



CITY OF OAKLAND
OAKLAND POLICE COMMISSION

Meeting Minutes

Thursday, May 10, 2018

6:30 PM

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

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: José Dorado, Ginale Harris, Mike Nisperos, Edwin Prather, and Thomas Smith. Quorum was met.

Commissioners absent: Mubarak Ahmad and Regina Jackson.

Alternate Commissioner present: Andrea Dooley.

Alternate Commissioner absent: Maureen Benson.

Counsel Meredith Brown

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

Thomas Lloyd Smith will welcome and call the public speakers.

Paula Hawthorne The implementation of PRIME 2 should in no way be holding up OPD in the compliance with the NSA.

Bruce Schmiechen thanked the Commission for setting an excellent agenda for the April 24 meeting. He spoke about the J. Chanin training and requested a transcript of it in the minutes.

Henry Gage recommendations (1) consider calling multiple speakers for any given open forum/public comment, it might help move things faster and (2) consider a scheduling item as a recurring agenda item after Open Forum.

Rashidah Grinage the enabling ordinance is scheduled for the June 19 City Council agenda. Councilman Kalb asked for it to be delayed.

IV. Oakland Police Department Report

Explanation of OPD interagency coordination. OPD will explain its policies and procedures when it receives complaints against other agencies operating within the City of Oakland, such as BART police, OUSD Police and private security. OPD will also

explain its policies and procedures for handling inbound complaints received from other agencies about OPD.

a. Discussion

Introductions by Darrin Allison, Deputy Chief (“DC”) of the Bureau of Field Operations and serving as the Acting Assistant Chief. Chief Kirkpatrick could not make tonight’s meeting. Lt. Tod Mork, Supervisor of IAD Administration Section, will report on the IAD Intake processes and respond to key questions you may have.

Lt. Tod Mork gave a report that OPD does not have jurisdiction over outside agencies (e.g. BART, OUSD) that operate within the city limits. If the person works for that agency, then we would give them appropriate telephone number to call, mailing address, location, etc. and advise them that we don’t take the complaint and need to that body to handle those complaints. In situations where we believe there may be allegations that would rise to criminal misconduct at the level of a misdemeanor or a felony, then we would get information from them about this and our Internal Affairs Division (“IAD”) would notify our chain of command and reach out to the jurisdiction where the alleged offense took place - whether that would be their agency or if happened in Oakland, then we would notify our criminal investigation to deal with that.

G. Harris asked that our last meeting she asked Chief Kirkpatrick about Mr. Tindle, who was killed by a BART police officer. His mother came to OPD and tried to come file a complaint against somebody, we don’t know who because they didn’t let her in – they locked her out. Who locked her out, why was she locked out? The response was that we are not handling the investigation. Could you respond to these questions?

T. Smith stated that if you do not know the answer to this question we would like to know systemically how it is possible that someone would get locked out. DC Allison responded. He knows some limited details of that interaction that day; don’t know the specific individuals who instituted locking of the doors. He did find out that a group of people had showed up to OPD and they wanted to file a complaint against the BART officer. It was determined through communication with the Watch Commander and the head of the group. He doesn’t know the specific individual’s name. They were under the assumption that because OPD was investigating the actual shooting, the homicide section, that the IAD section for Oakland would be also able to investigate any other type of misconduct that was conducted. As it is not an Oakland member employee, our IAD would not have jurisdiction over that. They were explained that process to them and provided them to the way to go and get that complaint filed with BART. That is his understanding of the interaction. He cannot respond to the locking down of the building.

A. Dooley raised the question about how to coordinate complaints that people may try to make with OPD about other agencies that operate within the boundaries of Oakland although it may not be the jurisdiction of the OPD. She thanked him for information regarding the general approach. Is that a written policy or is that just the practice? DC Allison responded. He said there is some written policy that is currently being worked on and believes that it is in the review process and may be waiting for review by the Commission. That does address in policy on how to deal with criminal aspects where we believe there is reasonable suspicion if a member is aware of an outside law enforcement agency not related to Oakland and it gives some direction as to which jurisdiction that criminal activity occurred in, how to handle that direction. A brief overview of that is that any member who finds out about something, like an officer from another agency did criminal activity in

Oakland, they would notify the watch commander, the watch commander would determine if that was within our jurisdiction as an investigative body, and they would notify the criminal investigation, and the criminal investigation would begin against that individual.

