regina Jackson

Commissioners Present: Tara Anderson, José Dorado, Ginale Harris, Regina Jackson, and Edwin Prather. Alternate Commissioner Chris Brown was designated as a voting member and quorum was met.

Alternate Commissioners Present: Chris Brown

Commissioners Absent: Mubarak Ahmad and Thomas Smith

Commissioners Excused: Edwin Prather

Counsel for this meeting: Sergio Rudin

III. Welcome, Purpose, and Open Forum

Comments were provided by the following public speakers:

Rashidah Grinage
Bruce Schmiechen
Henry Gage, III
Saleem Bey
John Bey
Assata Olugbala
Lorelei Bosserman

IV. Pawlik Investigation Update

The Commission discussed CPRA's recently completed Pawlik investigation and the process for closing the case.

Comments were provided by the following public speakers:

John Bey
Rashidah Grinage
Michael Tigges

Saleem Bey
Assata Olugbala

A motion was made by Regina Jackson, seconded by Ginale Harris, to close the Pawlik investigation, recognizing that by closing this investigation the Commission is not approving the already rejected CPRA report. In so doing, it is a decision of the Commission that the last recommendation from the Police Department, which is in this instance the findings and disciplinary determination of the Compliance Director, will stand. The motion carried by the following vote:

Aye: Anderson, Brown, Dorado, Harris, and Jackson
No: 0

A motion was made by Regina Jackson, seconded by José Dorado, to designate the following agenda items to be tabled for the next meeting: V, VI, VII, VIII, XIII, and XV.

V. Commission Subpoenas Related to CPRA/Pawlik Investigation Communications (*this item was tabled to the next agenda*)

Comments were provided by the following public speakers:

Michael Tigges
Rashidah Grinage
John Bey

VI. OPD Budget Update (*this item was tabled to the next agenda*)

Comments were provided by the following public speakers:

Rashidah Grinage
Saleem Bey
Assata Olugbala
Oscar Fuentes

VII. OPD's Policy on the Deployment of the BearCat and Other Militarized Weapons (*this item was tabled to the next agenda*)

Comments were provided by the following public speakers:

John Bey
Cathy Leonard
Assata Olugbala
Oscar Fuentes
John Lindsay-Poland
Rashidah Grinage
Bruce Schmiechen
Saleem Bey
Nino Parker

XI. Recess

The commission took a recess starting at 7:55 pm and resumed the meeting at 8:02 pm.

VIII. OPD Towing Policy Regarding Victims of Crime (*this item was tabled to the next agenda*)

Comments were provided by the following public speakers:

John Bey
Rashidah Grinage
Nino Parker
Saleem Bey

XIII. Outside Counsel RFQ Update (*this item was tabled to the next agenda*)

Comments were provided by the following public speakers:

Michael Tigges

XV. Commission Letter to City Council Regarding OPD Contract with Michael Palmertree (*this item was tabled to the next agenda*)

Comments were provided by the following public speakers:

Assata Olugbala

A vote was taken on the motion to table items V, VI, VII, VIII, XIII, and XV. The motion carried by the following vote:

Aye: Anderson, Brown, Dorado, Harris, and Jackson

No: 0

At this time the previously heard motion on item IV was repeated as follows:

A motion was made by Regina Jackson, seconded by José Dorado, to close the Pawlik investigation, recognizing that by closing this investigation the Commission is not approving the already rejected CPRA report. In so doing, it is a decision of the Commission that the last recommendation from the Police Department, which is in this instance the findings and disciplinary determination of the Compliance Director, will stand. The motion carried by the following vote:

Aye: Anderson, Brown, Dorado, Harris, and Jackson

No: 0

IX. Report from Ad Hoc Committee on CPRA Appellate Process (*this item was tabled to the next agenda*)

Comments were provided by the following public speakers:

Michael Tigges

A motion was made by Regina Jackson, seconded by José Dorado, to delay this item. A friendly amendment was made by Ginale Harris to remove the item from the agenda and put it on a prioritized list until the Commission obtains proper legal counsel. The amendment was accepted by Regina Jackson and José Dorado. The motion carried by the following vote:

Aye: Anderson, Brown, Dorado, Harris, and Jackson

No: 0

X. Bey Case Review

The Commission discussed engaging an investigator to review and consider the Bey case.

