



**CITY OF OAKLAND  
OAKLAND POLICE COMMISSION**

**Meeting Minutes**

**Thursday, November 8, 2018**

6:30 PM

City Hall, 1 Frank H. Ogawa Plaza, Council Chamber  
Oakland, CA 94612

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**I. Call to Order**

Thomas Lloyd Smith

The meeting started at 6:30 p.m.

**II. Roll Call and Determination of Quorum**

Thomas Lloyd Smith

Commissioners Present: Mubarak Ahmad, Maureen Benson, José Dorado, Ginale Harris, Edwin Prather, Regina Jackson (arrived late), and Thomas Smith. Quorum was met.

Alternate Commissioner Present: Andrea Dooley.

Counsel for this meeting: Sergio Rudin.

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

Thomas Lloyd Smith will welcome and call public speakers.

The purpose of the Oakland Police Commission is to oversee the Oakland Police Department's policies, practices and customs to meet or exceed national standards of constitutional policing and to oversee the Community Police Review Agency that investigates police misconduct and recommends discipline.

Assata Olugbala said that in attending a meeting, it came to her attention that to come in compliance with the Policy known as Conflict of Interest, each Board and Commission that exists must have a City staff member sitting at that forum and it is their duty and responsibility to monitor conflict of interest concerns. She asked who is the City staff person that sits not only for that entity but there are other things at this Commission meetings? Who is that person? Chair Thomas said monitoring the conflict of interest sounds like it would fit with the attorney who is sitting here for the Commission. Ms. Olugbala said it must be City administrative staff member. Chair Thomas said the answer is that he is not certain who the City designates but it could be Richard Luna. He will ask one of the City staff. He asked Mr. Finnell if he could answer that question? Mr. Finnell said he does not know that answer. Chair Thomas said he will get back to her with an answer. She asked that he not reply to her since the Commission is busy. She finished up on the note that it is very imperative when you say that what is going on in the City of Oakland related to African Americans and policing, it is crucial and there are very few public officials that she knows of who are adamant about dealing with the African Americans concerns. Desley Brooks is a power house when it comes to holding the police accountable. Her leadership on the public Safety Committee challenges police officers and the staff and the Police Chief. She doesn't know nobody coming forward that is going to be on the City Council that is

going to challenge and particularly she comes from District 6 and the person that might be representing me got a whole lot of money and she doesn't believe that the creditability is there to challenge the police. She is disappointed that we no longer have only one person who was challenging this police department. I don't know where we go from here with leadership but we are going to be missing a lot of it with Desley Brooks.

Elise Bernstein, District 6 resident, echoes those words. We will miss her terribly. She is here to address Agenda Item VII about indicating that you are not certain that you have the authority to go ahead with reading the investigative files. She said she is Elise Bernstein, Coalition for Police Accountability. The Desley Brooks thing threw her off. She totally feels that you have the authority, the power, to do what you need to do in terms of getting those investigative files. Going through the trouble of trying to get an amendment to the Ordinance, will take time, eat up a lot of energy, lots of other priorities. You have other priorities – lots of them. She hopes that in your discussion you see your way to not adding that distraction to your workload.

Lorelei Bosserman, member of the Coalition for Police Accountability, and wants to talk about Agenda Item VII about changing the Ordinance. It is not necessary. You have a lot to do and do not have time to spend your time and energy on something that is a real time consuming project. That would be a huge commitment and it is not necessary. The Ordinance already gives you the authority to see the files. The problem is not with the legislation. She doesn't know what you do when someone refuses to obey the law but you take a different path. You don't need to change the law; the law is already on your side.

John Bey said that when he looked over he did not notice if the Chief was here or if she is due here to address the very serious issue of the police department's policy on racial and religious profiling in Oakland. It's unfortunate, again, the lack of disrespect that is put forth at this body and the people/citizens who take their time to come here, you are our advocates. We can't make them hear, you can. We need you to get them here when we need to address serious issues in this City. The fact that she is not here now, whether she is due here or not, I would say at the very least she is late. If she is the Chief that sets the example that as a department we won't be held accountable as long as we keep our ranks tight and that is what we got to break up. Additionally, again, it is a waste of time to verify that you can do what you can do. Just do it. Whatever my complaints with you Mr. Chair are, style wise and whatever, you do start the meeting on time and he appreciates that. You do act. Leave this Commission to do what needs to be done – police accountability - oversight of the Oakland Police Department and their policies. Who defines oversight? You define it. The last thing is that if this is a Police Commission, he had meant to address this but it was recently brought back to my memory again, so for a Commissioner on the Police Oversight Committee to be even rumored to be involved in a political action committee against one of the most vehement police oversight leaders in the City for the Council, meaning Desley Brooks, is not a good look for the Commission. Whether we know it or not, you all need to find out whether we know people or not, we need to find out what their motivations are.

Rashidah Grinage asked if anyone saw the East Bay Express article about the officer who collided with the motorcyclist. What we have is a situation where a journalist has information that you don't have. Somehow this journalist can access information, videotape from the incident, and understand the consequence which is that the officer is still on the force and still behind the wheel. We have a situation where the duly empowered Commission is silent and our information comes from the press. This is unattainable. If it continues, the community will not be able to have any faith and trust in your ability to oversee the Department, especially if you don't demand the same level of access to information that journalists have; the federal monitor has and publishes.

This is a moment in time for this Commission and one that you may not recover from in terms of the community's faith and trust in you. If you haven't seen that article yet, pull it up on your phone and it will make your hair stand on end. At the very least, you need to know whether CPRA has investigated that case – it happened quite a while ago. What the CPRA investigation revealed; what those findings were, and whatever else you can.

Larry White, Coalition for Police Accountability. He followed up with the incident that Rashida Grinage referred to. He saw the tweet about it vetted from the East Bay Express with a video. What the video shows, very clearly, is somebody on a motorcycle going through an intersection with a green light and a police car going through a red light smashing into this person. It resulted in major injuries and a lawsuit against the City which he thinks they settled for 12 million dollars. A major incident. From the article, you can't tell whether the officer was disciplined or not; all we know is that the officer is on the force and keeping the same duties he had before including driving. One of the things that has been talked about here is the power of the Commission, the authority of the Commission. He read Section 604, Paragraph F of the City Charter: The Agency shall also investigate any other possible misconduct or failure to act of a department's sworn employee whether or not the subject of a public complaint as directed by the Commission." You have the right to direct the Agency to investigate an incident like this and he hopes that you will. This is what the Police Commission is here for. This is a perfect example of it.

Cathy Leonard, Oakland Neighborhoods for Equity and the Coalition for Police Accountability. The title of this article (East Bay Express) is OPD Caught Making Apparent False Statements After Injury Crash. He lied about the circumstances of the accident. She read aloud from the article – As victim Van Fleet lay bleeding and temporarily paralyzed on the sidewalk, Officer Chor argued with him, even lecturing Van Fleet that the accident was his fault because he wasn't careful enough. Well there was a video that was released by Oaksterdam. It showed that the motorcyclist was traveling on a green light, the officer sped through the intersection, ran into the guy, and then on several occasions lied about how the accident happened - repeatedly he kept saying, I stopped at the light. You should be careful. I stopped at the light. This guy sustained millions of dollars in medical bills including the amputation of his left leg, multiple surgeries, and physical therapy, and he is suffering from post-traumatic stress. Apparently, there was another report which she read aloud - In 2011, OPD's Inspector General found that the Department was barely reporting half of legally required data to the California Highway Patrol regarding pursuits officers are engaged in. The OIG studied over 19 months and found that Oakland police officers injured 21 bystanders, mostly pedestrians and other drivers who were hit by vehicles of fleeing suspects and police. OPD changed its emergency driving policy to require officers to stop at all red lights and stop signs and obey all other rules of the road. That is not what this officer did. He blew through that red light, caused this guy to be amputated and then the City settled for 12 million dollars. We have a homeless crisis in the City of Oakland. What could that 12 million dollars be spent on. Housing our homeless population. Do you know what the City is doing – they are busy paying 12 million dollars to this fellow and on this morning, they were at 11th and Pine evicting an encampment and on Saturday, they are going to evict another encampment. This is what our money is being spent on. Evicting people, paying out huge settlements – but not housing our homeless. Not fixing our streets. That is why she is disappointed that our Mayor got re-elected. You have got to take control of this situation and bring these people under control.

Jesse Smith said that this group of people here and this group of people in the audience here – we are all activists, public servants, we give of our time for free. There is a lot about our mentality and our temperament which is very different than the people that

get elected, people that work in the political machine. Having just spent a few months in an election, he is very fresh from this experience and it strikes him how this Commission is closing on all sides and how they keep trying to undermine and compromise this Commission. It is not because they are in favor of police brutality, it is because that is the nature of this machine. It is the nature of how power is created and exercised in the political environment. John Bey raised a point earlier that he wants to emphasize which is you need to take power by moving forward and you can demonstrate – this might be counter intuitive to the way people like us think – but there are things that can be done and things that must be done that are appropriate. For instance, to gain a lot of power and the trust of the community, to exercise the power of firing the current Police Chief. She is more than qualified to be dismissed from her covering up of the rape scandal to lying about the ICE raids and both to some degree everything falls on her watch. The public cannot have faith in her. We look to you, if you can remove her, then you would receive that faith/trust.

Ms. Janks, Oakland resident. Followed up in terms of the article. Her question is what that officer wrote on the police report. I am sure it is a Class 1 violation for fraudulently writing a police report. That is within your jurisdiction. She goes around and talks to people about the Commission and what we as a community can do with the Commission. This one you should care about. She was talking to a guy and said that we as a community should embrace the Commission, and bring them the issues we want them to work on and we got to engage, and they can set policy, etc. The guy said no, they can only deal with discipline. Your problem is that is how much people aren't paying attention. Somebody who is following criminal justice issues in Oakland, doesn't even understand what the Commission does. That is how little attention is being paid. The reason that little attention is being paid is because you have been mired in people trying to divert you. It is time to start doing things. This is not only an issue for the community of Oakland, desperate for you to start doing things - we will work with you. It is also an issue nationally, etc. You have got the powers and if you don't use them they will wither, we are here to work with you. Let's hold the hearing on policing and homeless; we will bring the people, you hold the hearing – let's do things; let's stop not doing things.

Jennifer Barber, Oakland resident. She is disappointed that Chief Kirkpatrick isn't here tonight. She said that it is shameful that we are still on Federal Oversight after 15 years. We deserve some answers as to why the police department is getting 60% of our City budget. We deserve answers as to why officers involved in the cover up of the trafficking scandal were promoted and not fired. If we were serious about changing the culture of our police force, we would have cleaned house after that and it didn't happen. She is horrified by what she read in the East Bay Express article – that pushed her into coming tonight. Why is that officer still getting paid and working for OPD? Not just that he violated what he was to do, he ran a red light and then lied about it. It is a tremendous problem. He harassed a citizen who was in extreme pain and suffering and needing medical care and having an argument with him. That is not even humane. Who does that when getting into an accident with somebody else. The City of Oakland got off easy on 12 million dollars – sounds like that barely covered his medical expenses, PTS, and the adjustments he must make after losing a leg – income, life style and quality of life, potentially life-long treatment for a mental health condition that he didn't ask for and shouldn't be dealing with. Why is that officer still working for the City? She hopes the Commission can do something about that.