A. Dooley asked do all the other agencies that operate in Oakland have a similar parallel body – do they all have IAD or some other process for managing civilian complaints. DC Allison responded. He said it is mandated by law that agencies have some form of avenue for citizens to file complaints and then there is some investigative process. Our agency due to its size, has its separate division; smaller agencies like a City the size of Albany, etc., have individuals that are designated as their internal investigators, so they may not have a separate IAD. There is always a process and then an investigative process.

A. Dooley – is there a place where all that information is kept – contact information, etc. for each jurisdiction. Is there a state website that lists them all? At a minimum, is there a flyer that says here is the complaint phone numbers for BART, etc. DC Allison said that OPD does not have anything and he is not sure if the State has some of this information on their website. A. Dooley asked that if people want to complain about OPD to these other jurisdictions, are those routed to you or not? DC Allison has received calls from other outside agencies and then we open an IA complaint and handle it as if they had walked in to Oakland itself. How do you handle mutual aid complaints about officers who were here providing mutual aid? He asked if we go outside the city to another agency and provide mutual aid? A. Dooley said either way - that during the protests (Occupy) we had several times we had mutual aid from other jurisdictions – how complaints against those officers were handled?

DC Allison reported that since he has been in IAD, they have not had any mutual aid type situations like that. During the past protest, we had all the complaints that we get that are generated because there is a high likely hood that an Oakland officer would be involved, we would intake the complaint and do an extensive research to determine whether or not there was any Oakland members involved and then based on that allegation, if it is determined that nobody is involved, then we would forward that material that we have investigated to the outside agency that was involved in it.

J. Dorado asked who was involved in locking out the Tindle family? Can you commit that we will receive that information? DC Allison reported. He said that the group that approached was that the police department understood that it was a demonstration and the safety protocol is to lock down the police department to determine what is occurring, make an assessment and then the watch commander in this situation will make the call and determine what is occurring. We will try to facilitate what the need is. In that situation, IAD was contacted once it was determined that they wanted to make a complaint and there was further discussion. OPD was locked down only for a brief amount of time; less than a half hour. J. Dorado asked if he could get a more detailed explanation of what happened, who was the watch commander, and length of time OPD was on lock down, and the applicable policy. DC Allison said that we can get you the policy relating to crowd control. J. Dorado said that we will look forward to that information.

b. Public Comment

Rashidah Grinage seemed to recall that at the CPRB there was a considerable amount of discussion on the matter of mutual aid.

Interim Director Finnell responded. Incident involved Hayward officers and OPD

officers jointly serving a warrant at a residence that had to be a double residence. OPD served on one half of the residence and Hayward police served a warrant on the other half. Out of that incident, a complaint was made based on the service of the warrant. We determined that the alleged actions occurred from the Hayward Police officers and no OPD officers were involved. CPRB began to research and we did have discussion on how to address such a situation because we could not do any further investigation into the matter because it involved Hayward officers only. The research that we did was centered more on the reporting of potential misconduct based on what it would be for OPD officers even though they would have no idea what general orders the Hayward officers would operate under. Nonetheless, we did the research on how to report that potential misconduct and how it could be accountable up the chain of command through OPD up to the responding agency and then from that point it would be in that agency's hands to address the allegations whether there were violations. We drafted a procedure and a process to report such actions and then it was presented to the City Administrator's office and the Chief Sean Whent. It didn't go any further from there. We did create a process for our officers to report potential violations and then work that up through the chain to make sure that the person was accountable and that it did get reported in a timely fashion to the assisting agency that was in our jurisdiction.

A. Dooley asked if Interim Director Finnell could provide the Commission with the draft that the Board or Agency offered to the Chief? Interim Director Finnell asked how do you want it provided? T. Smith said to send an email to the Commissioners for review and then we will determine what the next steps will be.

V. Oakland Police Commission Strategic Plan: Goal Setting and Action Steps

Thomas Lloyd Smith will engage the Commission in a working group session to develop a strategic plan that focuses on setting annual and long-term (3-5 year) goals, articulating action steps to achieve those goals, and defining objective measures in alignment with the Commission's mission and purposes as defined in Measure LL.

a. Discussion

T. Smith said that we are in the goal setting phase of our strategic plan. – We are following up on the goals set at the last Commission meeting. He included Measure LL in the packet. Smith mentioned that there are specific goals contained in Measure LL that should be incorporated into the Commission's strategic plan, such as conducting public hearings at least once a year. Smith asked E. Prather to speak to this point.