Comments were provided by the following public speakers:

Saleem Bey

John Bey

Henry Gage, III

Nino Parker

A motion was made by Ginale Harris, seconded by José Dorado, to follow the process of solicitation of services on Henry Gage, III, Amy Oppenheimer, and Michael Thompson and invite them to the next meeting on June 27th to present their scope of work, qualifications, and compensation. The motion carried by the following vote:

Aye: Anderson, Brown, Dorado, Harris, and Jackson

No: 0

XII. Audit of CPRA Investigations

The Commission discussed the procedure for conducting an audit of the CPRA, including the breadth and scope of any such audit and whether the audit should be conducted by an independent third-party.

Comments were provided by the following public speakers:

Rashidah Grinage

Saleem Bey

Assata Olugbala

John Bey

A motion was made by Ginale Harris to hire an investigative body to audit the CPRA investigations and files. A friendly amendment was made by Tara Anderson to add that the investigations should focus on racial profiling and use of force. Both the initial motion and the amendment were seconded by José Dorado. The motion carried by the following vote:

Aye: Anderson, Dorado, Harris, and Jackson

No: 0

Abstained: Brown

XIV. Pro Bono Legal Services Agreement

The Commission discussed and reviewed an agreement from Henry Gage, III for pro bono legal services that was approved by the Personnel Committee.

Comments were provided by the following public speakers:

Henry Gage, III

A motion was made by Regina Jackson, seconded by José Dorado, that the Pro Bono Legal Services Agreement item goes back on the pending list. The motion carried by the following vote:

Aye: Anderson, Brown, Dorado, Harris, and Jackson
No: 0

XVI. Commission Letter to City Council Regarding CAHOOTS

The Commission reviewed a letter to the City Council to support efforts within the City Council to fund exploration of whether Oakland can and should implement a similar program to CAHOOTS. CAHOOTS is praised by the community, police, fire, and city administration as an effective, compassionate, and money saving program, and may be beneficial in Oakland.

Comments were provided by the following public speakers:

Rashidah Grinage
John Lindsay-Poland
Anne Janks
Nino Parker
John Bey

A motion was made by Regina Jackson, seconded by José Dorado, to accept the letter with the edits that were made on paper by Commissioner Anderson and Alternate Commissioner Brown and handed to the Chair, and to authorize the Chair to send it. The motion carried by the following vote:

Aye: Anderson, Brown, Dorado, Harris, and Jackson
No: 0

XVII. Committee/Liaison/Other Commissioner Reports

José Dorado presented a brief report on his activities on outreach and community policing. Regina Jackson spoke on behalf of the Personnel Committee that is meeting on June 26th to conduct interviews for the CPRA Executive Director position.

Comments were provided by the following public speakers:

Rashidah Grinage

No action was taken on this item.

XVIII. National Association for Civilian Oversight of Law Enforcement (NACOLE) Annual Conference

The Commission discussed participation at the National Conference in Detroit September 22-26, 2019.

Comments were provided by the following public speakers:

Nino Parker

No action was taken on this item

XIX. Agenda Setting and Prioritization of Upcoming Agenda Items

The Commission engaged in a working session and discussed agenda items for the upcoming Commission meeting: Commission letter to City Council regarding the Palmtree contract; Commission retreat: and budget projections to be included on a future agenda.

Comments were provided by the following public speakers:

There were no public speakers on this item

XX. Adjournment

A motion was made by José Dorado, seconded by Tara Anderson, to adjourn the meeting at 9:40 p.m. The motion carried by the following vote:

Aye: Anderson, Brown, Dorado, Harris, and Jackson

No: 0



OAKLAND POLICE COMMISSION

MEETING MINUTES - DRAFT

June 27, 2019

6:30 PM

City Council Chamber, 3rd Floor
1 Frank H. Ogawa Plaza, Oakland, CA 94612

I. Call to Order

Chair Regina Jackson

The meeting started at 6:36 p.m.

II. Roll Call and Determination of Quorum

Chair Regina Jackson

Commissioners Present: Mubarak Ahmad, José Dorado, Ginale Harris, Regina Jackson, and Thomas Smith. Quorum was met.