Saleem Bey, concerned citizen. He has been up here every week, every meeting since June or July and pushing the Commission to do their job - as the 83% of the citizens who voted to put you in place because they were dissatisfied with the current status and specifically OPD running the department which is on the current Chief and how she did. She came to Oakland. We didn't ask for her. She knew what the problems were when

she came here and yet she still participates in the cover up of serial rate, the promotion, the dirty officers, the racial profiling of citizens. When he come up here and people don't pay attention or they get personally involved with the person that is bringing the message – it is not because he is here to try and force you to do something – it is bigger than me and bigger than all of us. Just in case you think he is playing, he wants all of you to see the faces of the people (he held up photos) who were murdered in this racial profiling operation that the Chief is covering up. See these people's faces when you are sleeping. I want you to burn it into your imagination and your mind that these are the people who we want justice for. This brother right here was a CEO of a corporation that hired 250 black jobs in Oakland that we need right now. The police were caught and admitted to systemically, purposely not investigating his case. This person was just walking through the neighborhood and got shot with the same gun from two years earlier that the police closed the case and didn't follow up on. This is the damage that racial profiling does. First let me show the audience in case they can't see it – he stands up holding the photos. There is a cover up going on. See these faces. Don't look at mine. This is why I am up here every week and giving my time for free to make sure that you know these people deserve justice just because they can't say it for themselves.

John Jones III, member of the Coalition for Police Accountability. He looked up the definition of the word accountability - It says "the fact or condition of being accountable, responsibility". It also gives an example: "Their lack of accountability has corroded public trust". I am always mindful that the reason why we found out about the scandal (rape of a minor) - It wasn't because the police department came out and said you know what, we realize someone among our ranks did something that is so despicable, we want to hold them accountable. We only found out because a member of their ranks committed suicide and left a note. What does it mean to be held accountable? Each and every one of us who have a job, we are held accountable. he can't do whatever he wants to do and not be held accountable to my employer. To go a step further – every job he had, he never pledged an oath to protect the citizens from his job. They should be held to a higher standard. He shared – Dr. Huey P. Newton said it best – power is the ability to define phenomena and make it act in a desired manner. It is your job to define the phenomena – what it is that you need to do and make it act in accordance to a manner that is desirable to you because clearly the systems and powers that be in the City have zero interest in keeping this department accountable. It is very cute to go out on TV and say that we are against ICE. That is a federal agency which the Mayor of this City has no purview over. The Mayor does have purview over the Police Chief and OPD. Fifteen years later, this is ridiculous. Please don't go on what they say because they have been undermining you every step of the way – they don't want this to happen, you have the power of the people behind you, 83% of the people voted for this, they can be fired or their terms can be up. The end of the day for those of us who are still here, who are raising children here, who are raising families here, this is why this is very important. Please - asking each and every one of you, exercise the power that has already been given to you – don't wait for someone else to validate it for you because that means you don't have power, they do.

#### **IV. Approval of Draft Commission Meeting Minutes October 11, 2018**

Thomas Lloyd Smith will offer the draft minutes for approval by the Commission.

##### **a. Discussion**

E. Prather noted that he raised an issue with the Minutes from October 11, 2018 from our last meeting. It did not include an interaction between Vice-Chair Harris and a Mr. Fuentes during Public Forum. These Minutes do contain that reference and he appreciates the effort that went into the preparer of these Minutes to get that

included. In my mind, these minutes are now complete.

b. Public Comment

No public comment.

c. Action

MOTION to approve the October 11, 2018 Minutes (E. Prather) and seconded (G. Harris). The vote was Aye: 5 (Ahmad, Dorado, Harris, Prather and Smith); Opposed: 1 (Benson); Abstained: 0. The motion passed. Commissioner R. Jackson was absent.

**Approval of Draft Commission Meeting Minutes October 25, 2018**

Thomas Lloyd Smith will offer the draft minutes for approval by the Commission.

a. Discussion

None.

b. Public Comment

No public comment.

c. Action

MOTION to approve the October 25, 2018 Minutes (J. Dorado) and seconded (E. Prather). The vote was Aye: 5 (Ahmad, Dorado, Harris, Prather, and Smith); Opposed: 1 (Benson); Abstained: 0. The motion passed. Commissioner R. Jackson was absent.

**V. Oakland Police Department Report (20 minutes)**

Chief Anne Kirkpatrick will report on the Fifty-Seventh Report of the Independent Monitor and OPD policies and actions relevant to Task 34 General Order M-19, *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*.

a. Discussion

Chair Smith welcomed Chief Kirkpatrick. She apologized for her tardiness and said she was with a family night with the police academy recruits.

**(1) Fifty-Seventh Report of the Independent Monitor and OPD policies and actions relevant to Task 34 General Order M-19, *Prohibitions Regarding Racial Profiling and Other Bias-Based Policing*.**

Chief Kirkpatrick reported that Task 34 of the NSA has to do with how we collect data on our stops and analyze it. Two of the Department's Area Captains (Captain Nishant Joshi and Captain Tony Jones) will walk through those two different aspects of Task 34. They will answer questions.

Chair Smith welcomed Captain Joshi. Captain Nishant Joshi said he is an Area Captain (from Fruitvale to about 82nd Avenue). Task 34 covers vehicle stops, field investigation, detentions, and other stops. He reported that officers are required to complete reports associated with the stops that includes specific details like where

the stop occurred, the reason for the stop, who the officer was, date/time, individuals who are stopped we look for specifics like race, age, whether Oakland residents or not, things of that nature. By collecting this data, we can store it into a database. That allows us to later look at the trends that are associated with the types of stops that we are doing. We do have policies that are associated with Task 34. Some of those policies are prohibition against racial profiling, the procedures on stop data collection, and reporting expectations. He gave some foundation and understanding of what Task 34 is, what it includes, what our policies are associated with it. This boils down to we are looking to identify when and where are we engaged in disparate treatment of any particular groups within the community. With this information as Area Captains, we are provided with data polls. These data polls range from 3-6 months and we are provided this information on every quarter. We look at the data and that data gives us the locations where stops are occurring, outlier type activities, specific groups that are being stopped, it includes searches, outcomes of searches, things like that. That allows us to look at to see if there are outliers that are occurring. The data also includes performance dimensions such as misconduct complaints, use of force, arrests that were not charged (deemed bad arrests), and then that allows us as managers to be able to look at who is this officer, where this officer works, who is his/her supervisor, and then we start drilling down and looking at if there is behavior that at-risk.

Chair Smith referenced Item 5 in the Agenda Packet, Task 34, Page 8, Commentary, Paragraph 3 of the Report and read aloud “However, despite repeated recommendations to do so, OPD continued to resist conducting a drill-down or in-depth analyses of squad or specific individual officer data to ascertain the basis for and/or to appropriately address such indicators when present.” He asked Captain Joshi what that means. Captain Joshi said that is a work in progress, we have work to do, we have to get better at looking at the data. We have had several different formats of the data that came out because we are trying to come up with something that is more user friendly for the managers to do the drill down that is intended by this policy. Chair Smith said the part that concerns him is that it says “despite repeated recommendations to do so” – are we making progress or not? Captain Joshi said that we are making progress but he still wants to acknowledge and say that there is more work to be done. We are not at that point to where we are being looked at as where we need to be as far as the drill down is concerned. The progress that we are making is that the number of stops we are doing have gone down, the number of searches that are occurring have gone down, our overall footprint in the community has gone down. He understands that we need to be more in depth in our drill down.

M. Benson - To build up from that same sentence, the part of the sentence that concerns her is the comment that there is resistance despite that. Can you speak to why anybody would resist these repeated recommendations? Who are the people that are resisting? Chief Kirkpatrick said she is going to accept ownership of that. We have been defensive and that is not going to be the case and that is not acceptable on our part. She appreciates it and wants to address - are we making progress. We are and one of the things we are going to presenting and rolling out to the Monitoring team when they come is that we now have in writing what we call a play book, is a structured way of how do we drill down so that whether it is this Captain or whomever that we have a structured way of saying that when we see a concern we know how to do the drill down. We put that in writing, Virginia Gleason has structured that for us. It is in the hands of the Federal Monitor and has been presented to Stanford (academic support). We believe that at the next site visit (in a few weeks), that we will have shown and demonstrated progress to that. She accepts full responsibility. Chair Smith thanked Chief Kirkpatrick. M. Benson said she appreciates her naming defensiveness. I know Chief that you and I have

had these conversations before where it sounds like respond to a concern about certain individuals or a system being defensive, is that the word – I want to make sure I heard you correctly? Chief said you heard correctly. As the leader of this organization, if any of us are defensive she owns that. M. Benson said she appreciates that. Her concern though is that the implementing of a specific guide is a technical solution to an adaptive problem. You have officers and people in leadership positions who are resisting. She is concerned because it seems to me like a bit of your leadership philosophy is implementing these technical procedures, you assume that people are going to change their belief systems, and she is not clear about that. In fact, none of the research she read supports that. It is a measure of both. My question is what work in addition to creating a technical solution is being done – it says here you are working with Stanford but to her, when we talk about accountability, if there are officers or people in leadership positions who are defensive about accountability, then we have some real serious beliefs to transform. Right? Chief Kirkpatrick said we are working on the transformation. I will tell you that the Command staff, you will see this in these two Commanders, we have quite a few Commanders who are on board. I think that there is a clear understanding that your own board or you won't be in executive leadership. She believes that message has been received. She doesn't see defensiveness in these Commanders or any of our Commanders to be frank right now. She owns the defensiveness. She understands that transformation involves either you come on board or you don't with the new way of thinking. She doesn't believe it, she knows it. We are coming online and it does take time to change how people view things but we are having progress and hopes that in the next site visit by our Federal Monitor you are going to see a report. This report is about two months from when we had our last site visit. There is a lag between the time the Monitors come, the time the report is processed and put to the public.

G. Harris said this is the 57th Report and she is noticing – read a lot of the reports – in regards to the Monitor pulling a hundred cases. A lot of the cases he reviewed did not have video to go along with that. That is one of our policies, right? Chief Kirkpatrick said right. G. Harris said that I am seeing that there is an issue that things can't be determined because there was no video that was connected to it. Also, there were 25% of the cases that they pulled - unreported use of force was apparent. She knows that the upper management is supposed to be reviewing the PDRDs. The Chief said yes. G. Harris said that nobody is reporting it, do you see that as an issue? Chief Kirkpatrick said yes. What we have done again is that when these things come to attention, she doesn't wait for an intervention. She mentioned the PDRD as an example – to stop gap that problem from occurring, we being an executive team, we have come up with what we believe is a solution. It is not finalized. She can give you what we think we will be doing. Whenever an officer uses force, we want now that they fill out a sheet where they would check mark if any force was used. That will then indicate to the approving supervisor that this officer has indicated that force was used, you need to check the video to make sure there is video whenever force is used. We are trying to catch those accountability systems through a method such as that. G. Harris said what she was asking in regards to the video, you keep saying accountability but we are not seeing that – this is the 57th Report. Either you turn that camera on or you are not fit to wear the uniform. Chief Kirkpatrick said as you know by law, employment law and attorneys, she cannot address in a public forum any officer's discipline. You heard the Mayor address that the other week and she can give you some aggregate numbers but since she has been the Chief of Police, she has terminated 15 officers – that doesn't even include the number of suspensions, reprimands; she can bring aggregate numbers at a different date. She understands because you hear silence, you think there is no accountability. Have I done demotions – yes she has. You don't get to hear individuals and/nor will you because it is against the law for me to



do so. That does not mean accountability is occurring. Chair Smith thanked the Chief.