E. Prather - Section 604(b)(2) – Conduct public hearings at least once a year... This is a key goal. We need to format, how we go about it, input, research; take months of planning and suggests having an ad hoc committee for this matter. Set a date for planning.

A. Finnell stated that he and J. Rus will assist in facilitating meetings. A. Dooley said that R. Jackson, Dorado and she met and talked about how the Outreach Committee envisioned public meetings. Their interest was having the first meeting as a listening session (June 14 and R. Jackson offered her facility); do a second one later in the year. In the meantime, there are a number of policies that are in OPD's pipeline and it would be helpful to know about them. That could constitute the agenda for a public hearing on pending policies (suggestion).

E. Prather said that taking meetings to the communities is outreach. Conducting a

public hearing is not something to take to the community. It is more like a law symposium. It does not make for easy interaction between the Commission and the public. It involves research, wordsmithing, etc. What kinds of support (research) is available? The Commission may not have the time to analyze each and general order they choose to make a part of this public hearing.

Mr. Finnell stated that R. Rus (Policy Analyst) is a resource and can assist with the research.

T. Smith asked about framework for how this information would get back to the Commission. Who will be the audience? Where is it? Some say it is outreach and some say it is a law symposium.

J. Dorado said that going out to the community it is important to start off with a listening session and get the word out that is what we are doing – hear what people’s thoughts are about the Commission, LL, etc. Have an extensive outreach and incorporate what LL is all about and what our Commission charge is. Add some details so the people come with having some details. That is a starting point.

T. Smith asked about E. Prather’s comments. E. Prather said that there is a reason that this is in LL. There is a need to review policies. He would like to speak to the community what they identify about policies and procedures, etc. Then we can talk about logistics, etc. J. Dorado said that his point is well taken.

M. Nisperos said that he supports need to find out what is in the pipeline; our immediate priority to review. Have Commission hearings dedicate to policies and procedures issues? LL – policies and procedures meeting and the other meeting is out in the community. We have a duty to provide an education to them about the CPRA – what does it do, filing a complaint, process and what is the Commission and how can we serve them. Then open the forum to the community to get their reactions and suggestions. We exchange information and provide education while we are getting educated.

G. Harris agrees with M. Nisperos. We need to go to the community. They don’t know who we are or what Measure LL is. It is important that we hold meetings in every community.

E. Prather said this is a key goal (4-6-month endeavor); start the wheels turning.

E. Prather regarding Measure LL - we are required to review the Mayor’s budget regarding the police department. We have not seen it, reviewed it, do not have an ad hoc committee set up; do we need to be trained; need an outside forensic accountant. We need to plan for this. This is key goal.

E. Prather said that the last thing is that we are to require an annual report from the Chief of Police – we have not asked for the report, determine the timing, content we want the chief to discuss, etc. and then take the content of that report and present it to the Mayor, City Council and the public. We would take the report, analyze it and then give our thoughts on what the report is from the Chief and then provide that to the Mayor, City Council, and the public. This is a key goal.

A. Dooley said to set a skeleton calendar of agenda items for the year or 6 months at a time. Then have some agreement when to have public hearings (maybe not August, December). T. Smith said that we should speak now on calendaring items.

M. Nisperos suggested Commission training from the budget office in reviewing the police department’s budget and reviewing previous budgets.

T. Smith asked for comments in reviewing the annual report from the Chief of Police. A. Dooley said inquiring of the police department whether they have their own cycle calendar/fiscal year reports and tag it to that or otherwise make it the anniversary of our first meeting (suggested interim report in July now and a full report in January). E. Prather agreed with A. Dooley's suggestion.

T. Smith said the Chief probably has topics lined up for the reports. The Commission could ask for customization or in depth reports (example: use of force, profiling – the content that we want) and consider where we want to focus.