Alternate Commissioners Present: Chris Brown

Commissioners Excused: Edwin Prather

Counsel for this meeting: Sergio Rudin

III. Welcome, Purpose, and Open Forum

Comments were provided by the following public speakers:

Oscar Fuentes
Michelle Lanzanea
Saleem Bey
Maureen Benson
Nino Parker

IV. Bey Case Review

The Commission presented and discussed bids received from Henry Gage, III and the Law Offices of Amy Oppenheimer for investigative services. The Commission voted to select the Law Offices of Amy Oppenheimer.

Comments were provided by the following public speakers:

Saleem Bey
Nino Parker

A motion was made by Ginale Harris, seconded by José Dorado, to hire an independent investigator for the scope of work that entails potential new evidence of OPD Department General Order [DGO] violations that have been exposed by civil complaint Discovery, produced by the City of Oakland in Bey v. Oakland currently in San Francisco Northern

California District Federal Court [14-cv-01626-jsc] relating to OPD IAD and City Administration CPRB complaints 07-0538, 13-1062, and 16-0147 for violations related to complaints of racial and religious profiling. The motion carried by the following vote:

Aye: Ahmad, Anderson, Dorado, Harris, and Jackson

No: 0

Abstained: Smith

A second motion was made by Ginale Harris, seconded by José Dorado, to enter into a contract with the Law Offices of Amy Oppenheimer, in an amount not to exceed \$50,000, to do an investigation on the Bey cases 07-0538, 13-1062, and 16-0147, with Ms. Seidel as the investigator. The motion carried by the following vote:

Aye: Ahmad, Anderson, Dorado, Harris, and Jackson

No: 0

Abstained: Smith

V. Oakland City Charter Revisions

The Commission discussed the effort currently being undertaken by the Coalition for Police Accountability, in collaboration with City Council President Rebecca Kaplan, to submit a ballot measure for revisions to Measure LL.

Comments were provided by the following public speakers:

Mary Vail

Rashidah Grinage

Reisa Jaffe

Maureen Benson

Saleem Bey

No action was taken on this item.

VI. CPRA Independent Audit Commissioned by the Oakland Police Commission

The Commission discussed the scope of services from the Mason Investigative Group and voted to approve the revised scope.

Comments were provided by the following public speakers:

Saleem Bey

Mary Vail

A motion was made by Ginale Harris, seconded by José Dorado, to contract the services of Mason Investigative Group to do the independent audit of the CPRA, not to exceed \$50,000. The motion carried by the following vote:

Aye: Anderson, Dorado, Harris, and Jackson

No: 0

Abstained: Ahmad and Smith

VII. Pawlik Investigation Update

Regina Jackson, in her role as Chair, called for the convening of a Discipline Committee comprised of Commissioners Dorado, Jackson, and Prather, to begin meeting starting July 1st in order to make recommendations that do not allow the 3304 deadline to expire.

Comments were provided by the following public speakers:

Rashidah Grinage

Saleem Bey

Jim Chanin

No action was taken on this item.

VIII. Commission Subpoenas Related to CPRA

The Commission discussed the subpoenas that were previously issued and how to work with attorney-client privileged information in procuring the materials received by CPRA Interim Executive Director.

Comments were provided by the following public speakers:

Oscar Fuentes

Jim Chanin

Mary Vail

Saleem Bey

No action was taken on this item.

IX. CPRA Executive Director Candidates

CPRA Executive Director finalists recommended by the Personnel Committee, John Alden and Sokhom Mao, offered brief biographical statements. The Commission voted to approve submission of the candidates to the City Administrator.

Comments were provided by the following public speakers:

Jack Bryson

Jim Chanin

Bruce Schmiechen

A motion was made by José Dorado, seconded by Thomas Smith, to move both candidates forward to the City Administrator for consideration. The motion carried by the following vote:

Aye: Ahmad, Anderson, Dorado, Harris, Jackson, and Smith

No: 0

X. OPD Budget Update

OPD Personnel Manager Kiona Suttle provided an update on the top five hiring priorities for the Department.

Comments were provided by the following public speakers:

Jim Chanin

Nino Parker

No action was taken on this item.

XI. Review of CPRA Pending Cases and Completed Investigations

Interim Executive Director Mike Nisperos reported on the Agency's pending cases and completed investigations.

Comments were provided by the following public speakers:

Rashidah Grinage

No action was taken on this item.