A. Dooley said she is familiar with use of force, other jurisdictions, etc. One concern she has about the process you propose to put in place, it is yet another technical system of filling out a report which then triggers which is cumbersome and ultimately just another slip paper or an email that can get lost in the system. What she has seen in other jurisdictions is literally the officer just calls their supervisor and then the supervisor flags it and it goes into the report and that triggers the review of the PDRD. In those jurisdictions, it is also the case that in their disciplinary matrix, a failure to report the use of force even reasonable use of force, triggers very high disciplinary reactions. People know you take the burden off the officer of having to do this report at the front end but they are doing a report, they are just talking to their supervisor, getting the feedback they need, they are learning about it, and if they don't take that opportunity, then they have a problem. Trying to find opportunities to increase the dialogue amongst your Command staff and your front line that don't involve just writing stuff on a piece of paper, may be more valuable for closing some of these accountability loops. Chief Kirkpatrick said she agrees. Reform as you know is the check list, is the policy and it is the check list. We are talking trying to move to transformation. Sometimes you have backup of systems to make sure that we are catching these areas. A. Dooley said that she is not suggesting that there is no reporting. What she is suggesting is that the obligation runs to the connection that the officers have with their supervisor that is documented in a report. The report is just that we captured the information. The conversation is the learning opportunity to ensure that the officers are getting what they need, that the suspects are getting what they need, and that the supervisor knows what is happening and can double check it. The Chief said she appreciates that as well. She encouraged Commissioners and community members to come see them in action; ride with us.

M. Ahmad - What year did you start as Chief for the City of Oakland? The Chief said February 27, 2017. M. Ahmad - How important is it for you, for the department, to have training about racial profiling of the citizens that live here? Chief Kirkpatrick said she absolutely supports it, it is critical, and it is trained in our police department.

J. Dorado mentioned that the Oakland outliers were the Ryders – that is where obviously, this NSA came from? Chief said yes. J. Dorado said you are aware of that coming into the job. The question raised previously about the resistance is greatly troubling. How is it possible that there would still be resistance, your knowing coming into the history of the NSA, the fact that the focus of the reforms was to reduce to the absolute minimum outliers by routing them out. This is a method by which that would have happened. To hear that there is resistance from the Federal Monitor is frustrating. Where did the resistance come from to have this process by which outliers were identified/embedded and why it hasn't been routed out - was it at your level, at the Command level, at the Sgt. level? The Chief said she can't address that for this reason – the Federal Monitor and she have not had an in-depth conversation about this so we see the Report two days before it is published. We can comment on it and do.

Chair Smith, for the record, R. Jackson was noted present at 7:20 p.m.

M. Benson – you mentioned that you have written the technical solution – since that falls under this jurisdiction, why that has not come to the Commission for review. The Chief said that it is not a policy change; more of a correction tool form. M. Benson said the policy is the same as to how officers are to report use of force,

just a different form? The Chief said it is how we want to try and make sure that there is an accountability to that policy. We want to be very collaborative with you; we want you to weigh in on policy, we welcome this. We did not see it as a policy.

Chair Smith thanked Chief Kirkpatrick.

b. Public Comment

Henry Gage III, Coalition for Police Accountability. As he was sitting listening to the reporting, a thought came to mind - silent accountability is no accountability at all. He read a lot of reports lately and it seems that throughout the history of the NSA, every three to four years someone comes out with a new plan, a new catchy nickname, with real change just over the horizon, and here we are – 57 Reports later and still not here. It is so frustrating. He hates to pick on you Captain Joshi but columnists are a work in progress is probably the understatement of the year thing. Secondly, he is going to continue to make this point – you are creating a record with these meetings. You are creating a bad record when you call the police department in to give reports, having us sit here for a 45-minute lecture on the issue of the day, is not useful longitudinally and not useful long term. We need written reporting. We need to be able to come to these meetings prepared to ask incisive questions and we can't do that after sitting here listening to Q and A for 45 minutes, etc. We just can't do it. Further, anyone who wants to figure out what OPD has reported about, must go back and review hours of video. Video that isn't time stamped which means you must watch the whole thing just in case you missed something. It is ridiculous. We need written reporting. Finally, I do believe that OPD has a six-month cool down on ride-a-longs and he asked Chief Kirkpatrick to respond. He would like to take her up on that offer to ride along and that six-month cool down must be waived; it is on the waiver. If she is willing to do that, He would like to take you up on that offer because he and other people would like to engage in more ride-alongs to see what it is like from OPD's perspective. He asked that this be sped up.

Mary Vail. Member of the Selection Committee and not speaking for them tonight and the Coalition for Police Accountability. When she read the Monitor's Report, glad that several people honed in on this, when you get to the hard part of the stop data, and that is following up on the data, dealing with squad and individual officer accountability, etc., to hear the Monitor use the word resistance. I can tell you back 2010, 2013, the time that Chief Whent was appointed, and major compliance Director changes were made in the NSA, what the Union said to a reporter was we are so sick of this, like we can't have Chiefs changing all the time, and we can't keep Oaklander's safe and worry about all these NSA requirements at the same time. That is their attitude, that is the culture they are defending. When it comes down to a particular task, changing the profiling, stopping it, and as the Monitor notes, yet reducing your footprint isn't a solution to the problem. You must change the practices and then the Monitor uses the resistance term in terms of following serious follow up on the data and requiring going through the steps to not only retrain or talk, but for what we call the outliers, the repeat profilers personnel accountability, etc. She is concerned that after all this time, 57 Reports, the court officials are still saying there is resistance in the Department, etc. Resisting and being defensive are two different things.

Saleem Bey agrees with Mary Vail – what the Chief is doing – deflecting. Specifically, he is a member of the profiled group that we are talking about. A person that lives in the community, person whose family lives in the community. It is unacceptable to say we are working on it. Especially after we are talking about the 57th Report but just as a quick count, from being here since 2017, you have been

here for at least six or seven Reports, so to say that we are two months behind and you are trying to catch up, doesn't meet the smell test. It just means that you have been here and now that you have been called on it, now you have an excuse. The issue of being is that if this was a corporation, would the corporate board accept the information that she just came up to the board and said. She said that we are still working on it. We are still meeting resistance. But let's put this in perspective. The citizens that have been profiled, the citizens that are suffering under this profiling, have been doing it since 2003 under the NSA and we could go back decades before that. The Chief was given two weeks ago a document that specifically said racial and religious profiling. When she was called up here by this Commission, she took the fifth; said she could not speak on it. I didn't hear her say anything about religious profiling that doesn't violate officer confidentiality. She could have spoken to that policy; has information on it. The NSA says that a criminal investigation as in a civil suit are two separate things. When the City Attorney is speaking for the Chief of Police and telling her that she can't answer your questions, you should question that because she can answer your questions without violating police confidentiality. The question is – Is there racial and religious profiling going on right now? Is there new evidence of racial and religious profiling that came to light in 2018 and what has she done/doing about it? He has heard about all these things about why these excuses or why she can't do anything. When you accepted this job, we were already 12-13 years into the NSA and you accepted the job with the understanding that OPD has been resisting for 12-13 years. To come up here after being here for two years and give the same excuses, means you have done nothing since you have been here. The people of Oakland have been suffering continuously under that. There is people dying in the street, people getting shot, people being lied on, all the things we have been saying about the police for all these years are still happening and she hasn't done anything about it.;

Jesse Smith said he gets confused by obscurest jargon by outliers, we mean racists. Right? That is what that term means. There is a lot of precedent for what he has heard about at trainings, at previous meetings here, and what the Police Chief was talking about tonight. During Viet Nam, there was a project by McNamara called Project 100,000. It was nicknamed McNamara's Morons - they brought in men who had IQ's as low as 40. The belief was that through the system they would become more competent and capable. Not only did they have extraordinarily high death rates but they often fragged their own troops not understanding that they were even in the war a lot of the time. This idea that what the Police Chief has said tonight is we are trying to change people's world views fundamentally, heal their racism; instead of getting rid of the racists. She is trying to run a program where systems make these morally incompetent people racists, not racists and somehow morally competent. She is trusting in the system. He is a big fan of cybernetic design and technocracy and all these kinds of nerdy things – this idea that computers can run our society and that we can have a better life through social networks, etc. We shouldn't be running this experiment with people's lives in Oakland.

Assata Olugbala said the data is not being brought forward tonight. The data says that African Americans are 26% of the population of Oakland and we represent 62% of the stops. That has been consistent data over 15 years; nothing has changed. We are talking about African American/black people who are the victims of racial profiling and excessive force in this City. African Americans and black people. The data is supposed to be analyzed. The system for analyzing the data is PRIME. PRIME won't be ready until March 2019. Nothing is happening reflecting that data analysis. That is a Court Order. I don't think it will be ready then. All this blah, blah that we are doing things, you can't do nothing until you analyze that data and you make a determination of why this is happening. Then when you have people who are experts who come in to help you understand

what is going on in your department and they only decide to come up with the bias that exists is only because unconsciously they don't know what they are doing when the scientifically explanation of what is going on has two sides. You do know what you are doing and you don't know what you are doing. She heard this from Dr. Eberhardt – To get buy in at the police department, you only use implicit bias so you can get buy in, you succumb to a lie to get them to buy in. There is no such thing as buy in, you do what you are supposed to do. Thank god for the State law that we are going to have to come under. State law in 2020 requires data goes to the Attorney General of the State to see if we are in violation of racial profiling and gender bias/gender profiling. We no longer need the NSA. We need to get out of this 6-million dollar per year arrangement and use that money for the homeless, housing, etc. Warsaw is not doing anything. The Chief can stand up any good day she wants to and say these officers will abide by General Order M-19 or you get out of this department. That goes to the supervisors, captains, and all the leadership – you are to monitor these officers; if they are not in compliance with M-19, get them out of here. You don't need the NSA.

Rashidah Grinage said she will try to be respectful and probably will not succeed. She has listened to OPD speak for a long time. OPD conceals what is important in mountains of unimportant statements. Statements about forums and process and who says what to whom and who reports what to who. It is all a distraction. The Monitor got it right when he said the implementation of the intelligence led policing model has been challenging for OPD. This is evidenced by continued variances in and/or misunderstanding of what constitutes an intelligence led or intelligence based stop. All of that means we are basically hunting for people who are on parole and/or probation. These are basically black people. That is why we have disparate numbers and that's what needs to be looked at. This is not a mystery. This is not something that takes 15 years to uncover and understand. What this requires is a straight direct pursuit of a solution. What happened to the policy revision on parole and probation? Let's start looking at that. Let's start looking at what percent of these stops are based on and fueled by parole and probation. Let's start there and start looking for answers and not verbiage.

Chair Smith had a quick response for the policy on parole and probation - we are going to request for December 4 (Public Safety Committee Meeting) that the City Council take it up; it should be going to the Public Safety Committee and then hopefully they will put it on for the first City Council meeting of December. We will keep you posted.

Lorelei Bosserman, speaking only for herself. She thanked the Chief for acknowledging the defensiveness because she has been frustrated over the last 11 months that all your reports have been saying, - no, we are great in this way, etc. We know there are problems but we want to hear what you are doing about them. She thanked Captain Joshi for acknowledging that they are not doing everything right. To the Chief, she wanted to thank her especially for saying that she has terminated 15 people, which is significant. That information is useful. You don't have to go into specifics, confidential information, you can give aggregate numbers. Could we get from you the reasons were for the terminations? Even an aggregate? Thanks for your time.