M Nisperos want to see if we can talk to whoever it is, in addition to the Chief, that staffs the Public Safety Committee (where the reports go) to determine if there is a large ombudsman report provided by the Chief of Police of multiple activities. Assuming the City Council will allow our amendment to the enabling ordinance and allow us what we should properly have – the authority to conduct the annual performance evaluation of the Chief of Police. Can we blend those two things together - The Annual Report as part of the Performance Evaluation?

b. Public Comment

Rashidah Grinage to G. Harris – She announced that the Coalition has set up a listening/informal event for Commission members to meet the community and the community to meet the Commission. She will provide you with a written description but arranged the meeting at St. Elizabeth's School on 33rd Avenue off East 14th Street (now called International Boulevard) on June 9 (Saturday).

T. Smith stated that we will contact you regarding the event.

Ms. Grinage also spoke about the issue raised by E. Prather (policies/policy analyst).

Bruce Schmiechen regarding oversight and police commission – (handle disciplinary issues, etc.) and as part of your strategic plan you need to become a transformative body and help make real effective change – with OPD.

Henry Gage regarding comments made with respect to calendaring, creating a new framework, future policy (looking at pipeline). He suggested contacting the current Inspector General and what policies they are looking at right now and moving into the future.

Paula Hawthorne regarding police reports (Public Safety Committee meetings); Joe DeVries is staff person. Bruce Stoffmarker (OPD) is the writer. The reports are also on the website.

VI. Oakland Police Commission Enabling Ordinance

The Commission completed its recommended revisions to the City Council's draft enabling ordinance for the Oakland Police Commission and submitted them to the City Clerk. The Commission will now discuss next steps including requesting an agenda item and the opportunity to speak in-person at an Oakland City Council meeting.

a. Discussion

T. Smith reported that he spoke with Ms. Hom and she agreed to get us on the agenda for the City Council June 19. We need to do some follow up work and find out how we can best position ourselves so they can make a swift decision on our

recommended revisions.

A. Dooley asked if there a way to propose that if there is controversy to our changes that they adopt the enabling ordinance as passed for first read and immediately take up an amendment to the enabling ordinance based on any recommendations of the Commission that they might want to give further consideration so at least we have an enabling ordinance but we also have the recommendations pending for further discussion and it doesn't get kicked down the road. Will that process work? Counsel Brown stated that you when you go to that meeting on June 19 you could make that request.

T. Smith will follow up with Ms. Hom and find out where we currently are and then if need to engage our conversation, I can see if I can talk to try and see that we can push this along and if need to get some advice.

A Dooley suggested reaching out to Councilmembers D. Kalb and N. Gallo (the two initial sponsors) and get their perspective in how they want to move it.

M. Nisperos thinking about what legal counsel has said and whether or not our recommendations for amendments to the enabling ordinance will go directly to the City Council.

A. Dooley mentioned that it came out of the Rules Committee and goes back to City Council and that has been calendared for the June 19 meeting.

T. Smith will follow up on this matter and inform members.

b. Public Comment

Henry Gage regarding the enabling ordinance and following up with Councilmember Reed (Chairs the Rules Committee as well as the Council). He suggested writing supplemental correspondence or memorandum incorporating the Commission's recommendations into a draft ordinance and sending that along with your recommendations so they could adopt that in its entirety..

Rashidah Grinage regarding the enabling ordinance process and contacting D. Kalb and N. Gallo.

T. Smith will schedule a meeting with them and support what we have approved as a Commission.

Counsel Brown referenced the email from Ms. Hom and it appears that you go straight to the City Council on June 19.

Paula Hawthorne said it is more important to get the independent counsel than get the enabling ordinance.

Larry White regarding discussion of the Coalition and Commission changes to the ordinance.

c. Action, if any

No action proposed.

VII. Oakland Police Commission Website Presenter: Interim Director Anthony Finnell

On April 23, 2018, the City of Oakland launched a new website “Oaklandca.gov”, which includes the Oakland Police Commission. The Commission will discuss feedback, insights or recommendations including messaging, design and content on the website.

a. Discussion

J. Rus gave a presentation regarding the new websites, including the Oakland Police Commission. T. Smith asked J. Rus to give a tour which he did. T. Smith asked who is posting pictures on the website. How do we get pictures of Commissioners on the website? J. Rus stated that it is being handled through the City Administrator’s Office. A. Finnell stated that we need to get everyone together and take an official photograph of the Commissioners and that will be posted to the website. Everything is still in progress. J. Rus stated that when you get your staff person in place that person will be handling the Commission website.

b. Public Comment

Henry Gage recommended contacting IT to implement system that you can jump to various sections/agenda items of a meeting in the video. A section on subcommittees (members, etc.).