Mubarak Ahmad left the meeting.

XII. OPD's Policy on the Deployment of the BearCat and Other Militarized Weapons

Captain Wingate answered questions from the Commission on OPD's use of the BearCat.

Comments were provided by the following public speakers:

Nino Parker

Oscar Fuentes

Bruce Schmiechen

John Lindsay-Poland

Reisa Jaffe

A motion was made by Regina Jackson, seconded by José Dorado, to deny OPD's request of a second BearCat. The motion carried by the following vote:

Aye: Anderson, Dorado, Harris, Jackson, and Smith

No: 0

A motion was made by Regina Jackson, seconded by José Dorado, to extend the meeting to 11:00 p.m. The motion carried by the following vote:

Aye: Anderson, Dorado, Harris, and Jackson

No: Smith

A second motion was made by Regina Jackson, seconded by José Dorado, to direct the Police Chief to provide a comprehensive list of grants for which the Department hopes to apply, with specific focus on any militarized equipment, that the Commission can review and/or approve prior to grant preparation. The motion carried by the following vote:

Aye: Anderson, Dorado, Harris, Jackson, and Smith

No: 0

XIII. Commission Letter to City Council Regarding OPD Contract with Michael Palmertree

The Commission discussed a letter that was sent to the City Council regarding OPD's contract with Michael Palmertree.

Comments were provided by the following public speakers:
There were no speakers on this item

No action was taken on this item.

XIV. Police Commission Retreat

The Commission discussed holding a retreat sometime in the coming months and reviewed a proposal from Walker and Associates.

Comments were provided by the following public speakers:
There were no speakers on this item

A motion was made by Regina Jackson, seconded by José Dorado, to approve the proposal from Walker and Associates, for a total of \$11,000, for a half-day retreat with a date and location to be determined. The motion was carried by the following vote:

Aye: Anderson, Dorado, Harris, Jackson, and Smith
No: 0

XV. Commission Letter to City Council Regarding CAHOOTS (Crisis Assistance Helping Out On The Streets)

The Commission discussed the letter that was sent to the Oakland City Council providing support for efforts within the City Council to fund exploration of whether Oakland can and should implement a similar program.

Comments were provided by the following public speakers:
Riesa Jaffe
Rashidah Grinage
Anne Janks

No action was taken on this item.

A motion was made by Regina Jackson, seconded by José Dorado, to extend the meeting to 11:10 p.m. The motion carried by the following vote:

**Aye: Anderson, Dorado, Harris, and Jackson
No: Smith**

XVI. Committee/Liaison/Other Commissioner Reports

José Dorado presented an update on the Community Policing Task Force. Ginale Harris presented an update on her work looking into resources for young people who get out of jail or are on parole or probation. Thomas Smith discussed setting up a meeting with the

Oakland Black Officers Association, his work with the NAACP, and other community outreach. Tara Anderson discussed her work with Campaign Zero regarding use of force, and the work of the Ad Hoc Committee on the OPD K-4 Use of Force Reporting Special Order.

Comments were provided by the following public speakers:
There were no public speakers on this item

No action was taken on this item.

A motion was made by Ginale Harris, seconded by Regina Jackson, to clarify the motion on item VI to direct Mr. Nisperos to hire the independent auditor contractually, not to exceed \$50,000 for the CPRA audit. The motion carried by the following vote:

Aye: Anderson, Dorado, Harris, Jackson, and Smith
No: 0

XVII. Agenda Setting and Prioritization of Upcoming Agenda Items

The Commission engaged in a working session and discussed items for the upcoming Commission meeting: Oakland City Charter revisions; Commission subpoenas related to CPRA; review of CPRA pending cases and completed investigations; Bey case review; Commission retreat; stop data and racial impact report; Pawlik update; and hiring CPRA investigators.

Comments were provided by the following public speakers:
There were no speakers on this item

No action was taken on this item.