## **VI. Community Policing Advisory Board (“CPAB”) Annual Report**

The CPAB will present their 2018 Annual Report. The CPAB was established in 1996 to monitor and report on the implementation of community policing, provide recommendations on steps to improve community policing, advise OPD on community policing matters, maintain communication between the OPD and the neighborhood

Crime Prevention Councils and Neighborhood Watch groups and Merchants Watch groups, assist in educating and informing the public about community policing, its current progress and its direction, and authorize Neighborhood Crime Prevention Councils and mediate disputes.

a. Discussion

Chair Smith asked if we have someone here from the CPAB? We have carved out about 15 minutes for the Report.

Ravinder Singh, Chairperson of the Community Policing Advisory Board, introduced himself. He is here to present their Annual Report to the Commission. Chair Smith asked if staff wanted to introduce themselves. Joe Devries, Assistant to the City Administrator, introduced himself and said he staffs the CPAB and will be adding to the presentation. Cathy Leonard introduced herself and said she is a member of the CPAB (since 2016). Mr. Singh said we will maintain our 15 minutes we are allotted. There will be a PowerPoint presentation that summarizes/highlights the key points from the Annual Report. He asked Joe Devries to lead the presentation. Joe Devries said this is our first presentation to the Police Commission since it was created. He gave some background about community policing. [Item 6 in the Agenda Packet]. Chair Smith asked if any Commissioners had questions. There were none.

Chairperson Singh said we will not be able to see the PowerPoint presentation and he will speak from his notes. He spoke about defining how we look at Community Policing and implement and measure community policing. He reviewed the 3 Pillars of Community Policing, CPAB Recommendations, etc. They want OPD to collect better data; how long these officers stay in their beats, why they are leaving. We have asked them to do exit interviews and we got agreement from them that they pursue this data capture for us. They want to hire additional Neighborhood Services Coordinators that work with the police department. Now, each of these Coordinators have 6-9 Beats. We want to continue working with our Neighborhood Councils by doing new leader trainings and citywide networking and recognition events, etc. He spoke about some recent accomplishments and goals they have and the goals moving forward. He mentioned that Captain Joshi comes to their meetings. (He referenced Item 6 in the Agenda Packet). Chair Smith thanked Mr. Singh.

Chair Smith asked if Commissioners had questions.

M. Benson thanked Mr. Singh for the presentation and informative. She is curious – she recently heard more about Richmond’s model – the hired neighborhood change agents – is that something that you have recommendations that are specifically about CROs but is that something that you had discussion about as it relates to community policing in any way or have you talked about that or is it new? Mr. Singh said that tonight is the first he heard about that and will look into it. M. Benson said that in Richmond, California their murder rate dropped in half and they started hiring formerly incarcerated people to be neighborhood change agents. They were nonsworn folks that were employed by the City. She recently heard about this. She would like to expand the idea of community policing to include nonsworn folks so that we can shift a bit of the historic model that has been problematic. Mr. DeVries said that the Richmond Model falls more along the lines of what the Measure Z funded Oakland Unite Projects are doing because they are working a multitude of violence prevention programs that are overseen by the Safety and Services Oversight Committee. There is a link/connection with your Commission, with the CPAB, with the SSOC - we are seeing that more and more

because the model of building partnerships in the community must include the entire community and so I think this Board recently had recommendations that were like the SSOC and the department is going from our Board to that Commission and we are going to see more of that in the coming year.

G. Harris thanked them for the presentation. She is a big fan of community policing however she has not heard very much about the CROs or this community organization in the neighborhood that she is from – east Oakland. It doesn't look like there is a lot of community involvement there. She would like to see that. When she first moved to Oakland, community grassroots raised, she wanted to see who the CROs were and found that the people they are signed to our neighborhoods in Oakland are not from Oakland. They know nothing of Oakland, don't live in Oakland, so they don't know our issues. They don't look like me, don't relate to me, so how could they help us with our issues. She would like to give you that feedback that it is imperative that the people that are working in all our communities know that every single person is important. She feels like east Oakland is neglected. Mr. Singh said that they meet every other month at the Eastmont Mall and get east Oakland more involved in our efforts. We do not get a much participation as we hoped. We know that within Neighborhood Councils they are more active. G. Harris suggested to not hold these meetings at a police station. Where she is from, they do not go to the police station for anything. You must build community trust and it is not in the police station. There are other places you can hold community meetings where young people or people get overlooked (18-30). The ones who are standing on the corner at the liquor store - ask them what they think, how you feel, etc. People want that.

Chair Smith introduced R. Jackson (President & CEO, East Oakland Youth Development Center) to the presenters. She appreciates the document in the Agenda Packet. Having run the Center for 24 years she has not had much engagement with the CPAB and would like to have more. How to support you in making sure that your meetings are attended. She asked that they email her their flier, etc. and maybe we can work on that. To Commissioner Harris' point – Parks and Rec buildings, libraries, senior citizen centers, youth development centers – we would all be happy to have you come and do some trainings, share with us what it is that you do so that it is not a mystery. She likes the fact that you are saying your partnership, at least for the focuses with police, you have faith that those are moving forward, you have trust in those evidentiary practices. That is a wonderful thing to hear. Community policing is so exceptionally important and we can get – maybe not all the kids who are on the street, but there are a lot of people who if given an opportunity to participate or responsibility or given a stipend, will give you perhaps more engagement than you know what to do with. In different times, we have taken the lead in trying to resolve those. She is here to say that Richmond, particularly under Bogan, community neighborhood work, has done some incredibly creative and resourceful work. When you acknowledge and honor people who are having the biggest struggles and then give responsibility, they often rise and that is what we need to be doing. We need to be giving responsibility to some of the least of these, the folks who don't have much and maybe don't have much direction, and give them responsibility, give them something to shine with. Those are my comments. Mr. DeVries agrees with everything that was said. He highlighted that where the strength of community policing lies. It doesn't live in the CPAB. It lies in the neighborhoods. Along International, we have Neighborhood Councils. That's where the Board needs to/all need increase participation of youth underrepresented, people who feel they can't meet at the police department. G. Harris is in 35X and we don't even have a representative on this page. Mr. DeVries said that each Beat has a Neighborhood Council and Neighborhood Services Coordinator assigned to them and they do meet often. It is not about the Board having strong neighborhood

participation - it is about the Councils having the strong participation. That is where the strong relationship building must take place. Those leaders are the ones who ultimately become board members., etc. The members bring that knowledge base, the experience of working in their neighborhood, they are the most equipped to make recommendations to the police department/to the City to hold us in check. He agrees with you. I want to keep the focus on the neighborhoods as well.

R. Jackson said that it has been 10 years since she went to an NCPC meeting at Eastmont Town Center because it wasn't a great place for it. She suggested moving them as Commissioner Harris mentioned - that would be a great starting point.

J. Dorado mentioned that the City or OPD has never supported the Neighborhood Councils. It is obvious. The community policing, if in fact that happened, it would greatly provide the basis by which the community would begin to come to the meetings and know their neighbors and work on identified problems that come to solutions. It has never happened to the extent that it should. These projects do go in a database. Nobody has access to it except OPD. That needs to change because that is a repository of best practices citywide, if it works in west Oakland it will work in east Oakland but how will we know if we don't have access to that and OPD can redact it anyway they want – we want the raw data, we don't need names, addresses, etc. He gave further comments.

b. Public Comment

Michael Tigges, Chair of Montclair Neighborhood Council. I know what the CPAB is and attended one meeting over the years. We have a CRO who has been on medical leave for the better part of last year, sometimes someone shows up at their meetings and sometimes not. The CROs are a reserve force for OPD in the patrol section. They don't interact enough. The longer you stay as a CRO, you don't get promoted. We are feeling neglected. It isn't just the flat parts of the community. The OPD/City must put enough priority behind it to do the outreach to the communities otherwise you will not get anywhere.

Jesse Smith, with admiration to people who work on community policing efforts, he agrees that the term is misleading – just another model and it has its pros and cons. Overall when we compare it to other models, it is very lacking. The NCPC system, when it first came in, was potentially revolutionary. It got people excited. Over time it became a problem in our community. The CROs arrive and they take reports. He spoke to a CRO extensively one time – very hard to find a functioning NCPC let alone CROs. What he found was, he described his process of what he does, shows up wearing guns. What can a person with a gun do for me? It is intimidating – maybe leave the guns or leave off the uniform.

Assata Olugbala said she has had the opportunity because she goes to the meetings of the CPAB and Measure Z and frequently at both those meetings the CRO officers would do presentations. She was taken back. She had seen several presentations by CROs and was not impressed. Then she finds out last year, CROs have never been trained. For the first time in March 2018, CROs were trained one/two days. Then she finds out at the last Measure Z meeting a few weeks ago, that there is no qualifications standard for becoming a CRO. You write your name on the list and they chose CROs. We have a combination of people not being trained and not being admitted into CRO with any kind of standard qualifications.

Community policing in its best form is that every officer had to be a community policing officer. The best way they perform is they get out of those cars and they walk through the community, engaging with the people, finding what the needs are, and coming up with some solution. That's community policing. The reason why

these officers are not able to stay focused and concentrated is the staffing component for Oakland is minimal police officers, minimum staffing. Because we work under minimum, those officers are pulled back into as needed. That is not going to work. The biggest thing is we do not have CROs who are adequately, at this point, prepared. They are working on fixing it. The best fix is every officer should be out in his/her community working for engagement with that community. NCPCs don't have to meet every month. At a minimum, they only meet four times a year. They are satisfied with that.

Saleem Bey, concerned citizen. He took some notes and had something to add. He commended these people for doing what they do because we understand how difficult it is and what the commitment is but he also wanted to say that for four years in north Richmond, he was the Community Coordinator and Liaison so he did do that job exactly what you are saying. He found that north Richmond is half unincorporated run by the Sherriff's Department and the other half is by the City of Oakland. On the Cityside, he worked directly with Devon Bogan and we implemented programs and different things to engage the community but it took resources. One of the things that concerned him is that you said that \$80,000 citywide to be divided is not resources of a commitment to success, especially when your one liaison officer that you just quoted, a captain, is making close to \$200,000 a year. One person, not all the other ones that are sent there, is making over twice as much as the whole community is being allotted. That doesn't make sense. The other thing is the commitment by the police department. There is a disconnect because he didn't hear you say anything about the racial profiling of the community that is being policed. We heard a very extensive report on racial profiling in the communities. How is it that you can talk about community policing with a liaison officer but you are not dealing with the whole department that is oppressing the whole community. That needs to be taken care of. The other thing is that the people who are being arrested by OPD don't have any resources. Everybody knows that it takes money to make money. That you get what you put in. If you don't invest in the community, you are not going to get anything out of the community. Every year more and more children are dropping out of school. You are not addressing them. Every year it increases the number of people without a high school diploma who are hitting the street which means that you will never catch up in terms of policing unless you stem the tide and create some type of opportunity for these people.

Elise Bernstein said her NCPC is 30Y in east Oakland. She has tried to break into her NCPC for nine years that she has lived here. They are tough. There is a core group of 20-25 women. All they want to talk about is abandoned cars. Our police officer is awesome (K. Armstead). She grew up in Oakland and lives in Oakland with her family. She has learned to approach her personally and tell her what is happening in her neighborhood (not abandoned autos). She said to let her know, email or call her and she will look into it and take care of it. Awesome. The group is hopeless. I brought up the issue of the Police Commission and the resident who was elected as Chair and does nothing. She brought up the issue of the Police Commission and asked if anyone in the audience knew about it. She raised her hand and two others did. She had copies of fliers that Ms. Janks photocopied about how to make a complaint regarding police behavior to the CPRA. A person did ask how do you let them know when you have a problem with the cops. The staff person said she didn't know, I guess you go to their website. Ms. Bernstein said no; she had fliers – and distributed them – she tells people how to make a complaint. People all took them. She suggested that people need to be told about the Police Commission and be given fliers at the least.