Lorelei Bosserman clarification that no one put the picture on the website – a news section was placed on the website.

Bruce Scmiechen gave comments relating to website – how to file a police misconduct report (should be a tag at the very top and a page devoted solely to that).

c. Action, if any

No action taken.

VIII. Recess (6 minutes)

**IX. Training: The Brown Act (Government Code 54950 et seq.) and Oakland’s Sunshine Ordinance (Oakland Municipal Code Chapter 2.20, Articles 1 & 11)
Presenter: Deputy City Attorney, Allison Dibley**

The Ralph M. Brown Act, located at California Government Code 54950 et seq., is an act of the California State Legislature, authored by Assembly Member Ralph M. Brown and passed in 1953, that guarantees the public’s right to attend and participate in meetings of local legislative bodies. Training will also include those portions of Oakland’s Sunshine Ordinance that address public access to meetings.

a. Discussion

A. Dibley gave a training presentation (Ms. Dibley reviewed the PowerPoint slides in Agenda Item 9).

J. Dorado asked what precautions should we taken – have food, etc. if someone should walk in. Ms. Dibley said you can do that but you do not want to be discussing Commission business.

M. Nisperos asked if there are Brown Act or Sunshine provisions regarding ad hoc committees. Ms. Dibley said ad hoc committees are not subject to the Brown Act. The qualification is that the Ad Hoc has fewer members and does not have standing jurisdiction and does not meet on a regular basis. A committee of few majority of the commissioners and addressing an item of business that will be completed in a definite period. Ms. Dibley made comments about the References (Item 9).

Counsel Brown reported that sometimes we have members of the public that want to circulate a document to the Board but the Brown Act requires that whatever the Board gets the public gets as well.

b. Public Comment

Lorelai Bosserman asked if there is an informal gathering that is noticed but members of the public want to talk to Commission members, they can do that but the Commission members cannot answer? Ms. Dibley reported that the Brown Act says that the Commissioners cannot deliberate, discuss or take any action with each other – for example can a member come up to a Commissioner at the meeting and greet and speak about (like the Commission to do this or that) – yes, but the Commissioner should be careful not amongst themselves to discuss this (they can separately take questions, etc. from the public).

Henry Gage regarding the time set aside for training.

X. Monthly Notification of Community Police Review Agency Complaints Proposed for Dismissal. Presenter: Interim Director, Anthony Finnell

Interim Director Finnell will provide a summary of community complaints of police misconduct that the CPRA plans to dismiss.

a. Discussion

T. Smith said that this will be an agenda item for every meeting. If a case is going to be closed, the Commission needs to know. We need to be able to determine whether or not to take action to prevent closure.

A. Finnell gave a presentation (Item 10 in the Agenda Packet). These cases have been closed, investigations completed and findings presented to the Chief and Internal Affairs.

G. Harris mentioned that she received a report from Mr. Finnell and did not hear of any of these cases being closed. Was this reported to the Commission? A. Finnell said that there was a report submitted early on for inclusion into the agenda but this is the first time officially that it was included on the agenda and reported on closed cases. He has been collecting and building that report. Going forward, there are still some considerations by the City Attorney's office for the proper mechanism for reporting to the Commission. There is only certain information that he can report. He cannot report information that he gives to the Police Chief or Internal Affairs Division. What you received was that and information up to April 25. G. Harris said that the Chief can get information that the Commission can't? Counsel Brown said that is the way Measure LL is written; there is a Discipline Committee that has access to confidential information. If you look at the enabling ordinance and personnel records, only the Discipline Committee has access. T. Smith asked

shouldn't we receive information on these cases before they are closed? Shouldn't we receive information that they are proposed for closure? Counsel Brown said that is an issue they are working on.

b. Public Comment

Rashidah Grinage suggested placing in the enabling ordinance the requirement of the police department to respond to requests for information in a certain period.

c. Action, if any

No action taken.

XI. Adjournment

MOTION to adjourn (E. Prather) and seconded (J. Dorado). The motion passed 5 yes; 0 opposed; 0 abstentions. Commissioners Mubarak Ahmad and Regina Jackson were absent.

The meeting was adjourned at 9:54 pm.