A motion to supersede the first motion on item IV was made by Ginale Harris, seconded by José Dorado, to direct Mr. Nisperos to enter into a contract not to exceed \$50,000 with the Law Offices of Amy Oppenheimer for the Bey case review. The motion carried by the following vote:

Aye: Anderson, Dorado, Harris, and Jackson
No: 0
Abstained: Smith

XVIII. Adjournment

A motion was made by Ginale Harris, seconded by Thomas Smith, to adjourn the meeting at 11:24 p.m. The motion carried by the following vote:

Aye: Anderson, Dorado, Harris, Jackson, and Smith
No: 0



OAKLAND POLICE COMMISSION

Agenda Report

Subject:	Pending Agenda Matters List
Date:	October 21, 2019
Requested by:	Police Commission
Prepared by:	Chrissie Love, Administrative Analyst II
Reviewed by:	John Alden, CPRA Executive Director

Action Requested:

Review Pending Agenda Matters List and decide on which, if any, to include in upcoming agendas.

Background:

The following exhaustive list was begun in early 2018 and includes items submitted for consideration on future agendas. Community members may suggest agenda items by completing and submitting the Agenda Matter Submission Form found on the Commission's webpage.

Discussion:

The following trainings must be delivered in open session and should be scheduled soon:

Subject Matter	Provider	Dates Offered or Scheduled (if known)
<i>Mandated by City Charter section 604 (c)(9) and Enabling Ordinance section</i>		
California's Meyers Milius Brown Act (MMBA) and Public Employment Relations Board's Administration MMBA (OMC 2.45.190(G)) <i>must be done in open session</i>	HR	Holding 12/12/19
Civil Service Board and Other Relevant City Personnel Policies and Procedures (OMC 2.45.190(G)) <i>must be done in open session</i>	HR	Holding 12/12/19
Memoranda of Understanding with Oakland Police Officers Association and Other Represented Employees (OMC 2.45.190(G)) <i>must be done in open session</i>	HR	
Police Officers Bill of Rights (OPC 2.45.190(H)) <i>must be done in open session</i>	John Alden	10/24/2019

Attachments:

Pending Agenda Matters List

**Police Commission
Pending Agenda Matters List**

Pending Agenda Matter	Date Placed on List	Duties/Deliverables	Additional Information/Details	Priority Level	Timeline/Deadline	Scheduled	Lead Commissioner(s), if any
Commissioner Training, Part 1	1/1/2018	Complete the training described in section 2.45.190(A) through (H)	The training described in subsections (G) and (H) must be done in open session. The 1 year deadline only applies to the first group of Commissioners and alternates; all other Commissions must complete this training within six months of appointment.	High	10/17/2018	10/24/2019	Ahmad, Dorado
Commissioner Training, Part 2	1/1/2018	Complete the training described in section 2.45.190(I) through (M)	The 18 month deadline only applies to first group of Commissioners and alternates; all other Commissioners must complete this training within 12 months of appointment.	High	4/17/2019		Ahmad, Dorado
Confirming the Process to Hire Staff for the Inspector General's Office	5/17/2019	When the Inspector General (IG) is hired, there is to be a Policy Analyst in of the office of the IG. This is to confirm the process of hiring for that	This will require information presented from the City Administrator's Office.	High			
Hire Inspector General (IG)	1/14/2019	Hire IG once the job is officially posted	Recruitment and job posting in process.	High			Personnel Committee
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	The Chief's report shall include, at a minimum, the following: 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; 2. The number of pending investigations in IAD, and the types of Misconduct that are being investigated; 3. The number of investigations completed by IAD, and the results of the investigations; 4. The number of training sessions provided to Department sworn employees, and the subject matter of the training sessions; 5. Revisions made to Department policies; 6. The number and location of Department sworn employee-involved shootings; 7. The number of Executive Force Review Board or Force Review Board hearings and the results; 8. A summary of the Department's monthly Use of Force Reports; 9. The number of Department sworn employees disciplined and the level of discipline imposed; and 10. The number of closed investigations which did not result in discipline of the Subject Officer. The Chief's annual report shall not disclose any information in violation of State and local law regarding the confidentiality of personnel records, including but not limited to California Penal Code section 832.7	High	June 14, 2018 and June 14 of each subsequent year		Dorado