Rashidah Grinage said that she was part of the original community policing task



force in 1993 when the City was carved up into these 57 beats. We had a lot of training about community policing is and what is supposed to be is that the community resource person officer is supposed to be a point in service provision, in other words if there are issues in a neighborhood that are with drugs, then that person is to link to Alameda County, or whoever has those kinds of services. The same with abandoned vehicles, people with mental health crisis, or other crisis where there are county services available since Oakland doesn't have a health department. Since then, there has been absolutely no training provided to NCPCs and community resource officers about what the original design of community policing was about. It was about service provision, problem solving in a way that brought necessary resources into a neighborhood. She doesn't know where this got lost. She has been to a lot of NCPC meetings which she likes. She went to one in north Oakland with Captain Bolton. They had never heard of SARA, no idea what it was and neither did the Neighborhood Service Coordinator. It is supposed to be the problem-solving model that is used. There has been a lot lost in translation; somebody needs to figure out how to go back to the original script.

Mary Vail said that she has been on her NCPC Board. She seconded Ms. Grinage's comments about the lack of structure and uniformity in terms of how the NCPCs are to operate. In 16Y, we have been taken advantage of the lack of rules and have developed a broad program for our neighborhood which is in central Oakland (Glenview/Diamond) and have had discussions and forums about not only our traffic problem on or neighborhood's main drag but the racial profiling situation and how neighbors should not be profiling each other or when they are dealing with OPD. We had one on protecting the immigrants from what is going on with the Feds because we have immigrants in our neighborhood and affected by the Feds policy. She has watched the hard work that the CPAB has been doing this year, sometimes with pushback from OPD about the SARA job description and about the community policing policy of the City. She hopes the two groups will support each other in asserting your role.

Henry Gage III, Coalition for Police Accountability. A quick rhetorical question for you. What causes crime? He asks that question because data shows that if you read the research, look through the reporting, we don't know what causes crime. It is a question that everyone wants to know the answer to and no one has it. We do know that there are things correlated with crime – social isolation and economic anxiety are at the top of the list. He says all this because in his opinion community policing is a worthwhile investment of resources. Especially, when you compare that to investing in direct police staffing by increasing the numbers of officers on patrol. He thanked Commission Dorado for research on this topic, for his involvement with CPAB because it started him to consider the building blocks Oakland has created for this program. We have some great building blocks but we don't have an inaccurate or adequate investment of resources. He mentioned data points. A thoughtful and resourced community policing program is the ultimate safety tool and has the potential to be very effective if we begin to resource it effectively. He would advocate to diverting resources away from OPD as currently constructed and towards some of these building blocks. There are concerns he has as well – Jesse Smith made a good point that if you are not careful, community policing can become a surveillance program. People are justifiably worried that if they go and talk to the police, that information will be used against them. You must actively fight against that perception. As an institutional concern, community policing is not the fast track to career advancement. That needs to change.

Chair Smith thanked CPAB for coming, the presentation, and hope that you will tell folks about the Police Commission and perhaps we can see them turn out at a few meetings. We do have Cathy Leonard at almost every meeting, her attendance has

been spectacular and she deserves a gold star. If we can get other people to do that, it would be great.

**VII. Amendment to Enabling Ordinance for CPRA File Review**

Commission will discuss and consider approving a request to the City Council to Amend the enabling ordinance to address the Commission's authority to review Community Police Review Agency files for the purpose of performing the Commission's duties. The Commission's request would be sent to City Council members willing to sponsor legislation to make these changes.

a. Discussion

J. Dorado said we are going to deal with this entire question later in the Agenda tonight. That is why we are tabling the Item now.

A. Dooley said that she prepared Item 7 in the Agenda Packet as an outcome, as an action item from the last meeting. She has continued to work on that with our Ad Hoc Committee and have reached out to several City Council members but she was told by Commissioner Dorado before the meeting that he intended to request that it be tabled. The question concerning Agenda Item 14 - it could be addressed as an action item and we could potentially review this Enabling Ordinance language in the future if necessary but that at this time, the Commission did not want to discuss it. That is what she understands. She did not discuss it with anybody so she does not know if anyone else discussed it. She is telling you what she was told. It is there, it continues to be in existence, and she will probably continue to talk to community members and the City Council about whether it is necessary but that is what she was informed before for the meeting.

Chair Smith said we will continue with public comment. Then come back for further discussion.

Chair Smith said we are back to discussion. J. Dorado said there is a motion on the table that he wants to withdraw.

E. Prather said he made his position on this issue very clear at the last meeting. He believes that if we don't exercise the power, it is like giving up the power. We need to act and ask forgiveness later if we are doing wrong. What concerns him is that he appreciates that we withdraw the tabling of this. We can't put something on the agenda and then table it when there is such public interest in the issue without explaining what is going on. Frankly, he is concerned because he hears mention of confidential information, etc. My intent in seeing this on the Agenda was to put it up for vote and then vote it down. We can do that. When we mention confidential information - information is confidential for two reasons: Attorney-Client Privilege or it is Personnel. He didn't get an attorney-client memo on this or he doesn't think this involves personnel so he doesn't understand what else is going on here. Whatever it is, our problem is that we don't look good now. We are not transparent. On the issue that is as important as this and that we have seen and heard and heard it for meeting after meeting, this public outcry on this issue, we need to understand why this issue is so important because every time someone comes up and wants to mention 83% of the people voted, they voted to give power and when we don't exercise the power, we are giving away something that people fought for to give us. That is the whole point here. For this Commission, we must respect what other people fought for to give us and then we must exercise it in a manner that is consistent in the way they expected us to use it. If he is wrong, he is wrong. That is fine. He has been wrong before. At the end of the day, we can't pass on an issue

like this without explaining why. If there is a legitimate reason to pass, and we have to explain all these people who came, who prepared notes to speaking points on this issue, we have to explain to them – ladies and gentlemen this is why we are going to table the issue, this is why we are going to pass, but not doing so, just lax a complete transparency, this Board is to give transparency, give information, it is not supposed to hide things and that is his concern. He doesn't know what is going on. He hopes we put this up for vote tonight. Chair Smith said that given your explanation, is that a prelude to a motion. E. Prather said it is.

b. Public Comment

Rashidah Grinage said somebody has been talking backstage. She hopes you didn't violate the Brown Act when you did it. She doesn't know what is going on; you have something on the Agenda. You put it here and now you want to table it. You are not explaining why. Why don't you want to vote on it? What is the reason to table it and does that mean you are going to bring it back or does it mean you are going to forget you ever did it? What is going on?

Saleem Bey, concerned citizen. Based on this and what the public view of this is, it is very confusing. We don't even know what it is that generated this in the first place. Why is there a question of what you can answer, why doesn't the Commission deal with that? Where did this question come up from? Who is it that said you can't see it? Where is it in the legislation that says, you can't specifically see it? Where did you get this information from? We don't have any of this information; you are just up here and say we are going to the City Council and ask for permission. Who is it that told you that you don't have the permission? Where did you get that from originally that told you don't have this power? The people do take the time to listen and come out here and we would like to be informed; that is not a stand-alone item. This had to come up. Where is the controversy? Who is it that told you that you couldn't do it. Those are the questions that he had just from reading the Agenda Item. He attends all the meetings, follows up, and is very active, and is not understanding what the basis of this is. The Commission owes the public an explanation of how we arrived at this confusing point.

Chair Smith said that Vice-Chair Harris will respond. G. Harris said that she does not speak for the entire Commission and is speaking for herself. We all have different opinions about everything on this Agenda. We can't discuss confidential information that was given to us. Again, we all have different opinions about changing language. She wants to just vote on it and she doesn't know how the rest of the Commission feels but that was her intention.

Assata Olugbala stated that you should not be in this arena when you are trying to fix something that should have been in the Ordinance. If it is in the Ordinance, it is not clear because something is wrong. In her opinion, this is not the only place because your powers from her should have been the ability to have full opportunity to read the reports but not only read the reports, to make a determination of the sustained ability, etc. She thought that was what you were going to be doing – not the Agency. That is what the CPRB was doing. The only difference was that once they came to a conclusion it had to go to the City Administrator but the piece that would have been perfect for you, because in her heart of hearts, she wants somebody to hold these police accountable for their behavior. You are right now when she reads what you do, you are looking at policy and procedures and you are making recommendations that go to the Council. Here is what you are going to have to deal with. You can go to this Council – you have three new people on the Council. They are coming in new. Desley Brooks is gone and would have dealt with this and spoke to it. If you must go back to the Council, who on the Council is

vehement about police action. Somebody owes you an apology. You should not be in the position you are in. If it is in there, somebody get up here and where is the attorney? Where is this gentleman that can help? Mr. Finnell said that it is not in there. You should not be doing this tonight. That is why she walked away from this; they were making too many concessions. She apologized because you are dedicated, trying to do the best you can, and you are getting caught up all the time and it is not fair.

Larry White said he is speaking for himself and not necessarily the Coalition for Police Accountability. He thinks it is a bad idea to try to get legislation to fix something that doesn't need to be fixed because he thinks you have the power you need and he thinks going to get legislation undercuts that power. The way you proceeded on this Agenda Item did not consider the expectations, the needs of the public in knowing why you are doing what you are doing. Personally, he thinks it is a good idea what you are doing so far but you need to lay that out before you do it and explain. Have a discussion explaining why you are doing what you are doing because otherwise it seems incomprehensible. He personally thinks that this Item should be tabled, probably better to vote on it and reject it, in any case you shouldn't go for further legislation and that is the bottom line.

Cathy Leonard, Coalition for Police Accountability. She read aloud the Ordinance which gives you the power. She said you are the boss. Get the investigative files you are entitled to get; if you don't get them, fire the employee. We are going around and around here and wasting time. Let's get this thing over with.

Mary Vail said you are having this discussion and this false issue is being raised because the narrative around the adoption of LL. We took the City Attorney and City Administrator and the Mayor out of certain Executive branch powers over you. You are independent of the Executive branch. They had to do that because of the police scandal that was going on in 2016. Now they are thinking we will grab our power back. One way of doing that is getting you all wrapped up in clarifying the Ordinance that will take months. In the meantime, you will not be supervising the Agency, won't be able to dig into the files, and time will be lost, and a bad precedent will be set. This proposal to change the Ordinance right now is very self-destructive. It should be abandoned. This discussion is also reminiscent and Ms. Olugbala pointed out that there may be gaps in the Ordinance of the discussion you had whether you had an elevation vote or whether you had a choice of who to elevate in the wake of Mr. Nisperos' resignation. A point was apparently made because the purity of the ratios, mayoral alternates, mayoral commissioners selection wasn't repeated and each section of LL and the Ordinance that therefore there were some ambiguity and that you had the option of replacing a selection committee commissioner with a mayoral alternate. You can have the reviews in closed session and come out in public session and give direction to the Agency of which closures you are approving, etc. without violating any officer's confidentiality.

Saleem Bey again, concerned citizen. To clarify what we were just saying. Everybody has been telling you about the power you have. This is what it says under Section B (Powers and Duties of the Commission), which he read aloud. What that is telling you, I am not a lawyer, and have enough sense to understand what he reads. The Commission has the power to issue a subpoena for the records that you are asking for from this person. If they don't come back, then go to the next step. Until you do that, somebody can tell you anything. This is the same person that you are trying to get these records from that lied for the police chief, has repeatedly covered up for dirty cops, who is a dirty cop from Chicago, who came from the same place, who was hired by the same people as the dirty police chief,

who keeps covering up all this thing. You are dealing with on one hand a dirty cop from Chicago who's a police chief who is telling you she can't answer stuff about racial profiling, or getting resistance, and on the other hand, you have the CPRA Director whose telling you he doesn't have to tell you anything. That is disrespectful on his part and it is very sad on your part.

Lorelei Bosserman said she wants to add something that she should have stated into the records in the microphone when she was talking to the Chief which was: Can you give us some information on why people were terminated and the Chief said no. Ms. Bosserman said: not even aggregated? The Chief said she will consider it. Ms. Bosserman said thank you instead of saying did you get that on the record and the Chief said she would look into it. Commissioner Benson is on it. She came up here to talk about this idea of amending the Enabling Ordinance. She wants to throw something in that seems relevant and not sure what is going on now. You shouldn't simply accept anything that the City Attorney told you. There were comments made at your last meeting as if, oh no, we have already gotten this and we do not need to look into it any further. Yes, you do. We already know the City Attorney does not have the Police Commission's best interest at heart.

Henry Gage III, Coalition for Police Accountability. It is very concerning to talk about going back to Council for anything. There are changes that need to be made to the Ordinance; there are likely changes that need to be made to Measure LL; there are some real structural issues involved with this Commission and its powers. Especially, disappointing power. But if you are going to go to Council, you can't just go on this. You can't do that. You can't just go on this because this has already been addressed. It is in the Ordinance – you seen the site for Section M. Even if it wasn't in the Ordinance, I have been re-reading some of the City Attorney's legal opinions that have been issued about this Commission, and one point that has been made repeatedly is that Charter powers cannot be edited or amended by Ordinance. You have the power under the Charter to oversee, organize and reorganize CPRA. You have the power under the Charter to exercise supervisory control over CPRA. There is no reasonable universe where you cannot exercise that authority without looking over CPRA's shoulder. You can't do that. Even if the Ordinance didn't have the language you cited, you have the Charter authority. Exercise it. It is also concerning because this is a very easy place to spin our wheels. We have been talking for 20 minutes now about amending an Ordinance. We have real work to do. Let's just push this away. This is not a fight you need to have. Put the onness on someone else to come put an opinion that you can have access which you want. Don't fight that yourselves. Make someone else fight that battle.

Amy Hutto, concerned citizen. She said everything has been said very well. She added – Some of potential consequences of you acting in the ways that have been suggested, might be very good opportunities for to engage in some non-violence civil disobedience, just saying. She knows that if you chose to go down that path, you will have a whole lot of people to back you.

Michael Tigges, member of the Coalition for Police Accountability and Block by Block Organizing Network. He put it on the table for the Mayor a few weeks ago before she was re-elected. The Commission and the City are in a political battle. Some of the people who work for the City and had their own turf for many years, also resent the fact that they are on oversight. You must think of it in those terms – it is not a legal issue; this is a political issue. What you need to do, as a group, come together, grow a spine, and fight back because we will be standing right behind you.

Elise Bernstein said that she can think of nothing to add to what everyone has said

before. She thinks that it is unnecessary – you have the power, use it.

c. Action, if any

MOTION to table Item 7 (J. Dorado) and seconded (M. Ahmad).  
MOTION withdrawn by J. Dorado.

M. Ahmad hopes he is not in violation of the Sunshine Act, Brown Act, etc., but the reason he voted to second J. Dorado's recommendation was that we do have the power and that is why we were withdrawing. Then when he sees the Commissioners, what they told him to uphold, is shocking to him. He wants to say that before he even votes because he was told that the thing that is on the table about the question about the matter we do have the power like we were told like you are saying. He was told that the City Attorney or someone downtown said that yes, you guys do have the power so that is why they were trying to table it. He spoke to the attorney and he said he didn't know if it is all the way true. He said we are not up to speed on it; people tell me one thing and then we start changing it.

Chair Smith said the attorney (Sergio Rudin) we have tonight is covering, because we have no attorney who has been assigned to the Commission yet, so I think he is up to speed with the issues the way we are up to speed on them.

MOTION that we do not act to amend the Enabling Ordinance (E. Prather) and seconded (R. Jackson). The vote was Aye: 6 (Ahmad, Dorado, Harris, Jackson, Prather, and Smith); Opposed: 0; Abstained: 1 (Benson). The motion passed.

## **VIII. Legal Opinion from City Attorney's Office**

The Commission will discuss whether to maintain or waive the client-attorney privilege for a legal opinion drafted by the Oakland City Attorney's Office and sent to the Commission on Thursday, October 25, 2018 concerning the Commission's authority to review the CPRA's investigative files.

a. Discussion

Chair Smith said we do have public comment on this matter. If we want to have dialogue around it we can open that up now.

M. Benson said that given there is a rumor that there is new advice, which she has not seen, she is wondering if we should table this Item too.

G. Harris does not think there is new advice and thinks this is the advice that was given via email from the City Attorney's Office so let's stop it right here because there is no new advice. She wants to share everything with the public.

Chair Smith said what we do have and what we are speaking of specifically is one item (he thinks she sent to two emails but both were on Thursday, October 25, 2018 and they were concerning the Commission's authority to review the CPRA investigative files.). That is the only item that we are talking about potentially waiving privilege on. There is no other item that we are discussing waiving privilege to at this point.

A. Dooley said this has been tagged to a specific October 25 email but at the last meeting, it involved an opinion from a prior legal counsel and we have had lots of back and forth on this. She will say as an attorney, there is nothing in this legal

opinion that is of any surprise to any of you. It is about POBRA, Davis, Berkeley POA, Measure LL, etc. She can say case law names and she is not giving what the advice is, she is telling you that you can read the cases. What she is saying that as an attorney, she has a big problem of releasing attorney-client privileged communication and setting a precedent to that particularly when it is not clear that we are the sole owners of that privilege. The City Council and the City Administration also hold the privilege and as with these things, we are not being properly informed of the potential consequences of these actions. In this case, this isn't important enough because we can design a process for reviewing these files without releasing this information which is not in fact shocking new law that the City Attorney made up; you can google any public-sector law firm and they are going to have the same crap that you are going to get from the City Attorney. She doesn't think it is worth wading into the battle about attorney-client privilege when we can continue to move forward on the actions that we need to take to fulfill Measure LL and the Ordinance. That is her view; she would have a difficult time if her clients were to release her legal opinions over her objections – as an attorney.

E. Prather, as an attorney, said his understanding of the attorney-client privilege is that if we need to consult our counsel today, he asks that we do that. His understanding is we cannot waive privilege over one specific email, one specific document, one specific item. If we waive privilege, it is a subject matter privilege. We are waiving privilege over all communications and work product in relation to that topic. He thinks the way this is styled to say that we are going to waive privilege over just one item is incorrect. He doesn't think we can do that. He believes that is correct and he would ask for confirmation.

Chair Smith, who is an attorney, said one of the reasons the agenda item is phrased the way it is, is an attempt to create the strongest argument possible that we are only considering waiving privilege on one item but that would probably end up being determined legally, which is why this is such a hard issue. The other thing is that the discussion we have here today would play into a determination of that as well. Chair Smith has all the concerns that the other two commissioners raised about this and he also questions whether it is necessary to get to where we want to go. He has a lot of concerns about it.

E. Prather said his position on this would be that if we are going to go ahead and request the Items, access to the files and the information that we seek, then he doesn't know that he needs to reach the issue of waiving the attorney-client privilege tonight, and he needs to know that.

Chair Smith said that he agrees that if we are going to ask and go ahead and find out one way or another. Yes, we are going to get access or we will get resistance. From there, we can figure out what the process would be. He is concerned about it. He doesn't know and wants to ask anybody else who wants to speak on the point. Does Counsel Rudin have a comment on this topic? If you do, he will open it up. Counsel Rudin said he does not have anything to add. He thinks you have identified the legal issues precisely based on your discussions. It sounds like you are aware of the potential ramifications of the decision you are making.

Chair Smith asked if any Commissioners want to speak. G. Harris said for her she is still unclear why there is an iffy about releasing advice that we can take or not from an attorney from the City Attorney's Office. She doesn't understand what the legal ramifications are – maybe it's because we don't have counsel. When we say, it is confidential – what is confidential? Is it what they are telling us. She is not a lawyer and comes from a public perspective. Some of the opinions that we have

received are not accurate.

b. Public Comment

Anne Janks said she has a proposal - so you don't have to do this again. That is that you decide now this evening that you will not accept legal opinions on issues. There is no reason for them to be confidential unless they are public opinions that you can use whether it is on policy or the Commission itself. You say that across the board, and no lawyer can be concerned because they know that if they give you an opinion, it is a public opinion because that's the way the Commission is to function. It is absurd to create a black box situation where you are going to tell the public, well, we have these other considerations, which we are not going to tell you about a public issue that has no reason to be confidential. It's absurd. Make a blanket decision right now that you only accept public opinions and if people have opinions that are so far out that they need to privatize them, you don't want them.

Cathy Leonard, Coalition for Police Accountability. It seems to her that Agenda Item 7 and Agenda Item 8 tie in to one another. The legal opinion would be concerning the Commission's authority to review CPRA's investigative files. When she stood before you on Agenda 7, she read language from the current Ordinance (M) which gives you the authority to review the investigative files. If your attorney told you that you can't review those files, he/she hasn't read M which clearly gives you the authority to look at these files. It seems to her that you can disregard that opinion if it conflicts with the Ordinance which gives you the authority to look at the files. You don't need to have this conversation but she added – the holder of the attorney-client privilege is the client, not the attorney. She doesn't know that she agrees with you with all due respect (A. Dooley) – that the City Council is the holder of the privilege. She doesn't know if that is true, your attorney does not represent the counsel – your attorney represents you. An attorney that is separate from the City Attorney's Office. The holder of the privilege is the Commission. She doesn't think that you need to go there because you have already got the authority to review the investigative files of CPRA.

Assata Olugbala is trying to figure out where we are going. The bottom line – You are going to get the files, review them, give it to the Agency to take back to redo, etc., they go and do that, Agency comes back and you say that we still don't like the way you did it, goes back to the Agency. The bottom line is you don't get to make the decision about the guilt/innocence of an officer; it is the Agency that makes the decision. The Chief makes the decision. You can sit there and read them files all day and say to the Agency, I don't like what we see here, go back and redo. The Agency has the power of the decision/determination; you have the power to look at the documents and we don't like what we see – that is not the power. When the Agency and the Chief don't agree, then you have three people from the Disciplinary Committee that get involved. When are you going to come to that conclusion that the power is in the hands of the Agency?

Larry White, Coalition for Police Accountability. He has a feeling where you are going with the files – he thinks it is great. The question of the legal opinion from the City Attorney is an extremely important matter of public policy. Who does this affect, whose interests are at stake? These are not private parties. This is the public and has to do with our interests. This legal opinion has to do with the powers of a Commission that was set by the voters of Oakland. Why would the City Attorney try to make this confidential? The only reason he can think of is because her



arguments are so weak that she is afraid of it being refuted. It makes no sense at all to keep it confidential. This is a public body. This is not a private attorney and with all due respect to Commissioner Dooley, no, it is not enough to guess what the cases are, what the citations are; he does know what a lot of the cases and citations are. He needs to see the arguments that were made by the City Attorney to address them. It's outrageous. He worked with developing Measure LL and getting the Enabling Ordinance passed, working with the City Council for years, and the City Attorney – there was back and forth for years - with the City Attorney, they gave their opinion, we gave our opinion. Never was the City Attorney's opinion said to be confidential, secret, and we couldn't see it. There is a power play. The City Attorney is playing you, trying to make the Commission weak. Please do not fall for it.