**Police Commission
Pending Agenda Matters List**

Pending Agenda Matter	Date Placed on List	Duties/Deliverables	Additional Information/Details	Priority Level	Timeline/Deadline	Scheduled	Lead Commissioner(s), if any
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		
Police Equipment Policy	9/10/2019		Discussion of proposal for OPD equipment use and acquisition	High		11/14/2019	
Creation of a Policy Committee	9/30/2019	The Commission will discuss, and take action, to determine whether to forward a request to City Council to authorize the creation of a standing		Medium			Gage
Measure LL Revisions	10/1/2019	The Commission will discuss and provide feedback on the draft revision of Measure LL provided by the Coalition for Police Accountability to the Commission and City Council		Medium			Gage
Receive Report from Urban Strategies on their Safe Oakland Summit of 6.5.19	8/22/2019		Commissioner Dorado will invite David Harris of Urban Strategies to give a report on the Safe Oakland Summit which was held on 6.5.19	Medium			Dorado
Report from OPD Regarding Found/Confiscated Items	7/12/2019	OPD Chief Kirkpatrick 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		11/14/2019	

**Police Commission
Pending Agenda Matters List**

Pending Agenda Matter	Date Placed on List	Duties/Deliverables	Additional Information/Details	Priority Level	Timeline/Deadline	Scheduled	Lead Commissioner(s), if any
City Auditor's Office to Present Performance and Financial Audit of Commission		City Auditor to conduct a performance audit and a financial audit of the Commission and the Agency	No later than two (2) years after the City Council has confirmed the first set of Commissioners and alternates, the City Auditor shall conduct a performance audit and a financial audit of the Commission and the Agency. Nothing herein shall limit the City Auditor's authority to conduct future performance and financial audits of the Commission and the Agency.	Medium	December, 2019		
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	Biennial, per budget cycle	Fall, 2019	
Brian Hoefler case: review video	10/11/2018		Response to allegation was officer was Just and Honorable, when allegations were the officer was untrue. All of the issues, despite what the officer said, was a deportation matter. Chief stated that people were charged with crimes, when they were not.	Medium			
Community Policing Task Force/Summit	1/24/2019			Medium			Dorado
CPAB Report			Oakland Municipal Code §2.45.070 (O) 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			
Desk Audit of CPRA Staff by Human Resources	5/17/2019	The Commission would like to request that Human Resources do a desk audit for every job position in the CPRA.	This will enable the Police Commission to engage in a reorganization of the CPRA.	Medium			
Finalize Bylaws and Rules	1/24/2019			Medium			Prather
Follow up on Najiri Smith Case	10/10/2018		Community members representing Najiri claim the officer lied re. the time of interaction, which makes the citation (loud music after 10pm) invalid. They claimed he was engaged by OPD around 9.10pm.	Medium			

**Police Commission
Pending Agenda Matters List**

Pending Agenda Matter	Date Placed on List	Duties/Deliverables	Additional Information/Details	Priority Level	Timeline/Deadline	Scheduled	Lead Commissioner(s), if any
Need for an easy to read process to determine if Commission can open or re-open an investigation	10/2/2018		We've been hearing a lot from community members about concerns about what the commission's power actually is. We've passed a few motions to ask for legal advice on whether we have the authority to open an investigation, but an easy to read flow chart or checklist format might be easier to digest by the community. We are suggesting a flow chart for what our parameters are and resources for where we can send people if we can't help them.	Medium			
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. (OMC § 2.45.090(B).)	Medium	Annually; at least twice each year		Ahmad, Dorado, Jackson
Public Hearing on Use of Force	4/22/2019		Work with Coalition on Police Accountability on presenting a public hearing on use of force.	Medium			
Receive a Report from the Ad Hoc Committee on CPRA Appellate Process	6/13/2019	Once the Commission has an outside counsel, work with them on determining an appellate process	When a draft process is determined, bring to the Commission for a vote.	Medium			Prather
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		

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Reports from OPD on such issues 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	10/6/2018			Medium			
Review budget and resources of IAD	10/10/2018		In our discipline training we learned that many "lower level" investigations are outsourced to direct supervisors and sergeants. We spoke with leaders in IAD ad they agreed that it would be helpful to double investigators and stop outsourcing to supervisors/sgts. Commissioners have also wondered about an increase civilian investigators. Do we have jurisdiction over this?	Medium			
Review Commission's Agenda Setting Policy	4/25/2019			Medium			
Review Commission's Code of Conduct Policy	4/25/2019			Medium			Prather
Review Commission's Outreach Policy	4/25/2019			Medium			
Review taser policy per outcome of Marcellus Toney	10/10/2018		In the report we were given, we were told that officers have choice as to where to deploy a taser. Commission to review these policies and make recommendations and/or find if there is connection to NSA.	Medium			