Michael Tigges, Coalition for Police Accountability. He wasn't here at the last meeting because he had a conflict. Is there a misunderstanding by the CPRA that because if you asked for their work product to review, it has to be in public because that is not what you are asking? You are asking in a closed session to review their work product to see if the rationale that they have used to close a case or resolve a case, etc., then you review it in closed session, you determine whether that is acceptable. The only thing you report to us is we disagree with their conclusions – no explanation needed because that's a confidential matter. As part of LL and part of all the laws of the State, you are advised to maintain confidentiality of all documents you review. The only time you can review or discuss them is in closed session and then report out to the public your conclusions. That seems to me just what LL tells you that you can do. Refusal to give you the work product that you are obligated by LL to review, is insubordination and the City Attorney's backing the insubordination is even worse.

Henry Gage III, Coalition for Police Accountability. He is still unclear as to why this opinion is confidential and it is an important question that should be answered. He could imagine an opinion like this could be confidential if it was prepared in anticipation for litigation. He is still unclear as to whether that is in fact the basis of this privilege. Also, he thinks you are alluding to Commissioner Prather the scopes of the waiver. It is still unclear to him whether or not this is an active doctrine but there is some language that is available with respect to limited or selective waiver of privilege but before you even get to questions of limited or selective waiver, you still must answer the preliminary question of what is confidentiality being asserted for. We are spinning in circles. We must figure out why this is considered as confidential before we can make an informative decision as to whether to waive this privilege.

Saleem Bey, concerned citizen. One of the things that needs to be brought back down to earth is what we are speaking about when we are talking about attorney-client and talking about the City specifically is that the City Attorney's Office was caught in the 2016 Report by Swanson of the NSA for throwing out cases of appeals for OPD and was admonished that the City Attorney's Office was biased for OPD. When two years ago the NSA is telling you that the City Attorney's Office is biased towards OPD, yet you are sending out opinions to them and taking them as fact, doesn't make sense. Especially, since the City Attorney's Office is part of the problem that was replaced by the 83% super mandate that created you. If the City Attorney's Office was holding people accountable in OPD, we wouldn't have this issue and you wouldn't up here. It started out with talking and he complained about the fact that your original attorney was from the City Attorney's Office. We see what happened. Everything that she said, at least in regards to his case, wasn't correct because she tried to say that we weren't able to see anything based on it being sealed. That was incorrect. It didn't meet the 3304 date, that was incorrect. All these things that came from the City Attorney's Office through your attorney,

turned out to be sabotaged because 6 or 8 weeks later you are still dealing with a case that she said you didn't have the authority to look at. That has been refuted. Now she is gone; she sabotaged you in the middle of your climb and did the public a favor by not coming. Whenever you reach out to the City Attorney's Office, make sure that it is just to line up with an opinion that you have from somebody else and then, if it doesn't, then you address it from there but don't take the City Attorney's Office as gospel because they are crooked as the day is long.

Amy Hutto, for her when she hears about this thing, it is like/what she is thinking is like for all of you to make this public point, wow public look what the City Attorney is doing. Blow the whistle. Do it as a group and if you can't all agree on it, one of you do it. Sitting here trying to decide, well I don't know, etc., it is not right. They are distracting. Blow the whistle. There are people, hard core, that would have your back if you do that.

Rashidah Grinage said you may remember when we were trying to pass the Ordinance that the City Attorney opposed some of the language and that she published her opinion in the Agenda Packet and she hired outside counsel to reinforce her opinion and that opinion was published in the Agenda Packet. Where was that confidentiality? That is the precedent that you follow. If the City Attorney felt that it was appropriate to publish her defense of why she found the Ordinance objectionable and that of the outside counsel that she hired, that was disclosable, or if the counsel themselves decided they would disclose it. In either case, that was the decision that it was in the public interest. We need transparency and particularly if the opinion is going to be one that impedes your work; we need to be able to refute it and we can't refute it, if we can't see it. You owe us that.

c. Action, if any

MOTION that we have this Commission exercise its authority and direct the CPRA to provide us with CPRA's investigative files in a closed and private manner (E. Prather) and seconded (R. Jackson).

Chair Smith said the topic we are on is the legal opinion from the City Attorney's Office. The motion that you made properly fits under this title but I do think it could fit under a later title which is Item 14 (Review of Agency's Administrative Closures and Dismissals).

E. Prather asked Chair Smith if we could ask Counsel and he said yes. Counsel Rudin said his advice would be that we are under the Item of the Legal Opinion from the City Attorney's Office and he doesn't think that direction to CPRA fits within the scope of that Item under the Brown Act so I would recommend that you either defer it to another Item or agendaize it properly for a future Agenda.

E. Prather withdrew the motion and will bring it later in the Agenda. Chair Smith suggested Item 14. R. Jackson withdrew her second.

MOTION that this Commission vote that, not just on this topic, all the legal opinions from the City Attorney's Office be made public (G. Harris) and seconded (J. Dorado).

Further discussion by Commissioners.

R. Jackson pointed out that Point A talks about the legal opinion that was given October 25. It can't cover all legal opinions because that is not related to this. Chair Smith said this pertains to one legal opinion for October 25. G. Harris said the problem she has with this Agenda Item is that she didn't have any input on it.

If we vote on this, that is okay. Chair Smith said you have a motion on the floor now.

G. Harris said since it is on the Agenda for October 25, she would like to make the motion. Chair Smith said you have a motion on the floor now so you would have to withdraw, etc. G. Harris asked Counsel if she can make the motion to amend the Agenda Item to all opinions - to all opinions that were received from the City Attorney's Office regardless of what the scope of those are? Chair Smith said the Brown Act requires posting ahead of time as well as the Sunshine Law so that we can't change an Agenda Item on the actual Agenda at this point because the public must have prior notice so that people can respond. We can't change an actual Agenda Item after it has been posted because it is not what people had notice of. G. Harris said that is fine. Chair Smith asked Counsel if that is correct. Counsel Rudin said yes. E. Prather to G. Harris regarding your motion – if you bring the motion in regards to style, the way the Agenda Item is titled, will have the same force and affect even though it is not specifically indicating your motion, it will have the force and effect of waiving privilege over the topic. Chair Smith said that is debatable.

E. Prather said that it is debatable, but if we waived one privilege over one document, other documents in that same line will also get waived. He thinks that is what your motion is trying to accomplish. He will defer to Counsel on that. G. Harris thanked him and that is exactly where she is going.

Chair Smith said that G. Harris needs to withdraw her motion and withdraw the second and make a new motion and follow the actual title.

G. Harris withdrew her motion and J. Dorado withdrew the second.

MOTION to waive the attorney-client privilege for a legal opinion drafted by the Oakland City Attorney's Office and sent to the Commission on Thursday, October 25, 2018 concerning the Commission's authority to review the CPRA's investigative files (G. Harris) and seconded (J. Dorado). The vote was Aye: 2 (Dorado and Harris); Opposed: 4 (Benson, Jackson, Prather, Smith); Abstained: 0. Commission Ahmad is not present. The motion failed.

M. Benson said that we get to voting and there is no discussion. We do not have our own attorney and taking outside legal advice as if it is attorney-client privilege, we don't even have an attorney and which we should hire by ourselves. Then they defend us if we are sued so they are our attorney in certain circumstances. This is confusing. I am not afraid of being sued, I just think that I would like to understand a lot of the pros and cons before I am voting on this and we jumped right into voting. Chair Smith said your question should be answered. The unfortunate part is you are right. We do have three attorneys sitting here.

Chair Smith asked M. Benson to restate her comments which she did. The problem is that now is there are defaults – attorney-client privilege. (1) How long is it going to take to hire our own attorney that isn't appointed to us by the City Attorney's Office – that has to stop. That advice is tainted. (2) The City Attorney eventually is going to be our attorney if we get sued over this, so what are the complications that we should be aware of before we vote on what can happen down the line if an attorney who has given us advice and we waived the privilege and now it is public and they are defending that?

Chair Smith said one of the Items on the Agenda deals with the RFP so we will discuss where the process is and where we are. This is complicated because the City technically would be defending us and that is part of the reason I am having

such a difficult issue with this right now. There is still a lot of unknown information about the waiver – when you waive, what you waive and what the implications could be because this waiver could down a line and it could cause a lot of problems like later. We don't even know the extent of what we are waiving or the attachment of the total legal liability that's attached to it. The people who are lawyers here are struggling in a massive way with this.

D. Dooley said she is not struggling with it. If she was voting she would vote no. She is not clear about that. When M. Benson asked what the pros are, she listed them out. The pros are: Public transparency is the main probe the fact is for me it may eventually something that we need to serve with this, but given the number of questions, she doesn't think now is the time we need to release this. She is sorry to the public who feel they are not getting all the information that they need but this is one area where being very cautious and thoughtful has value for legal reasons. It is not that it will never be public or not that we can never discuss it, the fact is we do plan to act in support of our powers to obtain the information that we need regardless or based on all the legal advice we received. Since we are acting, there will be that motion forward and she doesn't think the narrow interest of the public wanting to know this specific legal opinion warrants overcoming the greater value of the attorney-client privilege.

E. Prather said that Commissioner Dooley hit the nail on the head to some extent. The other concern he has is that he will be voting no to waive privilege is precedence. So, creating this precedent whether it is this opinion, which is sort of an easy call, but future opinions and what it means, etc. generally as a lawyer we are amiss to have clients waive an attorney-client privilege. It is something that is so valuable and just to waive it willy nilly, it must have some forethought in his mind. The way he reconciles the attorney-client privilege waiver along with public transparency is to reject the advice. He is going to reject the advice from the City Attorney and he is going to move that CPRA give us the investigative files and in that way, we are basically saying look we have a document, but we reject it. We are not paying attention to it so it is not important because frankly it is not important. At least for him personally that is the way he reconciles the difference. Chair Smith agrees with that.

G. Harris said that the problem that she has with this and this Commission is that we are forever going in circles. We don't know when we are going to get an attorney. We don't know any of that. How many items have we had on the Agenda that have been on the Agenda 20 times. Enough. Today is an example. We are sitting up here like we are confused; we are not confused. She feels like she has been misled for a long time and she is tired of it. She is not a lawyer and if they need to defend us, okay. Everybody likes to talk but the work needs to get done. She would vote yes and she encourages everyone to vote yes. Whatever happens, we can deal with it.

Chair Smith said that we could order the items that we want and then find out what happens from there forward. Under this point, he said he is going to vote no.

M. Benson asked why aren't we having legal opinions which can be public as a matter of record. She is tired of this and is unacceptable and puts us in a difficult position to not be able to share with the public. Can we say that we are not going to accept or entertain any legal advice? Chair Smith said we could but we would risk being in the dark on some issues. R. Jackson agrees with M. Benson and why we can't test that out.

Chair Smith said to be completely transparent he asked the City Attorney's Office to

release this multiple times but they wouldn't release the opinion so then it fell back on us to have this. He was hoping to avoid this because what this does is that it shifts the burden to us and if this turns into some disaster later, then we are to blame and he did not want that. They have their own rationale or how they decide what they are going to release and he does not completely understand it. Here we are.