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Revise employment contracts with CPRA and Commission legal counsels	10/10/2018		The employment 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			
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	Medium			
What are the outstanding issues in meet and confer and what is the status of the M&C on the 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			
Social Media Communication Responsibilities and Coordination	7/30/2019		Decide on social media guidelines regarding responsibilities and coordination	Medium			
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			
Annual Report	1/1/2018	Submit an annual report each year to the Mayor, City Council and the public		Low	4/17/2020		Prather, Smith
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			
Consider creating a list of ways to be engaged with OPD so that Commission can clearly state what issues should be addressed.	2/6/2019			Low			

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CPRA report on app usage	10/10/2018		Report from staff on usage of app.	Low			
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			
De-escalation Policy	1/1/2018		Review existing policy (if any) and take testimony/evidence from experts and community about best practices for de-escalation. Draft policy changes as needed.	Low			
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			

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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 (why not use CPRA attorney who knows the detailed investigation and is already paid for?) Reports on how OCA is supporting OPD in discipline matters and reports on arbitration Public report on police discipline from mayor’s office (Why not from CPRA? The history is that it was included in the annual CPRB report provided to City Council.) OIG audit includes key metrics on standards of discipline	Low			
Do Not Call list issues – cops whose untruthfulness prevents them from testifying	10/6/2018		This is impacted by SB1421 and will require legal analysis.	Low			
Feedback from Youth on CPRA app	10/10/2018		We want to get some feedback from youth as to what ideas, concerns, questions they have about its usability. We've already cleared a process with CPRA, just wanted to get this on the list of items to calendar in the future (ideally early 2019)	Low			
Modify Code of Conduct from Ethics Commission for Police Commission	10/2/2018		On code of conduct for commissioners there is currently a code that was developed by the Ethics Commission. It is pretty solid, so perhaps we should use portions of it and add a process for engagement with city staff and community.	Low			

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OPD Data and Reporting			Oakland Municipal Code §2.45.070(P) 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			
Outreach Committee: work with Mayor's Office and City Admin to publicize app	10/10/2018			Low			
Outreach Plan Discussion, including use of social media	10/6/2018			Low			
Overtime Usage by OPD (cost and impact on personnel health + moonlighting for AC Transit)	1/1/2018		Request Office of Inspector General conduct study of overtime usage and "moonlighting" practices.	Low			
Policy on Tasers			Policy on the discretion of tasers, review with Cunningham	Low			
Process to review allegations of misconduct by a commissioner	10/2/2018		Maureen Benson has named concerns/allegations about a sitting commissioner since early in 2018, but no process exists which allows for transparency or a way to have those concerns reviewed. It was suggested to hold a hearing where anyone making allegations presents evidence, the person named has an opportunity to respond and then the commission decides if there's sanctions or not. *Suggestion from Regina Jackson: we should design a form...checkbox for the allegation...provide narrative to explain..hearing within 4 weeks?	Low			Jackson
Promotions of officers who have committed crimes	10/6/2018			Low			
Proposal For Staff Positions for Commission and CPRA	1/1/2018	Provide the City Administrator with its proposal for staff positions needed for Commission and Agency to fulfill its functions and duties		Low	Ongoing as appropriate		

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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	4/15/2020		
Protocol on how OPC handles serious incidents	10/6/2018			Low			
Protocol on how to handle issues that are non-critical	10/6/2018			Low			
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	Coalition for Police Accountability is helping with this.	Low	Annually; at least once per year		Dorado
Recommendations for increasing communication between CPRA and IAD (ensure prompt forwarding of complaints from IAD to CPRA and prompt data sharing)	10/6/2018		Review of existing communication practices and information sharing protocols between departments, need recommendations from stakeholders about whether a policy is needed.	Low			

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Request City Attorney Reports	1/1/2018	Request the City Attorney submit semi-annual reports to the Commission and the City Council	<p>Oakland Municipal Code 2.45.070(I). Request the City Attorney submit semi-annual reports to the Commission and City Council which shall include a listing and summary of:</p> <ol style="list-style-type: none"> 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. <p>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</p>	Low	Semi-annually		Smith