E. Prather suggested that since we don't have legal counsel, why don't we wait until we hire counsel and then one of the things we could entertain at that point is that if the City Attorney does give us any legal opinions, that we make all those public because he agrees that there needs to be a level of transparency in the information they are providing us and there is a large distrust from the public about the information that they are providing us. He wants to do that with the advice of our own lawyer and bring that up at a future meeting.

E. Harris asked - Who is asking for advice from the City Attorney? Counsel said the City Attorney was providing you legal advice based on their own decision that they thought it would be appropriate to provide you legal advice. G. Harris said is it clear that we are not going to ask the City Attorney for legal advice. Chair Smith said, no, he is not going to commit to not asking if we don't have a counsel. We must consider that there will be legal issues that we come to and we cannot close our eyes to them. G. Harris said that he needs to consult with Commissioners prior to going to the City Attorney. Chair Smith said that he does not. We need to move to the next agenda item.

## **IX. Request for Qualifications for Outside Counsel**

The City Attorney's Office is preparing a Request for Qualifications (RFQ) for a non-City Attorney legal advisor for the Commission. The Commission is awaiting a draft of the RFQ.

### **a. Discussion**

Chair Smith reported that this is a process that is in motion. He received an email from Ryan Richardson that said that the City Attorney's Office is now working in putting together an RFQ for counsel. Last time we did not get many folks who applied.

We reached out, asked people if they would apply but what we got back was very few people. He is hoping that this time around if people have candidates who could be good representatives for this Commission, then we go ahead and get these people to apply. We can only have as many choices as people who complete the application and want to serve. If we don't have people who want to serve, then we don't have the choices. Last time we had a limited number of people who applied for either position – also for CPRA. If you know counsel who can help this Commission and have a background, please send them forward. We are going to go through this process again and we need someone who is good. We have had difficulty getting the resources that we need. For this position, we got to get someone who is qualified, good, has a background and able to provide independent advice and that means we need help from people, not people sitting up here but we need the Oakland people out there who know who some of these people are. He hopes that all happens.

M. Benson - it says that the RFQ is coming soon. Have you been given information? Chair Smith said they have not given him the date; they are working on it now. He received the email from them less than a week ago and they will give us the RFQ before they turn it out so we can comment, etc. M. Benson – Is the expiration of something like an interim or a temporary contract possible, now it

appears that is not until after the holidays. She had written the City Administrator to ask about guidelines for temporary contracts, facilitators for retreats, interim, etc. Is that something that we can explore to get somebody in here quickly? Chair Smith said Counsel Sergio Rudin was given to us as a temporary for our meetings; we do not have someone who is our attorney. To get a temporary person is different – to fill in for meetings, etc. quickly. You got the call from someone who is not us. That is her concern. Can we engage in that process? Chair Smith said we can do that and then say we want this person, what they will say, he does not know, because ultimately the final choice is the City Attorney’s Office and see if they give us who we want. M. Benson asked - Can you help us find some temporary candidates?

b. Public Comment

Larry White, Coalition for Police Accountability. The last time the RFQ was considered by the Commission last Spring there was something written by the City Attorney that was inappropriate to this position. This time, look carefully at it and make sure that something you send out represents what is the kind of position that is in Ordinance. We will reach out to people at Boalt Hall and Hastings and get them to start looking at their networks of lawyers who have public policy backgrounds.

Saleem Bey, concerned citizen. He has heard the phrases “kicking the can down the road” and “going in circles” and “Kangaroo Commission” and a lot of that does apply. The sincerity of the Commission is true for the most part. There is a lot of politics that are being played here and we are working through the politics. The important thing is that the Chair cannot unilaterally go to the City Attorney’s Office, that is a known hostile entity to this Commission, and ask for personal information. If you are not going to talk to the rest of the Commission, why are the rest of the Commissioners up here. If you are going to take unilateral motions with the City Attorney’s Office, who is discredited. Again, we talk about credibility for this Commission. Your credibility lies in transparency with the public. The City Attorney’s Office refuses to tell the public why the public can’t see the City Attorney’s opinion. You have the power. Don’t go to the City Attorney for anything; if they want to come to you with volunteer information, then you take it with a grain of salt. We are told to consider the source.

Assata Olugbala she reflected on how the City Attorney intervenes in ways they shouldn’t. She filed a complaint with the Ethics Commission on a Brown Act violation. Once you file a complaint and they determine there is some legitimacy, then they go through an investigative process to determine guilt or innocence. In her case, the City Attorney submitted a letter and the investigator’s whole case was built on the City Attorney’s opinion. Her challenge was what were your findings, what did you do? The Commission agreed with the City Attorney and the investigator’s process was not considered; she didn’t understand what that process was. She was upset that the whole determination of whether there was a violation of the Brown Act was purely on the City Attorney’s letter. This is not a first-time thing where the City Attorney intervenes in a way that might be considered inappropriate.

Rashidah Grinage pointed that out that she looked at the employment contracts for both Ms. Brown and CPRA. The CPRA one ended in October, she believes of this year. Does that automatically get renewed or can you open that position up to competitive applications? She would hope that would be the case and that you could open both positions. Specifically, as Mr. White said, look at the RFQ’s. You need lawyers to specialize in public policy, certainly the CPRA one needs a background in police policy and laws, procedures, labor, etc. Your attorney

certainly needs to have public policy background. The RFQ's should be specific and not just a generic boiler plate legal counsel contract which the previous one was. Maybe you will be able to get better responses if you do that kind of tailoring. We will help in getting the word out.

c. Action, if any

None.

**Counsel Rudin stated that as per your Bylaws, you have to adjourn by 10:30 p.m. unless you vote to extend the meeting time. Counsel suggested that this be done before the start of Closed Session.**

**MOTION to continue this meeting until 11:00 p.m. (Chair Smith) and seconded (R. Jackson). The vote was Aye: 4 (Benson, Dorado, Harris, and Smith); Opposed: 2 (Jackson, Prather); Abstained: 0. Commission Ahmad is not present. The motion passed.**

**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.**

**X. Closed Session  
PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE  
Govt. Code § 54957**

a. Action – Report out of closed session

None.

b. Public Comment

None.

**XI. Oral Report of Disclosable Final Decisions Made During Closed Session**

a. Report of disclosable final decisions, if any

Chair Smith said we are back in session with the report out of Closed Session. In Closed Session, we the Commission took the action to dismiss the Executive Director of the Community Police Review Agency. There were five Commissioners who voted in favor of dismissal, one Commissioner abstained, and one Commissioner was absent. The five Commissioners voting to dismiss the Executive Director consisted of Benson, Dorado, Jackson, Prather, and myself. The one Commissioner abstaining was Harris. The one Commissioner absent was Ahmad.

**MOTION that we table all remaining Items until our next Commission meeting (Chair Smith) and seconded (R. Jackson).**

**E. Prather – Point of clarification, one of our matters is when our next meeting is going to be (Item 13).**

**Chair Smith withdrew the Motion and R. Jackson withdrew the second.**

**MOTION that we table all the Items and move them forward to the next meeting except for Item 13 (Vote to determine whether to approve one monthly meeting in November due to the Holiday – the meeting falls on Thanksgiving (Chair Smith) and seconded (R. Jackson). The vote was Aye: 6 (Benson, Dorado, Harris, Jackson, Prather, and Smith); Opposed: 0; Abstained: 0. Commissioner Ahmad is not present. The motion passed.**

**M. Benson suggested not adding a significant amount of presentations (especially the police). Can we focus on those items, especially the Agenda prioritization, which will take time? Chair Smith said yes.**

**Chair Smith – We will conduct Agenda Item 13. We will take public comment on all remaining Agenda Items.**

b. Public Comment

Saleem Bey stated the public is in very much support of what you did to remove him. We have been calling for his removal from the beginning for the last few weeks and we believe that you are moving in the right direction that you got rid of the Interim Director, rid of the City Attorney who is influencing the Commission, and we are in very much support of replacing him as soon as possible. It is also within the Commission's ability to oversee and reorganize the entire CPRA, not just the Interim Executive Director, but then also the same investigators who have been closing the cases all along. The reason why the Commission was voted in by 83% was because if the CPRB had been doing its job, you would not be here.

**XII. Working Session for the Agenda Prioritization**

The Commission will discuss and prioritize a list of agenda items for future meetings.

a. Discussion

M. Benson – clarification/understanding of that Ad Hoc Committee's designing an appellate process; it was not specifically to Mr. Bey's case but it was inspired by Mr. Bey's case.

b. Public Comment

Saleem Bey requested that the Commission put on the next Agenda an Ad Hoc Committee report that Mr. Prather prepared on their case (status – what is happening, when it is meeting, what is going on about that Ad Hoc Committee).

c. Action, if any



This Item is tabled until the next meeting (December 13, 2018).

**XIII. November Commission Meeting Schedule**

The Commission will take a vote to determine whether to approve one monthly meeting for November. Measure LL states, “The Commission shall meet at least twice each month *unless it determines that one meeting is sufficient in a particular month.*”

a. Discussion

Chair Smith said this Item is still on the meeting schedule. The discussion is that our next meeting in November falls on Thanksgiving. To hold one meeting this month, we need to do a vote.

E. Prather said he would not want to meet on Thanksgiving. If we had a quorum of Commissioners who are available other days of that week, he would be amenable to meet and go over agenda items and other things. Chair Smith said you could do a subcommittee meeting or an Ad Hoc meeting. We would have to reserve the room, etc. E. Prather asked if we could get one of the satellite rooms downstairs? Chair Smith said we need to figure out who is available. E. Prather said could we not set it during the day? Chair Smith personally said that if you want to do the agenda setting, you can get an Ad Hoc Committee. E. Prather - let’s see if anyone is available. R. Jackson (response inaudible). G. Harris would like to meet however her job doesn’t permit it – She does not get off until 10:00 p.m. and they only allow her a select schedule, the second and fourth Thursdays. Chair Smith that you can’t get a majority. You can always meet with people for coffee if you want to talk about agenda items. Chair Smith asked for a motion.

b. Public Comment

No public comment.

c. Action, if any

MOTION that we cancel our November 22 Thanksgiving meeting and meet on the scheduled meeting on December 13 (R. Jackson) and seconded (G. Harris). The vote was Aye: 5 (Benson, Harris, Jackson, Prather, and Smith); Opposed: 1 (Dorado); Abstained: 0. Commission Ahmad is not present. The motion passed.

**XIV. Review of Agency’s Administrative Closures or Dismissals**

Mr. Finnell will report on the CPRA’s proposed dismissal or closure of complaints of misconduct involving Class 1 offenses. The Commission will consider whether to close the case(s) or direct CPRA to continue or reopen the case(s) and investigate the complaint in accordance with Oakland Police Commission Enabling Ordinance § 2.45.070(M).

a. Discussion

Chair Smith stated that we don’t have Mr. Finnell with us now but we are not doing this Item.

b. Public Comment

None.

c. Action to approve CPRA recommendations for dismissal or closure of cases or reopen the investigation, if any

This Item is tabled until the next meeting (December 13, 2018).

**XV. Agenda Setting and Prioritization of Upcoming Agenda Items**

Thomas Lloyd Smith will engage the Commission 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.

a. Discussion

None.

b. Public Comment

No public comment.

c. Action, if any

This Item is tabled until the next meeting (December 13, 2018).

**XVI. Adjournment**

MOTION to adjourn (R. Jackson) and seconded (Chair Smith). The vote was Aye: 5 (Benson, Dorado, Harris, Jackson, Prather, and Smith); Opposed: 0; Abstained: 0. Commission Ahmad is not present. The motion passed.

The meeting was adjourned at 11:45 p.m.